

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

7 OCTOBER 2019

APPLICATION FOR PLANNING PERMISSION

ITEM: **REFERENCE NUMBER:** 19/00932/FUL

OFFICER: Mr C Miller
WARD: Selkirkshire
PROPOSAL: Temporary removal of current restrictions on Sunday shooting – Reference Numbers E329/95 and 95/01201/FUL

SITE: Bisley at Braidwood Clubhouse, Midlem
APPLICANT: Mr Anthony Roupell
AGENT: None

PLANNING PROCESSING AGREEMENT (PPA)

There is no PPA in place, the application needing to be determined within the normal four month period for a major application, by 8 November 2019.

SITE DESCRIPTION

The site is occupied by an existing clay pigeon shooting facility, clubhouse and house occupying over 16HA of land to the north of Midlem village. The access leads from the B6453 to the north-west of Midlem. The site also contains landscaping, parking and earth bunding.

PROPOSED DEVELOPMENT

The application has been made under Section 42 of The Town and Country Planning (Scotland) Act 1997 as amended, (The Act) to modify original conditions on shooting times and hours placed upon application E329/95. The application seeks to vary the following conditions:

1. The site to be used for shooting only between the hours of 10.00am to 7.00pm on Mondays to Saturdays and for no more than 4 hours between 10.00am and 5.00pm on Sundays.
2. On six Sundays per year an unrestricted shooting to be permitted between the hours of 11.00am and 6.00pm, these days to be agreed in advance by the Planning Authority.

The Supporting Statement submitted with the application seeks “normal” operating hours for Sunday shooting to match the rest of the week ie. 10.00am to 7.00pm. This would effectively increase the number of hours by an additional five hours on Sunday and by two hours on the six Sundays within the year when longer hours are permitted through notification. Although shooting is permitted as normal on a Monday, the operator generally chooses not to have the facility open to the public that day.

The applicant explains that the shooting facility has become a very popular attraction and there has been recent investment in the clubhouse facility. The weekends are the most popular part of the week for use of the facilities and competitions are also held at weekends. The applicant feels removing the restricted hours on a Sunday would improve the service and help it grow. He feels the noise bunding is effective and that there are no noise issues with neighbours in Midlem.

The application has been clarified by the applicant as a temporary request to increase the Sunday operating hours. The applicant has reported the pre-application advice given to him by Environmental Health that they suggest the hours be relaxed on a 6-9 month basis as a trial period. This report will further examine the issue of justification for temporary relaxation below.

The application relates to over 16HA of land use and is, consequently, within the category of a “major” application under current legislation. Any application under Section 42 to vary conditions attached to an application that would have been “major” (had it been submitted post “Hierarchy of Development” legislation in 2009), is also classed as a “major” application. The only difference is that Section 42 “major” applications are exempt from the pre-application consultation procedures and community consultation that are required for all other “major” applications.

The application has, however, been advertised in the Southern Reporter.

PLANNING HISTORY

There is significant planning history associated with the site but the most relevant consents were as follows:

92/01204/FUL (E012/92) – Clay pigeon shooting
93/01269/FUL (E298/93) – Continued use as clay target shooting ground
94/01315/FUL (E369/94) – Siting of club house facilities
97/0006/SBC/C – Formation of noise reduction bunds and landscaping works
01/00824/FUL – Construction of 2nd phase noise bund to north-east side of shooting ground
04/00527/FUL - Construction of 2nd phase noise bund to north-east side of shooting ground
05/02291/FUL – Erection of clubhouse
06/01165/FUL – Extension to temporary consent 04/00527/FUL for 2nd phase bund
09/00722/FUL – Extension to temporary consent 06/01165/FUL for 2nd phase bund

There have also been other applications for a house, wind turbine and a number of pre-application enquiries relating to the shooting facility and operational hours on Sundays.

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Roads Planning: No objections.

Environmental Health: The change of hours to shoot every Sunday to 19:00 has the potential for noise complaints to arise from nearby properties.

Recommends that the increase in Sunday hours is allowed for a trial period for 6- 9 months. At the end of the trial period then a decision can be made to either allow a continuation of the extended hours or to revert back to the shorter Sunday hours.

Statutory Consultees

None

Other Consultees

None

REPRESENTATION SUMMARY

Twelve objections have been received to the application as well as concerns from the Midlem Village Hall Committee. These can all be viewed in full on the Public Access website. The main grounds of objection include the following:

- Noise adversely affects Midlem residents. Extending into Sunday evening is unacceptable at a time when peace and quiet are more valued.
- Noise impacts are already constant.
- Soundproofing bunds not effective, especially at Townhead area of village, principally aimed at protecting property to the east.
- No mitigation over types of cartridges to be used
- Regard should be had to Clay Target Shooting Guidance on Control of Noise from Chartered Institute of Environmental Health which recommends at least a kilometre buffer to inhabited buildings and only three hours operation in the middle of a Sunday if there are justified complaints.
- Environmental Health response not based upon any noise monitoring or acoustic assessment.
- Hours should be reduced not increased.

DEVELOPMENT PLAN POLICIES:

Scottish Borders Council Local Development Plan 2016

PMD2 Quality Standards

ED7 Business, Tourism and Leisure Development in the Countryside

EP3 Local Biodiversity

EP13 Trees, Woodlands and Hedgerows

HD3 Protection of Residential Amenity

IS4 Transport Development and Infrastructure

IS7 Parking Provision and Standards

OTHER PLANNING CONSIDERATIONS

SESplan Strategic Development Plan 2013

Scottish Planning Policy 2014

KEY PLANNING ISSUES

The main determining issue with this application is compliance with, and the balance between, Local Development Plan Policies on leisure development in the countryside

and the need to protect existing residential areas from adverse impacts on their amenity.

ASSESSMENT OF APPLICATION

History

The clay pigeon shooting range has been established at Braidwood, north of Midlem, since 1992. Initially, consent was only granted for two temporary periods of two years until, in 1995, a permanent consent was granted. Up until the 1995 consent, the operating hours were restricted to 10am-7pm Thursday to Saturday and only four hours on a Sunday taken between 10am-5pm. However, these hours and days were extended in the granting of the permanent consent in 1995, to the following:

- Monday to Saturday 10am-7pm (Condition 1)
- Sunday 4 hours taken between 10am-5pm (Condition 1)
- On six Sundays in the year (to be notified to the Council), operation between 11am-6pm (Condition 2)

The original consent was subject to landscaping proposals which included some bunding. This was developed in later applications to provide two phases of acoustic bunding to the eastern side of the development, the latter phase still not being fully complete due to issues with licensing and SEPA.

The application relates to an existing business and the relaxation of Sunday hours is sought on the basis of supporting and allowing an existing business to improve. The justification put forward by the applicant includes the fact that users want to shoot at weekends and this includes competition shooting. The applicant also feels that extending the Sunday shooting hours will allow more efficient staffing and improve the business generally.

In effect, the application made under Section 42 of The Act is to vary Condition 1 of consent reference E329/95 and to remove Condition 2. Condition 2 would become unnecessary should shooting hours on Sunday be extended as requested. In effect, the request is to extend the end time from 5pm to 7pm but also to remove the four hour maximum duration period on Sundays – the request would mean another five hours of shooting on every Sunday.

Policy

The existing business has been well established for over 25 years and is supported by Policy ED7 on “Business, Tourism and Leisure in the Countryside”. Expansion proposals are encouraged for existing businesses, subject to criteria. The applicant has explained the reasons why he feels the existing business is being restrained by the current Sunday hours restrictions, including weekends being the most popular time in terms of demand to use the facility and also in terms of competition shooting. He considers that the facility could be improved through extended Sunday hours and there would also be staffing benefits. The reasons advanced are not supported by any quantification of the impacts caused by the current restricted Sunday hours but ED7 does not specifically require a more detailed business case to be advanced for existing businesses. There is, therefore, no reason to contest the applicant’s claims that increasing Sunday hours would benefit the existing business and, in principle, there is support from Policy ED7.

Residential Amenity – Noise

Whilst there may be general support in ED7 for the expansion of an existing business, it is not unqualified support and there are six criteria that still need to be met. The most relevant of these criteria states that *“the development must have no significant adverse impact on nearby uses, particularly housing”*. This is supported by Policy HD3 which protects residential areas from adverse impact and, amongst other matters, will allow assessment of *“the generation of traffic or noise”*.

At the time of the original transfer from temporary to permanent consent in 1995, the Planning Officer had only received one complaint about noise and, therefore, had little justification to oppose the renewal of consent on a permanent basis. The case officer took his lead from conditions imposed on another existing shooting range operating near Galashiels at that time. Subsequent to that decision, the range at Braidwood has continued to install acoustic bunding but there appears to be different opinions between the applicant and objectors over the level of noise generated by the facility, the disturbance caused by that noise and the effectiveness of the bunding.

The bunding was part of the initial applications for temporary consent in the early 1990s and was augmented by further bunding to the north. It did not appear to be specifically required by the Council at the time but was additional mitigation offered by the facility to attenuate noise breakout. It is understood that the facility has continued to operate with only one valid noise complaint being received by Environmental Health in the intervening period.

However, as many of the objectors and the Village Hall Committee have mentioned, there is more of an expectation of limitations of noise on a Sunday than any other day of the week, in terms of enjoyment of residential amenity. Many have commented that elongating the hours into Sunday evening prolong the disturbance and would eliminate the guaranteed quiet period, thus adversely affecting residential amenity. This assumes, of course, that the shooting noise is audible and would be substantiated as a noise nuisance at the affected properties. The most obvious impacts would be on properties in Midlem village as well as isolated properties to the east of the application site.

There needs to be some sympathy with the objectors in terms of the level of change i.e. substantially adding to the number of total hours on a Sunday (by five hours) and encroaching into early evening by extending the hours from 5pm-7pm. Although longer periods on a Sunday have been allowed since 1995, these have only been six times per year starting later and finishing earlier i.e. 11am-6pm. What is now sought is 10am-7pm every Sunday in the year.

However, it is also the case that the range has operated for a considerable length of time without justifiable and sustained noise issues. They also do not operate the facility on Mondays. Environmental Health have suggested that a temporary consent relaxing the Sunday hours to that applied for, would enable a trial period of monitoring and assessment of any complaints that may be received. At the end of that period, advice can then be provided by them as to whether the relaxation can continue or not.

Whilst the concerns from objectors are understandable, the advice from Environmental Health is pragmatic and allows a monitoring and evaluation period. If Members are minded to allow the relaxation on this basis, then a new Section 42 application would need to be submitted before the expiry of the temporary period, for renewal of the relaxed hours condition, either on a permanent or further temporary basis. Normally, it would be assumed that a six month period would be sufficient time to judge whether

there was any substantiated noise nuisance to inform continued relaxation of hours on a Sunday or not. However, given that much of the open air shooting relies on natural daylight, the granting of a six month period from October to early April may not allow full evaluation of effects as a result of extending the evening hours from 5pm to 7pm. Consequently, better evaluation would occur from granting the nine rather than six month period, as advised by Environmental Health. If Members consider that the current hours and restrictions need to continue to apply and refuse the relaxation request, then the original consent and conditions continue unaffected.

There is also the possibility that other compromises are possible. Firstly, Members could consider temporarily removing the four hour restriction on the Sunday but still have the 5pm cessation. Alternatively, Condition 2 of the original consent could be varied to increase the number of unrestricted Sunday shooting days in the year from six per annum, without agreeing to every Sunday in the year. Whilst Members can consider these, the applicant has applied for a temporary relaxation of Condition 1 which effectively renders Condition 2 invalid. The advice of Environmental Health, based upon lack of previous objection, is to allow this trial period of every Sunday 10am-7pm. As the position is reversible, should complaints justify it, then it is considered that the advice from Environmental Health should be followed.

It is, therefore, recommended to amend Condition 1 to 10am-7pm daily, omit Condition 2 and impose a new Condition limiting the consent to a nine month period from the date of consent, at the expiry of which the use would need to revert to the 1995 consent and conditions – unless a new application is made and subsequently granted for the continuation of the revised conditions.

As the granting of consent under Section 42 of The Act, even on a temporary basis, is a new permission, all previous conditions would normally also need to be re-imposed, with the exception of those varied or omitted. However, as many of these were pre-commencement or time limited in other ways, it is clearer to impose a further condition ensuring that all such conditions, including any subsequent details agreed within those conditions, still pertain to the development now being amended.

CONCLUSION

In conclusion and subject to compliance with the proposed schedule of conditions, the development is considered acceptable when assessed against the Local Development Plan. The site is an established business and any improvements and expansion in the business that the relaxation of conditions allows for, can be assessed and balanced against potential noise and residential amenity impacts, on a nine month trial period and reversible basis.

RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:

I recommend the application is approved subject to the following conditions:

Conditions

1. The site to be used for shooting only between the hours of 10am to 7pm daily.
Reason: To safeguard the residential amenity of the area.

2. This consent shall be subject to all conditions attached to consent reference E329/95 and all details subsequently agreed through those conditions, with the exception of Conditions 1 and 2 which are hereby varied by this permission.
Reason: In the interests of road and public safety and to safeguard the visual amenity of the area.

3. This permission shall expire nine months from the date shown on this decision notice and, unless further permission is granted, the use shall revert to that originally consented under permission reference E329/95 and subject to all conditions attached thereto.
Reason: To safeguard the residential amenity of the area.

DRAWING NUMBERS

01 Location Plan

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

Author(s)

Name	Designation
Craig Miller	Principal Planning Officer



19/00932/FUL
Braidwood
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