

# SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY

MINUTE of Meeting of the LOCAL REVIEW  
BODY held in the Council Chamber, Council  
Headquarters, Newtown St Boswells, TD6  
0SA on Monday, 6 June, 2016 at 10.00 am

Present:- Councillors R. Smith (Chairman), J. Brown (Vice-Chairman), M Ballantyne  
(from paragraph 3), J. Campbell, J. A. Fullarton, I. Gillespie, D. Moffat,  
S. Mountford and B White

In Attendance:- Lead Officer Plans and Research, Solicitor (G. Nelson), Democratic Services  
Team Leader, Democratic Services Officer (F. Walling).

## 1. **DECLARATION OF INTEREST**

In terms of Section 5 of the Councillors Code of Conduct, Councillor Gillespie declared an interest in Item 5 of the agenda (application 16/00041/FUL) and left the meeting during the consideration of this review.

### **MEMBER**

Councillor Ballantyne did not take part in the determination of application 15/00890/PPP detailed below, as she was not present at the start of the consideration.

## 2. **REVIEW OF APPLICATION 15/00890/PPP**

There had been circulated copies of the request from Mr Stewart Kane, per Suzanne McIntosh Planning Ltd, 12-14 Lochrin Buildings, Gilmore Place, Edinburgh, to review the decision to refuse the planning application in respect of the erection of a dwellinghouse and upgrade access track at redundant water treatment works, north east of Broughton Cottage, Broughton. Included in the supporting papers were the Notice of Review which included the Decision Notice and Officer's report; papers referred to in the report; consultations; objections; additional representations; and a list of relevant policies. The Legal Advisor confirmed to Members that the Equality Act 2010, referred to in the Notice of Review, was a material consideration to the determination of the Review. Copies of Section 149 of the Act, referred to by the appellant, were provided at the meeting. Members noted the details of a previous similar application for a dwellinghouse on this site which had been refused consent and was subsequently dismissed at appeal. After initial discussion about the application site Members were in agreement that the proposal was contrary to housing in the countryside policy. Concern was also expressed about the suitability of the proposed access at the junction onto the A701. Their attention then turned to any other material considerations and in particular to the case submitted by the appellants regarding the need for a house of a design to meet the specific needs of their disabled son and his carers. Members expressed sympathy with the needs of the appellant's disabled son but, after lengthy debate, concluded that a specific need for the house in the proposed location had not been demonstrated.

### **DECISION**

#### **AGREED that:-**

- (a) **the request for a 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 the Development Plan and that there were no other material considerations that would justify departure from the Development Plan; and**

- (d) the officer's decision to refuse the application be upheld for the reasons detailed in Appendix I to this Minute.**

**2. REVIEW OF APPLICATION 16/00041/FUL**

There had been circulated copies of the request from Mrs Eileen Cockburn, per Alistair MacDonald, The Strone, Longnewton, St Boswells, to review the decision to refuse the planning application to remove Condition 3 of planning consent 04/02011/FUL pertaining to occupancy of dwellinghouse at Craigie Knowe, Earlston. Included in the supporting papers were the Notice of Review including the Decision Notice; Officer's Report; papers referred to in the report; and a list of relevant policies. The Local Review Body considered a piece of new evidence that had been submitted with the Notice of Review as detailed in Appendix II to this Minute and concluded, for the reasons given, that determination of the review could be made with reference to this new evidence. Members noted that planning consent was granted for the house and associated business in 2004. The condition which was the subject of the appeal had been added to ensure occupancy of the house was tied with the proposed business, as otherwise the house would be contrary to the Council's policy on housing in the countryside. A legal agreement had also been entered into which ensured no further houses were built on the land and that the house and business were not sold off separately. It was confirmed that the appeal related solely to the removal of the planning condition. Members noted that the appellant's husband had regrettably passed away and that the business did not now operate. Careful consideration was given to the wording of the condition and there was acceptance that, as circumstances had changed, the condition which was specific to the original applicant's business was now too narrow. Members emphasised the need to maintain the reasoning which was the basis of the decision to allow a house to be built at this location. However, after discussion it was agreed that the condition could be made more flexible in order to allow more options for the land to be operated for other agricultural or equestrian uses and to ensure that occupancy of the house was tied to that use.

**DECISION**

**AGREED that:-**

- (a) the request for a review had been competently made in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997;**
- (b) in accordance with Section 43B of the Town and Country Planning (Scotland) Act 1997 the review could be determined with reference to the new evidence submitted with the Notice of Review documentation;**
- (c) the review could be considered without the need for any further procedure on the basis of the papers submitted;**
- (d) the proposal would be contrary to the Development Plan but that there were other material considerations that would justify departure from the Development Plan; and**
- (e) the officer's decision not to remove the condition be upheld but that the wording of the condition be amended as detailed and for the reasons given in Appendix II to this Minute.**

**3. REVIEW OF APPLICATION 15/01498FUL**

There had been circulated copies of the request from Ms Kayleigh McFadzean, per M S Sim, 3 Castle Craig Gardens, Blyth Bridge, West Linton, to review the decision to refuse the retrospective planning application in respect of change of use from Class 4 (Office) to Class 2 (Beauty Therapy Salon) at Block 2, Unit 6, Cherry Court, Cavalry Park, Peebles. The supporting papers included the Notice of Review which included the Decision Notice, Officer's Report and consultation from the Roads Planning service; papers referred to in

the report; consultation from Economic Development; and a list of relevant policies. Members noted that Cavalry Park was identified as a Strategic High Amenity Site and that policy ED1 of the newly adopted Local Development Plan 2016 stated that in such sites Development would be predominantly for Class 4 use. However the policy also stated that other complementary commercial activity may be acceptable if it enhanced the quality of the business park as an employment location. Members' opinions were divided as to whether this business was a complementary commercial activity within Cavalry Park or whether the more appropriate location for such a business was the town centre. In their consideration Members pointed out that this appeared to be an established and successful business, that it provided employment, that it provided diversity within the business park and that there were advantages to the present location such as easy parking and access. It was also noted that there were unoccupied units on this section of Cavalry Park suggesting that the demand for Class 4 uses was limited.

### VOTE

*Councillor Moffat, seconded by Councillor Brown, moved that the decision to refuse the application be upheld.*

*Councillor Ballantyne, seconded by Councillor Mountford, moved as an amendment that the decision to refuse the application be reversed and the application approved.*

*On a show of hands Members voted as follows:-*

<i>Motion</i>	<i>- 2 votes</i>
<i>Amendment</i>	<i>- 6 votes</i>

*The amendment was accordingly carried.*

Members were advised that there were other unauthorised uses within Cavalry Park which required the submission of retrospective applications. Members expressed concern that the owners of the units were allowing tenants of the wrong class of use to take occupation.

### **DECISION**

#### **AGREED:-**

- (a) that the request for a 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 development was consistent with the Development Plan and there were no other material considerations that would justify departure from the Development Plan; and**
- (d) the decision of the appointed officer to refuse the application be reversed and the application for planning permission be granted, subject to conditions, as detailed in Appendix III to this Minute.**

*The meeting concluded at 1:10 pm*

## **APPENDIX I**

### **SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference: 16/00010/RREF**

**Planning Application Reference: 15/00890/FUL**

**Development Proposal: Erection of Dwellinghouse and upgrade of access track**

**Location: Redundant Water Treatment Works, North East of Broughton Place  
Cottage, Broughton**

**Applicant: Mr S Kane**

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### **DECISION**

The Local Review Body (LRB) upholds the decision of the appointed officer and refuses planning permission for the reasons set out in this decision notice on the following grounds:

- 1 The proposal is contrary to Supplementary Planning Guidance on New Housing in the Borders Countryside and Policy HD2 - Housing in the Countryside of adopted Local Development Plan 2016 in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group.
- 2 The proposal would be contrary to Policies HD2 and PMD4 of the adopted Local Development Plan 2016 in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.
- 3 The proposed dwellinghouse would be contrary to Policy HD2 of the adopted Local Development Plan 2016 in that satisfactory access and other road requirements cannot be met.

### **DEVELOPMENT PROPOSAL**

The application relates to the erection of a house on the site of a former redundant water treatment works in a field to the north east of Broughton Place Cottage, near Broughton. The application drawings consisted of the following drawings :

**Plan Type**

**Plan Reference No.**

Location Plan	051105/LOC
Planning layout	141412/PL/01
Site Plan	141412/PL/02

## **PRELIMINARY MATTERS**

The Local Review Body (the “LRB”) considered at its meeting on 6<sup>th</sup> June 2016 that the Review had been competently 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 and the Officer’s report; b) Papers referred to in report; c) Consultations; d) Objections; e) Additional representations and f) List of policies the LRB concluded that it had sufficient information to determine the review and proceeded to consider 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 2013 and the adopted Scottish Borders Local Development Plan (LDP) 2016. Members noted that the new LDP was adopted on 12<sup>th</sup> 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 within the LDP 2016 were :

- Local Development Plan policies : HD2 and PMD4

The LRB noted that although these new policies replaced policies D2 and G8 respectively within the consolidated Local Plan 2011, it was considered that the new policies did not raise any new material considerations in this instance.

## **OTHER MATERIAL CONSIDERATIONS**

SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008

Scottish Planning Policy

Equality Act 2010

The Equality Act 2010 had been referred to in the appellant’s submissions and in particular section 149 as a key material consideration to this application, however no extract had been provided. The Council’s Legal representative explained to the LRB the terms of section 149 “the public sector equality duty” of the Equality Act 2010 and provided them with an extract of it for reference. The Council’s Legal representative confirmed that the disabilities suffered by the appellant’s son referred to within the appellant’s appeal meant that the public sector equality duty was applicable to this case and that accordingly it was a material consideration to the determination of the application. The LRB was reminded that as with any material consideration it was for Members to decide how much weight should be given to it and in the event they considered the development was otherwise contrary to the Development Plan whether this material consideration justified departure from the Development Plan.

Although the Housing in the Countryside policy can allow more flexibility in the Southern Housing Market Area in respect of extending what are considered to be dispersed housing groups, it was confirmed Broughton is located within the northern housing market area and therefore this part of the policy was not relevant.

Members noted that a previous similar application (07/01075/FUL) by the same applicant for a dwellinghouse on this site was refused consent on the grounds that it was contrary to the Housing in the Countryside policy in that it did not relate to a building group, there was no other justified need for the house and that the access was unsatisfactory. A subsequent appeal was dismissed by a Reporter.

Members noted objections had been submitted by six parties and the Upper Tweed Community Council regarding the current proposal.

Members noted the location of existing properties within the vicinity of the application site and a wooded area on the northern side of the application site which the planning officer had considered to be a natural and strong boundary which defined the setting on the group. Members considered the application site fell outwith any recognised building group and considered the proposal had no connection with the sense of place created by the existing buildings. Consequently it was considered that the proposal did not comply with the Housing in the Countryside policy in that it was not considered an appropriate addition to the existing group of buildings.

Having decided that the proposed location of the proposal was contrary to the Housing in the Countryside policy, consideration was then given to any other material considerations. This primarily related to the case submitted by the appellants regarding the need for the house to achieve better facilities for the appellant's disabled son.

Members noted that the appellant had stated that:

- (i) policy PMD4 could support proposals outwith development boundaries if they would offer significant community benefits that outweigh the need to protect the development boundary.
- (ii) The community benefits would be that the family will continue to live in Broughton where the children will attend school and where the family operate their business.
- (iii) the specific medical needs of the applicant's family are the most significant material consideration which must, in this case, outweigh any planning policy objection to this proposal.
- (iv) although the family had recently moved to a single storey house within the village supplied by Eildon Housing which had been altered to accommodate disabled needs, that they considered it remained inadequate for the needs of the family.

In respect of the issue of whether the proposal delivered community benefits that would outweigh the need to protect the development boundary Members considered that as the family already live in Broughton the proposal would not offer any improved or other community benefits.

The LRB expressed sympathy with the needs of the appellant's disabled son and acknowledged that as he grows older his needs will likely increase. Members consequently gave careful consideration to whether the material consideration of "the public sector equality duty" justified departure from the Development Plan.

In considering this issue, the LRB considered that it was a further material consideration that the family had recently moved to a single storey house within the village supplied by Eildon Housing which had been altered to accommodate disabled needs, which better met their needs than their previous home.

The LRB was concerned that locating this house for special needs in this remote location could be problematic in terms of gaining an appropriate access to the site, particularly for emergency vehicles and any support care staff. The LRB considered from the evidence presented that this issue would likely be significant in the winter time. Members considered there appeared to be uncertainties as to whether the appellant had the necessary ownership of land to upgrade the access route to standards required by Roads Planning and Building Standards. Members expressed concern as to the suitability of the access at the junction onto the A701 where the single lane bridge would not allow two vehicles to pass. Consequently the LRB did not consider this was a suitable site for the needs of the appellant's family.

The LRB did not consider that the appellant had demonstrated a specific need for the house to be located in the proposed location, which would otherwise be contrary to Planning Policy. The LRB observed that there were two allocated housing sites within the village within which the appellant could potentially build a custom designed house for the family's needs in compliance with Planning Policy.

## **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.

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### **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.....**16 June 2016

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## **APPENDIX II**

### **SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference: 16/00011/RREF**

**Planning Application Reference: 16/00041/FUL**

**Development Proposal: Removal of Condition no 3 of planning permission  
04/02011/FUL pertaining to occupancy of dwellinghouse**

**Location: Craigie Knowe, Blainslie Road, Earlston**

**Applicant: Eileen Cockburn**

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### **DECISION**

The Local Review Body (LRB) decided that an occupancy condition remained necessary but that planning condition no 3 required to be amended to read:

“The occupation of the dwellinghouse hereby approved shall be limited to a person solely or mainly involved, or last employed, in the operation of the adjoining land for agriculture, as defined in section 277 of the Town and Country Planning (Scotland) Act 1997, or equestrian or other use approved by the Planning Authority, or any dependent of such person residing with him or her including a widow or widower of such person.

Reason: The site is in a rural area where it is not the Council's policy to permit unrestricted residential development, and permission has therefore only been granted on account of the demonstrated operational enterprise needs

### **DEVELOPMENT PROPOSAL**

The application relates to the removal of condition no 3 which was attached to planning permission ref 16/00041/FUL pertaining to the occupancy of a dwellinghouse. The application drawings consisted of the following drawing :

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	16/00041/FUL



## **PRELIMINARY MATTERS**

The Local Review Body considered at its meeting on 6<sup>th</sup> June 2016 that the Review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 (the "1997 Act").

After examining the review documentation at that meeting, which included: a) Notice of Review including the Decision Notice; b) Officer's Report; c) Papers referred to in the report and d) List of policies the LRB concluded that it had sufficient information to determine the review and proceeded to consider 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 2013 and the adopted Local Development Plan 2016. Members noted that the new LDP was adopted on 12<sup>th</sup> 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 was :

- Local Plan policy : HD2

### **Other Material Considerations**

SBC Supplementary Planning Guidance on New Housing in the Borders Countryside 2008

Scottish Planning Policy

Circular 4/1998 – The Use of Conditions in Planning Permissions

Circular 3/2012 – Planning Obligations and Good Neighbour Agreements

Within the Notice of Review it was noted that new material had been submitted. This related to a letter stating that the selling agents had marketed the property as a rural business premises. The letter stated that "the subjects were actively marketed, encouraging interest particularly from those with rural or equestrian background". Within the officer's report reference is made to the fact that this information was requested during the processing of the application but this was not submitted. This request was made by the planning officer to seek confirmation that any interested purchasers were aware of the tied occupancy requirement.

Members agreed that the issue to which the new material related was a material consideration in this application and that as such in terms of Section 43B(2)(b) of the 1997 Act it was appropriate that the LRB had regard to it.

Members noted that planning consent was granted in 2004 for this house and associated business. The proposal for housing in the countryside was supported on the business case submitted and a condition was attached to the consent to ensure occupancy of the house was tied with the proposed business. The condition stated that:

"The occupation of the dwellinghouse hereby approved shall be limited to a person solely or mainly employed in the operation of the adjoining land and building as a Horse

Breeder, Potato Merchant, Horse Feed Merchant or Farrier or other business approved by the planning authority.

Reason: The erection of a dwellinghouse for normal residential occupation would be contrary to the Council's policy on housing in the countryside."

A legal agreement was also entered into which ensured no further houses were built on the land and that the house and the business were not sold off separately.

Members noted that the appellant's husband has regrettably passed away and the business does not now operate. The house is now for sale and the appellant wishes to have the aforesaid planning condition removed. It was confirmed that the proposal solely related to the removal of the planning condition and the LRB were not requested to consider amending the legal agreement. Members observed that they did consider that the legal agreement remained necessary.

Members were advised that 3no options were available to them in determining this appeal. These were:

- 1) Uphold the planning officer's recommendation and retain the wording of the condition
- 2) Overturn the planning officer's recommendation and remove the condition, or
- 3) Amend the wording of the planning condition

Whilst clearly having sympathy with the appellant's circumstances, Members acknowledged that the approval was granted for this house solely on the grounds that the identified business would operate from the site and if the condition was removed then any party could reside on the site without any business ties and that this would be contrary to Council's policies on housing in the countryside. This was a concern as it was considered some type of business should be operated from the site in order to maintain the spirit and reasoning as to why the house was allowed in the first instance.

The LRB considered that the house had only been on the market six months which was not considered a long enough period of time to test the market and to justify the complete removal of the planning condition. Members were also not satisfied that it had been demonstrated that the house had been specifically marketed for relevant business uses, rather than just within the general housing market.

However, the LRB acknowledged that the condition as currently framed did not technically allow the applicant, as the widow of someone operating a relevant business, to remain in the house and that the condition needed to be amended to address this. Members further considered that the condition was overly narrow and specific to the appellant's husband's business operations which consequently may limit options for any other interested parties to take occupancy of the house and operate a business as identified within the planning condition. Consequently Members considered that the condition could be made more flexible in allowing more options for the land to be operated for other agricultural or equestrian uses, and ensure that occupancy of the house was tied to that use.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the planning condition should be amended to allow more flexibility for the land to be operated for an agricultural or equestrian use associated with the occupancy of the house.

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**Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

3. 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.
  
4. 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 ...**16 June 2016

**APPENDIX III**

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**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

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**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 :

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	15/01498/FUL

**PRELIMINARY MATTERS**

The LRB considered at its meeting on 6<sup>th</sup> 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 12<sup>th</sup> 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

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## **Notice Under Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.**

5. 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.
6. 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 ...**16<sup>th</sup> June 2016

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