

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY INTENTIONS 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:** 22/00026/RREF

**Planning Application Reference:** 21/00993/PPP

**Development Proposal:** Erection of dwellinghouse

**Location:** Plot 2 Land North of Belses Cottage, Jedburgh

**Applicant:** Phen Farms

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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 and the applicants entering into a Section 75, or other suitable Legal Agreement, as set out below.

**DEVELOPMENT PROPOSAL**

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

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	BPHE01-07
Proposed Block Plan	BPHE01-02
Proposed Plans	BPHE01-03

**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 19th September 2022.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Decision Notice; c) Officer's Report; d) Papers referred to in Officer's Report; e)

Consultations; f); List of Policies; g) Design, Access and Planning Statement and h) Appeal Statement 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 a Technical Note on Access Impacts.

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 Roads Planning Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 21st November 2022 where the Review Body considered all matters, including responses to the amended plans from the Planning Officer and Roads Planning Officer, and the applicant's reply to those responses. The Review Body 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: 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, HD2, HD3, EP1, EP2, EP3, EP13, IS2, IS7, IS9

### **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
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Affordable Housing 2015
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SPP 2014
- Draft NPF4

The Review Body noted that this was the applicant's second proposal for the erection of a dwellinghouse on land opposite "The Smithy" at Old Belses. The site is located adjacent to their application for a house on Plot 1 to the south west which was considered under a separate review (22/00025/RREF). The Review Body noted that this was the larger of the two sites and both developments would be served via the same proposed access.

Members firstly considered whether there was a building group in the vicinity under Policy HD2 and also whether there was capacity for addition to any such group. They noted that three residential properties were located to the south of the site on the opposite side of the B6400. Members also noted the applicants observations that the site was centrally located

within part of a wider group of 16 properties as depicted on Figure 4 of the Appeal Statement. Additionally Members recognised that a previous Local Review Body observed that a building group was present at Old Belses as part of their determination of 20/00022/RREF. They concluded that there was a building group present. Being mindful that the Review Body had already accepted the addition of one further house to this group at Plot 1, Members were satisfied that the group still had the capacity to accept a further house within the current LDP period under the numerical restrictions set by Section A of Policy H2.

Members then considered the relationship of the site within the group and whether it was within the sense of place and in keeping with its character. In this respect, they had regard to the positions of other houses in the group. Members did note that the nearest properties to the site were located on the southern side of the B6400 and they did accept that the site would break into an undeveloped field. They were however persuaded by the positioning of "Braeside" which was already located on the northern side of the B6400 and the soft landscaping which had already been implemented enclosed the site from the field. Members considered the site to be well related to the building group due to its central location and the containment within its planted enclosures. The Review Body considered that expansion of the building group in other directions could be less acceptable and represent ribbon development along the northern side of the B6400. They concluded that the site was within the sense of place and an appropriate addition to nucleus of the building group.

Members then considered the issues of road safety and access from the B6400. Taking into account the Technical Note on Access, the comments from the Roads Planning Officer and the applicant's response to these comments, they concluded that the new access had good visibility and the B6400 did not appear to be a busy road. They found that there were no road safety reasons to oppose the development. They considered that the development would not cause any changes to existing farm traffic movements and they could not enforce restrictions on the type of vehicles using public or private roads. Members noted that the new extended road towards the farm could promote an unsatisfactory form of ribbon development but were ultimately content for this access to form part of the approval. The Review Body, therefore, accepted that the proposal was in compliance with Policy PMD2 in relation to road access and safety.

Acknowledging the consent for a new house on Plot 1, the Local Review Body then considered the implications of phasing. Members were mindful that should Plot 2 be developed and Plot 1 left undeveloped, this would create an awkward gap which would have an adverse visual impact at a fairly prominent position on the corner of the B6400. Members therefore considered that it would be sensible Plot 2 to either be developed concurrently with Plot 1 or Plot 1 developed first. They were satisfied that suitable phasing of the development could be controlled by a suitably worded planning condition.

Members moved on to other material matters covering landscaping, parking and site services were considered but the Review Body were of the opinion that appropriate conditions could address them satisfactorily. They also noted that as this application would constitute the applicants second consent for a house in the same location that it would require a developer contribution towards affordable housing. This matter could be secured by a 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 existing building group and would not detract from its sense of place and the

means of access would not cause any detrimental impacts on to the public road. Consequently, the application was approved.

## 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 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.

3. 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 take place only 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.

4. No development shall commence until precise details of: the layout, siting, design and external appearance of the building; the means of access thereto; two off-street parking spaces (excluding garages); refuse and recycling bin storage and the landscaping and boundary treatments of the site, have first been submitted to and approved in writing by the planning authority. The development shall be completed in accordance with the approved details unless otherwise agreed in writing with the planning authority.

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.

5. No development shall commence until precise details of water supply and of both surface water and foul water drainage have been submitted to and approved in writing by the planning authority and thereafter, no development shall take place except in strict accordance with the approved scheme. All surface water drainage shall comply with the SUDS manual (C753) and maintain existing pre-development run off levels

Reason: To ensure that there are no unacceptable impacts upon the amenity of any neighbouring properties and that surface water is managed in a sustainable manner that does not increase off-site run-off.

6. Parking and turning for a minimum of two vehicles to be provided within the curtilage of the plot, excluding garages, prior to occupation of the dwelling and retained in perpetuity thereafter unless otherwise agreed in writing with the Council.

Reason: To ensure appropriate parking is provided for the new dwelling.

No development of the site shall be undertaken until the development at Plot 1 (21/00992/PPP) has been complete or a programme of phasing which confirms the proposed phased development on this site, Plot 1 (21/00992/PPP) and the new farm access has been submitted to and agreed in writing with the Planning Authority and thereafter the development shall only be carried out in strict accordance with the agree programme of phasing.

Reason: To ensure that the development proceeds in an orderly manner and avoid the creation of a gap site at Plot 1 which would detract from the visual amenity of the rural area.

This shall include a programme for completion of the main elements within the development - the community campus, outdoor sports facilities, all access roads and paths and the demolition of the existing Galashiels Academy. Once approved, the development then to be carried out in accordance with the approved scheme.

Reason: To ensure the development is carried out in a structured and orderly manner which ensures minimum disruption to educational and sporting facilities on site.

## **LEGAL AGREEMENT**

The Local Review Body required that a Section 75, or other suitable legal agreement, be entered into to secure developer contributions for affordable housing.

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 5<sup>th</sup> December 2022