



**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: 23/00050/RREF

Planning Application Reference: 23/00684/FUL

Development Proposal: Change of use from amenity land to garden ground

Location: 58 Waldie Griffiths Drive, Kelso

Applicant: M&J Ballantyne 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 proposal would be contrary to Policy 20 of National Planning Framework 4 and Policies PMD2 and EP11 of the Local Development Plan 2016 and the Supplementary Planning Guidance on Placemaking and Design 2010 in that it would result in the loss of public open space that would be out of character with the existing and proposed development pattern to the detriment of the visual amenity and character of the surrounding area. In addition, it has not been demonstrated that there is a social, economic or community benefit for the loss of open space or that the need for development outweighs the need to retain the space. No comparable or enhancement of existing open space has been provided to mitigate the potential loss.

DEVELOPMENT PROPOSAL

The application relates to the change of use of amenity land from garden ground and the erection of a new boundary fence on land adjacent to 58 Waldie Griffiths Drive, Kelso. The application drawings and documentation consisted of the following:

Plan Reference No.

P65 L 101
P65 LOC
P65 L 102

Plan Type

Proposed Site Plan
Location Plan
Specifications

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 22nd January 2024.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Papers referred to in Officer's Report; c) Additional Information; d) Consultation Replies; and e) List of Policies, the Review Body 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, EP11, HD3
- NPF4 Policies: 14, 15, 16, 20, 21

Other Material Considerations

SBC Supplementary Planning Guidance on;

- Householder Development (incorporating Privacy and Sunlight Guide) 2006
- Placemaking and Design 2010

The Local Review Body noted that 58 Waldie Griffiths Drive was a new build dwellinghouse which has been constructed as part of the East Broomlands residential development. The proposals sought to extend the garden of the dwelling by including land which forms part of a wedge of open space within the residential development into the property's curtilage. Members observed that if approved the development would require the existing boundary fence to be repositioned and a public footpath which is to be constructed adjacent to the boundary of the application to be re-routed.

The Review Body accepted that the proposal resulted in the loss of only a small area of open space. Members observed that the wider residential development did not benefit from large areas of open space and any loss of open space potentially impacting on its usability. Although the area of ground would provide the applicants with additional garden ground, the extent of the proposed extension was not necessarily judged to significantly improve the applicant's amenity.

Members were concerned that the repositioning of the fence to the southwest closer to the road would increase its prominence and affect the balance of the landscape layout at this part of the development. Additionally, it would require an awkward realignment of the path which could affect its usability by elderly residents. Members considered that the repositioning of the fence and its intrusion into an area of open space would detract from the streetscape of development and its wider masterplan layout.

Overall, Members agreed with the Appointed Officer that the development resulted in the unjustified loss of open space, contrary to Policy EP11 of the LDP and to the detriment of the

visual amenity and setting of the wider East Broomlands residential development. Members determined that the original decision should be upheld.

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.
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Signed Councillor S Mountford
Chairman of the Local Review Body

Date 7 February 2024