

**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: 22/00035/RREF

Planning Application Reference: 22/00464/FUL

Development Proposal: Erection of residential holiday let with associated facilities

Location: Townfoot Hill, Land North West of Cunzierton House, Oxnam, Jedburgh

Applicant: Mr Peter Hedley

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice, subject to conditions as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of a residential holiday let with associated facilities at Townfoot Hill, Land North West of Cunzierton House, Oxnam, Jedburgh. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	P726-PL-LOC
Block Plan	P726-PL-001 Rev A
Site Plan	P726-PL-002 Rev B
Sequential Plan	P726-PL-003

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 19th December 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Items referred to in Officer's Report; c) Additional Information; d) Consultation Replies; and e) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to a Business Plan, sequential site assessment, map of neighbouring developments, revised access drawing P726-PL-002 Rev B and Visual Impact Study. After consideration, Members agreed that this information was new, met the Section 43B test and that it could be considered, given it was material to the applicant's case and, therefore, to the determination of the Review.

The Review Body agreed to further procedure by means of written submissions to obtain the comments of the Planning, Landscape, Roads and Access Officers on the new information and to seek the response of the applicant to their comments. Members also agreed to undertake an unaccompanied site visit, which was subsequently carried out on 9 February 2023. The Review was, therefore, continued to the Local Review Body meeting on 20th February 2023 where the Review Body considered all matters, including the responses from the Planning, Landscape, Roads and Access Officers and the applicant's reply to the responses. 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: Scottish Borders Local Development Plan 2016 and National Planning Framework 4. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, ED7, HD3, IS4, IS5, IS7 and IS9
- Proposed Local Development Plan : Policy IS13
- National Planning Framework 4 Policies: 1, 2, 14, 15, 18, 29 and 30

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- Scottish Borders Tourism Strategy 2013-20
- Visit Scotland "Visitor Management Strategy" 2021
- Visit Scotland "Tourism Development Framework" 2016

The Review Body noted that the proposal was for the erection of a residential holiday let with associated facilities at Townfoot Hill, Land North West of Cunzierton House, Oxnam, Jedburgh.

Members firstly considered the principle of the development under Policy ED7. They noted that the Policy required the submission of a business case to support tourist accommodation proposals in the countryside. Whilst they noted that the Appointed Officer considered the submitted Business Plan did not provide sufficient indication of viability to justify the development, the Review Body accepted the Plan on the basis of farm diversification and the contribution it demonstrated to the existing farm business. They noted that the field was part of a working farm and that, in holding and business terms, it was not separated from the farm.

In addition, given the elevated and unique position of the proposal, the Review Body were satisfied that the proposal would be highly attractive to tourists, that the business would be viable as farm diversification and was, therefore, in compliance with Policy ED7.

Members then considered the criteria set down in Policy ED7 and PMD2 on siting, landscape and relationship with adjoining uses. Whilst they noted that the Appointed Officer and Landscape Officer had objected due to the prominence, elevation and secluded location of the proposal being out of character with the landscape and surrounding development pattern, the Review Body noted the additional submissions from the applicant, including the Visual Impact Study and sequential plan with associated photographs. Members considered that the site was a significant distance from a very limited number of farms and houses and that, from some directions, would not be visible at all.

The Review Body also noted that the proposal was utilising an existing disused quarry scar in the hillside, the building being sunk into the site with green roof and other design elements that would successfully reduce prominence, visual impacts and impact on the landscape. Provided controls could be imposed by condition to secure non-reflective glass and discrete indoor/outdoor lighting, Members were content that sunlight glint or evening lighting could be mitigated to acceptable levels, thus addressing the Landscape Officer's concerns over this element. The Review Body concluded that the development was modest in scale and form, with limited visibility and acceptable impacts on the landscape, character of the area and residential amenity. For these reasons, the proposal was in compliance with Development Plan Policies.

The Review Body then assessed the remaining criteria under Policies PMD2 and ED7 relating to the need for demonstration of sequential selection of the site and accessibility considerations. Members noted the submitted sequential map and photographs and were content with the information provided, showing the consideration that had been given to land and building opportunities within the farm. The Review Body also noted that the development was occupying rough agricultural land with previous quarrying use and that the development would contribute positively to the farm.

In terms of access and, whilst there was some concern over the gradient of the public road leading to the site, Members noted that both the Roads and Access Officers were content with the revised plans subject to appropriate conditions on the road access, parking, turning and maintenance of the existing right of way. Subject to those conditions, the Review Body concluded that the development was in accordance with the sequential site selection and accessibility requirements of Policies PMD2 and ED7.

The Review Body finally considered other material issues relating to the proposal including ecology, water, drainage, waste disposal and sustainability. Members also considered the relevance of NPF4 Policies, in particular, Policies 14, 29 and 30, concluding that the proposal was sustainable tourist accommodation benefitting the local economy and community. After full consideration, Members were of the opinion that such matters supported their decision to approve the proposal and were able to be addressed through appropriate conditions where relevant.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD1, PMD2, ED7 and IS5 of the Local Development Plan and Policies 14, 29 and 30 of National Planning Framework 4. The development was considered to be an appropriate provision of tourist accommodation for the location with a justified business case, complying with sustainability and tourism strategies for the area and providing high quality accommodation in an attractive setting. Impacts on

landscape and access could be satisfactorily mitigated by appropriate conditions. Consequently, the application was approved subject to conditions.

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. The occupation of the property shall be restricted to genuine holidaymakers, any person staying for a maximum of 3 weeks in total within any consecutive period of 13 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
Reason: Permanent residential use in this location would conflict with the established planning policy for this rural area.
3. No development to be commenced until a scheme of all external colours and materials, including non-reflective glass, is submitted to, and approved in writing by, the Planning Authority. The development then to be implemented in accordance with the approved scheme.
Reason: To safeguard the visual amenity of the area.
4. No development to be commenced until a scheme of waste storage for the development is submitted to, and approved in writing by the Planning Authority. Once approved, the development then to be operated in accordance with the approved scheme.
Reason: To ensure that the development is adequately serviced and does not have a detrimental effect on amenity and public health.
5. No development to be commenced until a scheme for the provision of a water supply and of disposal of foul and surface water for the development are submitted to, and approved in writing by the Planning Authority. Once approved, the development then to be operated in accordance with the approved scheme.
Reason: To ensure that the development is adequately serviced and does not have a detrimental effect on amenity and public health.
6. No development to be commenced until a plan is submitted to, and approved in writing by, the Planning Authority, indicating the precise line of Right of Way BR191 and the intended surfacing and width of the right of way. Once approved, the Right of Way to be improved where indicated on the plan before the holiday let is first occupied and, thereafter, retained unobstructed in perpetuity.
Reason: To safeguard public access rights through the site.
7. No development to be commenced until full details of the junction with the public road, service lay-by, access track and parking/turning are submitted to, and approved in writing by, the Planning Authority. Once approved, the works to be completed before the holiday let is first occupied and retained in perpetuity thereafter.
Reason: In the interests of road safety.
8. No development to be commenced until a scheme of lighting is submitted to, and approved in writing by, the Planning Authority.
Reason: To safeguard impacts on landscape and visual amenity.

9. No development to be commenced until a landscape scheme has been submitted to, and approved in writing by, the Planning Authority. The scheme shall include all hard and soft landscaping details including the treatment of the access road, parking/turning, walling and immediate boundaries to the site. Once approved, the scheme then to be implemented in accordance with the approved details and maintained in perpetuity thereafter.

Reason: To safeguard impacts on landscape and visual amenity.

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.

Signed...Councillor S Mountford
Chairman of the Local Review Body

Date 27 February 2023