

APPENDIX V

**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: 19/00005/RREF

Planning Application Reference: 17/01368/FUL

Development Proposal: Variation of condition 4 of planning permission 16/00753/FUL to
reinstate 2 no windows in lieu of air conditioning units

Location: Deans Bar, 3 Orrock Place, Hawick

Applicant: Mark Deans

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 variation of condition 4 of planning permission 16/00753/FUL to reinstate 2 no windows in lieu of air conditioning units. The application drawings and documentation consisted of the following:

| Plan Type | Plan Reference No. |
|------------------|--------------------------------|
| Location Plan | |
| Floor Plans | |
| Specifications | Windows |
| Photos | |
| Report | Noise Impact Assessment |
| Specification | Acoustic Boards |
| Specification | Sentry MK2 Sound Level Control |

PRELIMINARY MATTERS

The Local Review Body initially considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 15th April 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; f) Objection and g) List of Policies, the LRB concluded that it did not have sufficient information to determine the review and that it required Further Procedure in the form of an oral hearing.

With regard to the potential noise impacts of reinstating the windows, Members referred to the apparently conflicting advice provided by experts in the form of the applicant's Noise Assessment Report and the Council's consultants who assessed that report. It was agreed that the Review Body could not come to a conclusion about the application without further information being provided by way of a hearing session, to which the applicant, Council's Environmental Health Officer and interested party were invited. The matters considered at the hearing were: the case for the reinstated windows providing a means of ventilation as a suitable alternative to the ventilation system required under Condition 4 of planning consent 16/00753/FUL; and the noise impacts of reinstating the windows into the function room on the residential amenity of neighbouring residential properties.

The hearing was held at 10am on Monday 27th May 2019, after which the Review Body reconvened to consider the case. Following the hearing, Members agreed that it had been useful in providing further technical details and noted the mitigation proposed by the applicant to reduce noise breakout from the function room when in use. However, Members remained unclear about how effective the proposed mitigation in the form of acoustic boards and volume limiting equipment would be. After further discussion, they concluded that they could not make a determination without further procedure, in the form of written submissions, from the applicant to provide details of the boards and volume limiting equipment, and from the Council's Planning Officer and Building Standards in relation to their requirements for ventilation with the acoustic boards in place.

The Review was, therefore, continued to the Local Review Body meeting on 19th August 2019 where written submissions from the applicant, Environmental Health Officer, Planning Officer and Building Standards Officer were considered, together with a response from the applicant to those matters raised by other parties.. The Review Body 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: PMD2, ED3, HD3, EP9 and IS8

Other Material Considerations

- SBC Supplementary Planning Guidance on Placemaking & Design 2010
- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006

The Review Body noted that the proposal was to seek variation of condition 4 of planning permission 16/00753/FUL to reinstate 2 no windows in lieu of air conditioning units at Deans Bar, Orrock Place, Hawick.

Members firstly considered the variation to the condition which centred around the ventilation system for the function room, the use of the room being reliant on the Council accepting a system. It was noted that opinion had been sought from the Council's Planning Officer and Building Standards on the adequacy of the existing ventilation system, should the windows be kept shut and proposed acoustic boards placed over the windows internally during functions. The Review Body noted and accepted the advice of Building Standards that, as the ventilation system had been in use when the function room was previously used as part of a public bar, it was appropriate to meet the functional standard. They, therefore, accepted that condition 4 of consent 16/00753/FUL had been met and the condition could be varied through omission.

However, they then considered the issues of the removal of the former blocked up openings and replacement with the windows that had already been installed. Whilst they had no concerns over the designs of the windows in terms of the Conservation Area or character of the building and area, the submissions during the application and Review process had indicated potential for additional noise nuisance and breakout when the function room was in use.

Members had sympathy with the applicant in his attempts to control noise. They also considered that the mitigation proposed by the applicant would provide an additional layer of noise control. They were satisfied that with the windows shut, the proposed acoustic boards in place during functions and an agreed volume limiting system in operation, their remaining concerns over noise nuisance were allayed to some extent. They also noted that there were separate procedures that could be followed by Environmental Health in seeking further compliance under different legislation should a noise nuisance be deemed to be present.

Members sought conditions to secure this necessary mitigation, including the submission and agreement of the precise operating details and volume limit of the sound control system within two months of the date of the consent. They also agreed that an Applicant Informative be included to ensure the boards were maintained to ensure their sound insulation properties were not degraded in the regular actions of installing and removing them after use of the function room. Finally, they noted that as with any Section 42 application to vary a condition, the original conditions should be reattached to the consent unless any had been discharged in the interim.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, HD3 and EP9 of the Local Development Plan and relevant Supplementary Planning Guidance. The development was considered to be of appropriate design and the impacts of use could be controlled by appropriate conditions. Consequently, the application was approved.

DIRECTIONS

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. The function room not to be used unless the windows are shut and acoustic boards placed over them for the entire duration of any event or other activity held in the function room. The boards and the methods of mounting to be in full accordance with the details submitted.
Reason: To protect the residential amenity of nearby properties.
2. The function room not to be used until further details of the sound control system, including level of sound limit, are submitted to, and approved by, the Planning Authority within two months of the date of this consent. Thereafter, the system to be operated in accordance with the approved details for the entire duration of any event or other activity held in the function room.
Reason: To protect the residential amenity of nearby properties.
3. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.
4. 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 discernible tonal component. Tonality shall be determined with reference to BS 7445-2.
Reason: To protect the residential amenity of nearby properties.
5. All plant and machinery shall be maintained and serviced in accordance with the manufacturer's instructions so as to stay in compliance with the aforementioned noise limits.
Reason: To protect the residential amenity of nearby properties.

INFORMATIVES

With regard to Condition 1, the acoustic boards should be maintained to ensure their sound insulation properties are not degraded in the regular actions of installing and removing them.

SEPA recommend the use of flood resistant and resilience materials and design in transforming the property from rugby club to public house. They also recommend that the applicant investigates the availability of flood insurance cover since the property is considered to be in an area of high risk.

As access and egress to the development may also be affected by flood waters, in order to receive flood warnings from SEPA, the applicant should sign up to FLOODLINE at www.sepa.org.uk or by telephone on 0845 988 1188.

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, 4th 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.

Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013

1. If the applicant is aggrieved by the decision of the planning authority:
 - (a) to refuse permission for the proposed development;
 - (b) to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or
 - (c) to grant permission or approval, consent or agreement 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 S. Hamilton
Chairman of the Local Review Body

Date.....26 August 2019

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