

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY DECISION NOTICE**

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND
LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008**

Local Review Reference: 12/00022/RREF

Planning Application Reference: 11/01656/PPP

**Development Proposal: Erection of dwellinghouse (extension to previous
consent 08/0121/OUT)**

Location: Site East of Friarshaugh, Gattonside

Applicant: E M D Cameron (Lady Abernethy)

DECISION

The Local Review Body reverses the decision of the appointed officer and approves planning permission in principle, subject to conditions and an updated section 75 agreement, for the following reasons:

1. The material considerations in relation to the planning history of the site, the custodianship of the setting to the site, and the compliance of the proposal with Policy H7 of the Scottish Borders Consolidated 2001-2018 Structure Plan and Policy D2 of the Scottish Borders Consolidated Local Plan Adopted 2011, outweigh the lack of compliance of the proposal with Policy EP3 of the Scottish Borders Consolidated Local Plan adopted 2011.

The required SECTION 75 legal agreement has now been concluded and the formal decision notice can now be issued.

The Planning Permission in Principle to be subject to the following conditions-

STANDARD CONDITIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before the expiration of three years from the date of this permission

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

SCHEDULE OF CONDITIONS

2. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

3. The means of water supply and of surface water and foul drainage to be submitted for approval by the Planning Authority.

Reason: to ensure that the site is adequately serviced.

4. Two car parking spaces shall be provided within the site prior to occupancy of the dwellinghouse.

Reason: In the interests of road safety

FOR THE INFORMATION OF THE APPLICANT

It should be noted that:

The applicant is advised that, in submitting an application for approval of matters specified in conditions, the Planning Authority will expect particular attention to be taken of existing trees which are designated under a Tree Protection Order.

N.B. this consent does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment and apparatus may be affected by any works that you undertake.

SECTION 75

The section 75 entered into as part of previous approval process regulating contributions to the Waverley railway and to Earlston High and Melrose Grammar schools shall be updated to refer to this new planning approval.

DEVELOPMENT PROPOSAL

The application is for the erection of a dwellinghouse at land east of Friarshaugh, Gattonside. The application drawings consisted of the following drawings:

Plan Type Location Plan
Plan Reference No. Received 14/12/2011

PRELIMINARY MATTERS

The review was considered by Members at the meeting of the Review Body on 23 July 2012.

After examining the review documentation, which included: (a) Decision Notice, (b) Notice of Review and supporting papers, (c) Report of Handling, (d) papers referred to in Report of Handling, (e) Correspondence from consultees and (f) a list of Policies (including additional policy H7), the Local Review Body determined that it had sufficient information to determine the review and that no further procedure was required. In coming to this conclusion members considered the request for the applicant for further procedure in the form of further written representations, a site visit or an oral hearing

The Local Review Body considered the Review competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

REASONING

The determining issues in this review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: consolidated Scottish Borders Structure Plan 2001-2018 and consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- Structure Plan Policies: H7
- Local Plan Policies: D2, EP3

Other material key considerations the Local Review Body took into account related to:

- Supplementary Planning Guidance on New Housing in the Borders Countryside 2008

After considering the slides of the site and the submitted location and site plans, the Review Body accepted that information supplied by the applicant in connection with its custodianship of the surrounding area, providing the setting to the site, was material, as was the fact that there had been 5 previous approvals in relation to development of the proposed site.

Therefore the Local Review Body accepted the following as material considerations:

- Previous planning consents (1996, 1999, 2002, 2005, 2009)
- the custodianship of the surrounding area related to the setting of the site

In coming to this conclusion Members considered that the previous consents and the associated custodianship of the surrounding area demonstrated a consistency of intent towards the development of the site. While the Review Body were aware that the material regarding custodianship were new matters not before the Appointed Officer, they considered that this was as a result of exceptional circumstances in that

the applicant had been abroad. They were therefore satisfied that the material was properly able to be considered in accordance with section 43B of the Act.

The Review Body also accepted that there was a building group at Friarshaugh, as defined in Structure Plan Policy H7, Policy D2 of the Local Plan and in approved Supplementary Planning Guidance.

In coming to this conclusion, Members agreed with the appointed officer that Friarshaugh would be considered a building group and that there was capacity to add to that group as the site was well related to the building group and was contained within its sense of place. Therefore under policy D2 (A) it would be possible in principle to erect one house within the group, and that this would not conflict with the 2 unit/30% threshold contained within the policy.

The Review Body agreed that the proposal would not comply with Policy EP3.

In coming to this conclusion the Review Body agreed that the proposal could not be seen to comply with any of the exceptions criteria set out within Policy EP3.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Local Plan Policy EP3, but there were other material considerations that, in the particular circumstances of this application, would outweigh this and would justify departure from the Development Plan. The material considerations relate to the planning history of the site, the custodianship of the surrounding area providing a setting for the site, and the compliance of the proposal with Policy H7 of the Structure Plan and Policy D2 of the adopted Local Plan.

Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Signed. By Councillor R Smith
Chairman of the Local Review Body

Date: 26th June 2013