

## APPENDIX I

### SCOTTISH BORDERS COUNCIL LOCAL REVIEW BODY DECISION NOTICE

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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

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**Local Review Reference:** 19/00009RREF

**Planning Application Reference:** 18/01071/FUL

**Development Proposal:** Part change of use from agricultural barn to vehicle body repair and paint shop with associated parking (retrospective)

**Location:** Agricultural Barn, Mid Softlaw Farm, Kelso

**Applicant:** Mr Keith Redpath

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## 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 the conditions as set out below.

## DEVELOPMENT PROPOSAL

The application relates to part change of use from agricultural barn to vehicle body repair and paint shop with associated parking (retrospective). The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan (revised)	RF011
Existing Elevations	RF031
Proposed Elevations	RF061
Existing Floor Plan	RF021
Proposed Floor Plan	RF041
Existing Section	RF071
Proposed Section	RF051

## **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 17 June 2019.

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 Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information on working hours, machinery and staff facilities, the latter being shown on a revised Location Plan. Members considered that the information did meet the Section 43B test, was material to their consideration and could be considered.

The Review Body noted the applicant's suggestion for further procedure but did not consider any further procedure necessary, including a site visit, after viewing photographs and plans of the site and surroundings. They then 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: PMD1, PMD2, ED2, ED7, EP13, EP16, HD3, IS7 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Landscape and Development 2008
- SBC Supplementary Planning Guidance on Trees and Development 2008

The Review Body noted that the proposal was for planning permission for part change of use from an agricultural barn to vehicle body repair and paint shop with associated parking and that the use had commenced and the application was retrospective.

The Review Body firstly considered the application against Policy ED7. Whilst they accepted that the use applied for could result in any vehicle being worked on, they also noted that the use would allow for works and respraying to agricultural vehicles, which the applicant had stated would be the emphasis of the business, and that agricultural engineering was already a use carried out in other parts of the adjoining buildings. Members felt that this was an appropriate use for a rural area and also represented suitable farm diversification as encouraged by Council Policies. They considered it more supportive and viable for this local business, which was deemed to be providing an appropriate use in a countryside location, to allow conversion and re-use of the existing building within the farm steading than to ask the applicant to seek new premises within a town.

The Review Body then considered the issue of impacts on rural character and residential amenity, as protected by Policies PMD2 and HD3 in particular. They noted that there was no noise assessment or information on the potential impacts but that there could also be a level of noise and residential impact from a variety of agricultural uses of the building which would not require planning permission, including the agricultural engineering operations in the adjoining buildings. They also noted that the use was already in operation and that there was no evidence to suggest there was any particular complaint or objection from adjoining house owners, given there were no submitted objections to the planning application. They concluded that there was no noise or residential amenity reason to oppose the application although it would still be necessary to agree a scheme of methods of working, within a specified timescale, to ensure that impacts on residential amenity would be controlled and minimised. This would include noise impacts from use operation and machinery, waste storage, water, drainage and parking. They also required that the use be limited, by condition, to what was applied for as other uses within the same general industrial use class could cause greater detrimental impact on residential amenity.

Members then considered the issue of sustainability of transport and compliance of the proposals with Policy PMD1 in particular. Whilst it was accepted that a town location could offer more forms of sustainable transport and less reliance on private car, the Review Body considered that, as the Borders was a rural area with a significant rural economy, many businesses and customers had to rely on cars and that rigid application of PMD1 in this respect could be detrimental to the economy. It was also noted that the location of the site was within walking distance of bus services and reasonable cycling distance from Kelso.

The Review Body then considered Policy PMD2 and the quality and suitability of the building for the use. They noted the existence of toilet and staff welfare facilities in the adjoining buildings but that these facilities, together with other upgrades to the building required by different regulations and authorising organisations, would result in the building being more suitable for the use. This included the process of obtaining building warrant for the use. Members considered it necessary to ensure that the upgrades and additional facilities were also controlled by planning condition to ensure their implementation, within an agreed timescale.

## **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.

## **CONDITIONS**

1. Notwithstanding the terms of The Town and Country Planning (Use Classes) (Scotland) Order 1997 and any subsequent amendment, the use to be operated only as a vehicle body repair and paint shop and not for any other use within Class 5 or any other Class in the Order, unless application is made and subsequently granted for an alternative use.

Reason: To safeguard the residential character and amenity of adjoining properties

2. Within three months of the date of this consent, a Scheme of Method of Operation of the use to be submitted to the Planning Authority for approval. The Scheme shall provide days and hours of operation, noise levels of operation of the use (including any plant and machinery), proposed mitigation relating to noise levels, waste storage, water, drainage and parking for staff and customers. The use then to operate in full

accordance with the approved Scheme within three months of the date of approval of the Scheme and, thereafter, for the duration of the use.

Reason: To safeguard the residential character and amenity of adjoining properties and of the surrounding rural area

3. Within three months of the date of this consent, further details of building improvements and facilities to support the use to be submitted to the Planning Authority for approval. The approved details then to be implemented in full within three months of the date of approval of the details and, thereafter, retained for the duration of the use.

Reason: To ensure the building is suitable for its approved use and to safeguard the residential character and amenity of adjoining properties and of the surrounding rural area

## **INFORMATIVES**

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites".

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

### **Notice of Initiation of Development**

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

### **Notice of Completion of Development**

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD  
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA

Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU  
British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street,  
Stoke on Trent, ST1 5ND  
Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose,  
TD6 0SA  
Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL  
BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH  
THUS, Susiephone Department, 4<sup>th</sup> Floor, 75 Waterloo Street, Glasgow, G2 7BD  
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

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**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.....**19 June 2019

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