



**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:** 22/00003/RREF

**Planning Application Reference:** 20/00796/FUL

**Development Proposal:** Erection of dwellinghouse

**Location:** Land West of Causewayfoot Cottage, Wolflee, Hawick

**Applicant:** Miss Dawn Kilpatrick

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**DECISION**

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

1. The development would be contrary to Policy IS8 of the Local Development Plan 2016 in that the site is located within the 1 in 200 year functional floodplain of the Catlee Burn. This development would be at significant risk of flooding from the Catlee Burn and no information has been provided to demonstrate that the proposal can be safely developed on this land free from flood risk and without increasing the probability of flooding elsewhere.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of a dwellinghouse on land West of Causewayfoot Cottage, Wolflee, Hawick. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	
Site Plan	MM2008/1
Plan	MM2008/2
Elevations 1	MM2008/3
Elevations 2	MM2008/4

## **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 21<sup>st</sup> 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) Consultation Replies; e) General comment; 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: PMD2, HD2, HD3, EP1, EP2, EP13, IS2, IS7, IS8, and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Development Contributions 2021
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on SUDS 2020
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- "Flood Risk and Land Use Vulnerability Guidance" SEPA 2018

The Review Body noted that the proposal was for planning permission for the erection of a dwellinghouse on land West of Causewayfoot Cottage, Wolflee, Hawick.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were five existing houses within the Policy grounds and woodland of the former Wolflee estate, served by existing private tracks within the estate. The Review Body agreed with the applicant and Appointed Officer that this constituted a building group under Clause A of Policy HD2. With regard to 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, whether it was within the group's sense of place and in keeping with its character. In terms of relationship of the site with the group, the Review Body noted the current character, spacing and layout of the houses within the building group. Members considered the spacious pattern of separation to be part of the historic and current character of the group and they did not agree with the Appointed Officer that the application site was outwith the boundaries of the group. Members afforded weight to the current use of the site as garden ground with domestic buildings on the site, thereby not constituting development breaking into undeveloped fields. The Review Body were also of the opinion that the site did not need to be accessed from the Wolflee private tracks to be considered part of the sense of place and that the presence of the Catlee Burn, together with surrounding boundary vegetation, resulted in a site which lay within the boundaries and sense of place of the building group. For these reasons, Members concluded that the site was an appropriate addition to the building group and in compliance with Policy HD2 and Supplementary Planning Guidance.

The Review Body then considered the siting and design of the dwellinghouse in relation to Policies PMD2, HD2 and HD3. Whilst they recognised the rural position and attraction of the location and understood the concerns of the Appointed Officer over the design elements of the proposed house, Members did not consider there was justification to seek amendment to design in this location. They noted the design of the extension to Causewayfoot Cottage opposite the site and that appropriate roof materials could be addressed by condition. The Review Body concluded that the siting and design of the dwellinghouse were in accordance with Policies PMD2, HD2, HD3 and Supplementary Planning Guidance.

Members then considered the issue of flood risk and compliance with Policy IS8. They noted that despite a Flood Risk Assessment being provided, this had still resulted in sustained objections from both SEPA and the Council's Flood Risk Officer. Members noted the reasons for the objections which related to insufficient information, the floodplain extent and the impacts of the bridge and unnamed burn. Members were also concerned about safe access and egress. The Review Body gave significant weight to the fact that both SEPA and the Flood Risk Officer had objected, but they also noted the applicant's comments on clearance of the site above the Catlee Burn. Members also noted that the applicant would be willing to provide a more detailed Flood Risk Assessment.

After full consideration of various options in relation to the provision of a more detailed Flood Risk Assessment, Members agreed that the proposal was not acceptable in terms of flood risk on the basis of the current proposals and information submitted. The Review Body decided that if a more detailed Assessment was provided in discussion with SEPA and the Council's Flood Risk Officer, then the applicant could reapply for planning permission supported by the more detailed Assessment.

The Review Body finally considered all other material issues relating to the proposal including access, parking, water, drainage, ecology, trees, hedges and developer contributions. Members concluded that these issues did not influence their overall decision on the Review and that they could be addressed by conditions, informatives and a legal agreement had the application been approved.

## **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 28<sup>th</sup> March 2022**

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