

**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: 22/00014/RREF

Planning Application Reference: 21/01283/PPP

Development Proposal: Erection of dwellinghouse

Location: Land South East of Hardens Hall, Duns

Applicant: Duns Golf Club

DECISION

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

The necessary Section 69 Agreement has now been concluded.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
UK Planning Maps	Site Plan

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 18th July 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) General Comments; d) Additional Information; e) Consultation Replies; and f) List of Policies, the Review Body noted that the applicant had lodged new information in the form of three photomontage maps indicating the existing and proposed houses in the vicinity of the site, both at Hardens Hall and in the wider group to the west. Members understood that the Maps did not raise any new information that was not already in front of the Appointed Officer before the decision was made and, therefore, did not consider that the information needed to be tested under S43B of The Act. The Review Body also noted that the objection from Mrs Katie Massie to the planning application had been withdrawn and that her objection should be not be considered in the determination of the Review.

Members also noted that the applicant had requested further procedure by means of a hearing and site inspection. After consideration, the Review Body did not consider these 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, HD2, HD3, ED7, ED10, EP1, EP2, EP3, EP4, EP5, EP13, EP8, EP13, IS2, IS7, IS8, IS9 and IS13

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 Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Waste Planning 2015
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Contaminated Land Inspection Strategy 2001
- Scottish Planning Policy 2014

The Review Body noted that the proposal was for the erection of a dwellinghouse on land South-East of Hardens Hall, Duns. Members noted the planning history leading to development in Hardens Road, both within the Duns settlement boundary as defined in the Local Development Plan and in the wider area to the west of the site

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. Whilst they noted the applicant's claim that Hardens Hall and outbuildings constituted a building group of three dwellinghouses, the Review Body were not persuaded by this suggestion, given the background information to the case. However, Members did note there were four existing houses in the "Western Housing Group" as annotated on the applicant's submitted plans. Although it was understood that there were only two houses present within this group at the time of Local Development Plan adoption, the Review Body were aware that several planning consents had already been granted for further housing in the group, including subdivision of plots and an appeal decision. Given the history and the presence of four existing houses, Members were, therefore, content that there was a building

group present under Policy HD2, consisting of the “Western Housing Group” as noted on the applicant’s submissions.

In terms of whether there was capacity for this group to be expanded, the Review Body also noted that there were already several permissions and houses built since the Local Development Plan adoption and that, as the scale of addition had already been breached, a further breach through granting the current Review would not be sufficiently material to justify refusal, given the history. Members concluded that, subject to the site being considered to be an acceptable addition to the group, the issue of capacity was not a determining issue.

Members then considered the relationship of the site with the group and whether it was within the group’s sense of place and in keeping with its character. In this respect, they noted that the site adjoined Hardens Hall and was both within the overall sense of place of the wider grouping of houses to the west but also could be considered to be a logical extension. The Review Body concluded that the site was an appropriate addition, within the sense of place and character of the building group.

Whilst Members noted that the original application had also been refused due to the site being outwith, but related to, the Duns Settlement boundary as defined in the Local Development Plan, they considered that approving the site as an addition to a building group in the countryside under Policy HD2 outweighed the relevance of Policy PMD4 or the need for the proposal to comply with the terms of that Policy and its exclusions.

Members then considered the development in relation to Policies PMD1 and 2 and the impacts of a lack of footpath link, both in terms of sustainability of transport and road safety. Whilst they noted the objections of the Roads Officer, the Review Body considered that, given the presence of other development in the vicinity, it would be neither justified nor proportionate to require a single house application to provide a footpath link to Duns.

The Review Body finally considered other material issues relating to the proposal including landscape impact, residential amenity, access, water, drainage, contamination, trees, hedges and ecological matters but were of the opinion that appropriate conditions could address them satisfactorily. They also noted that development contributions for education would also be required, to be secured by legal agreement.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD1, PMD2, PMD4 and HD2 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to an existing building group to the west of the site and this outweighed the location of the site outwith the Duns defined Settlement Boundary. Members were also content that it would be disproportionate to require a footpath link to Duns for a single dwellinghouse in consideration of the existing developments in the vicinity. Consequently, the application was approved subject to conditions and 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.

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.

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.

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 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. a survey to indicate 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 within the site
- 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.

6. 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 include visibility splays, surface water drainage interception and provision for service vehicles, including construction and levels details.
- 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.

7. 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.
Reason: To ensure that the development is adequately serviced and in the interests of public health.
8. 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.
9. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.

The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition. and thereafter
- b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.
Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

LEGAL AGREEMENT

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Berwickshire High School and Duns Primary School. A Section 69 Agreement has now been concluded.

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 20th October 2022