

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTIONS 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 2013**

Local Review Reference: 21/00022/RREF

Planning Application Reference: 21/00839/PPP

Development Proposal: Erection of dwellinghouse, formation of new access and associated work

Location: Plot 1 Site adjacent Stroma, Charlesfield Industrial Estate, Charlesfield

Applicant: Mr Trevor Jackson

DECISION

The Local Review Body reverses the decision of the appointed officer and indicates that it intends to grant planning permission for the reasons set out in this intentions notice subject to conditions, informative and the applicants entering into a Section 75, or other suitable Legal Agreement, as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse, formation of new access and associated work. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	10103/01 Rev A
Block Plan	10103/02 Rev D
Block Plan	10103/03 Rev D
Cross Section	10103/04 Rev D

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 15th November 2021.

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 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, ED1, HD2, HD3, HD4, EP3, EP8, EP13, IS2, IS3, IS7, IS9 and IS13

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 New Housing in the Borders Countryside 2008
- Scottish Planning Policy 2014
- SESPlan 2013

The Review Body noted that the proposal was for the erection of a dwellinghouse with formation of new access and associated works at Plot 1, Site adjacent Stroma, Charlesfield Industrial Estate, St Boswells.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were a number of existing houses in the immediate vicinity alongside the road to the north of the site, together with a further dwellinghouse known as "Westlea" formed from a conversion adjoining the site to the south-west. Members were satisfied that this constituted a building group under Clause A of Policy HD2. In terms of whether there was capacity for the group to be expanded, the Review Body also noted that there were no existing permissions for any further houses at the group and they concluded that, subject to the site being considered to be an acceptable addition to the group, there was capacity for the development in compliance with Policy HD2 and the relevant SPG.

Members then considered the relationship of the site with the group and whether it was within the group's sense of place and in keeping with its character. In this respect, they had regard to the position of the site which they noted lay between the houses fronting the public road and the industrial estate and buildings to the rear. Rather than consider the site to be backland development as contended by the Appointed Officer, the Review Body were more of the opinion that the site represented an infill opportunity between two developed areas, the context for residential development already being present in the form of the conversion to form "Westlea". The provision of a further detached house within its own curtilage was seen as consistent with the current character of other houses within the group, which were noted as all being detached within their own curtilage. For these reasons, the Review Body did not

consider the group to be complete and viewed the site as a clear further infill opportunity within the sense of place and character of the group.

Members then considered the issue of residential amenity in relation to the adjoining industrial estate. They noted the proximity of the industrial estate and whilst accepting that the nature of impacts could change depending on the adjoining industries, the Review Body were of the opinion that noise assessment had already been undertaken, mitigation measures proposed and that such measures could be considered at the next planning stage when the siting and design of the house and boundaries would be decided. Members also noted that "Westlea" adjoined the industrial estate, setting a context for residential use. It was also considered that anyone occupying a new house would be aware of the potential impacts from the industrial estate.

The Review Body finally considered other material issues relating to the proposal including access, water, drainage, contamination, trees, hedges and ecological matters but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for education and the Borders Railway would also be required, to be secured by legal agreement.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and HD3 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate infill addition between the building group and the industrial estate, any impacts from the industrial estate being known to incoming residential occupants and able to be mitigated. Consequently, the application was approved subject to conditions and legal agreement.

DIRECTIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - a. the expiration of three years from the date of this permission, or
 - b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.

Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

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.

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

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.

CONDITIONS

1. 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, including new tree planting adjoining the industrial estate, have

been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.

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.

2. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place in strict accordance with the details so approved.

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. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):

- I. existing and finished ground levels in relation to a fixed datum preferably ordnance
- II. trees to be retained within the site
- III. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
- IV. location and design, including materials, of walls, fences and gates
- V. soft and hard landscaping works including new tree planting within the site, including along the industrial estate boundary
- VI. existing and proposed services such as cables, pipelines, sub-stations
- VII. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

4. The existing trees and boundary hedging should be retained in perpetuity. They should be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees and hedging, together with such other measures as are necessary to protect the trees, hedges and their roots from damage. Details of the methods it is proposed to use shall be submitted by the applicant to the Local Planning Authority and be approved by them in writing. The approved protective measures shall be undertaken before any works commence on the site and must, thereafter be observed at all times until the development is completed.

Reason: To ensure that adequate precautions are taken to protect trees and hedges during building operations.

5. No development to be commenced until further details of access and parking provision are submitted to, and approved in writing by, the Planning Authority. Thereafter the development to be completed in accordance with the approved details prior to occupation of the dwellinghouse unless otherwise agreed. The details shall include:

- I. The main access to include visibility splays of 2.4m by 120m in both directions, a 6m initial width, surface water drainage interception and provision for service vehicles, including construction and levels details.
- II. 2 no. parking spaces, not including any garage, and turning area to be provided within the curtilage of the site and retained thereafter in perpetuity

Reason: To ensure satisfactory form of access and adequate parking and turning provision, in the interests of road safety.

6. No development to be commenced until the details of water and drainage provision are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be completed in accordance with those details.

Reason: To ensure that the development is adequately serviced and in the interests of public health.

7. No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.

Reason: To ensure adequate provision for waste storage within the site.

8. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.

The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition. and thereafter
- b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.
Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

9. Any existing trees or hedges proposed for removal shall not be removed until appropriate breeding bird surveys are carried out, submitted and subsequently approved in writing by the Planning Authority.

Reason: To safeguard potential ornithological interests at the site.

Informative

The development shall be carried out in accordance with all regulations relating to any bats encountered on the site. Please contact Nature Scot if evidence of bats is noted pre-commencement of development.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Earlston High School, St Boswells Primary School and the Borders Railway.

N.B: This permission 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.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites".

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

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

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD

Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA

Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU

British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND

Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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.

Signed...Councillor H Laing
Chairman of the Local Review Body

Date.....

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