

**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:** 21/00007/RREF

**Planning Application Reference:** 20/01350/PPP

**Development Proposal:** Erection of dwellinghouse with associated access

**Location:** Site East of Dogcraig Cottage, Scotsmill, Peebles

**Applicant:** Lady Angela Buchan Hepburn

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**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 intentions notice subject to conditions, informative 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 with associated access. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	2020/26/101
Site Plan	2020/26/102A
Elevations	2020/26/104
Floor Plan	2020/26/103
Section	2020/26/105
3D image	
Indicative access	21003_003

**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 14<sup>th</sup> June 2021.

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) Consultations; and d) 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 further information in the form of an ECS Transport Planning Technical Note and two historical maps (dated from 1850's) included in the 'Ground of Appeal' document.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, as expert opinion on the information was required, there was a requirement for further procedure in the form of written submissions to enable the Planning Officer and Roads Planning Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 16<sup>th</sup> August 2021 where the Review Body considered all matters, including responses to the further information from the Planning Officer and Roads Planning Officer, and the applicant's reply to those responses. The Review Body also noted the applicant's request for further procedure in the form of a site visit but did not consider it 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, EP1, EP2, EP3, EP5, EP7, EP10, EP13, EP15, EP16, IS2, IS7, IS8 and IS9

### Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Supplementary Planning Guidance on SUDS 2020

- Local Biodiversity Action Plan 2001

The Review Body noted that the proposal was for the erection of a dwellinghouse with associated access on land East of Dogcraig Cottage, Scotsmill, Peebles.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that there were at least three existing houses in the immediate vicinity at Scotsmill, including converted buildings and the nearest being “Dogcraig Cottage”. Members were satisfied that this constituted a building group under Clause A of Policy HD2. In terms of whether there was capacity for the group to be expanded, the Review Body also noted that there were no existing permissions for any further houses at the group and that the planning consent on the adjoining intervening site had expired. They concluded that, subject to the site being considered to be an acceptable addition to the group, there was capacity for the development in compliance with Policy HD2 and the relevant SPG.

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 had regard to the positions of other houses in the group, especially “Dogcraig Cottage”, and they particularly noted that there was a history of previous consents between that property and the site. Members considered that the principle of extending the group to the east had, therefore, already been previously accepted and that the site, whilst beyond the previous approved site, was still well contained in the landscape. The woodland, riverbank and roadway provided strong boundaries to the site and allowed the Review Body to consider the site as lying within the natural boundaries of the group. Members also noted the presence of a former ruined cottage on the site and the historic evidence of former garden ground. Subject to careful siting of the house and new planting, Members concluded that the site would not be ribbon development and could be considered to be in compliance with Clause A of Policy HD2 and the Housing in the Countryside SPG.

The Review Body also noted the applicant’s previous occupation at Kailzie but, in terms of Clause F of Policy HD2, did not consider it necessary to test the proposal due to their support under Clause A relating to building group addition.

Members then considered the issues of road safety and access from the B7062. Taking into account the comments from the Roads Planning Officer and applicant and noting the amended plans which detailed a suggested access, they concluded that there were no road safety reasons to oppose the development. The Review Body considered that road users would be slowing down due to the presence of a building group and existing accesses, including the one in close proximity to the site serving “Dogcraig Cottage”. They noted that speeds would be unlikely to be in excess of 40mph and that the existing road geometry and visibility contributed to this. Members were also aware that a lay-by would be formed at the access junction for service vehicles. Subject to appropriate access details being agreed at the next planning stage, the Review Body concluded that the proposal was in compliance with Policy PMD2 in relation to road access and safety.

The Review Body finally considered other material issues relating to the proposal including the siting of the house, separation from the river, retention of trees, flood avoidance 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 Policy HD2 of the Local Development Plan and relevant

Supplementary Planning Guidance. The development was considered to be an appropriate addition to the Scotsmill building group, well contained within the sense of place and capable of safe access. Consequently, the application was approved subject to legal agreement.

## **DIRECTIONS**

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 by the Planning etc. (Scotland) Act 2006.

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 by the Planning etc. (Scotland) Act 2006.

## **CONDITIONS**

1. 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. The landscaping shall include tree planting to form a strong boundary to the north-west. 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.

2. 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.

3. No development to be commenced until a drawing is submitted to, and approved in writing by, the Planning Authority, demonstrating that no development will occur within 20m of the riverbank and the development site boundary not within 10m of the riverbank. Once approved, the development to be implemented maintaining the approved buffer separation in perpetuity.

Reason: To ensure there are no adverse effects on the River Tweed SAC

4. The finished floor level of the dwellinghouse to be no lower than 160.2m AOD as shown on Drawing 2020/26/105.

Reason: To safeguard the property from the risk of flooding.

5. Prior to commencement of development, a Species Protection Plan for bats, otter, badger, red squirrel and breeding birds shall be submitted to and approved in writing by the Planning Authority. The SPP shall incorporate provision for a pre-development supplementary survey and a mitigation plan. No development shall be undertaken except in accordance with the approved in writing SPP.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.

6. Prior to commencement of development a Construction Environmental Management Plan (CEMP) incorporating the latest good practice guidelines and statutory advice (as outlined: CAR GBR 10 and GPP5: Works and maintenance in and around water) to protect the River Tweed SAC/SSSI shall be submitted to and approved in writing by the Planning Authority. Any works shall thereafter be carried out strictly in accordance with the approved in writing scheme.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP1, EP2 and EP3

7. No development to be commenced until an arboricultural assessment and tree survey identifying the existing trees within the site are submitted to, and approved in writing by, the Planning Authority. The identified trees then agreed for retention 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.

8. 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. 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.

9. 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 of 2.4m by 120m in both directions and an integral service layby, 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.

10. 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.

11. 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.

## **Informative**

SEPA have given the following Regulatory advice:

Authorisation is required under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) to carry out engineering works in or in the vicinity of inland surface waters (other than groundwater) or wetlands. Inland water means all standing or flowing water on the surface of the land (e.g. rivers, lochs, canals, reservoirs).

Management of surplus peat or soils may require an exemption under The Waste Management Licensing (Scotland) Regulations 2011. Proposed crushing or screening will require a permit under The Pollution Prevention and Control (Scotland) Regulations 2012. Consider if other environmental licences may be required for any installations or processes.

You will need to comply with [CAR General Binding Rule 10](#) which requires, amongst other things, that all reasonable steps must be taken to ensure that the discharge does not result in pollution of the water environment. The detail of how this is achieved may be required through a planning condition.

Details of regulatory requirements and good practice advice for the applicant can be found on the [Regulations section](#) of our website or by contacting [waterpermitting@sepa.org.uk](mailto:waterpermitting@sepa.org.uk) or [wastepermitting@sepa.org.uk](mailto:wastepermitting@sepa.org.uk).

## **LEGAL AGREEMENT**

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for Peebles High School and Priorsford 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, 4<sup>th</sup> 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.

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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 S Mountford  
Chairman of the Local Review Body

**Date...19<sup>th</sup> January 2022**

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