

APPENDIX I

SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY DECISION NOTICE

APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013

Local Review Reference: 15/00011/RREF

Planning Application Reference: 15/00275/FUL

Development Proposal: Part change of use to form dental surgery suite

Location: 3 Cherry Court Cavalry Park, Peebles

Applicant: J T Ceramics Ltd

DECISION

The Local Review Body reverses the decision of the appointed officer and grants unconditional planning permission for the reasons set out in this notice.

DEVELOPMENT PROPOSAL

The application relates to the part change of use of the existing dental laboratory at 3 Cherry Court, Cavalry Park, Peebles to form dental surgery suite. The application drawings consisted of the following drawings:

| Plan Type | Plan Reference No. |
|----------------------|---------------------------|
| Location Plan | 1:1250 |
| Office 1 Floor Plan | CC-wd03 rev J |
| Internal Alterations | 01 |
| Panel Details | 02 |

PRELIMINARY MATTERS

The Local Review Body considered at its meeting on 15th June 2015 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 and supporting papers, (c) Officer's Report of Handling, (d) Consultations and (e) List of Policies, the Local Review Body determined that it had sufficient information to determine the review. In coming to this conclusion, the

Review Body considered the applicant's request for further procedure in the form of one or more hearing sessions and a site inspection.

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:

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- Local Plan Policies: G1, H2, H3, INF4 and ED1

Other material considerations the Review Body took into consideration were:

- Scottish Planning Policy
- Proposed Local Development Plan - Policy ED1(Protection of Business & Industrial land)

The Review Body were conscious that section 25 of the Planning Act requires planning decisions to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

The Review Body noted that the business unit lay within Cavalry Park, which is classified as a Strategic Employment Site in the Consolidated Local Plan. Members identified that Policy ED1 of the Local Plan was most critical to their deliberations, which stated:

"Development for uses other than Classes 4, 5 and 6 on strategic employment sites in the locations identified under Policy E13 of the Structure Plan will be refused."

Members concluded that as the proposal sought to introduce a use lying within Class 2 of the Town & Country Planning (Use Classes) Scotland Order 1997 the development was contrary to Policy ED1. The policy position is unequivocal in that all uses outwith classes 4, 5 & 6 will be refused. The development did not meet the policy's qualifying criteria and was therefore contrary to the Development Plan. The Review Body confirmed that the development was consistent with the other listed Development Plan policies.

In considering other material factors, the Review Body considered that these should be given significant weight in their deliberations. In the first instance, they acknowledged that Scottish Planning Policy was supportive of sustainable economic development and stated that planning authorities should "...give due weight to the net economic benefit of the proposed development." Members were content that this was a thriving business that was looking to expand its services and create employment for up to 8 new staff members. The economic benefits that would be generated by the development were in its favour.

The Review Body noted that Policy ED1 in the Proposed Local Development Plan now defined Cavalry Park as a Strategic High Amenity site, in which uses other than use class 4 would generally be refused. Members considered that this highlighted

there may be circumstances where alternative uses would be permissible and that the emerging policy position was not as restrictive as the existing Local Plan policy. In particular, the policy stated that a complementary use other than Class 4:

“...may be acceptable if it enhances the quality of the business park as an employment location.”

In this regard, Members considered, in detail, the nature of the business and its suitability at this location. In their view, the dental surgery was complementary to the existing business operation and would allow the business to grow and expand upon its specialist dental service. There were synergies in having the two elements of the business in the same location and it did not make practical or business sense for the business to be forced to consider a second premise elsewhere. The business would provide high quality services and employment and would, in Members' view, clearly enhance the quality of Cavalry Park as an employment location. The development's consistency with the emerging Local Development Plan policy was in its favour.

The Review Body also gave weight to how Cavalry Park was currently operating with a range of businesses, some in classes uses outwith the specified classes, which were flourishing and adding to the vibrancy of the business park. They also noted that another dental practice had been approved on the site in recent years.

The proposal would not involve the development of a vacant employment site and only required a modest portion of the floor space of the existing business to operate. Members noted that, in any event, there was a significant oversupply of such land within the Scottish Borders and the Peebles area and that there had been a low take-up of such land in recent years. The Review Body were satisfied that the development would not prejudice the availability of employment land at Cavalry Park, or the area more generally, and that this was also in its favour.

CONCLUSIONS

The Local Review Body concluded that, whilst the development was contrary to the Development Plan, there were a number of material factors that affect the balance of the decision in its favour. It was Members' determination that these matters outweighed the non-compliance with the Development Plan and that planning permission should be granted.

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

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:... 25 June 2015