

APPENDIX II

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: 18/00020/RREF

Planning Application Reference: 18/00398/FUL

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

Location: 52 Bank Street, Galashiels

Applicant: Craig Oliver

DECISION

The Local Review Body reverses the decision of the appointed officer and grants planning permission for the reasons set out in this decision notice subject to conditions and informatives as set out below.

DEVELOPMENT PROPOSAL

The application relates to a retrospective application for the change of use from retail to tattoo studio at 52 Bank Street, Galashiels. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	Scale 1:1250

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 17th September 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review; b) Decision Notice; c) Officer's Report; d) Papers referred to in Officer's Report; e) Consultations; and f) List of Policies, the LRB proceeded to determine the case. They noted

the applicant's request for further procedure in the form of written submissions, a Hearing and a site inspection but did not consider this necessary after considering the case and viewing photographs and plans of the site and surroundings.

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 Strategic Development Plan 2013 and the Scottish Borders Local Development Plan 2016. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD2, PMD5, ED3, ED4, HD3, EP9, IS7, IS8 and IS9

Other Material Considerations

- "Shop Fronts and Shop Signs" Supplementary Planning Guidance 2011
- Town Centre Core Activity Area Pilot Study 2018
- Scottish Planning Policy 2014

The Review Body noted that the proposal was to change the use of a former retail unit into a tattoo studio and that this would constitute Class 2 Use under Town and Country Planning (Use Classes) (Scotland) Order 1997. In the circumstances, the proposals would not be consistent with the main provisions of Policy ED4 in the Local Development Plan, which indicate a preference for Class1 and Class 3 uses in Core Activity Areas such as Bank Street.

Members noted that the recently approved Town Centre Core Activity Area Pilot Study 2018 applied to Galashiels town centre and was material to their deliberations. The Pilot identifies in Appendix 3 a range of uses, beyond the approved classes, that are now permissible. Whilst the tattoo studio did not fall within the extended category list the Pilot Study amplifies the provisions with Policy ED4 whereby an applicant can justify approval for "other uses" by demonstrating the potential contribution of the proposed use to the retail function of the town. The key factors the Review Body considered in this regard were:

- Contribution to joint shopping trips
- Footfall
- Current vacancy and footfall rates
- Vacancy length
- Marketing history
- Retention of shop frontage

Members acknowledged that the business was already operating successfully from the premises and that it had a large number of clients visiting the premises. The business was attracting clients from the Borders, Scotland and beyond to use their specialist services and was also a finalist in the Borders Retail Business Awards 2018.

The Review Body was satisfied that the business was already helping increase footfall and contributing to joint shopping trips within the town centre. They agreed that this was a good business which was an economic asset to the town and should be supported.

As the unit had been vacant for around a year before the applicant started operating it met the "6 month vacancy test" introduced by the Retail Pilot. Members were satisfied that, despite marketing by property agents, no suitable retail use had been forthcoming. In the circumstances, it was legitimate to consider alternative uses for the unit. In their view, the business would complement the variety of different small units in Bank Street, some of them non-retail and improve its attractiveness to visitors and locals alike. It was better to have the unit occupied by this business than see it vacant for a further indeterminate period.

The Review Body noted that the shop frontage has been unaffected by the use since it commenced, and that no alterations are proposed.

The Review Body was satisfied that a sufficiently persuasive case had been made to allow the business and that the applicant had demonstrated that the business would make a significant positive contribution to the town centre. In coming to this conclusion, Members also gave cognisance to the reasoning for the recent LRB decision for the provision of a dog grooming business in Bank Street and to the support from the Economic Development Section for the business.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was approved.

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.

CONDITION

1. The premises shall be used for a tattoo studio 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).
Reason: To ensure that the use is restricted to that applied for.

INFORMATIVE

1. The Council's Flood Officer recommends that the applicant contacts the Flood and Coastal Management Team on 01835 825035 and signs up to receive early warnings from the Council's water level gauge on the Bakehouse Burn, there is currently a "Bank Street Flood Warning Group" that receives the messages.

Furthermore, there is also access and egress issues during flood conditions and he would recommend that, to receive flood warnings from SEPA, the applicant signs up to FLOODLINE at www.sepa.org.uk or by telephone on 0845 988 1188.

Many businesses on the street own flood gates and a number of flood protection products such as floodgates and air-vent covers are also commercially available from the Council at heavily discounted prices through our subsidised flood product scheme; details of these can be found by calling Emergency Planning on 01835 825056. I would recommend that the owners purchase a flood gate and self-closing airbricks if required.

2. The Environmental Health Officer has highlighted that there may be noise impacts on neighbouring noise sensitive dwellings from machinery and equipment used at the premises and that measures should be taken to ensure that any such impact is minimised.

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..... 20 September 2018