

LOCAL REVIEW BODY
STATEMENT OF APPOINTED OFFICER
16/01174/PPP
Erection of vehicle body repair workshop and associated parking

ISSUES TO BE CONSIDERED:

For further consideration to be given to:

- 1) The reasoning for not siting the proposed development at, or in close proximity to, Spylaw Steading; and
- 2) The potential use of a Section 75 to 'tie' the business to the Appellant's land holding at Spylaw.

RESPONSE:

1) *The reasoning for not siting the proposed development at, or in close proximity to, Spylaw Steading*

It is noted that the Appellant has within its Supplementary Statement, set out various operational, environmental and amenity concerns which it considers would not make operation from Spylaw Steading viable or appropriate for the business. However, the relocation of the proposal to (or nearer to) the farmyard and buildings at Spylaw, would not in any case reasonably address the concern that the proposal does not comply in principle with Adopted Local Development Plan Policy ED7.

Rather than the proposal being relocated within or around Spylaw, it is maintained by the Planning Service that the proposal would more reasonably be accommodated within the Development Boundary of a settlement rather than in this countryside location. Further, the Appellant has still not demonstrated any overriding economic and/or operational need for any location at Spylaw, regardless of the precise site.

The Appellant's advice that the building would be: "*an agricultural portal framed shed*", is disputed. Regardless of its appearance (which would in any case, require to be addressed within a detailed ulterior application), the proposed use – vehicle body repair workshop – is a Class 5 industrial use. This is not an agricultural use, or a use that would be anticipated to be located on a farm, or in the open countryside. The indicative elevation and floor plan details that have been provided, are also consistent with the description of an industrial building (as might occur on an industrial estate) rather than with an agricultural shed. The latter tend to be higher and narrower structures than the indicated building, which has an exaggerated horizontal appearance that would not routinely be associated with farming. It has also been pointed out in the Report of Handling that the building would have a notably different operation from an agricultural building in terms of the use of its yard areas, which would not be sympathetic to the amenity of this countryside location.

Any proposal to locate the building on land elsewhere at Spylaw Steading would require to be the subject of a new planning application.

2) *the potential use of a Section 75 to 'tie' the business to the Appellant's land holding at Spylaw*

The Appellant advises that it has no objection in principle to the imposition of a planning obligation, at least where such a restriction can be properly imposed.

It is unclear though what a legal tie between the building and the Appellant's land holding would achieve in practical terms in this particular context; and beyond this, how any such requirement would be justified in planning terms. Firstly, planning obligations are not themselves appropriately used where planning conditions might serve the same purpose. Secondly, it is not in any case, considered that the regulation of the operation and/or disposal of the building, whether by planning condition or by legal agreement, would in this context, reasonably address (or otherwise mitigate) the concern that the siting and operation of this industrial building at this site would in itself, be contrary in principle to Adopted Local Development Plan Policy ED7.

Were restrictions upon the use and disposal of the building to be imposed (whether by planning condition or by legal agreement), and even as the subject of an exceptional approval, it would still need to be considered at this stage how the building might be disposed of in future, were the Appellant's business to cease trading from the premises. In the event of applications being made at some future time to remove or vary any planning conditions or obligation imposed, and for the purpose of allowing a new successor business to take up occupancy, it would be difficult to maintain that any restrictions imposed upon the building's use and disposal should be maintained where the only alternative was the building's dereliction.

Moreover, approval of the current proposal might in itself be liable to be seen as tantamount to an acceptance on the part of the Planning Authority of the principle that a general industrial use could be sited and operated at this site, and critically without any need first having been substantiated in planning terms for it to operate from this particular countryside location. Accordingly, in this context, the imposition of any legal agreement or planning condition(s) to restrict the industrial use and users of the premises in the long-term might be capable of subsequent challenge on the grounds that where the principle has otherwise been accepted, the imposition of such restrictions might be seen as unreasonable and unnecessary where these do not demonstrably ensure the proposal's compliance with planning policy.

All in all, if the concern is that the site should not be, or in time become, available for general industrial use, then the current application would be more reasonably refused due to the lack of reassurance and control that is offered by the context of this proposal in the long-term.

SUPPORTING DOCUMENTS:

- 1) Adopted Scottish Borders Council Local Development Plan:

https://www.scotborders.gov.uk/info/20051/plans_and_guidance/121/local_development_plan

- 2) New Housing in the Borders Countryside Supplementary Planning Guidance (December 2008):

[http://www.scotborders.gov.uk/directory_record/7443/new housing in the borders countryside](http://www.scotborders.gov.uk/directory_record/7443/new_housing_in_the_borders_countryside)

- 3) Planning Officer's Delegated Report of Handling:

<https://eplanning.scotborders.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=ODU9YQNTGY100>

