

**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: 22/00016/RREF

Planning Application Reference: 21/01421/PPP

Development Proposal: Erection of dwellinghouse

Location: Land North East of Woodend Farmhouse, Duns

Applicant: Mr John & Mrs Louise Seed

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.

The necessary Section 69 Agreement has now been concluded.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse at Land North East of Woodend Farmhouse, Duns. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	865-PPP-1
Site Plan	A103

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 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) Consultation Replies; and d) List of Policies, the Review Body noted that the applicants had stated new information had been submitted with the Review. This related to a Soil Fertility Report, amended Site Plan with reduced development boundary and a 3D visualisation.

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, there was a requirement for further procedure in the form of written submissions to enable the Appointed Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 22nd September 2022. Members considered all matters, including responses to the further information from the Appointed Officer and the applicants' comments on the 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, ED10, EP3, EP7, EP13, IS2, IS7 and 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 Biodiversity 2005
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008

The Review Body noted that the proposal was for the erection of a dwellinghouse at Land North East of Woodend Farmhouse, Duns.

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 to the west, including the existing farmhouse and cottages. 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 noted that there were no existing permissions for any further houses at the group. 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 location and spacings of other houses in the group, especially the farmhouse which Members noted was immediately adjoining the site. Given the relationship with the driveways and the position of other cottages to the east, Members agreed with the applicants that the site balanced the group, allowing the farmhouse to occupy a central position and focal point. The Review Body considered that the site mirrored the location of the cottages whilst being necessarily separated from the access and buildings relating to the working farm. The relationship with the building group was enhanced by the reduced curtilage boundary, existing and proposed planting, all of which could be controlled by condition. In conclusion, Members considered the site to be an appropriate addition to the building group in compliance with Clause A of Policy HD2 and the Housing in the Countryside SPG.

The Review Body also noted the applicants' current occupation at Woodend Farm, the intention for a retirement house and the continued operation of the farm by family. However, in terms of Clause F of Policy HD2, Members 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 proposal in relation to Policy ED10 relating to prime quality agricultural land. Whilst they noted the views of the Appointed Officer, the Review Body accepted the findings of the Soil Fertility Report and noted that there had been previous efforts at mitigation and improving the quality of the land. On the basis of the evidence provided, Members considered the site to be occupying a poorer grade of land at the field margin, the reduced extent of the site also resulting in a smaller land take. For these reasons, Members were content that the proposal did not represent a significant loss of prime agricultural land and, thus, complied with Policy ED10.

The Review Body finally considered other material issues including impact on the setting of a listed building, provision of water and drainage, road access details, landscape, tree impacts and the need for compliance with developer contributions. Members were of the opinion that appropriate conditions and a legal agreement could address the issues satisfactorily.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies HD2 and ED10 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate addition to the Woodend Farm building group and was sited on land demonstrated to have limited fertility. Consequently, the application was approved subject to conditions and a 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 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.

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 commence until a tree survey and tree protection plan are submitted to, and approved in writing by, the Planning Authority. The identified trees 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.

6. 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 adjoining the site to the west and incorporated within hedgerow planting along the new boundary to the north and eastern sides.
- 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.

7. The development site and garden curtilage to be restricted to the area bounded by the red line to the north and west and by the green line (indicating hedge and tree planting) to the east and south, as shown on revised Site Plan A103.

Reason: To integrate the site with the adjoining building group and prevent additional incursion into prime agricultural land.

8. The dwellinghouse not to be occupied until two parking spaces, not including any garage, and turning area are provided within the curtilage of the site and retained thereafter in perpetuity

Reason: To ensure adequate parking and turning provision, in the interests of road safety.

9. 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.

10. 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.

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 27 February 2023