

**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:** 21/00019/RREF

**Planning Application Reference:** 20/01327/FUL

**Development Proposal:** Erection of dwellinghouse

**Location:** Land Adjacent Carnlea, Main Street, Heiton

**Applicant:** Mr Mark Graham

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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 proposed development would not comply with Policies PMD2: Quality Standards and PMD5: Infill Development of the Local Development Plan 2016 in that the development would result in additional vehicular traffic on a substandard access to the detriment of road safety, both vehicular and pedestrian, and it has not been demonstrated that the improvements required to upgrade the access, as specified, can be carried out.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of a dwellinghouse on land adjacent Carnlea, Main Street, Heiton. The application drawings and documentation consisted of the following:

| <b>Plan Type</b>             | <b>Plan Reference No.</b> |
|------------------------------|---------------------------|
| Location Plan                | PDK-20-137-001            |
| Elevations                   | 006-01                    |
| Elevations                   | 007-01                    |
| Roof Plan                    | 008-01                    |
| Site Plan and Section        | 009-02                    |
| Privacy and Overlooking Plan | 010-02                    |

## **PRELIMINARY MATTERS**

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 18<sup>th</sup> October 2021.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Objections; c) Further Objection Comments and Applicant's Response; d) General Comment; e) Other Information; and f) List of Policies, 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 Land Register of Scotland – Land certificate version 12/09/2006; Letters from Scottish Water dated 20 April 2004 and 24 February 2005; Excerpts from The Robert Burns Annual and Chronicle 1948 and Excerpts from the Federation Year Book 1951.

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 Planning Officer and Roads Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 13<sup>th</sup> December 2021 where the Review Body considered all matters, including responses to the further information from the Planning Officer and Roads Officer, and the applicant's reply to those responses. The Review Body also noted that the applicant had requested further procedure in the form of written submissions, a hearing 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: PMD2, PMD5, HD3, HD4, EP13, IS2, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Landscape and Development 2008

The Review Body noted that the proposal was for planning permission to erect a dwellinghouse on land adjacent to Carnlea, Main Street, Heiton. Members noted that the site lay within the settlement boundary for Heiton as defined in the Local Development Plan and that, in many respects, the development was an appropriate infill opportunity in keeping with

the surroundings and in compliance with the relevant Policies PMD2 and PMD5. The Review Body had no general objections to the siting or design of the dwellinghouse and agreed with the Appointed Officer in these respects.

The Review Body also understood that the site had accommodated a residential property in the past according to information in the background papers, that previous planning permissions had been granted and that land registration documents appeared to confirm a right of access from the site to the A698. However, Members were also aware that such rights should not override all other material considerations and, in this respect, were of the opinion that the development would generate increased traffic utilising an inadequate and unsafe access onto the A698. They considered that traffic generation and volumes would be greater for the new development and on the A698 compared to those that would have existed when the site accommodated the previous property. As a consequence, there were greater road safety concerns over the proposal.

The Review Body agreed with the Roads Officer that the access road was narrow with very limited junction visibility, inadequate junction radii and poor surface condition. They noted that several properties already used the access road/junction and that the addition of a further property would result in the need for road improvements which could not be achieved within the applicant's ownership. Although Members did acknowledge the benefits of the creation of a turning head for the access road and the possibility that the current trial 20mph speed limit on the A698 may be made permanent, they did not consider these benefits outweighed the inadequacies of the current access and junction. For reasons of road safety, they agreed with the Roads Officer and concluded that the proposal was not in compliance with Local Development Plan Policies PMD2 and PMD5.

The Review Body finally considered other material issues relating to the proposal including residential amenity impacts, water, drainage and developer contributions but were of the opinion that the issues did not influence the overall decision on the Review and 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**.....

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