

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

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**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 2013**

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**Local Review Reference:** 21/00030/RREF

**Planning Application Reference:** 21/01257/FUL

**Development Proposal:** Erection of dwellinghouse

**Location:** Garden ground of Kilknowe House, East End, Earlston

**Applicant:** Mr A Elliot

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**DECISION**

The Local Review Body upholds the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

1. The proposal is contrary to policy IS8 of the Local Development Plan 2016 in that the site is at significant risk of flooding and allowing a dwellinghouse to be erected on this site would put persons and property at risk of flooding. In addition, access and egress could not be safely achievable during a flood event.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of a dwellinghouse on garden ground of Kilknowe House, East End, Earlston. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	
Floor Plans	
Site Plan	570-1
Access	570-2
Elevations	570-3

**PRELIMINARY MATTERS**

The Local Review Body initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 17<sup>th</sup> January 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Additional Information; d) Objection Comments; e) Consultation replies; and f) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information in the form of an amended drawing 570-2 showing access to the site being taken from the Main Street in Earlston.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, there was a requirement for further procedure in the form of written submissions to enable the Appointed Officer, Flood Risk Officer and Roads Planning Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 7<sup>th</sup> March 2022 where the Review Body considered all matters, including responses to the further information from the Appointed Officer, Flood Risk Officer and Roads Planning Officer. The Review Body also noted that the applicant had requested further procedure in the form of written submissions and a site visit but did not consider it necessary in this instance and proceeded to determine the case.

## **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: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, PMD5, HD3, EP13, IS2, IS3, IS7, IS8 and IS9

### Other Material Considerations

- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Trees and Development 2020
- Scottish Planning Policy 2014
- Scottish Government Flood Risk – Planning Advice 2015

The Review Body noted that the proposal was for planning permission to erect a dwellinghouse on garden ground of Kilnknowe House, East End, Earlston.

Members firstly considered the principle of the dwellinghouse on the site, which they noted lay within the settlement boundary of Earlston as defined in the Local Development Plan. The Review Body considered the proposal against the relevant infill Policy PMD5 and criteria within Policy PMD2 on quality standards. They noted that the Appointed Officer had accepted the infill site when considering these Policies and Members were of a similar view. They noted the position and size of the site and, given its relationship with the surroundings, they viewed the site as an acceptable infill opportunity within the settlement. Members also had no issue with impacts on residential amenity when considering the proposals under Policy HD3, nor with the precise siting and design of the proposed house, which they noted had been accepted by the Appointed Officer and would be subject to conditions.

Members then considered the issue of flood risk and whether the proposal would be in compliance with Policy IS8 and Government guidance. They noted that this was the reason the application had been refused by the Appointed Officer, based upon the advice from the Council's Flood Risk Officer that the site and access would be at risk of flooding. They noted that this advice was based on both the SEPA Flood Maps and the 2017 Earlston Flood Study, relating to both 1 in 100 and 200 year scenarios. The Review Body noted that the level of projected water inundation was such that the Flood Risk Officer had objected to the application and that, even if mitigation such as raised floor levels was considered, there would still be no access or egress safe from flooding.

Whilst Members took into account the applicant's comments about a lack of flood history in the area and expressed sympathy with regard to the proposal being an otherwise acceptable infill opportunity surrounded by existing properties also at risk, the Review Body acknowledged that with climate change, predicted flood levels were increasing. Given this, they attached significant weight to the advice of the Flood Risk Officer and concluded that flood risk seemed insurmountable at the site, contrary to the requirements of Local Development Plan Policy IS8. Members, therefore, upheld the decision of the Appointed Officer based upon the objection from the Flood Risk Officer.

The Review Body finally considered other material issues relating to the proposal including access, trees, water, drainage and developer contributions. They were of the opinion that the issues either did not influence the overall decision on the Review or could have been controlled by appropriate conditions and a legal agreement had the proposal been supported.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

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### **Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.**

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.
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**Signed**.....  
Councillor S Mountford  
Chairman of the Local Review Body

**Date 15<sup>th</sup> March 2022**