

Supplementary Statement

LOCAL REVIEW 17/00015/RREF

Land north west of Dunrig, Spylaw Farm, Lamancha, West Linton
Erection of vehicle body repair workshop and associated parking
GS Chapman Ltd. (the Appellant)

27 July, 2017

1.0 LOCAL REVIEW BODY 17 JULY 2017 – PROCEDURE NOTICE

1.1 With regard to the Local Review in relation to land north west of Dunrig, Spylaw Farm, Lamancha, West Linton where there is a proposal to erect a vehicle body repair workshop and create associated parking, the Local Review Body (LRB) of 17th July, 2017 determined that it required further procedure in the form of written submissions.

1.2 The matters upon which the LRB require further representation are set out in a Procedure Notice which has been served upon the Appellant. The two matters are:

1. **As the Applicant has, in pursuing this application, intimated that there is no other site available for the proposed development, the LRB now requires the Applicant to detail what consideration has been given to siting the proposed development within or near to the currently existing farm building group. Is there space which could be utilised or existing buildings which could be converted? If this has been discounted by the Applicant, the LRB would ask to be advised of the reason or reasons for so discounting.**
2. **It has been suggested that if the proposed development were to be consented at the current location the Authority might seek to tie the new business to the land and to the current farming land. The LRB would now request that the Applicant comment on whether such a proposal would be achievable (in terms of current land ownership) and would invite the Applicant to make any further comment on this suggestion they consider appropriate to make.**

This supplementary submission, which directly answers the questions above, consists of:

1. This written **Supplementary Statement with photographs at Appendix 1**
2. **Explanatory Plan 1** – Shows the 26 acre landholding at Spylaw with constraints marked thereon;
3. **Explanatory Plan 2** – Focusses on the **steading area** at Spylaw with constraints marked thereon;
4. **Plan 3:** A plan of the 26 acre landholding with **Ordnance Survey contours** marked thereon.
5. **Plan 4:** Aplan of the proposed site with **Ordnance Survey contours** marked thereon.

2.0 **REASONING FOR NOT SITING PROPOSED DEVELOPMENT AT OR IN CLOSE PROXIMITY TO SPYLAW STEADING**

2.1 Please refer to the three plans submitted with this Statement. These illustrate **key constraints** in the steading area.

- Plan 1: Explanatory Plan – Context
- Plan 2: Explanatory Plan – Steading
- Plan 3: Ordnance Survey contours at Spylaw

Note: The factual information provided herein and on the accompanying plans has been provided by the Appellant. No inspection has been made of legal titles.

Nature of the Appellant

2.2 The Appellant is the limited company 'GS Chapman Ltd'. It is important to note that this is a separate legal entity from Graeme and Deborah Chapman in their personal capacities, notwithstanding that both are Company Directors of GS Chapman Ltd.

2.3 Graeme and Deborah Chapman, together, 'personally' own Dunrig and the c. 26 acres of land indicated on the plans at Spylaw, which **excludes** 0.35ha (0.86 acres) at **Spylaw Steading**. Graeme and Deborah Chapman own no land or buildings within the steading area. The steading area is within the ownership of Mr and Mrs Chapman (senior) who both live in the dwellinghouse within that area. A second dwelling, which is the other half of Mr and Mrs Chapman's (snr) property, is not occupied.

2.4 The business "GS Chapman Ltd" (the Appellant) holds no land ownership or other legal interest, at Spylaw steading or the surrounding land. Graeme and Deborah Chapman are able to ensure that the business has the necessary rights (e.g. lease, access rights etc) at the proposed location as they own and control the land at the proposed site.

Lack of right of access along track to Spylaw from public road

2.5 Graeme and Deborah Champan do not own the access from the public road to Spylaw. They merely have a right over it sufficient for accessing the single dwellinghouse ONLY "Dunrig". The right of access is for domestic purposes. The access is owned by the owners of Spylaw Steading (Mr & Mrs Chapman snr). Easter Deans Farm (Glenrath Farms) has a right of access over the access road. Graeme and Deborah Chapman's existing domestic right of access does not provide the necessary rights for a business entity and its customers to utilise the access in the capacity of an operational business.

- 2.6 Essentially, GS Chapman Ltd would not have any ability to utilise the existing access, in terms of existing rights held, for the purposes of operating a business. This matter is not in the control of the Company Directors, Graeme and Deborah Chapman, as they do not own the access.
- 2.7 The Roads Planning Service raised no objections to the proposal at the currently proposed location. Graeme and Deborah Chapman have the legal capacity to ensure that the business has the necessary right of access at the proposed location.
- 2.8 It has been noted above that the Appellant, GS Chapman Ltd, (the business) has no right to utilise the existing access from the public road to Spylaw and that Graeme and Deborah Chapman, in their 'personal capacities' have no capacity to grant the business the necessary right of access. Notwithstanding this position, for the sake of completeness, it is further demonstrated below that any alternative location at, or in close proximity to, Spylaw steading or Dunrig is inappropriate.

Topography and Visual Impact

- 2.9 The ground slopes steeply up towards the area of flat ground where the Appeal site lies, having a moderately steep south easterly aspect as shown below. Explanatory Plan 2 also demonstrates the slope. A 3rd plan is also been provided with **Ordnance Survey contour data** thereon. It is abundantly clear just how steep the ground is around the steading area. **Photographs** are provided at Appendix 1 of this document.
- 2.10 Digging out sufficient ground for a shed measuring 24.4m x 12.0m and creating sufficient level parking space in accordance with the application drawings would result in many hundreds of tonnes of soil removal and significant lengths of unsightly retaining walls, given the steep gradients involved. All the ground below the plateau presents this problem as can be seen from the plans provided. The extent of "digging out" required for the much smaller development of Dunrig (the dwelling) is evident, with a substantial retaining wall evident to the rear of the property.
- 2.11 Disturbance of ground around the steading area would also produce significant disturbance to the several arterial field drains which run along the back of the steading and would be problematic to re-route.
- 2.12 The shed and parking area which would be hewn out of the ground if a location on the sloping ground around Spylaw were to be utilised would be **highly visible**, with its south easterly aspect, from the public road when travelling towards Spylaw for considerable

distance. In comparison, the proposed plateau location of the Appeal site is not visible in any close views.

- 2.13 The development in the proposed location **will not have detrimental landscape impact or impact upon visual amenity**. There are virtually no **SHORT DISTANCE** views to the proposed site. The point raised by a member of the LRB on 17/07/17 that “*standing on the site one can see Fife*” is not relevant. A small shed (12.0 x 24.4 metres), as proposed, will not be visible in such long views. The Council’s own Landscape Officer has not raised any concerns.
- 2.14 **The photographs provided with the original application show that the site will be barely visible from anywhere**. The parking area is behind the shed and is wholly screened from the road to the south west. No scrap cars or metal are stored outside, as has been suggested at LRB.
- 2.15 The site can be screened/ assimilated into the rural environment by landscaping and tree planting based on a scheme controlled by the Council at the next stage of the planning process. It is noted that such landscaping has been an important feature of seeking to assimilate the many c. 120m long nearby poultry houses (hen sheds) into the Tweeddale landscape.
- Residential Amenity and Safety**
- 2.16 Locating the development in close proximity to the 2no. occupied dwellings at Spylaw and Dunrig would be inappropriate in terms of impact upon residential amenity – from a noise and safety perspective. Whilst the business has limited operating hours (0830 – 1730 Monday – Friday; 0830 -1230 Saturday; closed Sunday), it would be inappropriate to site a business which regularly uses power tools and compressed air equipment right next to existing dwellings. The Case Officer has noted that the *proposed site has no impact of residential amenity* whatsoever as it is not located close to any dwellings.
- 2.17 The nature of the business gives rise to customer traffic movements. The Roads Officer has no objection to the proposed location of the access/ junction. In contrast, at Spylaw and Dunrig there are three young children who play around the steading area and between Dunrig and Spylaw. It would be wholly inappropriate to mix domestic access and curtilages of dwellings with the business’ access. This would give rise to significant safety concerns on behalf of the occupants of the dwellings.

- 2.18 It can be seen from the Explanatory Plans provided that there is no vehicular route from the access track to land to the east of Spylaw Steading without passing immediately in front of the dwelling house. This would be wholly inappropriate, even if the business were able to secure a legal right of access.

Water Supplies of Dunrig and Spylaw

- 2.19 The dwelling at Spylaw Steading receives its drinking water from a well immediately to the north of the house, as shown on the Explanatory Plan 2. There is serious risk of disturbance to the supply (and contamination during the build) were the site to be located uphill (to the north-west) of the Steading. Dunrig likewise has a private supply; it obtains its water from a borehole, as indicated on the Explanatory Plan 2, to the south west of the house. This would be at risk of disturbance also during the build period, were the development above or close to the supply point.
- 2.20 Whilst the proposal for the siting of the business has raised no objections from Environmental Health and the business will have to comply fully with all environmental regulations, it would appear imprudent to locate the business in close proximity to, or uphill from, the source of two private drinking water supplies.

Power cables

- 2.21 There is a myriad of overhead and underground power cables at Spylaw. The indicative location of several of these is shown on the plans. These pose a constraint to the location of the development.

Existing Sheds/ Conversion Opportunities

- 2.22 A table with information on the sheds at Spylaw Steading and a photograph are shown overleaf. As noted, Graeme and Deborah Chapman nor the Appellant, GS Chapman Ltd, own or have any legal interest in Spylaw Steading or the sheds located therein. Nonetheless, for completeness given the LRB's areas of inquiry, consideration is given to this matter.
- 2.23 Spylaw is no longer farmed in-hand on a commercial basis. Potato crops are grown 'in-hand' by the occupants at Spylaw Steading, but the land is let to a third party for grazing. The Steading is used largely for personal/ hobby use connected to potato growing and residential occupation at Spylaw.
- 2.24 The 3no. sheds at the Steading are **timber framed** with single skin box profile cladding which would clearly be wholly unsuitable for the proposed use (activities such as

welding are completely inappropriate in timber framed buildings). The sheds are also much smaller in size than the proposed shed (12.0 x 24.4 metres). They are numbered in the table below as shown on the Explanatory Plan 2. It is reiterated that these buildings are not within the ownership or control of the Appellant.

Fig 1: Sheds at Spylaw Steading - Information

Building	Construction	Dimensions (Approx. m)	Distance from Dwelling	Current Use
Shed 1	Timber framed, mono-pitch, clad with box profile sheeting.	11.5 x 7.3	15 m	Double garage, potato store + general purpose (in-hand) farm activity storage.
Shed 2	Timber framed, pitched, clad with box profile sheeting.	13.5 x 8.5	7 m	Farm machinery and tool store.
Shed 3	Timber framed, mono-pitch, clad with box profile sheeting.	18.0 x 6.5	6m	Farm machinery and secure storage.

Fig 2: Sheds at Spylaw Steading



Security

- 2.25 The proposed site is no less secure than any site closer to the steading would have been. Had a site at the steading been (a) legally and physically accessible and (b) suitable in respect of all matters detailed herein, it would have had to be located sufficiently distant from the dwellings in the interests of residential amenity. Buildings must be “secured by design” in terms of building standards. The Appellant may install a remote alarm system which would sound (only) in his dwelling as well as other security measures. In the event of an emergency, the Appellant has confirmed that he can reach the proposed site from his dwelling, on foot, in under one minute. It is noted that it takes approximately 6 minutes by car to reach the current premises at Sunnyside. **Security at the proposed site is not considered to be an issue.**

2.26 Mobile Phone Reception

As a final practical point which is not insignificant, it should be noted that mobile phone reception is poor at Spylaw/ Dunrig. The Appellant relies on mobile phone communications for the majority of his business as is increasingly common in current times.

3.0 POTENTIAL USE OF SECTION 75 TO “TIE” THE BUSINESS TO c.26 ACRES OF FARMLAND AT SPYLAW

- 3.1 With regard to concerns over future use for the building it is important to understand that the building will essentially be an agricultural portal framed shed which is internally fitted-out for the Appellant’s bespoke purpose. It could readily revert to agricultural use.
- 3.2 The Appellant confirmed in the Supporting Statement that was submitted with the Notice of Review that a **planning condition** to control the use of the premises in order to prevent ‘wider Class 5 industrial use’ would be wholly acceptable to the Appellant.
- 3.3 At that time, the Appellant also confirmed that the option of using a **section 75 legal agreement** to regulate the use of land would also be acceptable if such was achievable. In this regard, as requested, the following points are drawn to the attention of the LRB and its legal adviser:
- 3.4 The Applicant/ Appellant is a limited company business – GS Chapman Ltd. The owner of the land identified on Explanatory Plans 1 and 2 is owned personally by Graeme and Deborah Chapman, who are also Directors of GS Chapman Ltd.

- 3.5 Graeme and Deborah Chapman (personally), nor GS Chapman Ltd, have any ownership or other legal interest in the land or buildings at Spylaw Steading as shown on the Explanatory Plans.
- 3.6 It is understood that a section 75 agreement containing a disposal restriction was imposed on Graeme and Deborah Chapman in respect of the 26 acres of land at Spylaw in c. 2004 in connection with the outline planning permission (04/00836/OUT) for the dwelling "Dunrig" (consented at Committee despite it being acknowledged that "the farm is not large enough to sustain full time employment"). This document has not been made available for inspection, but it is noted that the Planning Authority will have a record of the Agreement.
- 3.7 **Whilst the Directors of GS Chapman Ltd have no objection whatsoever to the principle of the proposed business premises being tied to the land**, in their personal capacities as landowners, they seek confirmation that such is achievable in legal terms given the presence of an existing section 75 which means that the Appellant's landholding at Spylaw (Dunrig and 26 acres of land) is already subject to a section 75 making it an 'indivisible unit' with no part being able to be sold separately.
- 3.8 Again, whilst the Appellant has no objection in principle, the Council's legal section would need to satisfy itself that any proposed planning obligation, understood to be a proposed "tie" by way of a "disposal restriction" (meaning that no part of the land could be sold separately), would be able to meet with the 3/2012 Planning Circular tests. Planning Circular 3/2012 'Planning Obligations and Good Neighbour Agreements', sets out the Scottish Government's policy on the use of planning obligations. All tests would need to be met. The tests are noted to be:
- Necessary to make the proposed development acceptable in planning terms;
 - Serve a planning purpose;
 - Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
 - Fairly and reasonably relate in scale and kind to the proposed development; and
 - Be reasonable in all other respects.
- 3.9 Whether tying the business to 26 acres of unrelated farmland owned in a different legal capacity (personal) to the Appellant (business) is possible and serves a planning purpose, in particular, requires confirmation. **The Appellant does wish to stress, however, that if such a restriction can properly be imposed, they have no objection to the principle.**

**APPENDIX 1
PHOTOGRAPHS**

Fig 1: "Shed 1" at Spylaw



Fig 2: "Shed 2" at Spylaw



Fig 3: "Shed 3" (Garage) at Spylaw



Fig 4: The 3no. Sheds grouped at Spylaw



Fig 5: Moderately steeply sloping ground to south east of Dunrig (dwelling)



Fig 6: Steep ground to north west of Dunrig



Fig 7: Steep ground to south east of Dunrig



Fig 8: Steep ground generally at Spylaw



PLAN 1 – SPYLAW: CONTEXT. INDICATIVE LOCATIONS OF CONSTRAINTS





