

**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: 22/00029/RREF

Planning Application Reference: 22/00081/FUL

Development Proposal: Erection of two dwellinghouses with access and associated works

Location: Land West of 1 The Wellnage, Station Road, Duns

Applicant: C & V Developments

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 two dwellinghouses at Land West of 1 The Wellnage, Station Road, Duns. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	P759-PL-LOC
Proposed Site Plan	P759-PL-001
Proposed Floor Plans and Elevations	P759-PL-02
Photomontages	Figs 1-6

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 17th October 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 concluded that there was a requirement for further procedure in the form of an unaccompanied site inspection to enable the impacts of the existing and proposed dwellinghouses to be assessed, especially in relation to the listed building known as The Wellnage.

The Review was, therefore, continued to the Local Review Body meeting on 19th December 2022. Members considered all matters at this meeting, including the photographs and appendices to the Heritage Statement which had not been provided at the October meeting but which had since been clarified as being available to the Appointed Officer before the application was refused. 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, PMD5, HD3, HD4, EP7, EP8, EP13, IS2, IS5, IS7, IS8 and IS9
- Scottish Borders Proposed Local Development Plan Policy IS5

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
- Historic Environment Policy for Scotland 2019
- "Managing Change in the Historic Environment – Setting" 2016
- Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

The Review Body noted that the proposal was for the erection of two dwellinghouses at Land West of 1 The Wellnage, Station Road, Duns.

Members noted that the site was located within the Duns settlement boundary and there was no specific designation on the site which prevented it from being considered an appropriate infill opportunity. It was also noted that four previous houses had been developed adjoining the site by the same applicant and these had been assessed on the site visit, together with pegged out locations for the proposed two additional houses. The Review Body were of the opinion that the site was an unused area of land which would be improved through development rather than left in an unkempt state. Members also noted that there was no opportunity to secure the landscaping of the site should planning permission not be granted.

Whilst there was some discussion over the siting and design of the proposed houses, it was ultimately concluded that the four existing houses had been successfully integrated into the area and that, as the development was of similar styling, the application was an acceptable form of development for an appropriate gap site within Duns. Subject to appropriate conditions relating to the landscaping and boundary treatment, including restoration of the roadside wall, the Review Body concluded that the development was an appropriate infill development in keeping with Policies PMD2 and PMD5.

Members then considered the issue of impacts on the setting of The Wellnage, a Category B Statutorily Listed Building adjoining the site. Taking into account the relationship of the site and proposed development with The Wellnage, which had also been observed on the site visit, the Review Body were of the opinion that the setting of the Listed Building had changed significantly since The Wellnage was original built and it was no longer part of a larger undeveloped landscape. Members also noted the subsequent recent built development around The Wellnage, its subdivision, the high garden hedge, intervening trees, lack of inter-visibility and level difference with the lower-lying site. For all of these reasons, the Review Body concluded that the impacts on setting of a listed building were acceptable and in compliance with Policy EP7.

The Review Body finally considered other material issues including impacts on trees, access, parking, rights of way, water, drainage, surface water flooding, waste, the applicant's claims over the development contributing to sustainability, claimed housing land shortfall and the need for compliance with developer contributions. Members were of the opinion that approval with appropriate conditions and a legal agreement could address these issues satisfactorily.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, PMD5 and EP7 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate infill development in keeping with the character of surrounding development and with acceptable impacts on the setting of an adjoining listed building. Consequently, the application was approved subject to conditions and a legal agreement.

CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
2. No development to be commenced until further details of the vehicular access to the site are submitted to, and approved in writing by, the Planning Authority. Once approved, the access to be completed in accordance with the approved details prior to occupation of the first dwellinghouse.
Reason: To ensure adequate access to the site in the interests of road safety.
3. A vehicle turning area and two parking spaces per dwelling, not including any garage space, shall be provided within the site prior to the occupation of each dwellinghouse hereby approved and shall be retained in perpetuity.
Reason: To provide and maintain adequate off road parking.
4. 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.

5. 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. proposals for the retention, restoration and maintenance of the listed roadside wall bordering the site
 - V. location and design, including materials, of walls, fences and gates
 - VI. soft and hard landscaping works including new tree planting and boundary treatments
 - VII. existing and proposed services such as cables, pipelines, sub-stations
 - VIII. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

6. No development to be commenced until the details of water and drainage provision are submitted to, and approved in writing by, the Planning Authority. These details to include SUDs provision and diversion of surface water away from the proposed houses. Once approved, the development then to be completed in accordance with those details.

Reason: To ensure that the development is adequately serviced and in the interests of public health.

7. 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 first dwellinghouse.

Reason: To ensure adequate provision for waste storage within the site.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for affordable housing, Berwickshire High School and Duns 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 S Mountford
Chairman of the Local Review Body

Date 11 January 2023