

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

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

**Application for Planning Permission**

**Reference: 15/00065/FUL**

**To: Mr Simon Rutherford Chestnut Lodge Chirnside Station Chirnside Scottish Borders TD11 3LJ**

With reference to your application validated on 19th February 2015 for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

**Proposal: Change of use from retail and alterations to form micropub**

**At: 38 The Square Kelso Scottish Borders TD5 7HL**

The Scottish Borders Council hereby **grant planning permission** in accordance with the approved plan(s) and the particulars given in the application and in accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, subject to the following direction:

- That the development to which this permission relates must be commenced within three years of the date of this permission.

And subject to the conditions on the attached schedule imposed by the Council for the reasons stated

**Dated 3rd April 2015  
Planning and Regulatory Services  
Environment and Infrastructure  
Council Headquarters  
Newtown St Boswells  
MELROSE  
TD6 0SA**



**Signed**

.....  
**Head of Planning and Regulatory Services**

**APPLICATION REFERENCE: 15/00065/FUL****Schedule of Plans and Drawings Approved:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
15/B340/EX01	Location Plan	Approved
15/B340/SK01	Existing Layout	Approved
	Floor Plans	Approved
SUPPORTING STATEMENT	Report	Approved

**REASON FOR DECISION**

It is considered that the proposed change of use from shop to micro pub is in accordance with development plan policies covering prime retail frontages and core activity areas in that the proposals are typically located within the centre of towns, will not lead to an undesirable precedent and will not have an unacceptable adverse impact on the vitality and viability of the town centre.

**SCHEDULE OF CONDITIONS**

- 1 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
- 2 Any noise emitted by plant and machinery used on the premises will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernable tonal component. Tonality shall be determined with reference to BS 7445-2  
Reason To protect the residential amenity of nearby properties.
- 3 The operating times of the premises will be restricted to 1100 to 2300 Monday to Sunday with deliveries permitted 0900-1700 Monday to Saturday. There shall be no amplified music or voice operated within the premises.  
Reason To protect the residential amenity of nearby properties.

**FOR THE INFORMATION OF THE APPLICANT**

It should be noted that:

- 1 The premises will need to be registered with the Council before commencing operations. In order to ensure that the layout of the premises complies with the registration requirements the applicant should contact an Environmental Health Officer as the earliest stage possible. This can be done by calling 0300 100 1800 or emailing PLACEhealth@scotborders.gov.uk

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

**SCOTTISH BORDERS COUNCIL**

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO  
SERVICE DIRECTOR REGULATORY SERVICES**

**PART III REPORT (INCORPORATING REPORT OF HANDLING)**

**REF :** 15/00065/FUL  
**APPLICANT :** Mr Simon Rutherford  
**AGENT :**  
**DEVELOPMENT :** Change of use from retail and alterations to form micropub  
**LOCATION:** 38 The Square  
Kelso  
Scottish Borders  
TD5 7HL  
**TYPE :** FUL Application  
**REASON FOR DELAY:** No Reason

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
15/B340/EX01	Location Plan	Approved
15/B340/SK01	Existing Layout	Approved
	Floor Plans	Approved
<b>SUPPORTING STATEMENT</b>		Report Approved

**NUMBER OF REPRESENTATIONS: 0**

**SUMMARY OF REPRESENTATIONS:**

RPS: No objections

Kelso CC: No response

EH: Agree with proposals in principle subject to conditions covering noise opening hours as well as an applicant informative relating to Food Premises Registration.

Kelso AS: No response

Econ Dev: This application for a Change of use, we understand, does not meet Policy ED4 of the Consolidated Local Plan 2011 as it introduces a non-retail use into a location defined for Prime Retail Frontage. Economic Development, however, does support the application because the main aim of Policy ED4 is to protect and enhance the vitality and viability of Town Centres and this business could contribute to achieving this aim.

Forward Planning: It is considered that on balance, given this type of proposed use is typically associated and located within the centre of towns, finding alternative locations for this use is problematic and that supporting the proposal will not set an undesirable precedent against policy ED4 given the unique circumstances of this case, it is considered that the proposal can be supported.

**PLANNING CONSIDERATIONS AND POLICIES:**

Consolidated Local Plan 2011

Policy G1  
Policy BE4  
Policy ED4  
Policy ED5

Proposed Local Development Plan 2013

Policy ED4

**Recommendation by** - Euan Calvert (Assistant Planning Officer) on 1st April 2015

This application seeks planning consent for a formal change of use and alterations to form a micro pub from a shop at No 38 The Square, Kelso. The application site is a vacant retail unit (formerly John Moody Knitwear) located on the north side of the square between Tweed House Interiors and The Cross Keys Hotel. It is located within the Kelso Conservation Area and is Listed Category B as part of a group listing covering Nos. 38, 39 and 40 The Square. The site is also located within an area covered by the prime retail frontages policy as defined by the Consolidated Local Plan and the Core Activity Areas policy within the Proposed Local Development Plan (PLDP) (currently at Examination).

This report should be read in conjunction with the report and assessment for LBC application 15/00074/LBCNN which seeks consent for internal and external alterations.

Policy ED4 of the Consolidated Local Plan seeks to give protection to shop uses within the prime retail frontages as defined in the settlement proposals maps as these uses enhance the vitality and viability of town centres. Proposals for uses other than shops at ground floor level will be refused. However, Policy ED4 - Core Activity Areas of the Proposed Local Development Plan is also relevant. Whilst the PLDP is currently at Examination, there have been no objections to Policy ED4 during the public consultation of the plan and therefore this policy is a material consideration in the determination of this application. Both policies seek to ensure that retail units are not lost within town centres but Policy ED4 of the PLDP seeks to allow other complementary uses within town centres, including Class 3 uses comprising of food and drink. However, public houses, including micro pubs, fall out with any recognised use class and are considered "Sui Generis". As the proposed use does not fall within Use Class 1 or 3 of the Use Classes Order there would be an initial policy presumption against this proposal.

However, as confirmed by our Forward Planning team, the preferred and logical location for public houses/micro pubs is within the core activity area of town centres where these uses are traditionally located. Locating public houses out with these core activity areas is likely to lead to a detrimental impact on residential amenity in terms of noise nuisance as these areas are generally more residential in nature.

The application also seeks consent for alterations to the property to form the micro pub. These alterations are primarily internal and have been covered by the associated listed building consent application. The proposals would appear to include the application of vinyl lettering to the windows and the erection of a new fascia sign. These matters can be displayed with deemed advertisement consent and are considered appropriate for this building and the wider conservation area.

It is considered that the proposed use of this shop as a micro pub can be supported. Given this type of development is typically associated and located within town centres the unique nature of the development will not lead to an undesirable precedent against Policy ED4 and will not have an adverse effect on the vitality and viability of the town centre. This is very much an on balance decision, recognising the unique nature of the proposed development as a Sui Generis use will not lead to an unacceptable precedent of other uses outwith Use Classes 1 and 3.

**REASON FOR DECISION :**

It is considered that the proposed change of use from shop to micro pub is in accordance with development plan policies covering prime retail frontages and core activity areas in that the proposals are typically located within the centre of towns, will not lead to an undesirable precedent and will not have an unacceptable adverse impact on the vitality and viability of the town centre.

**Recommendation:** Approved - conditions & informatives

- 1 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
- 2 Any noise emitted by plant and machinery used on the premises will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernable tonal component. Tonality shall be determined with reference to BS 7445-2  
Reason To protect the residential amenity of nearby properties.
- 3 The operating times of the premises will be restricted to 1100 to 2300 Monday to Sunday with deliveries permitted 0900-1700 Monday to Saturday. There shall be no amplified music or voice operated within the premises.  
Reason To protect the residential amenity of nearby properties.

**Informatives**

It should be noted that:

- 1 The premises will need to be registered with the Council before commencing operations. In order to ensure that the layout of the premises complies with the registration requirements the applicant should contact an Environmental Health Officer as the earliest stage possible. This can be done by calling 0300 100 1800 or emailing [PLACEhealth@scotborders.gov.uk](mailto:PLACEhealth@scotborders.gov.uk)

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



**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:** 14/00008/RREF

**Planning Application Reference:** 14/00049/FUL

**Development Proposal:** Change of Use from Class 1 (Travel Agent) to Class 2  
(Estate Agent)

**Location:** 43, The Square, Kelso

**Applicant:** Mr James Hewit

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**DECISION**

For the reasons set out below, the Local Review Body reverses the decision of the appointed officer and grants planning permission subject to conditions.

**DEVELOPMENT PROPOSAL**

The application relates to the Change of Use from Class 1 (Travel Agent) to Class 2 (Estate Agent) at 43, The Square, Kelso. The application consisted of the following drawing:

<b>Plan Type</b>	<b>Plan Reference No.</b>
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Location Plan	-
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**PRELIMINARY MATTERS**

The Local Review Body considered, at its meeting on 12<sup>th</sup> May 2014, that the Review had been competently made under section 43A (8) of the Town & Country Planning (Scotland) Act 1997.

After examining the review documentation, which included: (a) Decision Notice, (b) Notice of Review; (c) Officer's Report of Handling; (d) Consultations; (e) Support Comments and (f) List of Policies, the Review Body concluded that it did have

sufficient information to determine the case and that further procedure was not required, in the form of further written submissions and an oral hearing session.

## **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 consolidated Scottish Border's Local Plan 2011. The Review Body considered that the most relevant of the listed policies were:

- Local Plan Policies: ED4, ED5, BE4, INF4, H2 and G1

Other material key considerations the Local Review Body took into account related to:

Draft Proposed Local Development Plan 2013

The Local Review Body noted that the Proposed Local Development Plan was a material planning consideration. However they considered that Policy ED4 thereof, could be given little weight. It had been subject to representation during the Plan's development and would therefore be subject to Public Examination. This, in turn, meant the proposed policy was potentially subject to change. The focus of Members' deliberations therefore turned on the compliance of the development with Policy ED4 of the Consolidated Local Plan.

In this regard, Members were aware that they must consider whether it had been proven that the development "...would not result in an unacceptable adverse impact on the viability or vitality of the town centre...". Members commented that whilst they were legally in different use classes the nature of a travel agency and an estate agency were very similar. They were satisfied that the proposed use would generate footfall and have a positive economic impact on the town centre. They accepted that the property had been advertised for a retail use but that no tenants had been forthcoming. The property being empty for 12 months had a negative impact on the town centre. The impact of its continuing to be left vacant was also an overriding concern of the Review Body. Whilst there may be implications for the town centre, if other uses specified in Class 2 were permitted, they were content that with the proposed condition restricting the proposed use to an estate agent only that the development would be consistent with Policy ED4.

## **CONCLUSIONS**

The Local Review Body concluded that the development would not have an unacceptable adverse impact on the viability or viability of the town centre of Kelso and that it was consistent with Policy ED4 of the Development Plan. There were no other material considerations that would justify departure from the Development Plan.

## **CONDITIONS**

- 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.

2. The premises shall be used for an estate agent office only and for no other purpose (including any other purpose in Class 2 of the Schedule to The Town and Country Planning (Use Classes) (Scotland) Order 1997, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order). The only exception to this restriction would be a change to a use specified in Class 1 (Shops) as defined in the relevant statutory instrument.

Reason: To ensure that the use remains compatible within the site.

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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.** Councillor R. Smith  
Chairman of the Local Review Body

**Date:...**16<sup>th</sup> May 2014



**SCOTTISH BORDERS COUNCIL**

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO THE HEAD OF PLANNING  
AND REGULATORY SERVICES**

**PART III REPORT (INCORPORATING REPORT OF HANDLING)**

**REF :** 14/00049/FUL

**APPLICANT :** Mr James Hewit

**AGENT :** Ferguson Planning

**DEVELOPMENT :** Change of Use from Class 1 (Travel Agent) to Class 2 (Estate Agent)

**LOCATION:** 43 The Square  
Kelso  
Scottish Borders  
TD5 7HL

**TYPE :** FUL Application

**REASON FOR DELAY:**

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
OS EXTRACT	Location Plan	Refused

**NUMBER OF REPRESENTATIONS: 1**  
**SUMMARY OF REPRESENTATIONS:**

**ROADS PLANNING SERVICE:** No objections to the change of use for this town centre re-development. The traffic generated by the buildings former use is likely to be similar to the proposed use. Given the town centre location, the building is well placed to take advantage of the public parking, public transport and pedestrian links already in place.

**FORWARD PLANNING SECTION:** In summary, the premises are protected by policy ED4 - Prime Retail Frontage of the consolidated Local Development Plan 2011. The purpose of this policy is to support the retention of Class 1 uses within the Use Classes (Scotland) Order 1997 in town centres. These Class 1 uses generally generate higher levels of pedestrian footfall and help promote the viability and vitality of town centres. The application proposes to change the use of the premises from Class 1 to Class 2 and is therefore contrary to policy. The premises occupy a prime retail location within The Square in Kelso which seeks protection of Class 1 uses. It is not considered there are any circumstances identified which could justify a deviation from this well established policy and consequently the proposal cannot be supported.

**KELSO AMENITY SOCIETY:** Most members have no objection to the COU. A general view was that the re-furbishment of the frontage of the building could not come quickly enough.

**COMMUNITY COUNCIL:** No objections.

**PUBLICITY AND REPRESENTATIONS**

The application was publicised by means of the direct notification of 21 neighbouring premises, a site notice, a press notice in the Southern Reporter, and a notice on the national planning notification website. One response form a resident of Rosewood Gardens, Kelso was recieved as a result of this

publicity, supporting the application. A second email was also received in support of the application from SBC Councillor Weatherston.

## **PLANNING CONSIDERATIONS AND POLICIES:**

Scottish Borders Consolidated Local Plan 2011

G1 - Quality Standards for New Development  
G7 - Infill Development  
BE4 - Conservation Areas  
ED4 - Prime Retail Frontage  
ED5 - Town Centres  
H2 - Protection of Residential Amenity  
INF4 - Parking Provisions and Standards

**Recommendation by** - Andrew Evans (Planning Officer) on 19th March 2014

The application relates to 43 The Square a ground floor shop premises in Kelso. The site is located within the Kelso Conservation Area. The site is within the defined town centre boundary of Kelso. The site occupies a very prominent location on the Square.

This application seeks full planning permission for the change of use of the premises from class 1 (retail) use to class 2 (office) use. The property was last in use as a Travel Agency. It is proposed to be used by an Estate Agents firm. The site is located within the Kelso Conservation Area and within an area identified as a prime retail frontage in the Consolidated Scottish Borders Local Plan of 2011.

Policy ED4 of the Consolidated Local Plan 2011 sets out the Council policy on Prime Retail Frontages. In such areas, the Council will resist the loss of shop units. Proposals for uses other than shop units at ground level on prime retail frontages will be refused unless it can be demonstrated that the development would not result in an unacceptable adverse impact on the viability or vitality of the town centre or village.

The application is accompanied by a detailed planning statement which sets out the background to the application. The site has been marketed for retail use for a period of over 12 months. The agents email of March 19th sets out his belief that Policy ED4 is adhered to, as bringing a unit that has remained vacant for over a year back into use for a very similar purpose to its previous use is a net benefit to the vitality and viability of the core retail area and the key test within the policy being that it will clearly not have an unacceptable adverse impact on the vitality and viability of the centre.

The agent goes on to pose the question in his email as to how is this proposal going to have an unacceptable adverse impact on the Vitality or Viability of the town centre? The agent contends that the proposal will enhance vitality in this area by attracting new customers/clients to the area (currently not happening with vacant unit) and that it is a sign of viability in that we have an Estate Agent wishing to invest in the town centre not compete with it. The Agent makes the point that the Council's proposed local development plan is similar to that of the Scottish Government ie. that Class 1 uses within our town centres, core or otherwise, is in decline and steps need to be taken to address the increasing rate of vacancies.

It is however important to note that ultimately, it is the use classes order on which this application hinges. The ultimate question presented to the Planning Authority in this application is to approve the loss of a retail unit to office use within a protected retail frontage, and this should carry significant weight in the determination of the application. Whilst the agent asks the question as to why does the department see the use of the unit as a Travel Agent to be any different to the proposed Estate Agent, the approval being sought seeks an office consent, rather than a retail one, and it is in these terms that the application is contrary to adopted local plan policies. The proposed use for class 2 purposes does not comply with policy. An approval for class 2 use would permit a wide range of class 2 uses to take place in the premises, such as betting offices, accountants, dentists and vets, at the expense of a class 1 retail use. Forward Planning colleagues confirm that it is not considered there are any circumstances identified which could justify a deviation from well established policy ED4.

Emerging planning policy is set out in the local development plan which has been out for public consultation, but not yet subject to any detailed scrutiny through the LDP process. This emerging plan sets out a new policy which would permit a wider range of possible uses in town centres, including office uses. The local development plan is only in its very early stages, and consequently I can only attach very limited weight to the emerging policy. It should also be noted that according to the Council's Retail Survey, Kelso currently has one of the lower vacancy rates in the Borders and based on the summer 2013 Retail Survey the vacancy rate in terms of units sat at 9%, compared to an 11% average figure across the Borders. The retail vacancy rate in Kelso is not (and has not previously been) considered to be high enough to justify an exceptional approval contrary to adopted planning policy on prime retail frontages.

#### **REASON FOR DECISION :**

The proposed use would be contrary to Policy ED4 of the Consolidated Local Plan 2011 in that it would result in the loss of a Class 1 retail unit and introduce a non-retail use into the Prime Retail Frontage at this location. It has not been demonstrated that the proposed change of use to Class 2 office would safeguard the vitality and vibrancy of Kelso town centre. Material considerations, including the vacancy of the unit and the current economic climate, have been accounted for but do not outweigh the conflict with Policy ED4.

#### **Recommendation: Refused**

- 1 The proposed use would be contrary to Policy ED4 of the Consolidated Local Plan 2011 in that it would result in the loss of a Class 1 retail unit and introduce a non-retail use into the Prime Retail Frontage at this location. It has not been demonstrated that the proposed change of use to Class 2 office would safeguard the vitality and vibrancy of Kelso town centre. Material considerations, including the vacancy of the unit and the current economic climate, have been accounted for but do not outweigh the conflict with Policy ED4.

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



**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

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

**Application for Planning Permission**

**Reference: 14/01163/FUL**

**To: Matthew Aplin Kingsrig Coldstream Scottish Borders TD12 4NA**

With reference to your application validated on **13th October 2014** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

**Proposal: Change of use from retail to podiatry clinic**

**at: 24 Horsemarket Kelso Scottish Borders**

The Scottish Borders Council hereby **grant planning permission** in accordance with the approved plan(s) and the particulars given in the application and in accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997.

**subject to the conditions on the attached schedule** imposed by the Council for the reasons stated

**Dated 18th November 2014  
Planning and Regulatory Services  
Environment and Infrastructure  
Council Headquarters  
Newtown St Boswells  
MELROSE  
TD6 0SA**

**Signed**

  
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**Head of Planning and Regulatory Services**

**APPLICATION REFERENCE : 14/01163/FUL****Schedule of Plans and Drawings Approved:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
OS EXTRACT	Location Plan	Approved
SCALE PLAN	Floor Plans	Approved

**REASON FOR DECISION**

The proposed change of use to Class 2 is considered to comply with policy ED3 (Town Centres and Shopping Development) of the Proposed Scottish Borders Local Development Plan (2013), and the benefits to vitality, viability and enhanced footfall are considered to outweigh the provisions of Policy ED4 of the Consolidated Scottish Borders Local Plan. The proposals are also considered acceptable in terms of impacts on parking, amenity and the wider Kelso Conservation Area.

**SCHEDULE OF CONDITIONS**

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.

**FOR THE INFORMATION OF THE APPLICANT**

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

**Notice of Initiation of Development**

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

**Notice of Completion of Development**

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



**SCOTTISH BORDERS COUNCIL**

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO  
SERVICE DIRECTOR REGULATORY SERVICES**

**PART III REPORT (INCORPORATING REPORT OF HANDLING)**

**REF :** 14/01163/FUL

**APPLICANT :** Matthew Aplin

**AGENT :**

**DEVELOPMENT :** Change of use from retail to podiatry clinic

**LOCATION:** 24 Horsemarket  
Kelso  
Scottish Borders

**TYPE :** FUL Application

**REASON FOR DELAY:** No Reason

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**DRAWING NUMBERS:**

Plan Ref	Plan Type	Plan Status
OS EXTRACT	Location Plan	Approved
SCALE PLAN	Floor Plans	Approved

**NUMBER OF REPRESENTATIONS: 0**  
**SUMMARY OF REPRESENTATIONS:**

**ECONOMIC DEVELOPMENT:** Note that this site is protected in the current Local Plan as prime retail frontage but is not included within the approved but unadopted Local Plan 2013, which has a reduced extent. Have no objections to the loss of retail use here and welcome the retention of the professional service of a podiatry clinic in the town. Trust the approval of the planned new reduced frontage will be a consideration in processing this application.

**FORWARD PLANNING SECTION:** Within the adopted Consolidated Local Plan 2011 this retail unit is located within the prime retail frontage which is protected by policy ED4 - Prime Retail Frontage. Policy ED4 excludes non Class 1 retail development within the prime frontage areas identified within the Plan unless it can clearly be demonstrated that the development would not result in an unacceptable adverse impact on the viability or vitality of the town centre. As part of the Local Development Plan (LDP) process the local plan polices and prime retail frontages were reviewed. The prime retail frontages were renamed core activity areas and were amended to extend the type of uses appropriate within town centres. The retail unit subject to this planning application is now outwith the prime retail frontage but remains within the Kelso Town Centre boundary and therefore will be assessed against policy ED3 Town Centres and Shopping Development. Policy ED3 encourages a mix of uses within town centres to protect and enhance vitality and viability whilst increasing footfall within the town centre. The policy considers a variety of uses appropriate for location in a town centre including use classes 1, 2, 3 and 4. It should be noted that representations have been received as part of the proposed LDP representation period in relation to policy ED3. However none of the points within these representations are relevant to this application. As the unit is not part of the new core activity area and is for a use appropriate to a town centre environment it is considered that the application can be supported.

ROADS PLANNING SERVICE: No roads objections.

COMMUNITY COUNCIL: Expired 12.11.14, with no response received.

KELSO AMENITY SOCIETY: No objections. Queried whether the shop front would be altered - it not being present on the current application.

#### **PUBLICITY AND REPRESENTATIONS**

This application was publicised by means of the direct notification of 32 neighbouring premises. No objections or representations were received.

#### **PLANNING CONSIDERATIONS AND POLICIES:**

Scottish Borders Consolidated Local Plan (2011)

G1 - Quality Standards for New Development

G7 - Infill Development

BE4 - Conservation Areas

ED4 - Prime Retail Frontage

ED5 - Town Centres

H2 - Protection of Residential Amenity

INF4 - Parking Provisions and Standards

Proposed Scottish Borders Local Development Plan (2013)

ED3 - Town Centres and Shopping Development.

**Recommendation by** - Andrew Evans (Planning Officer) on 14th November 2014

This application seeks full planning permission for the change of use of this ground floor retail premises on the Horsemarket in Kelso to a podiatry clinic. This involves a change from Class 1 of the Use Classes Order to Class 2. The site is located within the Kelso Conservation Area and within an area identified as a prime retail frontage in the Consolidated Scottish Borders Local Plan of 2011. Policy ED4 of the Consolidated Local Plan 2011 sets out the Council policy on Prime Retail Frontages. In such areas, the Council will resist the loss of shop units. Proposals for uses other than shop units at ground level on prime retail frontages will be refused unless it can be demonstrated that the development would not result in an unacceptable adverse impact on the viability or vitality of the town centre or village.

Nearby within Kelso, a recent decision was made at 43 The Square, on a planning application (14/00049/FUL) also seeking Change of use to Class 2 in the protected retail frontage. In that case, in May this year, the Local Review Body overturned an earlier refusal which had been made on the grounds of policy ED4. The LRB concluded that the development would not have an unacceptable adverse impact on the viability or vitality of the town centre of Kelso and that it was consistent with Policy ED4 of the Development Plan. It is important to note that ultimately, it is the use classes' order on which this current application hinges. The ultimate question presented to the Planning Authority in this application is to approve the loss of a retail unit to class 2 use within a protected retail frontage.

It is noted however that the emerging Local Development Plan identifies a more flexible policy. The Forward Planning Section of the Council was consulted on the current application at 24 Horsemarket, due to the emerging Local Development Plan being highly relevant to the consideration of this application. The proposed use for class 2 purposes does not comply with the adopted policy in the Consolidated Local Plan. An approval for class 2 use would permit a wide range of class 2 uses to take place in the premises, such as betting offices, accountants, dentists and vets, at the expense of a class 1 retail use. Forward Planning Colleagues confirm emerging planning policy, set out in the local development plan which has been out for public consultation, sets out a new policy which would permit a wider range of possible uses in town centres, including office uses.

Forward Planning colleagues confirm that the former prime retail frontages were renamed core activity areas in the LDP and were amended to extend the type of uses appropriate within town centres. The retail unit subject to this planning application is now outwith the prime retail frontage but remains within the Kelso

Town Centre boundary and therefore will be assessed against policy ED3 Town Centres and Shopping Development. Emerging policy ED3 encourages a mix of uses within town centres to protect and enhance vitality and viability whilst increasing footfall within the town centre. Policy ED3 considers a variety of uses appropriate for location in a town centre including use classes 1 (Retail), 2 (Financial / Professional Services), 3 (Food and Drink) and 4 (Office). Whilst representations have been received as part of the proposed LDP representation period in relation to policy ED3, Forward Planning confirms none of the points within these representations are relevant to this application. As the property is not part of the new core activity area and is for a use appropriate to a town centre environment Forward Plans consider that the application can be supported.

In the context of the previous LRB decision, the provisions of the emerging Local Development Plan, and the supportive consultation response of the Forward Planning Service, objection to the principle of the change of use of this building cannot be sustained, and indeed, the application must be supported.

Turning to other matters, the starting position must be initial consideration against the provisions of the Consolidated Scottish Borders Local Plan (2011). The site is centrally located within the Town Centre Boundary, and the Roads Planning Service confirms no Road Safety objections. The application is considered to comply with policy INF4 of the Consolidated Plan on Parking Provisions and Standards. Whilst a mixture of uses is present in this part of the Town Centre, the proposals are considered compatible with adjacent uses. Finally, whilst the comments of the Kelso Amenity Society and the Economic Development Service in relation to the shop front are noted, this application only covers the Change of Use of the building, not any physical alterations to the external fabric of the building, or signage etc. The application proposed only the Change of Use of the premises. It is noted that the shopfront window would in future serve a treatment room, with internal division of the space taking place. Such division does not require planning permission. The change is considered to be acceptable in terms of impacts upon the wider Kelso Conservation Area. As such, the proposals are considered to comply with the provisions of Policy BE4 (Conservation Areas).

In summary, the proposed change of use to Class 2 is considered to comply with policy ED3 (Town Centres and Shopping Development) of the Proposed Scottish Borders Local Development Plan (2013), and the benefits to vitality, viability and enhanced footfall are considered to outweigh the provisions of Policy ED4 of the Consolidated Scottish Borders Local Plan (2011). The proposals are also considered acceptable in terms of impacts on parking, amenity and the wider Kelso Conservation Area.

No planning conditions are considered necessary in this case, the use for Class 2 purposes being considered acceptable in this case, and the permitted change in the GPDO, back to class 1 use, also posing no problems.

#### **REASON FOR DECISION :**

The proposed change of use to Class 2 is considered to comply with policy ED3 (Town Centres and Shopping Development) of the Proposed Scottish Borders Local Development Plan (2013), and the benefits to vitality, viability and enhanced footfall are considered to outweigh the provisions of Policy ED4 of the Consolidated Scottish Borders Local Plan. The proposals are also considered acceptable in terms of impacts on parking, amenity and the wider Kelso Conservation Area.

#### **Recommendation: Approved subject to conditions**

- 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.

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