

APPENDIX III

**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: 16/00013/RREF

Planning Application Reference: 15/01498/FUL

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

Location: Block 2 Unit 6 Cherry Court, Cavalry Park, Peebles

Applicant: Ms K McFadzean

DECISION

The Local Review Body (LRB) reverses the decision of the appointed planning officer and grants planning permission as set out in the decision notice.

DEVELOPMENT PROPOSAL

The application relates to a retrospective proposal for a change of use from Class 4 (office) use to class 2 (beauty therapy salon). The application drawings consist of the following :

Plan Type	Plan Reference No.
Location Plan	15/01498/FUL

PRELIMINARY MATTERS

The LRB considered at its meeting on 6th June 2016, that the review had competently been made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

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

REASONING

The determining issues in this review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: SESplan 2013 and the adopted Local Development Plan 2016. Members noted that the new LDP was adopted on 12th May 2016 and therefore relevant policies within it were now the primary material policy considerations and that policies within the consolidated Local Plan 2011 were now superseded. Although the planning application had been considered primarily taking cognisance of the policies within the consolidated Plan which was in force when the application was submitted, it was agreed that the LRB should consider the proposal only against policies within the LDP 2016. The LRB considered that the most relevant of the listed policies of the LDP 2016 were:

- Local Development Plan policy : ED1

Members noted that the policy ED1 – Protection of Business and Industrial Land in the newly adopted LDP 2016 stated that with regards to Strategic High Amenity Sites (which is what Cavalry Park is identified as) Development will be predominantly for Class 4 use. The policy also states that other complementary commercial activity e.g. offices, call centres and high technology uses may be acceptable if it enhances the quality of the business park as an employment location. Members noted that the Council's Economic Development section had objected to the proposal as they considered the proposed Class 2 use was contrary to Development Plan policy.

Within the LRB appeal statement reference was made to what the appellants describe as a similar precedent made by the LRB previously within Cherry Court. That proposal related to a change of use to a dental surgery. However, Members considered that the practice only required a modest portion of the floor space of the existing business to operate which was in essence only a part change of use and the main use of the building would remain in a Class 4 use. The proposal subject to this appeal was wholly for a Class 2 use and therefore Members considered there were differing material circumstances between the proposals and the previous decision could not be considered a direct precedent for the current proposal.

In the planning officer's report reference was made to other unauthorised uses within Cavalry Park which required the submission of retrospective applications. These were being checked by the Council's enforcement team. Concern was raised as to why there appeared to be several unauthorised businesses operating within the Park. It was confirmed SBC planning officers had no involvement in these unauthorised

uses and the duty to check whether planning consent should fall between the owners of the units and tenants.

Members noted that the proposal was retrospective and that the appellant had been operating her business from the premises since 2013. There were mixed opinions as to whether proposals such as this should be located within the town centres where they would normally be expected to be found and would in turn add footfall to the town centre, whilst others considered this was an appropriate location for the business and was easier accessed for visiting clients.

Members noted that the new adopted LDP did identify the site as a Strategic High Amenity site which sought a preference for Class 4 uses. It was accepted this proposal was a Class 2 use. However, some Members considered that this proposal was a complimentary use which enhanced the offering of uses within the Park, it provided employment, it provided diversity and there appeared to be other available empty units within Cavalry Park which suggested the demand for solely Class 4 uses was limited. On balance Members considered these to be overriding issues in the determination of the application.

CONCLUSION

Members considered that the reasons set out above amounted to the necessary extenuating circumstances as well as being a complimentary use which allowed support of the proposal in accordance with policy ED1.

DIRECTION

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

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

CONDITIONS

When the business use ceases to operate from the premises any subsequent use from the site must revert back to a Class 4 Use of the schedule of the Town and Country Planning (Use Classes) (Scotland) Order 1997.

Reason : To ensure compliance with Local Development Plan policy

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....Cllr R Smith
Chairman of the Local Review Body

Date ...16th June 2016
