

**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: 22/00015/RNONDT

Planning Application Reference: 21/01846/PPP

Development Proposal: Erection of two dwellinghouses

Location: Land North of Ivanhoe, Dingleton Road, Melrose

Applicant: Rivertree Residential Limited

DECISION

The Local Review Body refuses planning permission as explained in this decision notice and on the following grounds:

1. The development would be contrary to Policy EP13 of the Local Development Plan 2016 and the Trees and Development SPG 2008 in that there would be an unacceptable and detrimental impact on the orchard trees forming part of the SBC TPO 21 ("Dingleton Hospital Site") as a consequence of loss of protected trees, prejudice to the remaining trees and insufficient space for adequate and acceptable compensatory planting, resulting in adverse impacts on the character and amenity of the area. Furthermore, the development has not demonstrated that public benefit would outweigh the loss of, and impacts on, the trees.

Development Proposal

The application relates to the erection of two dwellinghouses on land North of Ivanhoe, Dingleton Road, Melrose. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	AT3533 LOC
Existing Site Plan	AT3533 (-L)001
Site Plan with Tree Removals	AT3533 (-L)101
Site Plan as Proposed	AT3533 (-L)102

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; b) Additional Information; c) Consultation Replies; d) Objection Comments; e) Correspondence; and f) 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 the applicant in the form of a Bat Potential and Breeding Bird Survey.

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 Ecology Officer to comment on the new information. Members also concluded that a site inspection, as part of the further procedure, would assist them in their determination of the Review.

The Review was, therefore, continued to the Local Review Body meeting on 15th August 2022, the Review Body having previously carried out their site inspection. Members considered all matters, including responses to the further information from the Appointed Officer and Ecology Officer, together with the applicant's comments on the responses. The Review Body then 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, PMD3, EM32B, PMD5, HD1, HD3, EP1, EP2, EP3, EP4, EP8, EP10, EP13, EP14, IS2, IS3, IS7 and IS9.

Other Material Considerations

- 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 Biodiversity Action Plan 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Sustainable Urban Drainage Systems 2020

The Review Body noted that the proposal was for the erection of two dwellinghouses on land North of Ivanhoe, Dingleton Road, Melrose.

Members firstly considered the application against Policies PMD2 and PMD5 of the Local Development Plan and accepted that the site was an infill site within the defined settlement boundary of Melrose. They also noted that the site was part of the overall housing allocation EM32B in the Local Development Plan, albeit shown on the Settlement Proposals Map as part of the structure planting and landscaping within that land allocation, reflecting the fact that the site contained orchard trees protected by SBC TPO 21. The Review Body noted that the application was for planning permission in principle and that there were no detailed siting and design proposals, although a site plan with house positions and tree positions had been submitted. Having considered all the submissions and informed by their site inspection, the Review Body were of the opinion that this was a suitable infill development opportunity but that the proposal for two houses represented overdevelopment given the constraint of protected trees on the site.

Members considered that the orchard trees within the site represented an historic and important element of the natural landscape and environment of the area, providing a public amenity for residents around the site. Whilst they noted the conclusions of the Arboricultural Assessment and the new tree planting proposals, the Review Body agreed with the Council Landscape Officer that there was insufficient space within the site to achieve two dwellinghouses without resulting in the loss of existing orchard trees. Members also considered that there was insufficient space to carry out the new planting and for that planting to become established and retained, given that the proposal was for two houses. Ultimately, the Review Body concluded that the impact on the protected trees would result in an adverse impact on the character and amenity of the area and that there were insufficient benefits or mitigation that would outweigh the adverse impact. The proposal was, therefore, considered to be contrary to Policy EP13 of the Local Development Plan and the Trees and Development Supplementary Planning Guidance.

The Review Body did consider whether a more appropriate proposal would be a submission for one house on the site, which could potentially provide more space for the retention of the existing orchard trees and for adequate compensatory planting. However, Members were required to determine the proposal for two houses as submitted and that this could be a future option available to the applicant, to re-apply for one house on the site in a revised planning application.

The Review Body finally considered other material issues relating to the proposal including impacts on designated landscapes, residential amenity, ecology, access, parking, water, drainage and development contributions but were of the opinion that detailed siting, design, appropriate conditions and a legal agreement could have addressed these issues, 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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