

Public Document Pack

SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTES of Meeting of the LOCAL REVIEW
BODY held in Via Microsoft Teams on
Monday, 17 January 2022 at 10.00 am

-
- Present:- Councillors S Mountford (Chair), A. Anderson, S. Hamilton, D. Moffat, C. Ramage, N. Richards and E. Small.
- Apologies:- Councillors J. Fullarton, H. Laing.
- In Attendance:- Principal Planning Officer (C. Miller - paragraphs 1-4), Assistant Planning Officer (S. Shearer – paragraph 5), Solicitor (F. Rankine), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

MEMBERS

Having not been present when the following review was first considered Councillors Anderson and Hamilton did not take part in the determination of application 21/00244/FUL and left the Meeting prior to its consideration.

1. CONTINUATION OF REVIEW 21/00244/FUL

With reference to paragraph 1 of the Minute of 15 November 2021, the Local Review Body continued their consideration of the request from AB Wight Engineering Ltd c/o Murray Land & Buildings, Hillside, Dean Place, Newstead, Melrose TD6 9RL, to review refusal of the planning application for the erection of a new agricultural machinery dealership premises at Slater's Yard, Charlesfield, St Boswells TD6 0HH. Further procedure had been requested by Members, in the form of a written position statement on the Industrial Land available within Charlesfield Industrial Site, following a meeting between the Applicants, Applicants Agent, Planning Officer and a representative from Economic Development. There had been circulated position statements from the Applicant and Planning Officer together with the response from the Applicant on the SBC position statement. Following consideration of the position statements submitted by the applicant and appointed officer, together with a response from the applicant to the position statement submitted by the appointed officer and all relevant information the Review Body determined the case. The Review Body were of the opinion that the development was consistent with Policies PMD4, ED7 and EP6 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate use and building for the rural location and it had been demonstrated that there were no suitable alternative sites immediately available within Charlesfield Industrial Estate and the landscape and visual effects could be mitigated by appropriate conditions and was subsequently approved.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 4 3A of the Town and Country Planning (Scotland) Act 1997;
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted, the unaccompanied site visit, the Hearing and the position statements submitted;
- (c) the development was consistent with Policies PMD4, ED7 and EP6 of the Local Development Plan and relevant Supplementary Planning Guidance.

- (d) **the officer's decision to refuse the application be overturned and the application approved for the reasons set out in Appendix I to this Minute.**

MEMBERS

Councillors Anderson and Hamilton joined the meeting prior to consideration of the following applications

2. **REVIEW OF 21/00999/PPP**

There had been circulated copies of the request from Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the Erection of a dwellinghouse with associated amenity, parking, infrastructure and access on Plot 1, North of Cakemuir Cottage, Nenthorn, Kelso. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Objection comments; Consultation replies, further representations and List of policies. After considering all relevant information, the Local Review Body concluded that the development would be contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016, and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance 2008, in that the site was not within or well related to a building group and would unacceptably adversely impact the landscape and visual amenity of the surrounding area. The proposal was contrary to policies PMD1 and PMD2 of the Local Development Plan 2016 in that it would present itself as ribbon development contrary to the sustainable use and management of land and was not compatible with or respectful to the character of the surrounding area or building group.

DECISION

AGREED that:-

- (a) **the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) **the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) **the proposal would be contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016, and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance 2008, in that the site was not within or well related to a building group and would unacceptably adversely impact the landscape and visual amenity of the surrounding area. The proposal was contrary to policies PMD1 and PMD2 of the Local Development Plan 2016 in that it would present itself as ribbon development contrary to the sustainable use and management of land and was not compatible with or respectful to the character of the surrounding area or building group; and**
- (d) **the officer's decision to refuse the application be upheld and the application be refused, for the reasons detailed in Appendix II to this Minute.**

3. **REVIEW OF 21/01000/PPP**

There had been circulated copies of the request from Ferguson Planning, 54 Island Street, Galashiels to review the decision to refuse the planning application for the Erection of a dwellinghouse with associated amenity, parking, infrastructure and access on Plot 2, North of Cakemuir Cottage, Nenthorn, Kelso. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Objection comments; Consultation replies, further representations and List of policies. After considering all relevant information, the Local Review Body concluded that the development would be contrary to Policy HD2 of the Scottish Borders

Local Development Plan 2016, and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance 2008, in that the site was not within or well related to a building group and would unacceptably adversely impact the landscape and visual amenity of the surrounding area. The proposal was contrary to policies PMD1 and PMD2 of the Local Development Plan 2016 in that it would present itself as ribbon development contrary to the sustainable use and management of land and was not compatible with or respectful to the character of the surrounding area or building group.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (c) the proposal would be contrary to Policy HD2 of the Scottish Borders Local Development Plan 2016, and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance 2008, in that the site was not within or well related to a building group and would unacceptably adversely impact the landscape and visual amenity of the surrounding area. The proposal was contrary to policies PMD1 and PMD2 of the Local Development Plan 2016 in that it would present itself as ribbon development contrary to the sustainable use and management of land and was not compatible with or respectful to the character of the surrounding area or building group ; and**
- (d) the officer's decision to refuse the application be upheld and the application be refused, for the reasons detailed in Appendix III to this Minute.**

4. REVIEW OF 21/01257/FUL

There had been circulated copies of the request from Mr S Aitchison, 3 Glenfield Crescent, Galashiels on behalf of Mr A Elliot to review the decision to refuse the planning application for the erection of a dwellinghouse on Garden Ground, Kilknowe House, East Green, Earlston. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Objection comments; Consultation replies and List of policies. The Planning Adviser drew attention to information, in the form of plan showing an alternative access to the proposed dwellinghouse which had been submitted with the Notice of review documentation but which had not been before the Appointed Officer at the time of determination. Members agreed that the information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. However, they also agreed that the new information could not be considered without affording the Planning Officer, Flood Risk Officer and Roads Officer the opportunity of commenting on the new information and agreed that the application be continued for further procedure.

DECISION

AGREED that:-

- (a) the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) new evidence submitted with the Notice of Review in the form of a plan showing an alternative access to the proposed dwelling met the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and was material to the determination;**

- (c) **the review could not be considered without the need for further procedure in the form of written submissions;**
- (d) **the Planning Officer, Flood Risk Officer and Roads Officer be given the opportunity to comment on the new evidence submitted with the Notice of Review.**
- (e) **consideration of the review be continued to a future meeting on a date to be confirmed.**

5. **REVIEW OF 21/00836/FUL**

There had been circulated copies of the request from Mr Gordon Bain, Station Yard, Traquair Road, Innerleithen to review the decision to refuse the planning application for the siting of a mobile catering unit north of existing Station Yard building, creating pedestrian access, gates from Traquair Road (pavement) and installation of demountable timber fence at Station Yard, Traquair Road, Innerleithen. The supporting papers included the Notice of Review (including the Decision Notice and Officer's Report); Papers referred to in the Officer's report; Objection comments; and List of policies. The Planning Adviser drew attention to information, in the form of additional letters of support and a proposal to restrict the location of the catering unit to one place within the site which had been submitted with the Notice of review documentation but which had not been before the Appointed Officer at the time of determination. Members agreed that the information was new however, the new information did not meet the Section 43B(1) test, and could not be considered. Members raised concerns about the permanent loss of allocated business and industrial land, the hours of opening, rubbish disposal and smell from the site. After considering all relevant information, the Local Review Body concluded that provided the proposal was limited to a temporary form of development which would not result in the permanent loss of allocated business and industrial land and provided that the hours of operation were restricted, and matters covering smell and litter were regulated by planning conditions, the development would not adversely affect the amenity of neighbouring residential properties. Consequently, the application was approved, subject to conditions.

DECISION

AGREED that:-

- (a) **the request for review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) **new evidence submitted with the Notice of Review in the form of letters of support and proposal to restrict the location of the catering unit to one place within the site did not meet the test set in Section 43B of the Town and Country Planning (Scotland) Act 1997 and could not be considered;**
- (c) **the review could be considered without the need for further procedure.**
- (d) **the officer's decision to refuse the application be overturned and the application be approved, subject to conditions, for the reasons detailed in Appendix IV to this Minute.**

The meeting concluded at 12.45 pm



**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: 21/00016/RREF

Planning Application Reference: 21/00244/FUL

Development Proposal: Erection of agricultural machinery dealership premises incorporating workshop, show space, office and associated works

Location: Slater's Yard off Charlesfield Road, St Boswells

Applicant: A B Wight Engineering Ltd

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions as set out below.

DEVELOPMENT PROPOSAL

The application relates to the erection of agricultural machinery dealership premises incorporating workshop, show space, office and associated works. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	
Site Plan	
Elevations	01B
Proposed Building	Render Views

PRELIMINARY MATTERS

The Local Review Body initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 13th September 2021.

After examining the review documentation at that meeting, which included a) Notice of Review (including Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultation Replies; d) Objection comments; e) Additional Information and f) List of Policies, Members considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to additional 3D images of the building. Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered.

However, after further consideration, Members concluded that they did not have sufficient information to determine the Review and that they required Further Procedure in the form of both an unaccompanied site visit and additional information from the applicant and appointed officer by way of a hearing session. The unaccompanied site visit was held on Monday, 25 October 2021 and the matters considered at the hearing were in relation to the availability of industrial land within Charlesfield Industrial Estate and surrounding area.

The hearing was held at 10am on Monday 15th November 2021, after which the Review Body re-convened to consider the case. Members agreed that the Hearing had been useful in providing further information. However, despite the information supplied, Members remained unclear about land available within Charlesfield Industrial Estate and, after discussion, Members concluded that they could not make a determination without further procedure and clarification on land availability. They requested that the applicant meet with the appointed officer and Economic Development, and then provide a Position Statement on land availability at Charlesfield.

The Review was, therefore, continued to the Local Review Body meeting on 17th January 2022 where written submissions, in the form of Position Statements from the applicant and appointed officer, were considered, together with a response from the applicant to the Position Statement from the appointed officer. 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: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, PMD3, PMD4, ED1, ED2, ED7, HD3, EP3, EP4, EP5, EP6, EP9, EP12, EP13, IS7, IS8, IS9 and IS16

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Biodiversity 2005
- SBC Supplementary Planning Guidance on Local Landscape Designations 2012
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

- SBC Supplementary Planning Guidance on Countryside Around Towns 2011
- Scottish Planning Policy 2014

The Review Body noted that the proposal was to erect an agricultural machinery dealership premises incorporating workshop, show space, office and associated works at Slater's Yard, off Charlesfield Road, St Boswells.

Members firstly considered the proposal in relation to Policy ED7 which related to business development in the countryside. It was understood that there was a careful balance to be struck between the needs of expanding business and impacts on the countryside. They noted that the site was not within an allocated Industrial Estate such as existed at Charlesfield nearby and was also near to, but outwith the St Boswells settlement boundary as defined in the Local Development Plan. The Review Body understood that a fundamental requirement of Policy ED7 was that any business proposal in the countryside should both prove a need for the countryside location and also that there are no brownfield sites or existing building opportunities within existing development boundaries. These requirements were fully considered by Members, including during the hearing procedures and the subsequent submission of Position Statements from the applicant and appointed officer.

Members concluded that the site had historical and current use as Class 6 Storage and was, therefore, a brownfield site for business development and not unused open countryside. It was understood that the Class 6 Use had been accepted by the appointed officer on the site and Members, therefore, considered the building proposed and whether there was substantiation for the building and intended use at that particular location. Members noted that the use contained elements of Classes 1, 4 and 5 and that there was no clear consensus between the applicant and appointed officer over the predominant use. Whilst usage as Class 5 would require a change of use from Class 6, Members noted the applicant's contention that any Class 4 usage could occur without the need for planning permission. The Review Body concluded that the proposal was a mixed use building proposed on a site with an established Class 6 use history.

Members were provided with detailed information from both the applicant and appointed officer relating to the availability of alternative sites both at Charlesfield Industrial Estate and in the locality. Members also noted that the sites had been discussed by the applicant with both the appointed officer and Economic Development, following the outcome of the hearing process. After careful consideration of all evidence, the Review Body were satisfied that there were no alternative sites immediately available for the proposed development. Members were also content that the proposed use was appropriate and required in a countryside location in the St Boswells/Charlesfield area, noting that the use involved agricultural machinery and having heard that the customer base was local and would not necessarily follow any relocated business. Members also accepted that the current location for the business would be improved by having a single site and building rather than several sites and that there were locational advantages to the business being close to the A68. They also understood that infrastructure would still need to be provided on the site. The Review Body ultimately concluded that the proposal was in compliance with the fundamental requirements of Policy ED7 under criterion c) but also with secondary criterion c).

Members then considered the issue of development outwith settlement boundaries as controlled by Policy PMD4. They noted that the site was outwith St Boswells settlement boundary and also outwith the allocated boundaries of Charlesfield Industrial Estate. The Review Body considered that, for the same reasons that the proposal complied with the fundamental requirements of Policy ED7, the proposal could be allowed as an exception under PMD4, being job-generating development in the countryside where the economic justification had been accepted under ED7.

Members then also considered the visual and landscape impacts in relation to Policy EP6 covering countryside around towns as well as the relevant criteria in other Policies covering the landscape, designated areas and settlement edges such as Policies PMD2, PMD4, ED7, EP4, EP5 and EP9. It was understood that the site could have visual impacts on the countryside and edges to designated areas, albeit after carrying out a site visit and considering the details of the development, Members were of the opinion that the impacts were not significant and could be satisfactorily mitigated by appropriate conditions.

In concluding this, Members noted that the site was separated from the edge of St Boswells Conservation Area and settlement boundary by intervening rural land and lay in an unobtrusive lower-lying location, set back from the road, with a framework of surrounding trees in the vicinity, all reducing the impacts from the village. It was understood that tree and hedge planting was already required to screen the approved fencing along the roadside boundaries of the site. Members considered that this screening, combined with the building height, scale and external materials, would mitigate the visual and landscape impacts of the development when viewed from the public roads to the south. Subject to appropriate additional planting being achieved by condition along the north-western boundary and within the site, Members concluded that the visual and landscape impacts would be acceptable. The selection of appropriate external material colours by planning condition would also reduce the impacts further.

The Review Body finally considered other material issues relating to the proposal including claimed economic benefits, residential amenity impacts, flood risk, water and drainage, access provision and proposed planting. Members were of the opinion that the issues did not influence the overall decision on the Review and could be controlled by appropriate conditions, including the need for a Noise Impact Assessment and additional planting details.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD4, ED7 and EP6 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be an appropriate use and building for the rural location, it had been demonstrated that there were no suitable alternative sites immediately available within Charlesfield Industrial Estate and the landscape and visual effects could be mitigated by appropriate conditions. Consequently, the application was approved.

DIRECTIONS

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 to be commenced until samples of all external materials for the building are submitted to, and approved in writing by, the Planning Authority. The building then to be erected in accordance with the approved materials.
Reason: To safeguard the visual amenity of the surrounding area.
2. Lighting illumination not to exceed 250 candelas per square metre.
Reason: To ensure that there will be no distraction or dazzle to the drivers on the trunk road and that the safety of the traffic on the trunk road will not be diminished.

3. No development to be commenced until a detailed site layout plan has been submitted to, and approved in writing by, the Planning Authority. The plan shall include further details of:

- Site levels to indicate surface water drainage
- External lighting
- Parking
- Access junction works

The development then to proceed in accordance with the approved plan.

Reason: In the interests of road safety.

4. The use not to become operational until a Noise Impact Assessment has been submitted to, and approved in writing by, the Planning Authority. The building and use then to be operated fully in accordance with the Assessment.

Reason: To safeguard and minimise potential noise impacts on adjoining residential amenity.

5. No development to be commenced until further planting details are submitted to, and approved in writing by, the Planning Authority in relation to the north-western boundary of the site and the noted "Green Space" area on the approved Site Plan. The planting details shall include a timescale for implementation, a maintenance scheme and avoidance of conifer species. Planting then to be carried out in accordance with the approved details.

Reason: To safeguard the visual amenities of the area.

6. Notwithstanding the terms of The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, any proposals for site and building advertisement that would be classed as having express consent under the Regulations, should still be submitted to, and approved in writing by the Planning Authority before installation. Any proposals that would be classed as not having express consent should be submitted as an Application for Advertisement Consent and not installed until such application is approved.

Reason: To safeguard the visual amenities of the area.

7. No development to be commenced until a detailed drainage scheme for the building and site is submitted to, and approved in writing by, the Planning Authority. The scheme shall include proposals for compensation for displacement of flood waters. Once approved, the development then to proceed in accordance with the approved scheme.

Reason: To ensure that the site is adequately serviced and mitigation is proposed for the identified flood risk.

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites".

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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 S Mountford
Chairman of the Local Review Body

Date 27th January 2022

...

This page is intentionally left blank



**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: 21/00028/RREF

Planning Application Reference: 21/00999/PPP

Development Proposal: Erection of dwellinghouse and formation of new access

Location: Plot 1, Land North of Cakemuir House, Nenthorn

Applicant: Mr and Mrs Forster

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:

1 The proposal is contrary to policy HD2 of the Scottish Borders Local Development Plan 2016, and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance 2008, in that the site is not within or well related to a building group and would unacceptably adversely impact the landscape and visual amenity of the surrounding area.

2 The proposal is contrary to policy PMD1 of the Local Development Plan 2016 in that it would present itself as ribbon development contrary to the sustainable use and management of land.

3 The proposal is contrary to Policy PMD2 of the Local Development Plan 2016, in that the site is not compatible with or respects the character of the surrounding area or building group.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse and formation of a new access at Plot 1, Land North of Cakemuir House, Nenthorn. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	AH170 LP01 A

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 17th January 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Objection comments; d) Consultation Replies; e) Further Representations and f) 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: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, HD4, EP2, EP3, EP7, EP13, IS2, IS7, IS8 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- Scottish Planning Policy 2014
- SESPlan 2013

The Review Body noted that the proposal was for planning permission in principle for the erection of a dwellinghouse and formation of a new access at Plot 1, Land North of Cakemuir House, Nenthorn.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that a building group lay to the east of the site at Nenthorn comprising more than the minimum number of existing houses required to comply with Policy HD2. Whilst Members noted that the applicant claimed the building group included a wider and more dispersed arrangement of residential properties as per Figure 10 of the applicant's Review Statement, they did not agree with the applicant's view of the extent of the building group.

The Review Body considered that the building group at Nenthorn only included the grouping of houses to the east of the site and did not include Cakemuir to the south of the site. They

considered that Cakemuir was separated from the site and from Nenthorn by the configuration of public roads, roadside hedges and especially by the alignment of the Cakemuir houses which had their rear elevations facing the site to the north. As Members considered Cakemuir and Nenthorn to be two distinct building groups, they agreed with the Appointed Officer that development of the site could result in coalescence. Members also noted that, as a result of Nenthorn and Cakemuir being separate groups, the capacity of the groups to accommodate new development under Policy HD2 was significantly affected by the presence of extant and subsequent approvals to Local Development Plan adoption. Members considered that development on those sites should be completed before any further expansion of Nenthorn is considered.

In terms of the sense of place, character and whether the site was an appropriate addition to either building group, the Review Body noted that the site broke into an open agricultural field and represented both ribbon development to Nenthorn and development on the other side of a public road and hedgerow to Cakemuir, where existing houses had their principal elevations facing south. Consequently, Members felt the site was outwith natural and man-made boundaries and was poorly related to both groups, in contravention of Policies PMD2, HD2 and Supplementary Planning Guidance.

The Review Body then considered whether there was any economic justification for the dwellinghouse under Clause F of Policy HD2 and also whether the development would comply with Policy PMD1 on sustainability. They concluded that there was no economic case advanced for a house on the Plot and that the development would not comply with PMD1, given that it represented ribbon development into open agricultural land. Members also considered the relationship of Plot 1 with Plot 2, but ultimately decided that the proposal was outwith the boundaries and sense of place of both building groups, irrespective of its relationship with Plot 2 or its order of implementation.

The Review Body finally considered other material issues relating to the proposal including residential amenity, claimed housing land shortfall, tree/hedge impacts, access, water, drainage, biodiversity and developer contributions but were of the opinion that the issues did not influence the overall decision on the Review and could have been controlled by appropriate conditions and a legal agreement had the proposal 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 Local Review Body

Date 27th January 2022



**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: 21/00029/RREF

Planning Application Reference: 21/01000/PPP

Development Proposal: Erection of dwellinghouse and formation of new access

Location: Plot 2, Land North of Cakemuir House, Nenthorn

Applicant: Mr and Mrs Forster

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:

1 The proposal is contrary to policy HD2 of the Scottish Borders Local Development Plan 2016, and contrary to the guidance within the adopted New Housing in the Borders Countryside Supplementary Planning Guidance 2008, in that the site is not within or well related to a building group and would unacceptably adversely impact the landscape and visual amenity of the surrounding area.

2 The proposal is contrary to policy PMD1 of the Local Development Plan 2016 in that it would present itself as ribbon development contrary to the sustainable use and management of land.

3 The proposal is contrary to Policy PMD2 of the Local Development Plan 2016, in that the site is not compatible with or respects the character of the surrounding area or building group.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse and formation of a new access at Plot 2, Land North of Cakemuir House, Nenthorn. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	AH170 LP02 A

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 17th January 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Additional Information; d) Objection comments; e) Consultation Replies; f) Further Representations and g) 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: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, HD2, HD3, HD4, EP2, EP3, EP7, EP13, IS2, IS7, IS8 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008
- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008
- Scottish Planning Policy 2014
- SESPlan 2013

The Review Body noted that the proposal was for planning permission in principle for the erection of a dwellinghouse and formation of a new access at Plot 2, Land North of Cakemuir House, Nenthorn.

Members firstly considered whether there was a building group in the vicinity under Clause A of Policy HD2. They noted that a building group lay to the east of the site at Nenthorn comprising more than the minimum number of existing houses required to comply with Policy HD2. Whilst Members noted that the applicant claimed the building group included a wider and more dispersed arrangement of residential properties as per Figure 10 of the applicant's Review Statement, they did not agree with the applicant's view of the extent of the building group.

The Review Body considered that the building group at Nenthorn only included the grouping of houses to the east of the site and did not include Cakemuir to the south of the site. They

considered that Cakemuir was separated from the site and from Nenthorn by the configuration of public roads, roadside hedges and especially by the alignment of the Cakemuir houses which had their rear elevations facing the site to the north. As Members considered Cakemuir and Nenthorn to be two distinct building groups, they agreed with the Appointed Officer that development of the site could result in coalescence. Members also noted that, as a result of Nenthorn and Cakemuir being separate groups, the capacity of the groups to accommodate new development under Policy HD2 was significantly affected by the presence of extant and subsequent approvals to Local Development Plan adoption. Members considered that development on those sites should be completed before any further expansion of Nenthorn is considered.

In terms of the sense of place, character and whether the site was an appropriate addition to either building group, the Review Body noted that the site broke into an open agricultural field and represented both ribbon development to Nenthorn and development on the other side of a public road and hedgerow to Cakemuir, where existing houses had their principal elevations facing south. Consequently, Members felt the site was outwith natural and man-made boundaries and was poorly related to both groups, in contravention of Policies PMD2, HD2 and Supplementary Planning Guidance.

The Review Body then considered whether there was any economic justification for the dwellinghouse under Clause F of Policy HD2 and also whether the development would comply with Policy PMD1 on sustainability. They concluded that there was no economic case advanced for a house on the Plot and that the development would not comply with PMD1, given that it represented ribbon development into open agricultural land. Members also considered the relationship of Plot 2 with Plot 1, but ultimately decided that the proposal was outwith the boundaries and sense of place of both building groups, irrespective of its relationship with Plot 1 or its order of implementation.

The Review Body finally considered other material issues relating to the proposal including residential amenity, claimed housing land shortfall, tree/hedge impacts, access, water, drainage, biodiversity and developer contributions but were of the opinion that the issues did not influence the overall decision on the Review and could have been controlled by appropriate conditions and a legal agreement had the proposal 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 Local Review Body

Date 27th January 2022

...



**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: 21/00030/RREF

Planning Application Reference: 21/01257/FUL

Development Proposal: Erection of dwellinghouse

Location: Garden ground of Kilknowe House, East End, Earlston

Applicant: Mr A Elliot

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:

1. The proposal is contrary to policy IS8 of the Local Development Plan 2016 in that the site is at significant risk of flooding and allowing a dwellinghouse to be erected on this site would put persons and property at risk of flooding. In addition, access and egress could not be safely achievable during a flood event.

DEVELOPMENT PROPOSAL

The application relates to the erection of a dwellinghouse on garden ground of Kilknowe House, East End, Earlston. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	
Floor Plans	
Site Plan	570-1
Access	570-2
Elevations	570-3

PRELIMINARY MATTERS

The Local Review Body initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 17th January 2022.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Additional Information; d) Objection Comments; e) Consultation replies; and f) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information in the form of an amended drawing 570-2 showing access to the site being taken from the Main Street in Earlston.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, there was a requirement for further procedure in the form of written submissions to enable the Appointed Officer, Flood Risk Officer and Roads Planning Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 7th March 2022 where the Review Body considered all matters, including responses to the further information from the Appointed Officer, Flood Risk Officer and Roads Planning Officer. The Review Body also noted that the applicant had requested further procedure in the form of written submissions and a site visit but did not consider it necessary in this instance and 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: SESplan Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, PMD2, PMD5, HD3, EP13, IS2, IS3, IS7, IS8 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Development Contributions 2011
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Trees and Development 2020
- Scottish Planning Policy 2014
- Scottish Government Flood Risk – Planning Advice 2015

The Review Body noted that the proposal was for planning permission to erect a dwellinghouse on garden ground of Kilnknowe House, East End, Earlston.

Members firstly considered the principle of the dwellinghouse on the site, which they noted lay within the settlement boundary of Earlston as defined in the Local Development Plan. The Review Body considered the proposal against the relevant infill Policy PMD5 and criteria within Policy PMD2 on quality standards. They noted that the Appointed Officer had accepted the infill site when considering these Policies and Members were of a similar view. They noted the position and size of the site and, given its relationship with the surroundings, they viewed the site as an acceptable infill opportunity within the settlement. Members also had no issue with impacts on residential amenity when considering the proposals under Policy HD3, nor with the precise siting and design of the proposed house, which they noted had been accepted by the Appointed Officer and would be subject to conditions.

Members then considered the issue of flood risk and whether the proposal would be in compliance with Policy IS8 and Government guidance. They noted that this was the reason the application had been refused by the Appointed Officer, based upon the advice from the Council's Flood Risk Officer that the site and access would be at risk of flooding. They noted that this advice was based on both the SEPA Flood Maps and the 2017 Earlston Flood Study, relating to both 1 in 100 and 200 year scenarios. The Review Body noted that the level of projected water inundation was such that the Flood Risk Officer had objected to the application and that, even if mitigation such as raised floor levels was considered, there would still be no access or egress safe from flooding.

Whilst Members took into account the applicant's comments about a lack of flood history in the area and expressed sympathy with regard to the proposal being an otherwise acceptable infill opportunity surrounded by existing properties also at risk, the Review Body acknowledged that with climate change, predicted flood levels were increasing. Given this, they attached significant weight to the advice of the Flood Risk Officer and concluded that flood risk seemed insurmountable at the site, contrary to the requirements of Local Development Plan Policy IS8. Members, therefore, upheld the decision of the Appointed Officer based upon the objection from the Flood Risk Officer.

The Review Body finally considered other material issues relating to the proposal including access, trees, water, drainage and developer contributions. They were of the opinion that the issues either did not influence the overall decision on the Review or could have been controlled by appropriate conditions and a legal agreement had the proposal 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 Local Review Body

Date 15th March 2022



**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: 21/00032/RREF

Planning Application Reference: 21/00836/FUL

Development Proposal: Siting of mobile catering truck and alterations to existing access

Location: Land At Station Yard Traquair Road Innerleithen

Applicant: Mr Gordon Bain

DECISION

The Local Review Body overturned the decision and indicated that it intended to grant planning permission for the siting of mobile catering truck and alterations to existing access subject to conditions.

DEVELOPMENT PROPOSAL

The application relates to the siting of mobile catering truck and alterations to existing access. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	01.19.05 rev 0
Photos	02.19.05 rev 021

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 17th January 2022

After examining the review documentation which included: a) Notice of Review b) Review Statement c) Letters of Support d) Photograph's e) Papers referred to in officer's report and f) List of Policies, the Review Body proceeded to determine the case.

Members considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to additional letters of support and a proposal to restrict the location of the catering unit to one place within the site. Members agreed that the information was new however, the new information did not meet the tests outlined in Section 43B(1) of the Act and was not considered , that it was material to the determination of the Review under Section 43(2) of the Act and so should not be considered.

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 Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: ED1, PMD3, ED3 and HD3

The Local Review Body heard that the site was allocated as a District Site for Business and Industrial use within the Local Development Plan. The Review Body considered the proposal against Policy ED1 on Protection of Business and Industrial Land and Policy PMD3 on Land Use Allocations. Members accepted that the development did not provide a Class 4, 5 or 6 land use which is preferred on allocated District Business and Industrial Land.

The Review Body then went on to consider whether the siting of a mobile catering unit provided an exceptional form of development on the allocated employment land against the tests listed in criteria a) to d) of Policy ED1 and a) to d) of Policy PMD3. Members acknowledged that the development would represent the loss of employment land but also recognised that there was a business case for the proposal which would provide economic benefit. They noted that the site had not been used for its allocated use for some time and nor were there any current proposals to develop the site for Class 4, 5 or 6 uses. They were satisfied that the nature of the development would only require limited physical works, which was also helped by limiting the siting of the truck to one place within the site. The development was not viewed to prohibit the site being used for any business or industrial use in the future. The Review Body were satisfied that provided the development was restricted for a temporary three year period which could be controlled by planning condition, the proposal met the tests for an exceptional form of development on the allocated District site without leading to the permanent loss of employment land.

The Review Body agreed with the applicant and the appointed officer that the site was positioned out with Innerleithen's designated town centre. Members discussed that it was not uncommon to find snack bars located outside of town centres and this development would be no different to other similar catering units which operated towards the outskirts of other towns. It was recognised that the development may help ease congestion currently caused by cyclists at cafes on the High Street. The Review Body considered that the town required further catering services to meet the towns ambitions as a popular cycling destination and that this development would not undermine the role of the town centre or conflict with the aims of Policy ED3.

The Review Body discussed the impact of the development on residential amenity. Concerns were raised that the operation of a catering unit could impact on the amenity of neighbouring

properties. Members were content that the impact on residential amenity could be mitigated by seeking to control the hours of operation to between 0800 and 1800 Monday to Sunday by planning condition. This would ensure that the facility was only operational at appropriate times of the day to avoid upsetting the amenity of neighbouring residencies. Members requested that the condition allow for the operator to seek approval to operate out with these hours only when there were specific events i.e. cycling events and festivals. Litter was also identified as a potential nuisance but the Review Body were satisfied that a litter management plan via a planning condition would address this. Odour from the cooking facilities could impact on the amenity of residential properties but it was accepted that agreeing suitable means of extraction system by planning condition would mitigate against adverse impacts of smell.

Members moved on to other material matters. The Review Body did not find that the proposal would pose any road safety issues although final access details were necessary. In order to avoid customers bikes blocking Traquair Road, provision of a cycle parking area within the site was considered to encourage customers to use this space rather than parking on the footpath. Precise details of the new boundary fencing and gates were identified to be required. The site was acknowledged to be at risk of flooding but they noted the recommendation of the Flood Protection Officer that the flood risk could be mitigated by seeking the catering truck to be moved during times when flood warnings are issued by SEPA. The Review Body were of the opinion that appropriate conditions covering access, means of enclosure, cycle parking and flooding could satisfactorily address these matters.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that provided the proposal was limited to a temporary form of development which would not result in the permanent loss of allocated business and industrial land and provided that the hours of operation were restricted, and matters covering smell and litter were regulated by planning conditions, that the development would not adversely affect the amenity of neighbouring residential properties. Consequently, the application was approved, subject to conditions.

DIRECTIONS

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. Permission is granted for a limited period of 3 years from the date of this consent and, unless application is made and consent granted for its continuation, the use shall be discontinued at the expiration of the period granted and the catering van and associated fixtures shall be removed from the site.
Reason: The type of development requires that the consent be reviewed periodically in the interests of safeguarding employment land and visual amenity
2. The mobile catering unit shall occupy the position shown on Drawing No 01.19.05 rev 0 to the north of the Station Yard building and the catering unit shall not trade from any other position within the site unless any alternative location has been agreed in writing by the Planning Authority.
Reasons: To protect the business and industrial land and the amenity of neighbouring residencies.

3. Prior to the commencement of operations, the following details shall be submitted to and agreed in writing with the Planning Authority;
 - i. Precise details of the disposal of refuse/waste arising from the development (including litter generated by customers) shall be submitted to and approved in writing by the Planning Authority.
 - ii. Precise details of the kitchen extraction system
 Thereafter the development shall be operated in accordance with the agreed details for the duration of operations on site.
 Reason: To protect amenity of nearby residents and the environment.

4. The development hereby approved shall operate between the hours of 0800 and 1800 Monday – Sunday only, unless alternative hours have been agreed in writing by the Planning Authority.
 Reasons: To protect the amenity of neighbour residences.

5. Prior to the commencement of operations, precise details of the access alterations from Traquair Road and provision for dedicated cycle parking within the site shall be submitted to and approved and approved in writing by the Planning Authority and thereafter the development shall be operated in accordance with the agreed details.
 Reason: To ensure that the means of access pose no road safety issues and that bikes do not block the footpath on Traquair Road.

6. Prior to the commencement of operations, precise details of the boundary fence and access gates shall be submitted to and agreed in writing with the Planning Authority and thereafter the means of enclosure shall be erected in accordance with the agreed details.
 Reason: To ensure and appropriate form of development which respects the character and appearance of the surrounding area.

7. During times of flood warnings issued from SEPA, the catering truck shall be moved to a safe location outwith the site.
 Reason: To prevent the development being dislodged during a flood event and causing damage to buildings or roads.

INFORMATIVES

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 “Code of Practice for Noise and Vibration Control on Construction and Open Sites”.

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA
Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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 Mountford
Chairman of the Local Review Body

Date.....