

APPENDIX III

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY INTENTIONS 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: 16/00006/RREF

Planning Application Reference: 15/01491/FUL

Development Proposal: Erection of dwelling house and detached garage

Location: Land west of Whistlefield, Darnick

Applicant: Mr & Mrs P Burns

DECISION

The Local Review Body reverses the decision of the appointed officer and gives notice that it intends to grant planning permission subject to conditions and the conclusion of a legal agreement, as set out in this Intentions notice.

DEVELOPMENT PROPOSAL

The application relates to the erection of a house and a detached garage on land adjacent to Whistlefield, Darnick. The application drawings consist of the following:

Plan Type	Plan Reference No.
Location Plan	REC 09 DEC 2015
Site Plan	REC 03 FEB 2016
General	HOUSE REC 03 FEB 2016
General	GARAGE REC 03 FEB 2016

PRELIMINARY MATTERS

The LRB considered at its meeting on 18th April 2016, that the review had competently been made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation at that meeting, which included : a) Notice of Review including Decision Notice and Officer's report; b) Consultations; c) Representations; d) List of policies, the LRB considered they had enough information to determine the review and proceeded to consider the case. In coming to the conclusion, the LRB noted the request from the appellant for a site inspection and one or more hearing sessions

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 2013 and the consolidated Scottish Border's Local Plan 2011. The LRB considered that the most relevant of the listed policies were:

- Local Plan policies : G1, G7 and NE4

The LRB also noted that the emerging new Local Plan 2016 would shortly be adopted and that any relevant policies within it should be material considerations to the appeal. It was agreed that relevant policies, including policies PMD2, PMD5 and EP13, which will replace the aforesaid Local Plan 2011 policies, did not raise any new material considerations in this instance.

Other material considerations the LRB took into account related to:

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight (Householder Developments) 2006
- SBC Supplementary Planning Guidance – Placemaking and Design 2010
- SBC Supplementary Planning Guidance – Trees and Development 2008
- SBC Supplementary Planning Guidance – Development Contributions (updated and revised 2015)

During the presentation by the planning advisor members noted what they considered to be a range of house types in the vicinity of the site. It was noted that the site was outwith the village conservation area.

Two letters of representation had been submitted. The first was from the occupier of the property known as Whistlefield, which is located closest to the proposed house on the eastern side, which confirmed support of the proposal. The second does not include an objection, but notes that in 1990 only two houses were built off Lye Road, which was the proposed access route to the appeal site, because to build three would require the road be upgraded to an adoptable standard. It is queried if these conditions still apply. It was confirmed that nowadays roads regulations state 4no houses can be built off a private road within a built up area without the need for it to be brought up to an adoptable standard.

Members noted that whilst the Roads Planner raised some concerns regarding the standard of Lye Road this did not justify a reason for refusal although the access immediately within the site was to be made up to a specified standard. Members also noted the condition and location of a beech tree located on the south west boundary of the site which the planning officer sought more detailed information on in order to confirm if its root systems would be affected by the proposed garage.

Members noted that the prime reasons of concern by the planning officer were the design of the house and the lack of information provided in relation to confirming the safety of the beech tree and trees on the southern boundary. The planning officer considered the house design issues could be resolved if the width of the house was reduced, the eaves were raised and the size of the front projection was reduced.

Whilst acknowledging the planning officer's concerns regarding the proposed house and guidance stated within the Council's Placemaking and Design guidance, it was considered there was always an element of subjectivity with regard to design. In this particular instance members considered the plot was large enough to comfortably accommodate the house and the detached garage and that the design and finishing materials were interesting and quite appropriate in this instance and members were complementary towards the proposal.

Although accommodation was shown on the first floor of the garage, a condition would ensure it was not used as a separate residential unit to the main house. Members commented that the beech tree, on the south west boundary of the site, appeared to be in a poor condition and may have to be removed in any event. Members otherwise considered that the proposal would not endanger any trees.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that development was consistent with the Development Plan and that there were no other material considerations that would justify departure from the Development Plan.

DIRECTION

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006

CONDITIONS

1.No development shall take place until the applicant has secured and implemented a programme of archaeological work and reporting in accordance with a Written Scheme of Investigation (WSI) outlining an Archaeological Battlefield Survey. The requirements of this are:

- The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Institute for Archaeologists (IfA) approval of which shall be in writing by the Planning Authority.
- The developer shall allow sufficient time in advance of development for all archaeological works to be conducted to the satisfaction and written approval of the Planning Authority.

- The developer shall allow the archaeologist(s) access to all areas where development is to be undertaken.
 - Results will be submitted prior to development to the Planning Authority for review and agreement in writing in the form of a Battlefield Survey Report.
 - In the event that the report highlights areas of archaeological potential these will require further targeted evaluation prior to development.
 - If significant archaeology is identified by the contracted archaeologists and in agreement with the Planning Authority, a further scheme of mitigation subject to an amended WSI shall be implemented.
- Reason: The site is within an area where ground works may interfere with, or result in the destruction of, battlefield remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

2. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved. The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

- a) A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council **prior to** addressing parts b, c, d, and, e of this condition.

and thereafter

- b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.

Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

3. Mains water and foul drainage connections to be confirmed with Scottish Water prior to the commencement of the site

Reason : To ensure adequate service provision of the site

4. Parking to be provided on site for a minimum of 2no vehicles, excluding any garages, along with a turning area within the curtilage of the site

Reason : To ensure adequate parking and turning of vehicles within the site

5. The initial 2.0m of the private driveway from Lye Road into the site will require to be constructed to the following specification - 75mm of 40mm size single course bituminous layer blinded with bituminous grit all to BS 4987 laid on 375mm of 100mm broken stone bottoming blinded with sub-base, type 1

Reason : To ensure that adequate access to the site for pedestrians and vehicles is provided and is at all times properly maintained.

6. A plan to be submitted confirming finished site and floor levels to be agreed with the planning authority prior to the commencement of any on-site works

Reason : To ensure the satisfactory development of the site

7. The garage hereby approved shall only be used as ancillary accommodation in connection with the use of the main property as a single private dwelling house and shall at no time be converted to a self-contained unit

Reason: The Planning Authority consider the site to be of insufficient size to accommodate an additional dwelling

8. The colour of the external render and the colour of the garage doors to be agreed with the planning authority

Reason : To safeguard the visual amity of the area

9. Where proposed hard surfaces or buildings pass beneath tree canopies, the developer shall carry out all excavation by hand digging where necessary and provide porous filling around the base of the tree, taking such further precautions as may be necessary to prevent any damage to any tree or its root system.

Reason: To protect the trees to be retained.

Legal Agreements

The Local Review Body required that a Section 75 Agreement, or other suitable legal agreement, be entered into regarding the payment of a financial contribution towards educational facilities and towards the re-instatement of the Borders Railway

Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.

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 R Smith
Chairman of the Local Review Body

Date...10 May 2016
