

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 18/00398/FUL

APPLICANT : Craig Oliver

AGENT :

DEVELOPMENT : Change of use from retail to tattoo studio (retrospective)

LOCATION: 52 Bank Street
Galashiels
Scottish Borders
TD1 1EP

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
	Location Plan	Refused

NUMBER OF REPRESENTATIONS: 0
SUMMARY OF REPRESENTATIONS:

Consultations:

Roads Planning Service: No objection. It is unlikely that this proposal will result in a detrimental effect on the surrounding road network. There is town centre parking available both on and off street within acceptable walking distance

Environmental Health Service: Noise from equipment used on these premises has the potential to impact on local amenity. Recommend conditions regarding noise limits

Economic Development Service: Have no objections and support this application as it could increase town centre footfall.

Flood Protection Officer: The site is at risk from a flood event with a return period of 1 in 200 years. In 2012, several businesses on Bank Street were badly flooded from water overtopping at the Bakehouse Burn, running down St John Street and Gala Park, which pooled on Bank Street. If this application is to be approved, the FPO recommends that the applicant signs up to receive early warning from the Council's water level gauge on the Bakehouse Burn. It is also recommended that, to receive flood warnings from SEPA, the applicant signs up to FLOODLINE. Flood protection products such as floodgates and air-vent covers are also commercially available from the Council at heavily discounted prices. The FPO recommends that the owner purchases a flood gate and self-closing airbricks if required. However, this is a change of use that is unlikely to have a significant effect on the storage capacity of the functional flood plain or affect local flooding problems and he does not oppose it on flooding grounds.

Forward Planning Service: This site is within the Core Activity Area of the town as defined in the Local Development Plan 2016. The application must be assessed against Policy ED4. This policy seeks to ensure Class 1 retail units are not lost within town centres as these generate higher footfall which enhances vitality and viability of the town centre. The policy also allows other uses within Class 3 (food and drink). This proposal falls within Use Class 2 and is therefore contrary to the prime purpose of Policy ED4. The policy does allow consideration of a number of other factors to be considered and applied on a case by case basis. The key factors that influence the vitality and viability of a town centre include pedestrian footfall, the diversity of uses and the number of vacant properties. The proposed use requires to be tested against Policy ED4's criteria.

The Council's Town Centre Footfall Survey at this location indicates a recent increase up to 8470 in 2017 from 6850 in 2013. The Council's most recent retail survey (Summer 2017) indicates that the Galashiels' retail vacancy rate had decreased 1% to 18% from the figure of 19% in the Winter of 2016. It is appreciated the proposal will generate a degree of footfall, although by the nature of the business and the few people that will visit it in a typical day this would be substantially less than a typical retail unit. Consequently in respect of these matters it is not considered these are reasons in themselves for deviating from Council policy in this instance.

The Council's retail survey, which goes back to 2006, shows that these premises were vacant between Spring/Summer of 2016 and the Spring/Summer of 2017. It is believed the tattooist opened in May 2017. At no other time since 2006 have the premises been vacant. No information has been submitted in respect of the marketing of the premises at the time it was vacant. It is not, therefore, possible to assess this retrospective application in terms of the marketing history of the proposal during this period. Bank Street is the most attractive and buoyant retail area of Galashiels, being opposite the well maintained and attractive garden. Vacancy rates on Bank Street have historically been low.

Town centre regeneration in Galashiels is a major objective for the Council and these principles are identified in the Blueprint. If the Council allows a number of uses which do not meet the principal thrust of Policy ED4 this would defeat the long term aims of generating healthy footfall. This would have major implications for the aspirations of ensuring a buoyant and healthy town centre.

It is not considered that this planning application meets the requirements of Policy ED4 and should therefore be refused.

Community Council: No reply

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016

PMD2, PMD5, ED3, ED4, HD3, EP9, IS7, IS8, IS9

Scottish Planning Policy 2014

Recommendation by - Carlos Clarke (Lead Planning Officer) on 28th May 2018

Proposal and site description

This application seeks retrospective consent for a tattoo studio within a former retail unit located within the town centre. The property fronts Bank Street and has a timber faced shopfront.

Principle

The property is within the town centre. Policy ED3 supports a wide range of uses appropriate to the town centre. This is a use appropriate to a town centre location, capable of contributing positively to its overall character, mixed use nature and overall vitality and viability. However, the property is also within the Core Activity Area where uses other than Class 1 (retail) and 3 (food and drink) are to be refused under Policy ED4, unless the proposal can be assessed as contributing significantly to the town centre's core retail function. This proposal would most comfortably fit within Class 2 and, even if categorised outside a Class

(sui generis) it would be in conflict with Policy ED4 since it is within neither Class 1 nor 3. The test is whether the proposal would make a significant positive contribution to the core retail function of the town centre. To assist with this test, Policy ED4 identifies six criteria to apply to Class 2 uses, and these are considered in turn:

1. How the proposed use would contribute to joint shopping trips

It is difficult to be anything other than speculative as regards to how this particular business will contribute to joint shopping trips. It will clearly do so more than a vacant shop, or perhaps some other Class 2 or other uses. However, it will likely do so less than a shop or café, since clients are likely to be in the building for some time and may not perhaps be likely to combine their visit with shopping. That said, some may do and clients may likely visit for consultations before or after receiving a tattoo. Some may also be accompanied by friends or family who may wish to combine their trip with visits to shops, a café or other town centre businesses. I would, however, ultimately consider that the proposal is unlikely to contribute significantly to joint shopping trips, certainly not to the extent of a Class 1 or Class 3 use.

2. Footfall contribution

As our Economic Development Service note, the proposal will generate footfall since it will comprise a business that generates personal visits by clients. However, as the Forward Planning Service note, it may most likely generate significantly less footfall than a typical retail unit. That said, the unit itself is small so differences between footfall generated by a shop or café and tattooist will be proportionate to the size of the unit and the success of the business itself. There is no firm evidence on the matter, but it is reasonable to speculate that the level of footfall is unlikely to be as significant as for a Class 1 or Class 3 use operating from the same premises.

3. Current vacancy and footfall rates

As our Forward Planning Service notes, the Council's most recent retail survey (Summer 2017) indicates that the Galashiels' retail vacancy rate had decreased 1% to 18% from the figure of 19% in the Winter of 2016. This indicates an improvement, but also a relatively high level of vacancy, which suggests the town remains vulnerable in terms of its capacity to attract and maintain commercial businesses. As they also suggest, Bank Street is an attractive and buoyant retail area of Galashiels. Vacancy rates on Bank Street have historically been low. On the one hand, this suggests the street is attractive to retailers and may remain so - to allow Class 2 uses may dilute its attractiveness. On the other hand, this might also suggest that the street is robust enough to accommodate small changes in its overall mix of uses, particularly since it does, already, contain a number of non-retail businesses. It is to be noted also that the Local Review Body recently consented the provision of a dog grooming practice further along the street (application 17/01704/FUL) which will also add to the variety of uses that complement the retail function, but will reduce its core retail base. This proposal will contribute positively in that it will ensure occupancy of a unit, albeit it will contribute negatively in that it will remove another unit from the retail core.

In terms of footfall, the Council's Town Centre Footfall Survey indicates an increase up to 8470 in 2017 from 6850 in 2013 at this location. As the FPS notes, footfall along Bank Street is reasonably high. Given this use did not commence operation until the past year or so, it is not possible to be sure as to how it may have contributed to footfall, since the next survey is not due until later in the year. As noted above, this proposal will contribute positively to footfall, but not likely to the extent of a Class 1 or 3 business, albeit the small size of unit means that any variations may not, perhaps, be significant.

4. Longevity of vacancy

I understand that the property has been vacant once since 2006. The most recent being the period just before this business commenced operating from the premises. According to the Council's retail survey it appears that the property was vacant between summer 2016 and May 2017. The applicant was asked to confirm when he started operating and how long the property was vacant before he moved in, but has not responded to calls or emails regarding the application. In any case, while any extent of vacancy is concerning, longer periods of vacancies have become increasingly common in town centres in the last ten years, and this period is not extensive. Any period of vacancy is clearly undesirable in terms of the vitality of the town centre, however, the level of vacancy here does not appear significant enough that it should be an overriding consideration.

5. Marketing history of premises

It is known that the premises were marketed by a local agent on-line and by a notice in the window. However, it was described as a shop or an office, the latter being a Class 2 use itself for which the unit was not lawfully capable of being occupied as. Regardless, whether the opportunity given for Class 1 or 3 businesses to use the premises was sufficient is unknown. Obtaining information on the extent of marketing from the owner would have been helpful, though I have been unable to approach the owner without having first agreed this with the applicant who has not responded to any emails or calls regarding this application. It is, however, apparent that the property was marketed but this does not, on its own, demonstrate that a departure from Class 1 or 3 uses should be permitted.

6. Ability to retain shop frontage

The shop frontage has been unaffected by the use since it commenced, and no alterations to it are proposed. The arrangement of the interior has resulted in a relatively welcoming public frontage, with an entrance/waiting area to the front of a display wall visible from the outside. The proposal is acceptable as regards this criterion.

Ultimately, Policy ED4 resists uses other than those falling within Class 1 and 3 unless it can be shown that the proposed use will make a significant positive contribution to the core retail function. Applying the policy tests to this proposal, I would conclude that the proposal will make a positive contribution, in that it will ensure a business that contributes to town centre activity will operate from the premises, as opposed to it being vacant. However, this will be at the expense of a unit that could be occupied by a Class 1 or 3 use which would likely contribute more significantly to the core retail function of the town. While the level to which any particular use might contribute to the town's core retail function from a unit this size may not be vastly different between one use and another, this proposal will not reach the level of 'significant contribution' that the policy requires. On balance, I would conclude that the proposal does not satisfy Policy ED4.

I note that the LRB has recently allowed for a dog groomers in Bank Street on the basis that it will provide a specialist service, despite being a Class 2 use. Though a tattooist provides a specialist service, it is perhaps not quite a niche market, and indeed is a use that is becoming increasingly commonplace. Though the LRB's decision recognises that there needs to be some flexibility when dealing with small scale units, it is also a decision to be taken on its own merits, and does not directly influence a decision on this application which has its own particular considerations to account for.

Services and parking

The proposal is acceptable as regards parking and access issues. It is presumed that mains water and drainage services will exist and that long standing bin storage and collection arrangements are in place.

Flood risk

As our Flood Protection Officer notes, the property is at risk of flooding, though the proposal is not a vulnerable use. An informative note can cover the FPO's recommendations.

Amenity

The use will not conflict with other businesses, nor directly affect the amenity of neighbouring properties. I note the EHS's suggestion that a noise limit be imposed. However, this is a town centre use in a town centre location, and equipment in a tattooists is unlikely to generate high levels of external noise. The business has already become established and the EHS has not advised of any concerns with its operation to date. The EHS has scope to control noise separately under environmental protection procedures, so a condition would appear to be unnecessary. An informative could have usefully drawn the applicant's attention to the matter if the application were to be approved.

Alterations

No external alterations are proposed, so there will be no adverse effect on the character or appearance of the Conservation Area. No signage is proposed and, would, in any case, fall to be considered under the

Advertisement Regulations. An Informative note can refer the applicant to consent requirements for such works.

REASON FOR DECISION :

The proposed development does not comply with Policy ED4 of the Local Development Plan 2016 in that it does not comprise a Class 1 (retail) or Class 3 (food and drink) use. The level of contribution of the proposed use to the town's core retail function will not be so significant as to justify its occupation by the proposed use and there is no evidence to suggest otherwise. The development would potentially detract from the vitality and viability of the town centre and no other material considerations would outweigh this potential harm

Recommendation: Refused

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