

**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: 22/00027/RREF

Planning Application Reference: 21/00188/PPP

Development Proposal: Erection of dwellinghouse

Location: Woodland Strip, North of Springhall Farm, Kelso

Applicant: Mr Kevin Stewart

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 proposal is contrary to Policy PMD2 of the Scottish Borders Local Development Plan 2016, in that the principle of a new vehicular access onto this derestricted 'A' class road (A698) in this rural area would be detrimental to the safety of users of the road. The economic case presented does not outweigh these road safety concerns.
2. The proposal is contrary to Policy EP13 of the Scottish Borders Local Development Plan 2016 and the Supplementary Planning Guidance: Trees and Development 2020 as the development would result in a loss and harm to the woodland resource to the detriment of the visual amenity of the area and it not been demonstrated that the public benefits of the development outweigh the loss of this landscape asset.
3. The proposal is contrary to Policy EP10 of the Scottish Borders Local Development Plan 2016, in that it would result in further loss and damage to the quality and integrity of the Designed Landscape and it has not been demonstrated that development would safeguard or enhance the landscape features, character or setting of Hendersyde Park.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse on the Woodland Strip, North of Springhall Farm, Kelso. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	3.01 Rev A
Location Plan	3.01 Rev C
Site Plan	3.02
Visualisation 1	3.03

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 October 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including Officer's Report and Decision Notice); b) Items referred to in Officer's Report; c) Additional Information; d) Consultation Replies; and e) List of Policies, the Review Body 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, EP1, EP2, EP3, EP5, EP7, EP8, EP10, EP13, IS2, IS7 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 Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- "Control of Woodland Removal" Scottish Government 2019
- SPP 2014
- Draft NPF4

The Review Body noted that the application was for the erection of a dwellinghouse on the Woodland Strip, North of Springhall Farm, Kelso

Members noted that the application had not been refused in relation to the principle of a house under Policy HD2 of the Local Development Plan and the New Housing in the Borders

Countryside Supplementary Planning Guidance. However, they did consider the issue as part of their overall consideration of the Review, the relationship with the Development Plan and all other material issues. It was also noted that the applicant had addressed compliance with Policy HD2 in the submitted Planning Statement. Members accepted that there was a building group present at Springhall Farm to the south of the site but did not consider that the application site was well-related or within that group under Clause A of Policy HD2.

The Review Body noted that the proposal was intended for occupation by a farmer who would then retire, releasing the existing farmhouse for continued occupation. After discussion, and whilst Members expressed some sympathy towards the retirement case, they were not persuaded there was sufficient justification under Clause F of Policy HD2, given the fact that Springhall Farm was not in the ownership of the applicant and could lead to difficulties securing the vacated farmhouse with the landholding. Members also considered that the proposed site was too detached from the farm grouping and may have been more appropriate within, or adjoining, the farm grouping.

The Review Body were particularly concerned over the proposed access onto the "A" Class Road and noted that the Roads Officer had objected on grounds including the principle of a new access in this location, the fast overtaking stretch of road affected and the potential for cross traffic between the site and the farm. Members were in agreement with the objections of the Roads Officer and did not consider that the proposal was able to be accessed safely onto the "A" Class Road, therefore being contrary to Policy PMD2. The access to the minor road to the north was also considered as an alternative proposal, but Members noted this involved the use of land outwith the ownership of the applicant. As there was no assurance that the access could be achieved nor any condition imposed that would comply with the tests required by the relevant Government Circular on the use of conditions, the Review Body concluded that the site could not be accessed safely under Policy PMD2.

Members then considered the issues of woodland and landscape impact, noting the location of the site within Hendersyde Park Designed Landscape and the comments of consultees including Historic Environment Scotland and the Council Landscape Officer. Assessing the proposals against Policies EP10, EP13 and the relevant parts of Policies PMD2 and HD2, the Review Body were concerned at the landscape prominence of the site, also noting how prominent the rebuilt East Lodge was to the north of the site. Members were also concerned over potential breaching of the rear wall required for access from the north. In terms of the impacts of the development on the woodland within and around the site, the Review Body noted the applicant's claims that the site would be in a clearing but still considered further tree loss would be likely if the house was to be developed and occupied. Members concluded that the impact on the landscape and trees would be contrary to Policies EP10 and EP13.

The Review Body finally considered other material issues relating to the proposal including water, drainage, ecology, Government support for rural and sustainable development, and the need for compliance with developer contributions towards Kelso High School. As Members did not consider that the proposal was acceptable for access, trees and designed landscape reasons, they agreed that these issues did not influence their final decision.

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 20 October 2022

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