

SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW BODY held in the Council Chamber, Council Headquarters, Newtown St Boswells on Monday, 15 August 2022 at 10 a.m.

Present:- Councillors S Mountford (Chair), J. Cox (from para 3), M. Douglas, D. Moffat, A. Orr, V. Thomson, N. Richards, S. Scott, E. Small (from para 3)

In Attendance:- Principal Planning Officer, Solicitor (S. Thompson), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

MEMBERS

Having not been present when the following review was first considered, Councillors Cox and Small left the meeting.

1. CONTINUATION OF REVIEW 21/00739/PPP

With reference to paragraph 2 of the Minute of 20 June 2022, the Local Review Body continued their consideration of the request from F J Usher's Children Trust, c/o Hannah Belford, Agent, Wemyss House, 8 Wemyss Place, Edinburgh to review the decision to refuse the planning application for the erection of two dwellinghouses on Land East of Delgany, Old Cambus, Cockburnspath. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; additional information, correspondence, consultation replies; objection comments, general comments, further representations; list of policies and submission by the Planning Officer and Environmental Health and the Applicant response. Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2 and following discussion, were satisfied that the existing houses constituted a building group, albeit they did not include "Dalgeny" due to its separation by distance and woodland belts. They also accepted that there was capacity for the group to be expanded. Members then considered the relationship of the site and whether it was within the group's sense of place. Whilst the indicative site plan and photomontages were noted, the Review Body were not persuaded 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. 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.

DECISION

DECIDED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted;
- (c) 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 was not overridden by any other material considerations.

- (d) the officer's decision to refuse the application be upheld and the application refused, for the reasons detailed in Appendix I to this Minute.**

MEMBER

Having been unable to attend the site visit, Councillor Moffat left the meeting.

2. CONTINUATION OF REVIEW 21/01846/PPP

With reference to paragraph 6 of the Minute of 20 June 2022, the Local Review Body continued their consideration of the request from Aitken Turnbull Architects, 5 Castle Terrace, Edinburgh EH1 2DP to review the non-determination of a planning application for the erection of two dwellinghouses on Land North of Ivanhoe, Dingleton Road, Melrose. The Review Body noted that the review was submitted against non-determination of the planning application, as the Council had not determined the application within the application processing period. This constituted a deemed refusal and they were required to make a 'De Novo' decision on the application. The supporting papers included the Notice of Review; additional information; consultation replies; objection comments; correspondence; List of Policies and submissions by the Planning and Ecology Officers and Applicants response. Members accepted that the site was an infill site within the defined settlement boundary of Melrose and 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 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 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 and insufficient space to achieve and maintain replacement planting. As there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused.

DECISION

DECIDED that:-

- (e) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) 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.**
- (d) the deemed refusal of the application be upheld and the application refused, for the reasons detailed in Appendix II to this Minute.**

MEMBERS

Councillors Cox, Moffat and Small joined the meeting prior to consideration of the following review.

3. REVIEW 22/00127/FUL

There had been circulated copies of a request from Daina McFarlane, Leitvale, Eden Road, Gordon to review the decision to refuse the planning application for the change of Use from Industrial (Class 4, 5, 6) to Fitness Studio (Class 11)(retrospective) at Unit C, Whinstone Mill, Netherdale Industrial Estate, Galashiels. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; additional information; consultation replies; support letters and list of policies. The Planning Adviser drew attention to information on the availability of Industrial Units within Netherdale Industrial Estate, Galashiels, which had been submitted with the Notice of Review but which had not been before the Appointed Officer at the time of determination. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. However, they also agreed that the matter could not be considered without enabling the Planning Officer and Economic Development Service to respond to the information on the availability of Industrial Units within Netherdale Industrial Estate. Members, therefore, agreed that the application be continued for further procedure in the form of written submission to seek comments from the Planning Officer and Economic Development.

DECISION

DECIDED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) new evidence submitted with the Notice of Review in the form of information about the availability of Industrial Units within Netherdale Industrial Estate, Galashiels met the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and was material to the determination;**
- (c) the review could not be considered without the need for further procedure in the form of written submissions;**
- (d) the Planning Officer and Economic Development be given the opportunity to comment on the information on the availability of industrial units within the Netherdale Industrial Estate, Galashiels provided by the applicant.**
- (e) consideration of the review be continued to a future meeting on a date to be confirmed.**

4. REVIEW 21/00706/FUL

There had been circulated copies of a request from Mr Drew Glendinning, c/o Ferguson Planning, Shiel House, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a dwellinghouse on Plot 4, Westcote Farm, Westcote, Hawick. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; additional information; consultation replies; objection comments and list of policies. The Planning Adviser drew attention to the revised location plan submitted with the Notice of Review but not before the Appointed Officer at the time of determination. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered without the need for further procedure. Members firstly considered whether there was a building group under Clause A of Policy HD2 and noted that there were a number of existing houses in the immediate vicinity consisting of the original farmhouse, several conversions and new-builds to the north of the site. Members were satisfied that this constituted a building group and there

was notional capacity for addition. In considering whether the site was within the group's sense of place and in keeping with its character, the Review Body noted the location of the site within a field on the southern edge of the group, and Members were concerned that the proposal was not within the cluster of buildings and houses around the original farmhouse and that it appeared to constitute ribbon development, lying outwith the group and breaking into a field. Members were also concerned that this could set a precedent for further sporadic development in 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. 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.

DECISION

AGREED that:-

- (a) **the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) **The development was contrary to Policy HD2 of the Local Development Plan 2016 and New Housing in the Borders Countryside Guidance 2008 because it would constitute housing in the countryside that would not relate well to the existing building group and would lead to an unjustified sporadic expansion of development into a previously undeveloped field. Furthermore, there is no overriding economic justification to support the development. Material considerations do not outweigh the resulting harm; and**
- (d) **the officer's decision to refuse the application be upheld and the application refused, for the reasons detailed in Appendix III to this Minute.**

MEMBER

The Chairman left the meeting and Councillor Richards took the chair for the remainder of the meeting.

5. REVIEW OF 22/00093/PPP

There had been circulated copies of a request from Mr James Hewitt c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a dwellinghouse with associated infrastructure works on Land adjoining 16 Hendersyde Drive, Kelso. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; consultation replies; objection comments; further representations and list of policies. The Review Body considered the comments from Scottish Water in terms of the equipment contained within the site, the Flood Risk Officers comments and those comments from the roads officer. Members expressed concern with regard to the possible loss of green space and the potential for the site to flood.

VOTE

Councillor Moffat, seconded by Councillor Douglas moved that an unaccompanied site visit be held.

Councillor Small, seconded by Councillor Scott moved as an amendment that the application be determined without a site visit.

On a show of hands Members voted as follows:-

Motion - 4 votes
Amendment - 4 votes

As there was an equality of votes, the Chairman exercised his casting vote in favour of an unaccompanied site visit.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could not be considered without the need for further procedure in the form of an unaccompanied visit to the site;**
- (c) consideration of the review be continued to a future meeting on a date to be confirmed.**

6. REVIEW OF 21/01625/PPP

There had been circulated copies of a request from Mr and Mrs Jerry and Shona Ponder, c/o Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the erection of a residential dwelling with associated amenity, parking, infrastructure and access on land to the East of South Laws, Duns. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; additional information, consultation replies and list of policies. The Review Body agreed that there was an existing building group and noted that although there had been one consent granted within the current Local Development Plan period, that had since lapsed and there was capacity to expand the group. Members considered the relationship of the site with the group and whether it was within the group's sense of place and 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 a precedent would be set for further development within the field. The Review Body 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. Consideration was then given to the issue of loss of prime agricultural land and compliance with Policy ED10 of the Local Development Plan. Members agreed with the Appointed Officer that the site was within a field being used and available for agricultural purposes. 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.

VOTE

Councillor Moffat, seconded by Councillor Cox moved that the application be approved.

Councillor Thomson, seconded by Councillor Orr moved as an amendment that the application be refused.

On a show of hands Members voted as follows:-

Motion - 3 votes
Amendment - 5 votes

The amendment was accordingly carried and the application was refused.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) The proposed development failed to comply with Policy HD2 of the Local Development Plan 2016 and Supplementary Planning Guidance, New Housing in the Countryside 2008, as it would not relate well to the existing building group, would break into an undeveloped field, outwith the building group's sense of place and would result in ribbon development long the public road which would adversely impact upon the composition and quality of the landscape character. The development also failed to comply with Policy ED10 as it would result in the permanent loss of prime quality agricultural land.**
- (d) the officer's decision to refuse the application be upheld and the application refused, for the reasons detailed in Appendix IV to this Minute.**

The meeting concluded at 1:05 p.m.