

Appendix III

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: 18/00024/RREF

Planning Application Reference: 18/00635/FUL

Development Proposal: Change of Use from Class 4 to include Class 11 (Leisure) and Class 3 (Café)

Location: Factory Plexus Facility, Tweedside Park, Tweedbank

Applicant: J S Crawford Properties (Borders) Ltd

DECISION

The Local Review Body upholds the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

- 1 The proposed development will conflict with Policies PMD3 and ED1 of the Scottish Borders Council Local Development Plan 2016 and Supplementary Guidance - Central Borders Business Park Tweedbank 2017, in that it would comprise uses which do not fall within the permitted uses for this Strategic Business and Industrial Site and which would not contribute positively to the efficient functioning of the allocated site or its future as a business park
- 2 The proposed development conflicts with Policy EP13 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance Trees and Development 2008 in that it comprises car park alterations which potentially risk adversely affecting adjacent trees which are important to the amenity value of the business park and the application does not demonstrate that the trees will be adequately protected during construction of the car park alterations

DEVELOPMENT PROPOSAL

The application relates to Change of Use from Class 4 to include Class 11 (Leisure) and Class 3 (Café). The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	TB/PP/CoU/001
Existing Layout	TB/PP/CoU/002
Site Plan	TB/PP/CoU/003 rev A
Elevations	TB/PP/CoU/004 rev A
Floor Plans	TB/PP/CoU/005
Floor Plans	TB/PP/CoU/006
Floor Plans	TB/PP/CoU/007
Floor Plans	TB/PP/CoU/008
Sections	TB/PP/CoU/009

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 19th November 2018.

After examining the review documentation at that meeting, which included: a) Notice of Review (including Decision Notice and Officer's Report); b) Papers referred to in officer's report; c) Consultations; and d) List of Policies, the Review Body proceeded to determine the case.

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, PMD3, ED1, HD3, EP8, EP13, EP16, IS7 and IS9

Other Material Considerations

- Scottish Planning Policy 2014
- Strategic Development Plan (SESplan) 2013
- SBC Employment Land Audit 2016
- SBC Supplementary Guidance on Central Borders Business Park/SPZ 2017
- SBC Supplementary Planning Guidance on Trees and Development 2008
- SBC Supplementary Planning Guidance on Waste Management 2015

The Review Body noted that the proposal was for Change of Use of part of the building from Class 4 to include Class 11 (Leisure) and Class 3 (Café).

The Review Body firstly considered the proposals against Policies PMD3 and ED1 of the Local Development Plan together with the Supplementary Guidance on the Central Borders Business Park and the associated Simplified Planning Zone scheme. They noted that the

proposals were part retrospective with regards to the gym and that the uses fell outwith those normally sought within the Local Development Plan and Supplementary Guidance for a Strategic Business and Industrial Site. They also noted that the uses would occupy a limited part of the building and that the remaining employment uses would continue within the building.

Members discussed the terms of Policy ED1 in particular and how the proposed uses would comply with the use class restrictions. Whilst there was some sympathy that part of the building had been vacant since 2014 and that continuing vacancy was not contributing to the efficient functioning of the Business Park, the Review Body nevertheless felt that approval of the proposed uses would result in the loss of business space and that this would be both premature and undermine the aims of the Council's recently approved Supplementary Guidance and Simplified Planning Zone for the Business Park. Members felt that it was too soon to be allowing business space to be lost and that this could detrimentally impact on the overall aims of regeneration and investment based upon the railway presence. They also felt there could be more appropriate locations and opportunities for the uses as other areas are brought forward for development in the locality.

The Review Body did accept that the gym had a local demand and that there was support from Economic Development for this element. They also accepted that such a use, in itself, could have been considered to be in compliance with Policy ED1 in contributing to the efficient functioning of the Business Park. However, they also noted that the application was mixed use including a Children's Soft Play facility with associated café and that this could not be considered to contribute to efficient functioning. Although there was also a clear demand and Members accepted that a particular type of building with height was specifically required for the facility, they did not accept that the facility had to be located within a Business Park resulting in the loss of protected floorspace.

Members considered all other factors raised by the applicant including employment creation, claimed oversupply of industrial land and availability of suitable buildings. Whilst there was discussion and some sympathy with regard to these factors, the Review Body ultimately did not consider them to be sufficiently material to outweigh the terms of the Local Development Plan and Supplementary Guidance/SPZ.

The Review Body also noted the impacts of the proposed parking on trees and that the Appointed Officer considered the requirements of Policy EP13 had not been met by the proposal.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and Supplementary Planning Guidance and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused.

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.
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Signed.....Councillor T. Miers
Chairman of the Local Review Body

Date.....26 November 2018

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