

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference:** 22/00040/RREF

**Planning Application Reference:** 22/00961/PPP

**Development Proposal:** Erection of 2 no dwellinghouses

**Location:** Land at Silo Bins, Edington Mill, Chirnside

**Applicant:** Mr & Mrs O McLaren

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**DECISION**

The Local Review Body upholds and varies the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

1. The development is contrary to Policy HD2 (Housing in the Countryside) of the Local Development Plan 2016, Policy 17 of NPF4 and the New Housing in the Borders Countryside Supplementary Planning Guidance 2008 in that it would constitute piecemeal and sporadic new housing development in the countryside that would be poorly related to an established building group and no other supporting justification has been presented. This conflict with the development plan is not overridden by any other material considerations.
2. The proposed development is contrary to Local Development Plan 2016 policies PMD2 (Quality Standards) and HD3 (Protection of Residential Amenity) as the erection of dwellinghouses at this location would be incompatible with neighbouring farm uses, with a reasonable likelihood of unacceptable residential amenity impacts arising for the future occupants of the proposed dwelling units. Other material considerations do not justify a departure from the development plan in this regard.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of 2 No dwellinghouses on land at former Silo Bins, Edington Mill, Chirnside. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	22/B936/Loc
Proposed Site Plan	P002
Proposed Site Plan	P002 Rev A
Existing Site Plan	P001

## **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 23<sup>rd</sup> January 2023

After examining the review documentation at that meeting, which included a) Notice of Review (including Officer's Report and Decision Notice); b) Papers referred to in Officer's Report; c) Additional Information; d) Consultation Replies; e) Support Comments; f) Objection Comments and g) 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 an amended site plan with an enlarged planting belt to the northern boundary of the site. 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 Officer on the new information and to seek the response of the applicant to their comments.

The Review was then considered by the Review Body at its meeting on 20<sup>th</sup> February 2023. At that meeting, Members noted that National Planning Framework 4 (NPF4) was in force as part of the Development Plan and considered it necessary for the Review Body to have regard to any relevant Policies in NPF4 before determining the Review. Members concluded that it was appropriate to undertake further procedure by seeking written submissions from the Appointed Officer and Applicant in relation to NPF4.

The Review was, therefore, continued to the Local Review Body meeting on 17<sup>th</sup> April 2023 where the Review Body considered all matters, including the response from the Planning Officer and the applicant's reply to that response. 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 the Scottish Borders Local Development Plan 2016 and NPF4. The LRB considered that the relevant listed policies were:

- Local Development Plan Policies: PMD1, PMD2, HD2, HD3, ED10, EP3, EP8, EP13, IS2, IS5, IS7, IS8, IS9 and IS13
- Proposed Local Development Plan Policies: IS5, IS13

- NPF4 Policies: 1, 2, 3, 5, 7, 9, 14, 16, 17, 18, 22 and 23

#### 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

The Review Body noted that the application was for the erection of 2 No dwellinghouses on land at former Silo Bins, Edington Mill, Chirnside.

Members firstly considered the application in relation to Policy HD2 of the Local Development Plan, Policy 17 of NPF4 and the Housing in the Countryside SPG. The Review Body noted the comments of all parties, the submitted drawings and visual presentation. They noted that both the applicant and Case Officer agreed upon the existence of a building group at Edington Mill within the river valley to the south and it was the relationship of the site with the group that was in dispute.

Members also accepted that there was a building group at Edington Mill within the river valley and that, even allowing for the extant consents, there was capacity to add to the group under Clause A) of Policy HD2. However, the Review Body did not agree that the application site was part of that group as it was not within the river valley enclosing the group and the site was also distinct and separated by distance from the edge of the valley and existing houses. They agreed with the Appointed Officer that it was, therefore, outwith and had a poor relationship with the building group.

Whilst Members noted the applicant had contended that four consented houses connected the application site with the existing building group, they gave little weight to the argument as none of the houses were actually built and in existence at this stage. The Review Body concluded that the site was outwith and not part of the existing building group and, as there were no economic or agricultural reasons put forward for the houses, the proposal was considered contrary to Policy HD2 and the Housing in the Countryside SPG.

The proposal was also considered to be contrary to NPF4 Policy 17 which allows Local Authorities to tailor their specific approach to housing in the countryside, the proposal being against that specific approach related to building group addition. Whilst Members gave consideration to the applicant's comments in relation to former silos and brownfield land, they did not consider that in this instance, NPF4 Policy 9 had any particular bearing on their decision to uphold the Appointed Officer's refusal of the application.

The Review Body then considered the issue of conflict between the proposed houses and the agricultural building to the north of the site. Members understood from the submissions that the building was used for storage of poultry manure and they noted that the farmer using the building had objected due to the potential of complaints from future residential occupiers. Taking into account all submissions and noting the concerns from the objector, Case Officer and Environmental Health over residential amenity issues caused by odour and flies, the Review Body did not consider that the site was appropriate for housing on the basis of likely incompatibility of uses and close proximity between houses and the agricultural building. Whilst Members noted the augmented planting belt on the revised plan, they also noted that Environmental Health considered such planting would have negligible effect in reducing the impacts from odour and insects. The Review Body, therefore, concluded that the proposal was contrary to Policies PMD2 and HD3 of the Local Development Plan.

The Review Body finally considered other material issues relating to the proposal including road access, rights of way, flood risk, water, drainage, land contamination, landscaping,

archaeology, ecology and the need for developer contributions. As Members did not consider that the proposal was acceptable for relationship with building group and residential amenity 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.

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## **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 M Douglas  
Vice Chairman of the Local Review Body

**Date 28<sup>th</sup> April 2023**

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