

**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: 22/00008/RREF

Planning Application Reference: 21/00739/PPP

Development Proposal: Erection of 2 no dwellinghouses

Location: Land East of Dalgeny, Old Cambus, Cockburnspath

Applicant: F J Usher's Childrens Trust

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 development would be contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016 and the New Housing in the Borders Countryside Supplementary Planning Guidance 2008 in that it would not relate sympathetically to the character of the existing building group. The proposal would not respect the scale, siting and hierarchy of buildings within the existing group and would degrade its strong sense of place. This conflict with the Local Development Plan is not overridden by any other material considerations.

Development Proposal

The application relates to the erection of 2 no dwellinghouses on land East of Dalgeny, Old Cambus, Cockburnspath. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	5311/01/F
Existing Site Plan	5311/02/F
Proposed Site Plan	5311/03/G
Proposed Site Plan	5311/04/F
Photomontage	Image 1

Photomontage
Photomontage

Image 2
Image 3

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 20th June 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) Correspondence; e) Consultation Replies; f) Objection Comments; g) General Comment; h) Further Representations and i) 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 further information submitted by an objector in the form of noise levels of machinery in operation at TD Trees and Land Services, Old Cambus.

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 Appointed Officer and Environmental Health to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 15th August 2022 where the Review Body considered all matters, including responses to the further information from the Appointed Officer and Environmental Health, together with the applicant's comments on the responses. The Review Body also noted that the applicant had requested further procedure by means of a site inspection 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, ED10, EP1, EP2, EP3, EP5, EP8, EP13, EP14, 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
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Landscape and Development 2008

- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Contaminated Land Inspection Strategy 2001
- SPP 2014
- Draft NPF4
- NPPG14 Natural Heritage
- PAN60 Planning for Natural Heritage
- PAN33 Contaminated Land
- 2/2011 Planning and Archaeology
- 1/2011 Planning and Noise

The Review Body noted that the proposal was for the erection of 2 no dwellinghouses on land East of Dalgeny, Old Cambus, Cockburnspath.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were five houses in the vicinity, including the farmhouse and the property known as “Dalgeny” further to the west. After discussion, the Review Body were satisfied that this constituted a building group under Clause A of Policy HD2, albeit they did not include “Dalgeny” due to its separation by distance and woodland belts. In terms of whether there was capacity for the group to be expanded, the Review Body noted that there was one other plot to the north-east of the farm steading which had been accepted by the Appointed Officer subject to a legal agreement. However, Members also understood that, as there had been no planning consent yet issued for that site, it would not impact on the scale of addition allowance as that only took into account issued planning consents. As there were no existing permissions for any further houses at the group, the Review Body 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 noted the location of the site, the proposal for two plots, the height of the site and the relationship with the farmhouse, cottages and other steading buildings. Having concluded that “Dalgeny” was not part of the building group, Members were of the view that the development site constituted an inappropriate addition to the existing group, lying outwith the group and constituting ribbon development with an unsympathetic layout and relationship with the farmhouse, steading and general form of the group.

The indicative site plan and photomontages were noted but did not persuade the Review Body that detailed siting and design at a future planning stage could resolve their fundamental concerns over the inappropriate location, shape and height of the site. There was concern that development on the site would conflict with the height, location and hierarchy of the other buildings in the group and could also set a precedent for further ribbon development towards “Dalgeny”. Whilst the Review Body considered there may be capacity and potential for further development within the building group, they did not consider the application site to be an appropriate location and Members concluded that the proposal was contrary to Policy HD2 and the relevant Supplementary Planning Guidance. The Review Body also noted that there had been no economic justification advanced for the need for the site under Part F of Policy HD2.

Members also considered other material issues relating to the proposal including the adequacy of the road network, noise impacts on residential amenity, loss of prime agricultural land, coastline impacts, infrastructure constraints, ecology, archaeology, possible land contamination and the need for compliance with developer contributions. Members were of the opinion that appropriate conditions and a legal agreement could have addressed such issues satisfactorily, had the application 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.

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 23 August 2022

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