

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTIONS 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: 22/00021/RREF

Planning Application Reference: 22/00093/PPP

Development Proposal: Erection of dwellinghouse and associated works

Location: Land East of 16 Hendersyde Avenue, Kelso

Applicant: Mr James Hewitt

DECISION

The Local Review Body reverses the decision of the appointed officer and indicates that it intends to grant planning permission for the reasons set out in this intentions notice subject to conditions and the applicants entering into a Section 75, or other suitable Legal Agreement, as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse at Land East of 16 Hendersyde Avenue, Kelso. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	10172-0-01
Site Plan	10172-0-02

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 15th 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) Consultation Replies; d) Objection Comments; e) Further Representations and f) List of

Policies, the Review Body concluded that there was a requirement for further procedure in the form of an unaccompanied site inspection to enable the various outlined concerns and constraints to be assessed on site.

The Review was, therefore, continued to the Local Review Body meeting on 22nd September 2022. Members considered all matters at this meeting, informed by their site inspection. After further discussions, Members were concerned over the comments of the Flood Risk Officer and the risk of the site being affected by surface water flooding. The Review Body concluded that there was further procedure required, in the form of written submissions, to seek a Flood Risk or Drainage Impact Assessment from the applicant and for the Flood Risk Officer then to be asked to comment on the Assessment.

The Review was, therefore, continued to the Local Review Body meeting of 23 January 2022. Members considered all matters at this meeting, including the submitted Flood Risk Assessment and the response of the Flood Risk Officer. Members 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, PMD5, HD3, HD4, EP11, EP13, IS2, IS7, IS8 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 Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SPP 2014
- Draft NPF4
- Proposed Local Development Plan

The Review Body noted that the proposal was for the erection of a dwellinghouse at Land East of 16 Hendersyde Avenue, Kelso

Members noted that the site was located within the Kelso settlement boundary and there was no specific designation on the site which prevented it from being considered an appropriate infill opportunity. The Review Body noted the history of the site and retention as public open space for the development but were of the opinion that the site was large enough to accommodate a dwellinghouse without significant impacts on adjoining properties or overdevelopment, in keeping with the character of the residential surroundings and remainder of the housing development. Members considered the site to be an appropriate gap site that

would enhance the amenity of the area and complete the housing development in compliance with Policies PMD2 and PMD5 of the Local Development Plan.

The Review Body then considered the other identified constraints on the site and material factors which led to the initial refusal of the application. Under EP11, the importance and nature of the site as local green space was considered by Members, who had found the site inspection particularly useful in this regard. Whilst some access to the site was evident, especially through the trees from the rear of the site, Members also noted that the overgrown condition of the land indicated a low and infrequent level of usage. The value and importance of the ground as open space to the community also appeared to be hindered by the frontage fencing and lack of obvious public entry points from the housing development. Taking all material factors into account, the Review Body concluded that the impacts of loss of open space in this instance were justified and not sufficient to contravene Policy EP11 or warrant refusal of the application for that reason.

Members then considered the issue of trees to the rear of the site and the impacts of the development under Policy EP13. Having noted the position of the trees to the rear of the site during the site inspection, Members were still content that there was sufficient space on the site to accommodate a dwellinghouse without causing undue impacts on the trees. Whilst the Review Body also considered the potential impact of the trees on the occupation and residential amenity of the new house, they concluded that the site could accommodate an appropriately sited and designed dwellinghouse in compliance with Policy EP13. This would be subject to a tree survey and protection of the trees by planning condition.

Members then considered drainage on the site and the identified concerns over surface water flood risk. The Flood Risk Assessment submission and acceptance by the Flood Risk Officer were noted. The Review Body had also noted there were higher parts of the site during their site inspection. Subject to conditions siting the house away from the small area of surface water flood risk identified in the Assessment and ensuring the finished floor level was at or above 49.67m above Ordnance Datum, the Review Body were content that flood risk had been satisfactorily addressed under Policy IS8.

The Review Body finally considered other material issues including impacts on Scottish Water apparatus, access, parking, residential amenity, sustainability, claimed housing land shortfall and developer contributions. Members were of the opinion that these issues did not outweigh their decision on the Review and that approval with appropriate conditions and a legal agreement could address any remaining issues satisfactorily.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, PMD5, EP11, EP13 and IS8 of the Local Development Plan. The development was considered to be an appropriate infill development in keeping with the character of surrounding development and with acceptable impacts on the open space and residential neighbouring properties. The development was also able to be achieved without flood risk. Consequently, the application was approved subject to conditions and a legal agreement.

CONDITIONS

1. Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
 - a. the expiration of three years from the date of this permission, or

- b. the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.
- c. Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

- 2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

- 3. No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site, have been submitted to and approved in writing by the Planning Authority. Thereafter the development shall be carried out in accordance with the agreed details.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

- 4. No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place in strict accordance with the details so approved.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

- 5. No development shall commence until a tree survey and tree protection plan are submitted to, and approved in writing by, the Planning Authority. The identified trees to be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees or tree areas, together with such other measures as are necessary to protect the trees and their roots from damage. Details of the methods it is proposed to use shall be submitted by the applicant to the Local Planning Authority and be approved by them in writing. The approved protective measures shall be undertaken before any works commence on the site and must, thereafter be observed at all times until the development is completed.

Reason: To ensure that adequate precautions are taken to protect trees during building operations.

- 6. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):

- i. existing and finished ground levels in relation to a fixed datum preferably ordnance
- ii. trees to be retained within the site
- iii. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored
- iv. location and design, including materials, of walls, fences and gates
- v. soft and hard landscaping works including new tree planting and boundary treatments

- vi. existing and proposed services such as cables, pipelines, sub-stations
 - vii. A programme for completion and subsequent maintenance.
Reason: To ensure the satisfactory form, layout and assimilation of the development.
7. No development to be commenced until further details of access and parking provision are submitted to, and approved in writing by, the Planning Authority. Thereafter the development to be completed in accordance with the approved details prior to occupation of the dwellinghouse unless otherwise agreed. The details shall include:
 - i. The main access to illustrate proposed turning and reversing manoeuvres, together with replacement parking spaces for No. 16 Hendersyde Avenue.
 - ii. 2 no. parking spaces, not including any garage, and turning area to be provided within the curtilage of the site and retained thereafter in perpetuity
Reason: To ensure satisfactory form of access and adequate parking and turning provision in the interests of road safety.
 8. No development to be commenced until the details of water and drainage provision are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be completed in accordance with those details prior to occupation of the dwellinghouse
Reason: To ensure that the development is adequately serviced and in the interests of public health.
 9. No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.
Reason: To ensure adequate provision for waste storage within the site.
 10. The design and siting of the dwellinghouse to comply with the terms of the Flood Risk Assessment report dated 30 November 2022 by Kaya Consulting, the finished floor level being no lower than 49.67m AOD and the dwellinghouse sited to avoid the flood risk zone shown on Figure 6 of the aforementioned report.
Reason: To safeguard the proposed development from surface water flood risk.

Informative

1. The interception and treatment of surface water to be agreed with Scottish Water

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Kelso High School and Broomlands Primary School.

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 “Code of Practice for Noise and Vibration Control on Construction and Open Sites”.

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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 27 January 2022