

**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 2013**

Local Review Reference: 22/00001/RREF

Planning Application Reference: 21/01262/FUL

Development Proposal: Removal of Condition 2 of planning permission 18/010000/FUL
pertaining to use as holiday let accommodation

Location: Warlawbank Steading, Reston

Applicant: Ms Louise Weddell

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 removal of Condition 2 of planning permission 18/01000/FUL would be contrary to Local Development Plan 2016 policies PMD2 (Quality Standards), HD2 (Housing in the Countryside), HD3 (Protection of Residential Amenity) and IS2 (Development Contributions) as the Planning Authority would lose control over the consented use of the development for holiday let purposes. The use of the development for residential purposes would be incompatible with neighbouring farm uses, with unacceptable levels of amenity for occupants, and would result in the creation of a new residential unit without addressing deficiencies in local education created as a result of the development. Other material considerations do not justify a departure from the Development Plan in this case.

DEVELOPMENT PROPOSAL

The application relates to the removal of Condition 2 of planning permission 18/010000/FUL pertaining to use as holiday let accommodation at Warlawbank Steading, Reston. The application drawings and documentation consisted of the following:

Plan Type

Plan Reference No.

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 21st March 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) Further representations and Agent response; e) Consultation Replies; f) Objection comments; and g) 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: PMD2, ED7, HD2, HD3, IS2, IS7, IS9 and IS13

Other Material Considerations

- SBC Supplementary Planning Guidance on Housing in the Countryside 2008
- SBC Supplementary Planning Guidance on Developer Contributions 2021
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- PAN 4/1998 Use of Conditions

The Review Body noted that the proposal was for planning permission to seek the removal of Condition 2 of planning permission 18/010000/FUL pertaining to use as holiday let accommodation at Warlawbank Steading, Reston. Whilst Members understood that in considering a Section 42 application they would be entitled to consider the principle of the development under certain circumstances, they noted that the consent had not lapsed and there was also insufficient evidence to show that the consent was incapable of being implemented.

The Review Body, therefore, proceeded to consider the justification for Condition 2 and the potential effects of removing the condition on the overall development. Members noted that the site had originally been intended as additional accommodation as an extension to Warlawbank. Members also noted that there had been attempts to market the site for holiday occupation since the 2019 consent and considered all comments made from the applicant, consultees and objectors on the issue of occupancy. In particular, Members noted the close proximity of the proposed accommodation to a working farm building and yard, considering the buffer space to be much less than other houses at the location and also noting the level differences with the farmyard and farm building at an elevated position.

Members supported the objections of the Environmental Health and Appointed Officers over the potential use conflicts that would be likely to occur due to the close proximity and elevated position of the farming activities. Whilst they noted that the applicant was contending that anyone purchasing the property would be aware of the potential use conflicts, the Review Body considered that the issue needed to be properly addressed at this stage, to reconcile potential future conflicts. Members recognised that the impacts on residential amenity would be more significant for anyone occupying the property as a permanent dwellinghouse, compared to impacts on holidaymakers only staying for short periods of time. For these reasons, the Review Body agreed with the Appointed Officer's decision that the application was contrary to Policies PMD2, HD2 and HD3 of the Local Development Plan.

The Review Body finally considered all other material issues relating to the proposal including the water supply, road capacity, foul drainage and development contributions, Members noting that contributions would be needed for education purposes if the property was not restricted to holiday occupancy. The Review Body concluded that these issues did not influence their overall decision on the Review and that the decision of the Appointed Officer be upheld.

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.

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 S Mountford
Chairman of the Local Review Body

Date 28th March 2022