



**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:** 23/00048/RREF

**Planning Application Reference:** 23/00492/FUL

**Development Proposal:** Erection of dwellinghouse

**Location:** Land North of Ivanhoe, Dingleton Road, Melrose

**Applicant:** Rivertree Residential Ltd

---

**DECISION**

The Local Review Body upholds the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

The development would be contrary to policy 6 of the National Planning Framework 4 and policies EP10 and EP13 of the Scottish Borders Local Development Plan 2016 and SBC Supplementary Planning Guidance: Trees and Development 2020 in that there would be an unacceptable loss of protected trees, which would undermine the value of the site as a historic orchard of amenity value, compromising the character and amenity of the local area, the setting of the Dingleton Hospital redevelopment and the integrity of the Dingleton Designed Landscape, prejudicing the health and future retention of the remaining trees whilst allowing insufficient space for adequate compensatory planting. Furthermore, it has not been demonstrated that the public benefit of the development would outweigh the loss of, and impacts on, the protected trees.

**DEVELOPMENT PROPOSAL**

The application relates to the erection of a dwellinghouse on land North of Ivanhoe, Dingleton Road, Melrose. The application drawings and documentation consisted of the following:

<b>Plan Reference No.</b>	<b>Plan Type</b>
(-L)000	Location Plan
(-L)001	A Existing Site Plan

**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 22<sup>nd</sup> January 2024.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Additional Information (including LRB Decision Notice 22/00015/RNONDT; c) Further Representation and Applicant's Response; d) Objections; and e) List of Policies. 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: the Scottish Borders Local Development Plan 2016 (LDP) and National Planning Framework 4 (NPF4). The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, PMD3, PMD5, HD3, EP1, EP2, EP3, EP4, EP7, EP8, EP10, EP13, IS2, IS3, IS7, IS9
- NPF4 Policies: 1, 2, 3, 4, 6, 7, 14, 15, 16

### Other Material Considerations

Supplementary Planning Guidance on:

- Placemaking and Design 2010
- Householder Development (Privacy and Sunlight) 2006
- Trees and Development updated October 2020
- Biodiversity 2005
- Development Contributions updated April 2023
- Sustainable Urban Drainage Systems August 2020

The Review Body noted that the proposal was for the erection of a single dwellinghouse on land North of Ivanhoe, Dingleton Road, Melrose. The LRB also noted that they previously refused permission for appeal 22/00015/RONDT which sought permission for two houses on this site primarily on grounds that the development would result in the loss of existing trees within the site, to the detriment of the character and visual amenity of the surrounding area with insufficient space left for adequate compensatory planting.

Members firstly considered the application against Policies PMD2 and PMD5 of the Local Development Plan and Policies 14 and 16 of NPF4. They accepted that the site was within the settlement boundary of Melrose and may present an infill opportunity. They recognised that the site was still part of the overall housing allocation EM32B in the Local Development Plan, albeit shown on the Settlement Proposals Map as part of the structure planting and landscaping within that land allocation, reflecting the fact that the site contained orchard trees protected by SBC TPO 21.

The Review Body noted that the application was for planning permission in principle and that there were no detailed siting and design proposals, although a site plan with house position

and tree positions had been submitted. The indicative positioning of the house had been informed by a detailed Arboricultural Impact Assessment.

Having considered all the submissions, the Review Body were of the opinion that the key issue was whether the site has the capacity to accommodate the revised proposal for a single house without adversely affecting the protected trees in a manner which would allow the site to be developed without harming the amenity of the surrounding area.

The LRB remained of the opinion that the orchard trees within the site represented an historic and important element of the natural landscape and environment of the area, providing a valued public amenity for residents around the site. Despite this latest application reducing the number of houses from two to one and also reducing the number of trees which would have to be removed to allow the site to be developed, Members remained concerned that the proposal would still result in the loss of a number of protected trees. Additionally, concerns were raised that if the site were developed for residential purposes it may result in future pressure to remove any remaining trees to improve the amenity of a dwelling's garden. Consequently, the development was found to result in the loss of protected trees within the site which would have an adverse impact on the character and amenity of the area and there remained insufficient benefits or mitigation that would outweigh the adverse impact.

The Review Body finally considered other material issues relating to the proposal including impacts on designated landscapes, residential amenity, ecology, access, parking, water, drainage and development contributions but were of the opinion that detailed siting, design, appropriate conditions and a legal agreement could have addressed these issues, had the application been supported.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

---

## **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.

---

**Signed** Councillor S Mountford  
Chairman of the Loal Review Body

**Date** 7 February 2024