

**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: 19/00033/RREF

Planning Application Reference: 19/01000/PPP

Development Proposal: Erection of dwellinghouse and garage

Location: Land East of Auburn Cottage, Ashkirk

Applicant: Mr & Mrs C W Davies

DECISION

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

The necessary Section 69 Agreement has now been concluded.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse and garage. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	003
Proposed Site Plan	001

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 17th February 2020. After examining the review documentation which included: a) Notice of Review (including Decision Notice and Officer's report); b) Papers referred to in officer's report; c) Consultations; and d) 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 new and more detailed tree planting proposals surrounding the application site. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered.

Members also noted that the applicant had requested further procedure in the form of 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, HD2, HD3, IS2, IS3, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Waste Management 2015
- Scottish Planning Policy 2014

The Review Body noted that the proposal was for Planning Permission in Principle to erect a dwellinghouse and garage on the site east of Auburn Cottage, Ashkirk.

Members understood that the site had been refused on two previous occasions for residential development and that there had been three further houses developed within the building group since those refusals. They also noted that, although the applicants were local farmers intending to retire and also had a nearby golf driving range to operate, there was no business case advanced for the application and approval was sought on the basis of addition to the building group under Policy HD2 and associated guidance.

The Review Body firstly considered whether there was a building group present at the location and concluded that, as six houses currently existed, this constituted a building group in terms of Policy HD2. They also recognised that the group could expand by up to two houses and that the proposal was within that scale of addition capacity.

Members then considered the relationship of the site with the group and whether it was in keeping with its character, whilst noting that the application was for planning permission in principle and that the suggested siting and design of house remained indicative. In this respect, they had regard to the opinion of the Appointed Officer who considered the site was well related and also that there appeared to be no infill or other suitable sites within the group to allow addition. Although they understood the concerns over ribbon development, the lack

of a strong defensible boundary between the site and Auburn Cottage, combined with the proximity of the site to the group and lack of other sites within the group, determined that they considered the site a natural location for building group expansion, in accordance with the Policy and Guidance. Members also considered that the nature of the group had changed since the earlier refusals.

The planting proposals were also given weight in considering the suitability of the site, Members accepting that substantial planting would provide a stronger end-stop to the building group in this direction. They noted that the applicants had sufficient land ownership to ensure the planting was achieved and the Review Body requested a condition to secure the planting. In this way, it was felt the group would benefit from a stronger, more defensible boundary. Whilst noting the Appointed Officer's concerns over repeated ribbon development if planning permission was granted, Members could only determine the current application on its own merits and not on whether it would set any precedent. Similarly, the case at Carfraemill presented as a comparable application by the applicant and referred to by the Appointed Officer, was noted but not given weight in deciding the Review.

The Review Body finally considered other material issues relating to the proposal including residential amenity, access, site levels, water and drainage but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for the Waverley Line were required and could be secured by legal agreement.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policy HD2 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to an existing building group within its sense of place and enclosed by proposed planting. Consequently, the application was approved.

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 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. a survey of existing trees 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 planting within and outwith the site as shown on the indicative plans 001 and 003 submitted with the PPP application
- 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. 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. Access to be constructed as per SBC Standard Detail DC-3
- II. 2 no. parking spaces, not including any garage, and turning area for each dwellinghouse 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.

5. No development to commence until further details of the provision of a water supply, foul and surface water drainage are submitted to, and approved by, the Planning Authority. Thereafter, development shall proceed in strict accordance with the approved details.

Reason: To ensure that satisfactory arrangements are made for the provision of water and for disposal of surface and foul water.

INFORMATIVES

All work within the public road boundary must be undertaken by a contractor first approved by the Council.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for the Waverley Line. A Section 69 Agreement has now been concluded.

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.
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Signed.....
Councillor T. Miers
Chairman of the Local Review Body

Date..... 12th May 2020

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