

**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:** 17/00047/RREF

**Planning Application Reference:** 17/01139/FUL

**Development Proposal:** Change of use from Class 1 Retail to allow Mixed Use Class 2 (Podiatry Clinic) and Class 1 (Ancillary Retail)

**Location:** 40-41, The Square, Kelso

**Applicant:** Mr Robert McCririck

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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 condition.

**DEVELOPMENT PROPOSAL**

The application relates to the change of use from Class 1 retail to allow mixed use of Class 2 (Podiatry Clinic) and Class 1 (Ancillary Retail) at 40-41, The Square, Kelso. The application consisted of the following drawings:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	1:5,000
Location Plan	1:500
Existing Layout	Ground Floor Plan
Existing Layout	First Floor Plan
Proposed Layout	Ground Floor Plan
Proposed Layout	First Floor Plan

**PRELIMINARY MATTERS**

The Local Review Body considered, at its meeting on 18<sup>th</sup> December 2017, 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) Notice of Review (including Decision Notice and Officer's Report of Handling); (b) Papers referred to in Officer's Report of Handling; (c) Consultations; (d) Support Comments; (e) Additional Representation; and (f) List of Policies, the Review Body concluded that it had sufficient information to determine the case and that further procedure was not required.

## **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 Scottish Borders Local Development Plan 2016. The Review Body considered that the most relevant of the listed policies were:

- Local Development Plan Policies: PMD1, PMD2, ED3, ED4, EP7, EP9, HD3 and IS7

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

- SBC Supplementary Planning Guidance on Shop Fronts and Shop Signs 2011
- SBC Retail Survey 2016
- Connected Borders 2017-2022
- Historic Environment Scotland Policy Statement 2016
- Scottish Planning Policy 2014
- 'National Review of Town Centres External Advisory Group Report: Community and Enterprise in Scotland's Town Centres' 2013
- 'Town Centre Action Plan' Scottish Government 2013

The Local Review Body agreed that the focus of their deliberations was the compliance of the development with Policy ED4 of the Local Development Plan and whether the development would make a significant positive contribution to the core retail function of Kelso town centre.

Members were satisfied that the proposed podiatry business was a suitable town centre use, that added to the diverse range of independent operators in the town centre and which would complement those existing businesses. The new business would provide a much needed service locally, which was particularly relevant to an ageing population. They noted the inclusion of the retail element to the front of the ground floor and that the premises would still retain a shop front appearance. They felt it important that the shop front was retained to maintain an interesting frontage to The Square.

The Review Body did not accept that the business would result in an unacceptable adverse impact on the viability or vitality of the town centre. They were satisfied that the proposed use would generate footfall and contribute to joint shopping trips in the town. They were content that it would have a positive economic impact on the town centre.

Members gave significant weight to the fact that the property had been advertised for a retail use but that no tenants/purchasers had been forthcoming. The property being empty for around 2 years 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 a podiatry business only the development would be consistent with Policy ED4.

## **CONCLUSION**

The Local Review Body 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. There were no other material considerations that would justify departure from the Development Plan.

## **DIRECTIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## **CONDITIONS**

2. The premises shall be used for a podiatry clinic (with ancillary retail use) 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 with 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 T Miers  
Chairman of the Local Review Body

**Date:.....**21 December 2017