

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: 15/00009/RREF

Planning Application Reference: 14/01342/FUL

Development Proposal: Erection of veterinary practice building

Location: Land South East Of Paul Burton Warehouse, Plot 8, Pinnaclehill Industrial Estate, Kelso

Applicant: Cheviot Vets

DECISION

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

DEVELOPMENT PROPOSAL

The application relates to the erection of veterinary practice building on land South East of Paul Burton Warehouse, Plot 8, Pinnaclehill Industrial Estate, Kelso. The application drawings consisted of the following drawings:

Plan Type	Plan Reference No.
Location Plan	LOC-01
Existing Layout	EX-01
Floor Plans	PL-01
Elevations	PL-02
Site Plan	PL-03

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, (including papers referred to in Report of Handling) (d) Consultations, (e) Additional representation from Community Council and (f) 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 a site inspection.

The Notice of Review indicated that new evidence had been submitted to the Local Review Body that had not been before the appointed officer when the case was determined. This was in respect of alternative sites and the sequential approach to their assessment set out in section 5.0 of the applicant's Notice of Review Supporting Statement. Members decided that this evidence did not meet the tests set out in Section 43B of the Act, and they proceeded to determine the case without reference to this information.

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, INF3, INF4, INF6 and ED1

Other material considerations the Review Body took into considering were:

- Scottish Planning Policy
- Supplementary Planning Guidance on Householder Development 2006
- Supplementary Planning Guidance on Placemaking & Design 2010
- Supplementary Planning Guidance on Trees & Development 2008
- Supplementary Planning Guidance on Landscape & Development 2008
- Supplementary Planning Guidance on Timber in Sustainable Construction 2009
- 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 development site lay within Pinnacle Hill, which is classified as a Strategic Employment Site in the Consolidated Local Plan. Members identified that Policy ED1 of the Local Plan was 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 out with 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 terms of its impact on neighbouring uses, its design, layout and landscape fit.

There was some frustration expressed by Members that the basis of employment land allocations and associated policies were resulting in viable businesses being turned away. Notwithstanding the existing policy position, the Review Body considered that there were a number of other material factors that 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 acknowledged that the existing business was already delivering an important service to the rural community, providing equine and small pet care and to the farming community more generally. The provision of the new facility at Pinnaclehill would assist in the further development of their operations in the Scottish Borders enhancing the capacity of the business and importantly would create up to 5 new jobs at the facility, for professional and admin staff. Members also noted that in addition to the proposed facilities there was capacity and aspiration to expand the business to accommodate care for large animals in the future.

The Review Body concluded that the economic benefits that would be generated by the development were in its favour and they also gave weight to the positive support for the development from the local community and the Council's own Economic Development team.

The Review Body noted that Policy ED1 in the Proposed Local Development Plan now defined Pinnaclehill as a Strategic Business and Industrial Site, in which uses other than use class 4, 5 & 6 would generally be refused. Members considered that this wording highlighted there may be circumstances where alternative uses would be permissible. They were satisfied that the emerging policy position allowed some degree of flexibility in decision making and enabled them to take into account the nature and quality of the proposed business and the benefits it would bring to the local economy. In particular, the policy stated that uses other than Class 4, 5 & 6 can be considered if it can be:

"...clearly demonstrated as contributing to the efficient functioning of an allocated site."

In this regard, Members considered, in detail, the nature of the business and its suitability at this location. In their view, a modern veterinary surgery requires a location away from town centres and residential properties, with adequate access and parking facilities and that this site was ideally placed to accommodate the business and future proof it for expansion. It was also a logical position in terms of the practice catchment area and the practical management and operation of the business. The business would provide high quality services and employment and

would, in Members' view, clearly enhance the quality of Pinnaclehill as an employment location and contribute to the efficient operation of the strategic site.

The development's consistency with the emerging Local Development Plan policy was in its favour.

The proposal would involve the development of a vacant employment site. However, Members noted that there had been a low take up of such land in recent years at the site and in Kelso. The land at the extension to Pinnaclehill had been marketed for a considerable period with only limited success and if this development did not proceed it was likely that the site would remain vacant for the foreseeable future. The fact that all the allocated land in Kelso is classed as strategic, does not currently encourage this type of use and is potentially an impediment to business development.

The Review Body were satisfied that the development would not prejudice the availability of employment land at Pinnacle, or the area more generally, that it may in fact provide a stimulus for other businesses to develop at the site and that these factors were 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

CONDITIONS

1. Notwithstanding the description of the materials in the application, no development shall be commenced until precise details of the materials to be used in the construction of the external walls and roofs of the buildings have been submitted to and approved in writing by the Local Planning Authority, and thereafter no development shall take place except in strict accordance with those details.
Reason: The materials require further consideration to ensure a satisfactory form of development, which contributes appropriately to its setting.
2. No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):
 - i. existing and finished ground levels in relation to a fixed datum preferably ordnance
 - ii. existing landscaping features and vegetation to be retained and, in the case of damage, restored

- iii. location and design, including materials, of all boundary fencing and gates
- iv. soft and hard landscaping works
- v. existing and proposed services such as cables, pipelines, sub-stations
- vi. other artefacts and structures such as street furniture, play equipment
- vii. A programme for completion and subsequent maintenance.

Reason: To ensure the satisfactory form, layout and assimilation of the development.

3. Prior to the commencement of the development, details of the access, parking and turning facilities for the site to be submitted to and approved by the Planning Authority. Thereafter the works to be carried out in accordance with the approved details before the business becomes operational.

Reason: In the interests of road safety to ensure that site is adequately serviced.

4. No development shall commence until details of the means of water supply and of both surface water drainage and foul drainage have been submitted to, and approved in writing by, the Planning Authority. Thereafter the development shall be implemented in accordance with the approved details.

Reason: To ensure that the site is adequately serviced

5. 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

6. The premises shall be used for a veterinary surgery 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 remains compatible within the site.

INFORMATIVE

In respect of condition 3 above, the Roads Planning Officer requires that:

- The verge crossing to be surfaced to his specification i.e. A 40mm layer of 14mm size close graded bituminous surface course to BS 4987 laid on a 100mm layer of 28mm size dense base (roadbase) to the same BS laid on a 310mm layer of 100mm broken stone bottoming blinded with sub-base, type 1.
- The radii to be kerbed using precast concrete half battered radius kerbing.
- A footway link to be provided from the main entrance of the building to tie in with the existing footway provision opposite, on the main access road. This will include footway crossing points on both sides of the carriageway. Details of which must be submitted and approved by the Planning Authority and implemented thereafter prior to first occupation of the building.

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