



NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

IMPORTANT: Failure to supply all the relevant information could invalidate your notice of review.

Use **BLOCK CAPITALS** if completing in manuscript

Applicant(s)

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Address 5, KITTLECAIRY VIEW

Postcode EH45 9LZ

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Mark this box to confirm all contact should be through this representative:

* Do you agree to correspondence regarding your review being sent by e-mail? Yes No

Planning authority SCOTTISH BORDERS COUNCIL

Planning authority's application reference number 15/01498/FUL

Site address BLOCK 2 UNIT 6 CHERRY COURT, CAVALRY PARK, PEEBLES

Description of proposed development CHANGE OF USE FROM CLASS 4 (OFFICE) TO CLASS 2 (BEAUTY SALON)

Date of application 16.05.2016 ~~12.05.2016~~ Date of decision (if any)
 16.05.2016

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

Reasons for seeking review

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

I CAN GATHER WRITTEN SUBMISSIONS FROM A LARGE NUMBER OF BUSINESSES AND INDIVIDUALS THAT ARE SITUATED IN AND AROUND CAVALRY PARK WHO WILL EXPRESS THEIR SUPPORT.
Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | Yes | No |
|--|-------------------------------------|--------------------------|
| 1. Can the site be viewed entirely from public land? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

PLEASE REFER TO 'APPEAL STATEMENT' ATTACHED

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

KVA

- ROADS PLANNING REPLY
- OFFICER'S REPORT
- REFUSAL
- COVER LETTER
- STATEMENT OF APPEAL

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant/~~agent~~ [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed [Redacted Signature] Date 16.05.2016

The Completed form should be returned to the Head of Corporate Administration, Scottish Borders Council, Council Headquarters, Newtown St. Boswells TD6 0SA.

Dear Mr Herkes,

I write in reply to your refusal of planning application 15/01498/FUL

You state that as Cavalry Park is regarded as a strategic site in the Local Plan and Structure Plan and therefore is protected, to ensure only classes 4, 5 & 6 are permissible, as defined in Policy ED1.

I feel I have to point out that businesses within the park include:-

- Oral Design Dental surgery
- Chiropractors
- Children's Nursery
- Female Gym
- Male gym
- NHS Dental Surgery
- Internet & Public retail shoe shop
- Music School
- Accountants Office
- Lawyers Office
- Photography Studio

All of the above have public support making Cavalry Park the hive of activity it is now. You may therefore understand my disappointed and dismay with your refusal.

For many years units at Cavalry Park were vacant, as no manufacturing businesses were tempted to set up. However, since the small business units were built and class 1&2 small businesses started to trade, the park has thrived on the diversity of companies therein. Which I believe contributes to the commercial and economic community.

I would also like to point out that we are the only salon at this side of town, this has proved to be a valuable and much needed service to the community and has attracted a lot of public support.

It is worth highlighting that our business provides services to the community at Cavalry Park which is also complimentary to other businesses. Any increase in volume of traffic within the park would be limited as a consequence of my proposal.

Continued

Before taking on the unit at cavalry park, I investigated the possibility of suitable premises in and around the High Street but was unable to find anything.

The problems I encountered were;

- suitability of premises
- lack of easy access
- parking
- congestion

The above are major issues in and around the High Street of Peebles, there would have been (and to my mind still are) huge difficulties for the elderly, disabled and in particular the wheelchair bound.

There are no permanent changes in our unit. All of the concerns with a High Street location would be eliminated since we are fully compliant with all health and safety issues and with easy access for the elderly and disabled having more than ample level site parking available on the doorstep.

I look forward to hearing from you.

Yours sincerely

Kayleigh mcfadzean



STATEMENT OF APPEAL

Planning Ref: 15/01498/FUL

Change of Use from Class 4 (Office) to Class 2 (Beauty
Therapy Salon)
6 Cherry Court, Cavalry Park, Peebles, EH45 9BU
May 2016

Kayleigh McFadzean
Peebles Beauty Salon

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1. INTRODUCTION

1.1 This statement of appeal has been written and prepared by Kayleigh McFadzean, who seeks a change of use from Class 4 to Class 2 for her beauty therapy salon.

1.2 The beauty therapy salon is currently operating from the site, and has been doing so since 11th March 2013.

1.3 The initial planning application was lodged on 10th December 2015.

1.4 Scottish Borders Council's Planning Department refused the change of use application on 16th February 2016. We therefore now seek to appeal this decision via the Council's Local Review Body.

1.5 The following appeal statement includes background information for myself, the applicant, will provide detail on the unit's change of use, and will note strong grounds for appeal.

2. BACKGROUND

2.1 I, Kayleigh McFadzean, currently own and manage Peebles Beauty Salon from my unit at 6 Cherry Court, Cavalry Park, Peebles.

2.2 I was born in Nottingham, England in 1989. I moved to Broughton, Scotland in 2000, and have been a resident of Peebles since 2011. Myself and my husband, who is a retained Firefighter in Peebles, recently welcomed our son into the world, on 16th December 2015. We plan to reside in Peebles for the foreseeable future, wishing to raise our family here.

2.3 I set up Peebles Beauty Salon in March 2011. I did an Events Degree at Edinburgh Napier University, specialising in Human Resource Management. During my time on this course, I noticed a gap in the market for a beauty salon on the South side of Peebles. Using my business knowledge from my course, I created Peebles Beauty Salon.

2.4 Over the past three years, the business has thrived, and has grown significantly. Our client database currently has excess of 800 clients. I currently employ four members of staff, and also work there myself. If business continues to flourish, there is the potential to employ a further two members of staff.

2.5 I am thrilled to have been a part of Cavalry Business Park, which is a charming and flourishing business community, and sincerely hope to remain part of this Business Park. I believe the diversification of businesses within Cavalry Park are its bloodline, and its reason for vitality.

2.6 There are numerous businesses that are beyond Class 4-6 within Cavalry Park:

- Oral Design Dental Surgery (Class 2)
- NHS Dental Surgery (Class 2)
- Public Shoe Shop (Class 1)
- Chiropractor (Class 2)
- Carpet Showroom (Class 1)
- Children's Nursery (Class 10)
- Fitness Studio (Class 11)
- Accountants/ Lawyers Offices (Class 2)

- 2.7 The proposed change of use has not been applied for sooner as I was unaware of this requirement. I was not advised of this when taking on the property, and had not considered it due to the diverse business types that were already located within Cavalry Park.
- 2.8 No changes made to the building internally are permanent, and changes made are minimal. The building is compliant with health and safety regulations.
- 2.9 The beauty therapy salon creates a number of benefits to the Peebles area, which include:
- Employment of 5 staff members, with the potential to employ a further two members of staff, therefore enhancing the local economic climate.
 - Employment of further staff members through sub-contracting of complimentary therapies.
 - Our clients include individuals from all over the Scottish Borders and Edinburgh. These clients will contribute to the local economy, as they will often use restaurants, cafes and shops etc whilst visiting Peebles.
 - The location of our beauty therapy salon eases and reduces the harmful environmental effects of driving. Many clients who would have to drive to an alternative premises situated in or around the high street are able to access our salon on foot.

3. REASON FOR REFUSAL

3.1 The recommendation for refusal was on the basis of:

The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

3.2 Within the officers report, there were no objections from the Roads Planning Section or the Environmental Health Section. There were also no comments made from the Community Council.

3.3 The following extracts taken from the Officer's Report are considered important to highlight towards the refusal decision are:

3.31 No Class 2 approval is in place within this development and this operation should not be permitted.

3.32 We do not consider it appropriate for this operation to be on employment land when it seems more appropriate to be within the town centre where class 1 & 2 uses, involving visits by the general public, are more desirable.

3.33 Within the emerging Local Development Plan, Cavalry Park is to be identified as a Strategic High Amenity Site, and as such, according to emerging Local Development Plan Policy ED1, will be for predominantly Class 4 use. It is acknowledged that other complementary commercial activity may be acceptable, if it enhances the quality of the business park as an employment location.

3.34 Class 2 uses are usually more appropriately accommodated in town centres, in areas outwith Prime Retail Frontages, where the surrounding

infrastructure is more conducive to the accommodation of visiting members of the public; and Class 2 uses can themselves contribute to the diversity and vitality of town centres as attractive shopping and service areas.

3.35 *It is acknowledged that the Local Review Body (LRB) has recently taken a different view with respect to the requirements of emerging policy ED1 within its consideration of the appeal relating to Planning Application 15/00275/FUL.*

3.36 *This is a group of buildings that have been set aside from the start, to accommodate the core employment uses that Cavalry Park is intended for.*

4. GROUNDS OF APPEAL

The main reasons for the application refusal were noted in Section 3 of this document. My responses to the reasons for refusal, alongside further information regarding the business and supporting the appeal, have led to the following Ground Of Appeal (GOA):

4.1 GOA 1:

Referring to Section 3.31 of this document, within the officer's report it was stated that ***"No Class 2 approval is in place within this development and this operation should not be permitted."*** The Local Review Body recently overturned the refusal of Planning Application 15/00275/FUL and their appeal case was accepted to allow a part change of use from Class 4 Office to a Class 2 Dental Surgery. This application was also contrary to Adopted Local Plan Policy ED1 . The application was eventually approved on the basis that *'the dental surgery was reasonably characterised as a complimentary commercial activity'; that it was 'currently operating with a range of businesses, some in classes uses outwith the specified classes'; and that 'there is an oversupply of Class 4 land within the Scottish Borders and the Peebles Area.'* These considerations are relevant to this proposal also. It is conceivable that the Beauty Salon is complimentary to many businesses within Cavalry Park. Many of our clients are recommended to other businesses within the park, specifically the chiropractors and the chiropodist. We have many clients who use our services after visiting the fitness studio. A large number of our clients are employees within the business park, who would agree that the services we provide improve their working life within the Cavalry Park. There is no other Beauty Salon operating within Cavalry Park, so the business is adding to the diversity of the site, making it more attractive to other potential businesses. There are a number of businesses within Cavalry Park that fall beyond Class 4-6 uses. These, in my opinion, add to its vitality and sustainability. This wide variety of businesses includes:

- Oral Design Dental Surgery
- Scotlight Electricians
- James Inglis Shoe Store
- Scotsdale Finance
- Nomad Beat Music School
- Lemon Digital Design
- Braidwood Graham Accountants
- Borders Chiropractor
- Black Circle Tyre Store
- Rugby Store
- NHS Dental Surgery

- Mackieson & Sons Painters
- Rogersons Shoe Warehouse
- Omni Fitness Gym
- The Health Rooms Fitness and Wellbeing Studio
- Peebles Carpet Showroom
- DcR Computer Maintenance
- Gold Star Taxi's
- The Sew Shed

The Planning Department consented an office development to allow Class 2 uses within it at Cavalry Park (10/01098/FUL). Another example of a change of use application being approved, in a similar case to my own, is that of case 06/01787/FUL which consented an office being changed into a Chiropractor. I believe that this flexibility and assortment of businesses that contributes to the increasing success of Cavalry Park.

There is also an oversupply of Employment Land within the Peebles area. According to the Scottish Borders Council Employment Land Audit (2015), there has been no employment land take up during the last few years. This suggests to me that although supply is high, demand is low.

4.2 GOA 2:

Referring to Section 3.32 of this document, it was shown that the Officers Report quoted: ***'We do not consider it appropriate for this operation to be on employment land when it seems more appropriate to be within the town centre where class 1 & 2 uses, involving visits by the general public, are more desirable.'*** As stated within GOA 1, there is an oversupply of employment land within the area. There are various office spaces within Cavalry Park, and currently within Cherry Court, that are vacant. Furthermore, the statement suggests that the general public are more likely to visit businesses situated within the town centre. The majority of the salon's client base visit us on the basis that we are not situated within the town centre. Parking is much easier and more available for clients, than in the town centre. It is within walking distance for many residents who are situated on the South side of Tweed Bridge, therefore making it much more accessible to clients who cannot drive and live within walking distance of Cavalry Park. We are particularly accessible to people who live in, and people who visit the new housing development. We feel that we pose as an attractive selling point to potential home-owners within the area as they will have a beauty salon on their door step. We have disabled access, which in many premises within the town centre is not possible. Our client base also advantages other businesses within the park, as we bring a large footfall of people into the Park who use other businesses as a result of visiting us.

4.3 GOA 3:

Considering Section 3.33 of this document, within the Officers Report it was stated: ***'Within the emerging Local Development Plan, Cavalry Park is to be identified as a Strategic High Amenity Site, and as such, according to emerging Local Development Plan Policy ED1, will be for predominantly Class 4 use. It is acknowledged that other complementary commercial activity may be acceptable, if it enhances the quality of the business park as an employment location.'***

I have already touched on the number of businesses that are operating outwith Class 4 use. I feel that I should stress that the salon does enhance the quality of the business park as an employment location. Many employees from various businesses within the park visit the salon, particularly in their lunch hours. This provides them with an easily accessible service which can not only uplift their mood and therefore improve their workplace morale and productivity, but also can improve their home life as they do not have to take time out after work to obtain such services. We have great support from all of our clients based withing Cavalry Park, and from other business owners. Our services compliment many other businesses within the park- we often work alongside the gym, chiropractor, dental surgery and chiropodist to provide the best and most fulfilling service to our clients. We also uitlise services within the park for salon purposes, including electricity and gas services, and accountants, further adding to the economy of the park.

4.4 GOA 4:

Referring back to Section 3.34 of this document, the Officers Report noted that: ***'Class 2 uses are usually more appropriately accommodated in town centres, in areas outwith Prime Retail Frontages, where the surrounding infrastructure is more conducive to the accommodation of visiting members of the public; and Class 2 uses can themselves contribute to the diversity and vitality of town centres as attractive shopping and service areas.'***

Firstly, I would like to point out that there are various other Class 2 business operating within Cavalry Park. Secondly, I think it is important to consider that the beauty salon is contributing much more in its current location than it could if it was situated within the town centre. I would disagree that my business could add to the diversity of businesses within Peebles Town Centre. There are already the following beauty salons situated within this area:

- Xanadu Beauty Clinic
- The Retreat
- At First Sight Beauty Salon
- Clare Gilmore Beauty Salon

- The Loft Beauty Salon
- Liz Howieson Beauty Salon
- Gina Enickle Beauty Salon

For a relatively small distance, which spans not even one mile, there are seven beauty salons operating. Another beauty salon operating within this area would not improve the diversity of the town centre. In fact, I think it could have a detrimental effect, as it could be using a premises which would be better suited for a more diverse and potentially beneficial business.

4.5 GOA 5:

Referring to Section 3.35 of this document, the Officers report highlighted:

'It is acknowledged that the Local Review Body (LRB) has recently taken a different view with respect to the requirements of emerging policy ED1 within its consideration of the appeal relating to Planning Application 15/00275/FUL.'

As previously mentioned, this refers to the accepted application of Oral Design Dental Surgery, which also operates within Cherry Court, Cavalry Park. As with the Dental Surgery, we will not be limiting the availability of employment land within Cavalry Park, or within the general area.

4.6 GOA 6:

I will now refer back to Section 3.36 of this document. A quote from the Officers Statement claims:

'This is a group of buildings that have been set aside from the start, to accommodate the core employment uses that Cavalry Park is intended for.'

I feel that this statement is outdated. Cavalry Park was established in 2002, with Cherry Court being opened in 2009. Since then, a number of additional buildings have been built within Cavalry Park, including the recently finished Copperbeech Court, which is also for Class 4 use only. I am of the opinion that there is surplus space within Cavalry Park for offices, with many units currently sitting empty. I am employing four members of staff plus myself, which surely can be seen as a positive, and as an employment use.

4.7 Further Arguments:

- Peebles Beauty Salon was a big investment for myself. I spent a large amount of money when I first set the salon up, using all local services to help me do

so. It would be a huge loss financially for me if I was unable to continue working from there. I would be unable to fund a new kit-out if I had to move premises, and therefore would most likely be forced to cease trading.

- I employ four members of staff, and also work there myself. I also give work experience to college students. If I had to leave my premises, it would likely result in the loss of employment for my staff members. I feel that the salon provides a high and satisfactory level of employment for the size of premises. Many other units housing office-based businesses within the site have less employees. I also have potential to employ a further two members of staff if my business continues to flourish.
- Our location means there is less congestion in the town centre than if we were to be located there. Peebles Town Centre is already an extremely busy location. Parking is limited, and more traffic would have to cross over Tweed Bridge from the other side of town to access services there.
- We have many clients who use our salon because of the fantastic location, accessibility and disabled access. Many premises available within the town centre are not situated on the ground floor, and therefore those who have difficulty walking, or who are wheelchair bound, would not be able to access.
- Cavalry Park enjoys generous parking provisions, and the salon clients do not impact the parking facilities or access to the surrounding sites in any way.
- We are the only Beauty Salon that operates within its location. We believe we offer a very important service particularly to clients who live in addresses such as Kittlegairy, Whitehaugh, Kingsmeadows, Forest View, Cademuir Drive, The Meadows, Victoria Park Drive and many more.

5. CONCLUSION

I believe that the current site represents a sound and acceptable location for my Beauty Therapy Salon. It compliments and enhances neighbouring businesses, adds value to the local economy, boosts local spending, creates employment opportunities and learning facilities, decreases congestion within the town centre, provides a valuable service to the local community and helps to improve the wellbeing of employees within Cavalry Park. As a result of this, it will encourage and upkeep the diversity and vitality of the business park as a whole. In my opinion, in compliance with Planning Policy ED1, allowing the change of use for my beauty therapy salon will not have a negative impact on the economy or on the town centre, and will not take up existing vacant units or employment opportunities. In my opinion, it is quite the contrary. The beauty salon being located within Cherry Court has a positive effect on the economy, on the business park as a whole, and provides employment opportunities. I feel that relocating to the town centre would not only be unachievable, but would also be of no benefit to the diversity and vitality of the town centre.

Considering all points of argument, including the 'Ground of Appeal', I respectfully request that this appeal be allowed.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Planning Permission

Reference: 15/01498/FUL

To: Ms K McFadzean per M S Sim 3 Castlecraig Gardens Blyth Bridge West Linton Scottish Borders EH46 7DH

With reference to your application validated on **10th December 2015** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal: Change of use from Class 4 (Office) to Class 2 (Beauty Therapy Salon)

At: Block 2 Unit 6 Cherry Court Cavalry Park Peebles Scottish Borders EH45 9BU

The Scottish Borders Council hereby **refuses** planning permission for the **reason(s)** stated on the **attached schedule**.

**Dated 16th February 2016
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Chief Planning Officer

APPLICATION REFERENCE: 15/01498/FUL**Schedule of Plans and Drawings Refused:**

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused

REASON FOR REFUSAL

The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning 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 require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Melrose TD6 0SA.

If permission to develop land is refused or granted subject to conditions, whether by the Planning Authority or by the Scottish Ministers, 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 may serve on the Planning Authority a purchase notice requiring the purchase of his interest in the land in accordance with the provisions of Part 5 of the Town and Country Planning (Scotland) Act 1997.

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 15/01498/FUL

APPLICANT : Ms K McFadzean

AGENT : M S Sim

DEVELOPMENT : Change of use from Class 4 (Office) to Class 2 (Beauty Therapy Salon)

LOCATION: Block 2 Unit 6 Cherry Court
Cavalry Park
Peebles
Scottish Borders
EH45 9BU

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused

NUMBER OF REPRESENTATIONS: 0
SUMMARY OF REPRESENTATIONS:

No representations.

Roads Planning Section: No objections to this proposal.

Environmental Health Section: No comments.

Economic Development Section: Cavalry Park is regarded as a strategic site in the Local Plan and Structure Plan and therefore is protected, to ensure only classes 4, 5 & 6 are permissible, as defined in Policy ED1. We have checked the original application for this development under PA 08/01574/FUL and it was approved, on 21 Nov 08, as Class 4 & 6 only. Therefore no Class 2 approval is in place within this development and this operation should not be permitted. We do not consider it appropriate for this operation to be on employment land when it seems more appropriate to be within the town centre where class 1 & 2 uses, involving visits by the general public, are more desirable. We do not support this application.

Community Council: has been consulted but has not responded to the public consultation.

PLANNING CONSIDERATIONS AND POLICIES:

Adopted Scottish Borders Local Plan Policy ED1 - Protection of Employment Land
Adopted Scottish Borders Local Plan Policy G1 - Quality Standards For New Development
Adopted Scottish Borders Local Plan Policy H2 - Protection of Residential Amenity
Adopted Scottish Borders Local Plan Policy H3 - Land Use Allocations
Adopted Scottish Borders Local Plan Policy Inf4 - Parking Provisions and Standards

Scottish Borders Council Proposed Local Development Plan Policy ED1 - Protection of Business and Industrial Land

Recommendation by - Stuart Herkes (Planning Officer) on 12th February 2016

PROPOSED DEVELOPMENT

This application proposes a part change of use of an existing office premises to accommodate a beauty therapy salon within a business unit at Cherry Court, Cavalry Park. The unit in question (No 6) is located on the end of a row of three similar units on the north side of a courtyard shared by a total of 11 units. The beauty therapy salon is currently operating from the site.

These units were consented by Planning Consent 08/01574/FUL. The latter was issued subject to conditions, including a requirement that these units, including the site, be restricted to a use within Class 4 of the Schedule of the Town and Country Planning (Use Classes) (Scotland) Order 1997 or to any other purpose in Class 6 (limited to no more than 235 square metres) of the Schedule to The Town and Country Planning (Use Classes) (Scotland) Order 1997. This is for the purpose of ensuring that the uses of the units remain compatible within the site.

The Applicant advises on the application form that there has historically been no interest in the units from Class 4, 5 or 6 businesses; that the beauty therapy contributes to a vibrant business park and economy at Cavalry Park and within Peebles; and that it encountered difficulty locating appropriate premises within the vicinity of Peebles town centre due to the costs involved in converting an existing premises.

PLANNING POLICY

A beauty therapy salon is a Class 2 use and is therefore contrary to the requirement of the aforementioned planning condition. Beyond this, neither prevailing nor emerging planning policy affords any grounds to be supportive of a Class 2 use in these circumstances.

Within the statutory development plan, Cavalry Park is identified as a strategic employment site and is therefore subject to the strict requirement that sites so identified, should only be used for Classes 4, 5 and 6 uses, while all other uses should be refused.

The position within the emerging Local Development Plan is less explicit in its statement of a similar requirement, but does not afford any reasonable provision to be supportive of the accommodation of a Class 2 use. Within the emerging Local Development Plan, Cavalry Park is to be identified as a Strategic High Amenity site, and as such, according to emerging Local Development Plan Policy ED1, will be for predominantly Class 4 use. It is acknowledged that other complementary commercial activity may be acceptable, if it enhances the quality of the business park as an employment location. However, the examples given of potentially acceptable commercial activities are all Class 4 uses.

In line with Economic Development's consultation response, it is considered that Class 2 uses are generally not complementary to Class 4 uses. Class 2 uses are usually more appropriately accommodated in town centres, in areas out with Prime Retail Frontages, where the surrounding infrastructure is more conducive to the accommodation of visiting members of the public; and Class 2 uses can themselves contribute to the diversity and vitality of town centres as attractive shopping and service areas. A town centre appears to be the more natural location and context for a beauty therapy salon rather than operation from a peripherally located business park.

Taking account of the planning policy context constituted by both the statutory development plan and the emerging local development plan, it is not considered that there are any grounds to support the principle of a Class 2 use being accommodated at the site. However, with respect to the planning officer's interpretation of emerging planning policy, it is acknowledged that the Local Review Body (LRB) has recently taken a different view with respect to the requirements of emerging Policy ED1 within its consideration of the appeal relating to Planning Application 15/00275/FUL.

In particular, the LRB considered that the emerging policy's recognition of the potential for "other complementary commercial activity" to enhance "the quality of the business park as an employment location" was less restrictive than the requirements of Policy ED1 of the statutory development plan. In the aforementioned appeal case, the LRB was ultimately minded to consider that a proposed part-change of use of a Class 4 premises to accommodate a Class 2 use was appropriately characterised as a complementary commercial activity which would enhance the quality of the business park as an employment location.

The wider context of the LRB's consideration in this matter is considered below, but with respect to this particular point a distinction needs to be made between the current proposal and that which was the subject of the appeal. Critically the proposed change of use to Class 2 allowed at appeal is accommodated within a premises that remains in part (and predominantly) within Class 4 use, and in operational terms is well-related to that Class 4 use. It is therefore more reasonably characterised as a complementary use given that it directly supports a Class 4 operation within the premises in which it is accommodated. This is not the case with the current proposal which would result in the total loss of a business premises that is in Class 4 use.

Accordingly, the extent to which the proposed beauty therapy salon is reasonably characterised as "complementary" to the wider business park's operation as an employment location is more questionable when it directly reduces the number of Class 4 units which emerging Policy ED1 is concerned should predominate at Cavalry Park.

Ultimately it is the prerogative of the Applicant to test through the appeal system whether or not the LRB would be concerned to recognise their proposal as a "complementary use" within the business park at Cavalry Park in similar terms to the decision taken at appeal with respect to Planning Application 15/00275/FUL. However, it is not considered that such a view is reasonably extended to the assessment of the current proposal from the specific assessment the LRB undertook in the case of the appeal.

In summary, and unless there were reasons to support the proposal as the subject of an exceptional approval, it is not considered that the proposal complies, or accords, with either the statutory or emerging development plan.

MATERIAL CONSIDERATIONS

As noted in the previous section, a part-change of use to a Class 2 use - specifically the operation of a dental surgery in association with a pre-existing dental laboratory - has recently been approved at appeal by the Local Review Body with respect to a unit fronting the south of the same forecourt at Cherry Court (Unit 3).

The use of the property concerned in that case had been regulated in exactly the same way as the current unit, with a restriction on operations therein being restricted to Class 4 and Class 6 uses. The Planning Application (15/00275/FUL) was refused under delegated powers and specifically on the basis that: "the proposed change of use of part of the premises to dental surgery suite would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted".

At appeal however, the Local Review Body overturned this decision on the basis of its determination that material considerations outweighed the non-compliance of the proposal with the Development Plan. Beyond the specific proposal being only a part-change of use of the premises of an established business (which would remain predominantly in Class 4 use) and beyond the LRB's view that the dental surgery was reasonably characterised as a "complementary commercial activity", the LRB also took account of other considerations.

First of all, it noted that Cavalry Park was currently operating with a range of businesses, some in classes uses outwith the specified classes, which were flourishing and adding to the vibrancy of the business park.

Secondly, it recognised a significant oversupply of Class 4 land within the Scottish Borders and the Peebles area and that there had been a low take-up of such land in recent years.

On this basis, the LRB was satisfied that the proposed dental surgery would not prejudice the availability of employment land at Cavalry Park, or within the area more generally.

These considerations are potentially relevant to the assessment of the current proposal. It is at least conceivable that the current proposal might contribute to the strength-in-diversity that the LRB highlighted at Cavalry Park, while the position with respect to Class 4 land within the Peebles area is unlikely to be significantly different to the position considered by the Planning Authority at the time of the appeal. Potentially then these are considerations that are liable to be equally applicable to the current determination. And it is reasonable to consider whether these concerns in isolation, or in culmination with other concerns, justify an exceptional approval.

Ultimately however, the LRB's consideration of the appeal relating to Planning Application 15/00275/FUL should not be taken out of context in that it relates to a particular view formed at a particular point in time, relative to a particular proposal. Given that this is a recent decision relating to very similar circumstances, it is reasonably considered here but it is not considered appropriate to assume or presuppose any fixed and blanket view or position on the part of the LRB, that should then be taken up by the Planning Authority with respect to the assessment of this, and all and every other future non-employment use proposal at Cavalry Park. In short, it is not considered that the wider context of the LRB's consideration in the case of Planning Application 15/00275/FUL constitutes any grounds to justify an exceptional approval contrary to Adopted Local Plan Policy ED1 or emerging Local Development Plan Policy ED1.

Ultimately there are differences between the current and appeal proposals. The current proposal does not benefit from any association with an established business that is already in Class 4 or Class 6 use, and - unlike the proposal that was the subject of Planning Application 15/00275/FUL - would result in a change of use of the entire unit. Unlike the appeal case, the proposal does not contribute positively to the maintenance of a Class 4 use or a Class 6 use within the existing business premises and would result in the loss of a unit in Class 4 use. It would therefore seem less reasonably and securely identified as a "complementary use".

The latter point is to some extent, capable of being mitigated by a condition requiring that the premises revert to Class 4/Class 6 use if, or when, the Applicant's business vacates the unit, but there are no considerations which suggests that the Applicant's circumstances or business should be viewed or treated exceptionally.

It is further acknowledged that Cavalry Park enjoys generous parking provision and that the proposed use would not be liable to have any unacceptable impacts upon parking and access at the site.

It is noted and known that there are other business operations both at Cherry Court, and within Cavalry Park more generally, that are either Class 2 uses or are not otherwise Class 4, 5 or 6 uses. Some of these uses are either consented or were accepted as permitted changes of use. Others have, however, been accommodated without planning approval. The latter are liable to enforcement action. With regard to those other uses that have previously secured planning consent on sites elsewhere within the business park, in some cases decision-making was informed by previous versions of the statutory development plan, and/or by the circumstances that prevailed within the specific cases concerned.

Ultimately, some diversification within the businesses accommodated is not considered to be unacceptable, provided that these uses are sympathetic to the amenity and environment of the business park and do not predominate. This diversification can contribute positively to the quality of business environment, with potential to make the business park a more attractive setting for new and expanding businesses. However, a balance is required. Cavalry Park's status as the Borders only Strategic High Amenity Site needs to be secured and protected in the long-term by ensuring that offices and light industrial units remain its predominant character. In this context, it is considered that the material considerations identified above are not sufficient (neither individually nor cumulatively) to outweigh the requirement that this application be determined in accordance with the plans and policies of the statutory development plan.

Further, it is considered material in this case that the planning conditions attached to the original approval, Planning Consent 08/01574/FUL, specifically require that these units be used for Class 4 or Class 6 uses only. This is a group of buildings that have been set aside from the start, to accommodate the core employment uses that Cavalry Park is intended for. There is no change in circumstances within the

prevailing planning policy context, or on site, that would require that any different view now be taken within the determination of the current application.

There are also opportunities for the accommodation of Class 2 uses elsewhere within Cavalry Park; which it is considered, further justifies the strict enforcement of the requirement that the units consented by Planning Consent 08/01574/FUL be reserved, as intended, for Class 4 use only. Four office units equally capable of Class 2 as Class 4 office use are located to the west of the site (10/01098/FUL).

Taking account of the above, it is not considered that the Applicant has demonstrated any requirement for the application to be made the subject of an exceptional approval.

OTHER CONCERNS

There are no Roads or Environmental Health concerns. Car parking provision at Cavalry Park is generous and appears appropriate to accommodate the vehicles of customers/clients arriving at the premises on an appointment basis.

CONCLUSION

It is not considered that there are any material considerations which individually, or collectively, outweigh the need to determine this application in strict accordance with the plans and policies of the Adopted Consolidated Local Plan or the emerging Local Development Plan. Accordingly, it is considered that the application should be refused.

REASON FOR DECISION :

The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

Recommendation: Refused

- 1 The proposed change of use of the premises to Beauty Therapy Salon would be contrary to Adopted Local Plan Policy ED1 in that it is not a Class 4, Class 5 or Class 6 use, and the site (Cavalry Park) is safeguarded for employment uses in the Adopted Local Plan, having more particularly been identified as a Strategic Employment Site; a designation which requires that all other uses be resisted. Further, the Beauty Therapy Salon would not constitute a complementary commercial activity or enhance the quality of the business park as an employment location, and as such does not comply with the Policy ED1 of the emerging Local Development Plan.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.

REGULATORY SERVICES



**To: Development Management Service
FAO Stuart Herkes**

Date: 13 Jan 2016

**From: Roads Planning Service
Contact: Paul Grigor**

Ext: 6663

Ref: 15/01498/FUL

**Subject: Change of use from Class 4 (Office) to Class 2 (Beauty
Therapy Salon)
Block 2, Unit 6, Cherry Court, Cavalry Park, Peebles**

I have no objections to this proposal.

AJS