

**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: 22/00036/RNONDT

Planning Application Reference: 22/00297/FUL

Development Proposal: Erection of 3 no holiday pods and associated parking

Location: Land West of Burnmouth Church, Stonefalls, Burnmouth, Eyemouth

Applicant: Stonefalls Development Partnership

DECISION

The Local Review Body refuses planning permission as explained in this decision notice and on the following grounds:

1. The application is contrary to Policy PMD4 of the Scottish Borders Local Development Plan as the development lies largely outwith the development boundary of Burnmouth, and there is insufficient community benefit demonstrated to outweigh the significant adverse effects on the landscape setting of the settlement and the natural heritage of the area.
2. The application is contrary to Policies PMD2, PMD5 and ED7 of the Scottish Borders Local Development Plan in that the site cannot be accessed without significant adverse impacts on road safety, due to the angle and gradient of the site access junction with the public road.
3. The application is contrary to Policy EP1 of the Scottish Borders Local Development Plan in that the applicant has failed to demonstrate that the proposal can be developed without significant detrimental effects on the Berwickshire and North Northumberland Coastline Special Area of Conservation through potential landslip.
4. The application is contrary to Policy EP2 of the Scottish Borders Local Development Plan in that the applicant has failed to demonstrate that the proposal can be developed without significant detrimental effects on breeding birds or Schedule 1 raptors at the site.

Development Proposal

The application relates to the erection of 3 no holiday pods and associated parking at Land West of Burnmouth Church, Stonefalls, Burnmouth, Eyemouth. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	10101/3-01
Site Plan	10101/3-02 Rev A
Sections & Elevations	10101/3-04
3D Overview of Site	10101/3-06
3D Views	10101/3-03
Holiday Cabin Plots 1 and 2	10101/3-05
Development Land Area	10101/3-09
Visual Impact	10101/3-20

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 Decision Notice and Handling Report) ; b) Additional Information; c) Consultation Replies; d) Objection Comments; and e) List of Policies, the Review Body noted that the applicant had requested further procedure in the form of a hearing. After consideration, Members did not consider further procedure was necessary in this instance and 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, PMD4, ED7, HD3, EP1, EP2, EP3, EP5, EP7, EP8, EP13, EP14, IS5, IS7, IS8 and IS9.
- Proposed Local Development Plan Policy: IS5

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SESPlan 2013
- SPP
- Draft NPF4
- Scottish Borders Tourism & Strategy Action Plan

The Review Body noted that the proposal was for the erection of 3 no holiday pods and associated parking at Land West of Burnmouth Church, Stonefalls, Burnmouth, Eyemouth.

Members firstly considered the application against Policies PMD4 and ED7 of the Local Development Plan. They noted that part of the site had a development history of cottages but that this was both historic and, in any case, related only to the access/parking area. The Review Body also noted that the defined settlement boundary for Burnmouth did not contain the three proposed holiday pods but only the parking and access road. Members considered that as the development was, therefore, largely outwith the defined settlement boundary, it was contrary to Policy PMD4. The only relevant exception to that Policy related to community benefits and, whilst Members were generally supportive of the principle of tourism accommodation at this location, they did not consider that community benefits had been demonstrated to an extent that would outweigh the landscape or natural heritage impacts on the setting of the settlement boundary

The Review Body then considered the issue of safe vehicular access to the development and noted all submissions on the matter. Members agreed with the Roads Officer and objectors in relation to the steep gradient of the public road, the narrowness of the road, the position of the bend, the acute angle of the site access on that bend for left-turning vehicles into the site and the differing levels. With reference to Policies PMD2, PMD5 and ED7, the Review Body were not persuaded that the development could be accessed without causing significant road safety issues to vehicles generated by the development and other road users. They concluded that the development was contrary to the aforementioned Policies.

Members then discussed the objections of Nature Scot and other respondents in relation to the claims over land stability in the vicinity. It was noted that the position of Nature Scot was of a sustained objection as they were concerned that the construction of the development could cause landslip onto the shoreline, damaging reef habitat and ultimately impacting on the Berwickshire and North Northumberland Coastline Special Area of Conservation (SAC). The Review Body noted that Nature Scot had requested an engineer's stability assessment but this had not been submitted, albeit the applicant had offered submission post-consent by way of planning condition. Members were of the opinion that such an assessment should have been submitted before any decision was taken on the development and therefore, supported the objections of Nature Scot. The Review Body concluded that Policy EP1 was contravened due to the lack of demonstration over the stability of the site being able to accommodate the development without impacts on the SAC

The Review Body also noted the concerns of the Ecology Officer in relation to breeding birds and protected species. As the submitted survey had not been carried out within the activity season, the Officer was concerned over impacts on breeding birds and protected species, including skylark and peregrine falcon. Whilst again the applicant stated that a further survey could be carried out by condition, Members agreed with the Ecology Officer that the survey should have been submitted prior to a decision being taken on the development. As the survey could not be carried out until the commencement of the activity season at the end of March, the Review Body, therefore, considered that the proposal had not demonstrated how it could be developed without significant adverse effects on breeding birds and protected species. The application was, therefore, considered to be in contravention of Policy EP2.

As the development of the three holiday pods was largely located outwith the Burnmouth Settlement Boundary, the Review Body also assessed the application against the principle of Policy ED7. Whilst Members understood that a business case had been submitted as required by Policy ED7 and noted that tourism objectives had been claimed to be met by the proposals, they considered that the development exhibited overriding issues resulting in non-compliance with settlement boundary, roads and ecology policies. The Review Body concluded that these issues were not outweighed by the claimed economic and tourism benefits.

The Review Body finally considered other material issues relating to the proposal including impacts on visual amenity, landscape designations, trees, the listed harbour, surface water flood risk, residential amenity, relationship with the coastal path, archaeology, water, drainage, waste disposal, compliance with SESplan and NPF4. After consideration, these issues did not change the final decision of the Review Body.

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.

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

Date 11 January 2023