

**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:** 22/00022/RREF

**Planning Application Reference:** 21/01625/PPP

**Development Proposal:** Erection of dwellinghouse and formation of access

**Location:** Land East of The Garden Cottage, South Laws, Duns

**Applicant:** Mr and Mrs Jerry and Shona Ponder

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**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 development fails to comply with Policy HD2 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance, New Housing in the Borders Countryside 2008, as it would not relate well to the existing building group, it would break into an undeveloped field, outwith the building group's sense of place, and it would result in ribbon development along the public road, which would adversely impact upon the composition and quality of the landscape character. Furthermore, the proposed development fails to comply with Policy ED10 as it would result in the permanent loss of prime quality agricultural land.

**Development Proposal**

The application relates to the erection of a dwellinghouse and formation of access on Land East of The Garden Cottage, South Laws, Duns. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	11833-04
Site Plan	11833-03 Rev D
FF Plan and North & West Elevations	11833-02 Rev B

## **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 15<sup>th</sup> August 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; and e) List of Policies, 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, HD2, HD3, HD4, EP13, IS2, IS7, IS8 and IS9

### **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 Waste Management 2015
- Proposed Local Development Plan
- SPP 2014
- Draft NPF4

The Review Body noted that the proposal was for the erection of a dwellinghouse and formation of access on Land East of The Garden Cottage, South Laws, Duns.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were a number of existing houses to the west of the site and south of the public road. Members were satisfied that this constituted a building group under Clause A of Policy HD2. In terms of whether there was capacity for the group to be expanded, the Review Body noted that there had been one consent granted within the current Local Development Plan period which had now lapsed. The Review Body concluded that, subject to the site being considered an acceptable addition to the group, there was notional 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 within a field on the eastern edge of the group. The Review Body were concerned that the proposed site lay outwith and was not related to the building group, constituting ribbon development and breaking into the corner of an arable field. Members were

also concerned that this could set a precedent for further development within the field. After full discussion, the Review Body concluded that the building group was complete and that the site was not an appropriate addition to the group. As there had also been no economic case advanced for the proposed house, Members considered the application to be contrary to Policy HD2 of the Local Development Plan and the New Housing in the Borders Countryside Supplementary Planning Guidance.

The Review Body then considered the issue of loss of prime agricultural land and compliance with Policy ED10 of the Local Development Plan. Whilst Members noted the submissions by the applicant claiming the site occupied an unproductive field margin, they agreed with the Appointed Officer that the site was still within a field being used and available for agricultural purposes and that the proposal resulted in the unjustified loss of prime agricultural land contrary to Policy ED10.

The Review Body also noted the objection of SEPA over the potential for flood risk at the site. Whilst Members had concerns over this issue, they accepted that the Appointed Officer had refused the application for other reasons and it was, therefore, not necessary to investigate the issue further at this stage.

The Review Body finally considered other material factors relating to the proposal including claimed housing land shortfall, national planning policy, other building group addition cases, access, passing places, water, drainage, impacts on trees and hedges, waste and the need for compliance with developer contributions. Members were of the opinion that the factors did not outweigh their conclusion that the development was contrary to Local Development Plan Policies and that appropriate conditions and a legal agreement could have addressed them 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.

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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 N Richards  
Acting Chairman of the Local Review Body

**Date 23 August 2022**