

# SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW  
BODY held in the Council Chamber, Council  
Headquarters, Newtown St Boswells on  
Monday, 14 August 2023 at 10 a.m.

-----

Present: - Councillors S. Mountford (Chair), M. Douglas, J. Cox, D. Moffat, A. Orr, N. Richards, S. Scott, E. Small, V. Thomson.

In Attendance: - Lead Planning Officer, Principal Planning Officer (S. Shearer), Solicitor (S. Thompson), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

## MEMBERS

Having not been present when the following review was first considered, Councillors Mountford, Thomson, Orr, Small, and Scott left the meeting. Councillor Richards chaired the meeting for the next item of business only.

### 1. CONTINUATION OF REVIEW 23/00002/RREF

- 1.1 With reference to paragraph 14 of the Minute of 17 April 2023, the Local Review Body continued their consideration of a request from Mr Robert Gaston, Ravelaw Farm, Whitsome, Duns to review the decision to refuse the planning application for the Erection of agricultural building (retrospective). The supporting papers included the written submissions from the Planning Officer and Applicant in respect of new information, written; submissions from the Planning Officer and Applicant in respect of NPF4; Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; additional information; consultation replies, support comments; general comments; objections and list of Policies.
- 1.2 The Local Review Body noted that the application was retrospective. The building which was the subject of the appeal was used as part of Ravelaw's pig farming enterprise and as the building had been erected within 400 metres of third-party residential properties planning permission was required for the development. The Review Body accepted that the principle of the development was supported by Policy ED7, and no concerns were raised regarding the siting and design of the building in relation to visual amenity. The Review Body therefore considered whether the development was compatible with surrounding uses and in particular whether it would harm the amenity of neighbouring residential properties, particularly in relation to noise, odour, dust and attracting vermin.
- 1.3 Following discussions, the Review Body concluded that the development did not result in an increase in the number of pigs at Ravelaw Farm but instead allowed the number of pigs to be spread across more farm buildings, therefore reducing the number of pigs housed in sheds nearest the residential properties and improving the impact of the pig farm on neighbouring residential properties, provided it was operated in accordance with the terms of the Memorandum of Understanding. In addition, Members considered that the development would improve the welfare of the pigs and the efficiency of the rural enterprise. In light of the information which had been presented to them and compared against the current relationship of the farm and residential properties, Members concluded that the development would not negatively impact on the amenity of nearby residential properties.

## DECISION

**AGREED that: -**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for further procedure;**
- (c) after considering all relevant information, the development complied with Policies ED7, HD3 and PMD2 of the LDP and Policies 5, 14 and 23 of NPF4; and**
- (d) the officer's decision to refuse the application be overturned.**

**2. CONTINUATION OF REVIEW 23/00012/RREF**

- 2.1 With reference to paragraph 2.1 of the minute of 19 June 2023, there had been circulated copies of a request from Mr Ian Swann, per MAKAR Ltd, Clachandreggy, Dores Road, Torbreck, Inverness to review the planning application in respect of the erection of dwellinghouse on Land West of the Old Barn, Westwater, West Linton. The supporting papers included the written submissions from the Planning Officer and Applicant in respect of new information, written submissions from the Planning Officer and Applicant in respect of NPF4; Notice of Review (including the Decision Notice and Officer's Report); papers referred to in the Officer's report; Additional Information and Consultation Replies.
- 2.2 The Review Body were advised that the second reason for refusal on the original Decision Notice and the Handling Report was a duplicate of the first reason and instead a residential amenity reason was intended to be the second reason for refusal. Members noted that the applicant had sought to address residential amenity concerns in their appeal submissions. It was confirmed that the site already benefited from PPP approval for a dwellinghouse, and the principle of the development was supported by the Appointed Officer. The key issue was in relation to whether the design and siting of the development was acceptable against relevant housing in the countryside and placemaking development plan provisions.
- 2.3 In terms of the siting of the proposed dwellinghouse, the Review Body judged that the house was positioned deep within the plot, too far from the road, too close to the site's eastern boundary and did not relate well to the positioning of other dwellings within the building group. This resulted in the height of the proposal having an overbearing impact on the amenity of the Old Barn and gave rise to overlooking which would detract from the privacy of the Old Barn. The Review Body accepted that the site was large and had capacity for the development provided it was suitably sited. The modern design approach was also acceptable, in principle, provided that the design was sympathetic to the character of the rural area. However, reservations were raised with regard to the use of timber as the sole wall material finish as this did not fully respect the material finishes of other properties within the building group.

**DECISION**

**AGREED:-**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for further procedure**
- (c) the siting, access design, orientation and height of the development failed to respect the character of the building group and resulted in a development which would adversely impact in the residential amenity of the Old Barn. The Review Body concluded that the proposal was contrary to Policies HD2, HD3**

**and PMD2 of the Local Development Plan, Policies 14 and 17 of NPF4 and supplementary guidance on New Housing in the Borders Countryside; and**

**(d) the officer's decision to refuse the application be upheld.**

**3. REVIEW OF 23/00019/RREF**

3.1 There had been circulated copies of a request from Mr J M and Mrs G Barton c/o Ferguson Planning, 54 Island Street, Galashiels to review the planning application in respect of the installation of timber gates (retrospective) at Church House, Raemartin Square, West Linton. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Consultation Replies and 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 letters of support from local residents, updated response from the West Linton Community Council, letter from ward Councillor and letter from the West Linton Village Trust. The Review Body concluded that the information did not raise any new material evidence that was not before the appointed officer and could be admitted without the need for any further procedure.

3.2 The Review Body noted that the application was retrospective, that the site was located within the West Linton Conservation Area and that the property was a converted church with two separate gates providing access to the property from Raemartin Square. Members observed that the gated openings were formally iron railed with decorative tops and the appeal sought permission for the painted timber boards which had been added to both access gates, whilst the iron gates remained in-situ behind the timber boards and gave weight to the fact that the works had not resulted in the complete loss of the original entrance features. The Review Body observed that the property was not extensively visible from other parts of the Conservation Area and noticed that other properties within the Conservation Area, including a neighbour opposite the site, had similar timber gates. The Review Body judged that the works did not affect any of the retained gate piers or the stone boundary wall and its railings. Reservations were raised over the colour of coating which had been applied to the timber boards, but it was accepted that this would weather in time.

**DECISION**

**AGREED that: -**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for further procedure;**
- (c) that the development was consistent with Policies PMD2 and EP9 of the Local Development Plan and Policies 7, 14 and 16 of National Planning Framework 4 whereby the development was not found to adversely impact on the character and appearance of the conservation area or the visual amenity of the residential area; and**

**(d) the Officers decision to refuse the application be overturned.**

**4. CONSIDER REVIEW OF 23/00020/RREF**

4.1 There had been circulated copies of a request from Mr Stephen Murray, per W M Brown, Mill Cottage, Annay Road, Melrose to review the decision to refuse the planning application in respect of the erection of a dwellinghouse on Land South of Greenbraehead Farmhouse, Greenbraehead, Hawick. The supporting papers included Notice of Review (including the Decision Notice and Officer's Report); Consultation Replies and List of Policies.

- 4.2 Members noted the planning history of the site where two previous applications for the erection of a dwellinghouse were refused in 2017 and 2019 on the basis that the site did not relate to a building group. The Review Body noted that the site was located to the south of Greenbraehead Farmhouse within a small paddock to the east of an existing farm track serving Greenbraehead Farm and the application was seeking consent for a house on economic grounds to provide accommodation for the applicant to manage agricultural operations at Greenbraehead Farm. Firstly, Members considered whether an existing building group of three or more dwellings existed at the location and concluded that there was no building group at Greenbraehead. Members then considered whether the proposed house could be justified under Part F of Policy HD2 and criteria a) part 5 of NPF4 Policy 17, and acknowledged the business was a viable operation but questioned whether the 20ha currently rented by the applicant was sufficient to operate the business long term. Members accepted that the economic case required to justify the need for a house to support the business was difficult to prove and also noted that the applicant had invested heavily in machinery and had agreed a 25-year long term lease on the land, with the intention to purchase or lease a further 12ha from the forestry commission, although financing the additional land and growth of the flock had not been included in the projected accounts. Some weight was also given to the security benefits associated with an employee residing on site.
- 4.3 Overall, Members accepted the justification of a house was only on the basis of its operational need, therefore occupation of the house was required to be controlled to a person (and their dependants) employed in the farm enterprise at Greenbraehead Farm and that this occupational restriction be controlled by a planning condition with the house tied to the business via a legal agreement.

## **DECISION**

### **AGREED that;**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for further procedure;**
- (c) the development was necessary to support a viable rural enterprise and that there was an essential operational requirement for a worker to reside on site. The development was determined to be consistent with development plan provisions covering housing in the countryside, principally Policy HD2 of the LDP, Policy 17 of NPF4 and relevant Supplementary Planning Guidance on housing in the countryside; and**
- (d) The Local Review Body overturned the decision of the appointed officer and indicated that it intended to grant planning permission subject to conditions and the applicants entering into a Section 75 legal agreement to tie the house to applicants' business.**

## **5. REVIEW OF 23/00021/RREF**

- 5.1 There had been circulated copies of a request from Mr M Curtin per RM Architecture Ltd, Bloomfield, Heatherlie Park, Selkirk to review the decision to refuse the planning application in respect of the demolition of shed and erection of dwellinghouse (approval of all matters specified in planning permission 20/00874/PPP) on Land Northwest of Rosebank Cemetery Lodge, Shedden Park Road, Kelso. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Consultation Replies and List of Policies.
- 5.2 The Review Body noted that the Application sought AMC approval of the condition attached to consent 20/00874/PPP. It was noted that the PPP consent expired in December 2023 and that the principle of a house on this site was not a matter for the

review. The Review Body were mindful that the site was located close to the Conservation Area and that the site was compact in scale. Members accepted that the central positioning of the house within the site ensured that the proposal was not too close to either neighbour and the height of the house correlated with the ridge heights of the properties on either side. Overall, it was accepted that the proposal would not lead to overdevelopment of the site and the proposal was judged to be in keeping with the scale and density of surrounding residential plots.

#### **DECISION**

**AGREED that: -**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for further procedure;**
- (c) that the development was consistent with Policies PMD2 and PMD5 of the LDP, Policy 16 of NPF4 and Supplementary Planning Guidance on Placemaking and Design; and**
- (d) the Officers decision to refuse the application be overturned.**

#### **6. REVIEW OF 23/00022/RREF**

- 6.1 There had been circulated copies of a request from Mr Jim Warnock, per Ericht Planning & Property Consultants, Gifford House, Bonnington Road, Peebles to review the decision to refuse the planning application in respect of the Erection of dwellinghouse with outbuilding and formation of new access (approval of all matters specified in conditions of planning permission 21/00030/PPP) on Land at Rachan Woodlands, Broughton. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Consultation Replies and List of Policies.
- 6.2 The Review Body noted that the Applicant was seeking AMC approval of the condition attached to consent 22/01973/PPP and that the PPP consent expired in 2024. The principle of a house on the site was not a matter for the review.
- 6.3 In comparison to the previous AMC application, Members welcomed the updated proposal which transposed the position of the garage and the dwelling and allowed the house to be located closer to other dwellings within the group. The LRB accepted that this positioning would not be possible owing to the presence of a Victorian stone cundy within the application site which would restrict any further westward siting. Members observed that the central positioning of the proposal within the site reflected the positioning of some other dwellings in the group which are centrally located within spacious plots. Overall, Members accepted that the position of the dwelling was well related to the building group, and provided, existing mature trees were protected, and the final site landscape details agreed, the development would integrate with the sense of place of the building group.

#### **DECISION**

**AGREED that: -**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for further procedure;**
- (c) that the development was respectful of the sense of place of the Rachan building group and the submitted details satisfied all conditional requirements of consent 21/00030/PPP, subject to compliance with the schedule of conditions; and**

**(d) the Officers decision to refuse the application be overturned.**

**7. REVIEW OF 23/00023/RREF**

7.1 There had been circulated copies of a request from Mrs Nancy Hunter, per Sam Edwards, Ferguson Planning, 37 ONE George Street, Edinburgh to review the decision to refuse the planning application in respect of the Erection of dwellinghouse with detached garage on Land South of Headshaw Farmhouse, Ashkirk, Selkirk. The supporting papers included the Notice of Review; papers referred to in the Officer's Report; Consultation Replies and List of Policies. The Planning Adviser drew attention to information, in the form of aerial photographs which had been submitted with the Notice of Review, but which had not been before the Appointed Officer at the time of determination. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. However, they also agreed that the new information could not be considered without affording the Planning Officer an opportunity of making representations.

**DECISION**

**AGREED that: -**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) new evidence submitted with the Notice of Review in the form of aerial photographs met the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and was material to the determination;**
- (c) the review could not be considered without the need for further procedure in the form of written submissions;**
- (d) the Planning Officers be given the opportunity to comment on the new evidence submitted with the Notice of Review in the form of aerial photographs; and**
- (e) consideration of the review be continued to a future meeting on a date to be confirmed.**

**8. REVIEW OF 23/00030/RNONDT**

8.1 There had been circulated copies of a request from Mr Hugh Garratt, The Guildhall, Ladykirk, Berwick-Upon-Tweed to review the decision to refuse the planning application in respect of the Change of Use of shop and alterations to form 2 No. dwellinghouses at the Shop 22 – 24 South Street, Duns. The Review Body noted that the review was submitted against non-determination of the planning application, as the Council had not determined the application within the agreed application processing period. This constituted a deemed refusal and Members were required to make a 'De Novo' decision on the application. The supporting papers included the Notice of Review; Consultation Replies and List of Policies.

8.2 The Review Body were advised that a previous application (21/01457/FUL) sought planning permission to convert the property into two dwellinghouses, each with two bedrooms. The Planning Authority were minded to support that development, subject to conditions and the need for the applicant to enter into a legal agreement for developer contributions totalling £19,926 towards Duns Primary School, Berwickshire High School and Affordable Housing. Subsequently, the legal agreement had not been concluded therefore planning consent 21/01457/FUL had not been issued.

8.3 The Review Body noted that the application before them sought to convert the property into two, one-bedroom properties and that the applicant's justification for the revised

application was directly in response to the current economic landscape which resulted in the previous proposal (21/01457/FUL) no longer being viable due to the developer contributions it attracted. The new application proposed to reduce the number of bedrooms at each property and would only attract affordable housing contributions of £2000 which would not affect the viability of the proposed conversion.

- 8.4 Members determined that the proposed change of use represented a suitable form of infill development which would not adversely affect the vitality or viability of the Duns town centre and the external alterations were sympathetic to the character of the conservation area subject to conditions covering external materials, replacement window and door details. The proposed access and parking arrangements were acceptable and no residential amenity concerns were raised.

#### **DECISION**

**AGREED that: -**

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for further procedure;**
- (c) that the development was consistent with Policies PMD2, ED3, EP9 and IS2 of the Local Development Plan and Policies 7, 16 and 27 of National Planning Framework 4 in that that proposal represented a suitable form of infill development, which does not detract from the vibrancy of Duns town centre or the character of the Conservation Area, subject to conditions and a legal agreement covering associated developer contributions towards affordable housing; and**
- (d) the application be approved.**

*The meeting concluded at 2.00 p.m.*