

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 20/00283/FUL

APPLICANT : Mr James Hewit

AGENT : Ferguson Planning

DEVELOPMENT : Change of use of land to form motor vehicle display and form sales office from industrial unit (renewal of previous consent 16/01363/FUL) and erection of new sales building (retrospective)

LOCATION: Unit 1B And Incorporating Land To West Of
Riverside Works
Edinburgh Road
Jedburgh
Scottish Borders
TD8 6EA

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
LOC Rev D	Location Plan	Refused
001 Rev H	Proposed Block Plan	Refused

NUMBER OF REPRESENTATIONS: 0

SUMMARY OF REPRESENTATIONS:

Eleven neighbours were notified. There were no representations.

Consultations:

Council Estates: No response.

Landscape Architect: Object. Landscaping proposals (which the Council had spent considerable length of time securing in the previous approval) have not been implemented. The boundaries of this site do not make the high quality contribution. The "hard" appearance now erodes the visual amenity of this approach to Jedburgh. The hedge proposed will be insufficient in length to provide continuity to the built frontage to mitigate the proposal and safeguard amenity.

Outdoor Access Officer: There is a Core Path, on and adjacent to the planning application site along the Jed Water Riverside. This is Core Path 107. This is a riverside path adjacent to the site bounded at present with trees on the riverside and a fence-line on the side adjacent to the development. It currently then follows an existing pavement to cross the area of the proposed development site and joins the roadside path. A condition is requested.

Community Council: No response.

Transport Scotland: No objection/ no comment.

Roads Planning: No objections.

Second response: Response of 9th April 2020 remains unchanged.

Economic Development: First response: Object. Landscaping has not been implemented from the earlier permission. Development at this site should be considered as part of a wider application considering the development of a vehicular access to the adjacent car wash, which crosses land in control of the Council.

Second response: Do not object but recommend that the change of use is temporary as previous items like hedging have not been undertaken.

Contaminated land: The area is already developed. There appears to be a possible historic use of the land as a slaughterhouse and railway land within the vicinity of this application. A full site assessment may not be proportionate. An informative note is recommended.

Flood Risk Officer: No objection, Small scale of works consistent with 2016 application, although site is within 1:200yr event.

Forward Planning: Object. Contrary to ED1 with loss of business and industrial land for an indefinite period of time, which would also set a major precedent. There has been a significant material changes of circumstance since the application was submitted in 2016 as there is no end user. If consent was to be granted there is no end user business to benefit from this proposal and in essence the approval would have the sole purpose of changing the adopted LDP policy. The Development Management process is not the vehicle for doing this.

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016

PMD2 Quality Standards

ED1: Protection of Business and Employment Land

HD3: Protection of Residential Amenity

EP13: Trees, Woodlands and Hedgerows

IS5: Protection of Access Routes

IS7: Parking Provision and Standards

IS8: Flooding

Supplementary Planning Guidance:

Placemaking and Design 2010

Landscape and Development, 2008

Recommendation by - Euan Calvert (Assistant Planning Officer) on 1st May 2020

This is a proposal for change of use to car sales forecourt and creation of a sales office on a site, which was previously granted retrospective permission for this use in March 2017. This previous planning permission was granted for a 3-year period to Riverside Car Centre only.

Site

The site is located adjacent to the A68 on the northern approach into Jedburgh. It is visibly prominent. This site is situated adjacent to the east of the roadside, fronting Riverside Industrial Units. There are two buildings; one of brick construction and the other constructed in profile steel sheet, aligning with the Edinburgh Road. The northern half of the brick building forms part of this application. Directly opposite (on

the other side of the road) is Jedburgh Woollen Mill. This neighbour is a red brick building set within open grounds which are laid to surfaced parking bays and grassland.

This site appears behind an avenue grassland and specimen trees (sycamore). A 45m long, 0.6m tall, timber knee rail has been erected to define the roadside boundary of the site. A new sealed surfaced vehicular road has been formed from the drop kerb on the southern boundary, through this site. There is no boundary treatment on this northern extent. The road returns to an unbound track through the adjacent grassland. This road now serves the adjacent car wash which is operating from the adjacent building to the north of this site. This track is a right of way; it is the route of the former railway and is now a Core Path leading to Newmill or Jedforest Rugby Ground. Adjacent to the eastern side of this new surfaced road is the forecourt area laid in brown coloured unbound gravel and measuring approximately 5m x 45m. Between the knee rail and this new road is an area of grey coloured loose gravel measuring approximately 3m x 45m.

In May 2019 the Council's Planning Enforcement Officer was alerted to the construction of a new building adjacent to this site measuring 3.7m square. The building is a single pent roofed structure clad in brown profile sheet. It is finished in yellow brick and is attached to the southern gable of the existing factory. It features a single window on the south wall and a window and door unit on the west elevation (facing the A68). It has been constructed independent of the adjacent factory and is set at a higher floor level. The surrounding land has been built up and surfaced in a yellow coloured mono-block to share a common level with the forecourt.

Site History

[The following is not directly related to this application but provides essential context:

This site was formerly amenity grassland which was purchased from the Council by Border Print and Packaging Ltd in 2003. Plans were drafted by the Council to form 16 nose-to-tail parking bays enclosed by a beech hedge/ post and wire fence. The development never came to fruition.

05/00237/OUT: Demolition of existing buildings and erection of residential care home, Border Print and Packaging Ltd, Edinburgh Road, Jedburgh (Refused April 2005).

10/01201/PPP: Erection of retail foodstore with associated parking and access infrastructure; Former Oregon Timber Frame Ltd, Station Yard, Jedburgh. (Refused October 2011).

11/01455/PPP: Erection of retail foodstore with associated parking and access infrastructure; Former Oregon Timber Frame Ltd, Station Yard, Jedburgh. (Refused February 2012).

11/01121/PPP: Erection of retail food store with petrol filling station, associated parking and access road; Former Oregon Timber Frame Ltd and Riverside Workshops, Old Station Yard, Edinburgh Road (Refused April 2013).

13/01048/FUL: Change of use from Class 4 - 6 (industry/storage) to Class 1 (retail) and alterations to entrance door; Land and Building North of Riverside Works Edinburgh Road Jedburgh Scottish Borders (Approved February 2014).

16/00091/UNUSE: Planning Enforcement enquiry 2016- Riverside Car Centre had commenced operation without applying for change the use of the land.

16/01363/FUL: Change of use of land to form motor vehicle display (Approved March 2017). Reason for decision: "The development is a departure from Policy ED1 although several material considerations ensure that partial loss of an employment unit to car sales is acceptable. Considerable amendments have been made to the plan which will mitigate any adverse impacts to amenity and character. The proposal will create jobs and will not negatively impact upon the vitality and viability of the town centre. The use of this building for a limited time-limited period will not prejudice the long term suitability and availability of the site for Class 4, 5 and 6 employment use. The building has sat dormant therefore bringing it to commercial use will maintain viability, while being compatible with the neighbouring uses. "

This previous permission was granted with six conditions:

Condition 1 was a conformity condition and required implementation of Block Plan Rev G within 56 days of decision.

Condition 2 restricted this to a personal permission only for the benefit of "Riverside Car Centre". This was in view of the particular circumstances and nature of the business.

Condition 3 was a time bared condition requiring submission of a planning application within a 3 year period or the use of the premises would revert to lawful use Classes 4-6 of the Use Class (Scotland) Order 1997. This application is submitted within this timescale.

Condition 4 required Core Path 107 (the public path through the site) to be maintained open and free from obstruction in the course of development and in perpetuity. No stiles, gates, steps or barriers to access were permitted on the route of the path.

Condition 5 required landscaping plan, Block Plan Rev G, to be implemented and maintained for a period of three years. This has not occurred.

Condition 6 reserved for further consideration the position, size, colour, materials and method of illumination of any signage to be displayed on the building, within the site or on the site boundaries. No details were ever submitted.

19/00043/SEC27: Building Enforcement case, May 2019.

19/00090/UNDEV: Planning enforcement, May 2019 - Erection of an extension without a planning permission or warrant" - Live.

Proposal

On receipt of the application I highlighted concerns to the agent that the site plan does not correspond with the erection of a building on-site. Block Plan Rev H was submitted and re-consultation has been undertaken.

This proposal now includes the 3.7m x 3.7m office building within the proposals for change of use (within the red line boundary).

Planning statement

Riverside Car Centre trades successfully on-site and maintains employment of local people and income in the town. The Applicant intends to continue trading on the premises and continue presence of a car show room in the town. Old Station Yard site to the south of this unit is vacant. Weak market demand is identified as reason for the vacancy rather than condition of these adjacent premises. There remains plentiful availability of business units in the town.

Policy

The Council is required to consider the application against the prevailing Local Development Plan (Section 25 of the Town and Country Planning (Scotland) Act 1997) unless material considerations indicate otherwise. The site is within the town boundary and this land is identified as business and industrial safeguarded site (zEL33).

Policy ED1 aims to protect supply of business and industrial land. Class 4, 5 and 6 uses are promoted on these sites while other uses may be acceptable, subject to suitability criteria. In addition, any proposals must respect the character and amenity of the surrounding area, and be landscaped accordingly. They must be compatible with neighbouring business and industrial uses.

In the preamble to Policy ED1 (Para 1.4) there is reference to other uses which can "co-exist" on an industrial estate such as sui generis uses and other complementary uses, which do not "conflict with existing uses". The Council may consider location, needs of the community and `deliverability`.

Assessment

There was no business activity evident on the day of the site visit. There are no advertising signs on-site and the office building (which has recently been completed) is empty. Crucially, there are no vehicles for sale. The website of Riverside Car Centre no longer operates. The property is advertised for lease on a local Estate Agent's website. Riverside Car Centre had previously relied on vehicular sales being advertised digitally and was reliant on the prominent roadside location for attracting passing trade.

My concern is how to reconcile any proposed future car sales activities in this application with Policy ED1. I have considered the submitted Planning Statement but I find no case for relaxing the terms of Policy ED1 in this instance.

Precedence

There are several examples of car forecourts spilling out over verges on entrances to other towns in the Borders. On the face of it, this proposal may be considered a logical location for a car sales forecourt. However the absence of Riverside Car Centre is in itself testament to the fact that this has not been a successful site to operate this sui generis use.

It very much seems that there is not an identified end user for this particular site. I am concerned that Riverside Car Centre does not appear to be trading and certainly is not from this site. There has been no evidence presented to demonstrate that this proposed site layout (specifically the size, scale and nature of proposal) is suited to the proposed unrestricted use.

This appears to be a speculative request for land use change where there is no end user identified or demand. No pecuniary evidence has been presented from the past three years of permitted use. There has been no business case presented which would indicate future size and scale of proposed operations. No evidence has been presented of marketing of the site for Class 4, 5 and 6 use and/ or failure to find a tenant. There has been no demonstration that the site is no longer viable or that there is no reasonable prospect of it becoming marketable in future. There has been no neighbouring planning exceptions in the surroundings which would demonstrate that there has been a predominant land use change in this location.

Failure to provide any of the above makes it very difficult to justify any requested departure from Policy ED1. It is not sufficient to note anecdotal evidence from a neighbouring sales agent that demand for business and industrial users is weak. I know the neighbouring industrial site remains vacant.

The permission granted in 2017 was an exception against Policy ED1. Riverside Car Centre was treated as an exception as it; intended to create jobs; intended to ensure occupancy of a dormant building; and intended to improve the viability and vitality of the area without significant amenity issues (to the town). These were material considerations of the previous application and gave weight to a decision of support. The decision notice was specifically restricted to Riverside Car Centre and was restricted to a three year duration on this basis.

I accept that Riverside Car Centre operated without recourse to neighbouring uses or residential amenity issues over the past three years. However, character and amenity must be duly considered.

Landscaping proposals (which the Council had spent a considerable length of time securing in the previous approval) have not been implemented. The boundaries of this site do not make the high quality contribution that was sought and the Landscape Architect has confirmed objection to these proposals. The Landscape Architect notes the "hard" appearance now erodes the visual amenity of this approach to Jedburgh.

Block Plan Rev H is a carbon copy of these previous landscape proposals. The Landscape Architect has highlighted that hedge proposed will be insufficient in length to provide continuity to the built frontage to mitigate the proposal and safeguard amenity.

I therefore have significant concern regarding successfully managing the character and amenity of this site in future.

This is a sensitive location on the gateway to Jedburgh. It is visually prominent and my concerns revolve around the future effective assimilation of a proposal. There is no meaningful way to determine the impacts of size, scale and nature of any operation at this location from the plans submitted. The plans are sparse in detail and lack clarity on how the site would function as a forecourt rather than a parking court.

There is potential for serious adverse impact to character of the gateway in the event of any approval to this decision.

The appearance of the office building (utilitarian as it is) on-site has not harmed the site. It is appropriately sited and does not recourse to significant adverse effects to the area. It appears contiguous in finish to the host building and is innocuous, owing to the small size.

A permanent and unrestricted change to sui generis car sales would sever this wider industrial site and would be contrary to Policy ED1. There can be no meaningful distinction for the Council between a local car sales operator (Riverside Car Centre for example) or a large multi-national franchise coming forward for this site in future if an unrestricted permission were to be granted. That is not to say the latter would be any less acceptable but what I am concerned about are the potential impacts on character and amenity. My concern is that the current application fails to adequately detail how this site will function and operate as a sales forecourt rather than a parking court. As a minimum, I would be expecting detailed elevations, proposals for signage and hoardings, floor plans, a business case and supporting statement.

Colleagues in Forward Planning object and note that proposals (other than Class 4, 5 and 6) on this "District Site" may only be considered against four criteria:

Firstly, limited demand for employment land in Jedburgh is noted but the policy deliberately prioritises the long term needs of providing Class 4, 5 and 6 employment land. I can add weight to this point. On the day of my site visit I witnessed the building being used by a local joinery manufacturer. This proposal would potentially result in the permanent displacement of a local manufacturing business which policy ED1 specifically seeks to protect.

Secondly, this application has not presented any significant community benefits which would outweigh the need to retain the site in business/ employment use.

Thirdly, there are no known constraints on the site. There remains a reasonable prospect of it becoming marketable for employment in the future. The building is actually currently occupied by an appropriate use. The provision of this parking court may even make this site more attractive for future Class 4, 5 and 6 businesses use.

Fourthly and lastly, the predominant surrounding land uses remains unchanged. A major change to the neighbouring site has been the introduction of a car wash business but this operates ancillary to a Class 4, valeting business, from the adjacent building.

This proposal would set an undesirable precedent for the Council. It would displace current employment uses. It would make this area less, not more, attractive for Class 4, 5 and 6 uses. Car sales has not been demonstrated in this application to be an appropriate or successful land use change which could co-exist on this industrial estate. This proposal would recourse to significant adverse impact to the character and amenity of the gateway to Jedburgh. It has not been successfully demonstrated that the landscape proposals contained herein would mitigate these impacts.

Policy EP1, 2 and 3: Ecology

The Jed Water (River Tweed Special Area of Conservation) runs alongside the eastern boundary. There are no anticipated significant ecological impacts or harm to protected species. Policies EP1, 2 and 3 are all satisfied.

Policy IS8: Flooding

The Flood Risk Officer has been consulted and is satisfied that development is small scale. The site is within the 1 in 200 year inundation outline for the Jed Water. It is unlikely to have a significant effect on the storage capacity of the functional flood plain or affect local flooding problems therefore it does not conflict with their statutory duties therefore I find development to be aligned with policy IS8: Flooding, in that it will not adversely affect risk of flooding.

Policy IS7: Parking Provision and Standards

The layout plan successfully demonstrates road safety and is supported by Transport Scotland and Roads Planning.

The Council has monitored the impact of on-site activities in the past three years. Development has not proceeded in accordance with the approved plans. The intention has always been to retain the ability to protect the character and appearance of the town in accordance with policies ED1 and EP13.

There have been no other car sale forecourts or sales areas permitted in Jedburgh in the intervening period. Potentially, this use change could be a reason to visit Jedburgh for prospective purchasers but the case presented does not substantiate this assertion.

Policy PMD2 Quality Standards and Placemaking and Design Supplementary Planning Guidance

The development of a car sales forecourt at this location has not been suitably demonstrated. There will always be tension between roadside trading and landscape setting and it has not been successfully demonstrated that the proposed size, scale and nature of a permanent sales forecourt and office accommodation can be accommodated while preserving and enhance this sensitive landscape setting.

Policy IS5 Protection of Access Routes

Core Path (107) requires to be maintained open and free for public access and this layout would achieve this aim. A condition could ensure the footpath is maintained open.

Economic Development initially objected. The car wash to the north is utilising this site as a through route (over Council owned land without planning permission). This is a peripheral matter which will be followed up as an enforcement matter. I have now received a response of no objection, provided the permission is restricted in duration. They note the previous undertakings like hedging have not been undertaken. I have reviewed this response and find no justification for relying on a temporary consent once more.

Jedburgh Community Council have not responded.

The proposal is not acceptable and does not comply with policies of the Local Development Plan 2016. Mitigating impacts to character and amenity have not been adequately demonstrated in this application. There is potential for significant long lasting adverse impact to the character and amenity of a gateway to Jedburgh. No material considerations have been presented which justify departure from the aim of Policy ED1, which seeks to avoid dilution of the industrial estate with other uses. The proposed permanent and unrestricted use would not fit with the District Site criteria of Policy ED1 and would set an undesirable precedent.

It has not been demonstrated that this proposal will create jobs. There has been no demonstration of marketing history to demonstrate any period of dormancy or vacancy in letting the buildings for Class 4, 5 or 6 use. It has not been demonstrated that this sui generis use is a necessity to maintain viability of the site.

REASON FOR DECISION :

This proposal does not comply with Policy ED1 of the Local Development Plan. There are no material considerations which justify departure from the aim of Policy ED1, which seeks to avoid dilution of the industrial estate with other uses. The proposed permanent and unrestricted use would not fit with the District Site criteria of Policy ED1 and would set an undesirable precedent. It has not been demonstrated that this proposal will create jobs. There has been no demonstration of marketing history to demonstrate any period of dormancy or vacancy in letting the buildings for class 4, 5 or 6 use. It has not been demonstrated that this sui generis use is a necessity to maintain viability of the site. Location, needs of the community and deliverability have not been demonstrated by this proposed sui generis use.

The proposal does not comply with Policy PMD2 of the Local Development Plan in respect of boundary treatments and integration with the surroundings. It will cause significant adverse impacts to the character and visual amenity of this sensitive northern gateway to Jedburgh. These landscape mitigation proposals will

not protect this gateway from long lasting adverse impacts to character and amenity of this high amenity gateway.

Recommendation: Refused

- 1 The sui generis use would be a departure from and does not comply with Policy ED1 of the Local Development Plan. There are no material considerations which justify departure from the aim of Policy ED1, which seeks to avoid dilution of the industrial estate with other uses. The proposed permanent and unrestricted use would not fit with the District Site criteria of Policy ED1 and would set an undesirable precedent. It has not been demonstrated that this proposal will create jobs. There has been no demonstration of marketing history to demonstrate any period of dormancy or vacancy in letting the buildings for Class 4, 5 or 6 use. It has not been demonstrated that this sui generis use is a necessity to maintain viability of the site.

- 2 The proposal does not comply with Policy PMD2 of the Local Development Plan in respect of boundary treatments and integration with the surroundings. It will cause significant adverse impacts to the character and visual amenity of this sensitive northern gateway to Jedburgh. The landscape mitigation proposals will not protect this gateway from long lasting adverse impacts to character and amenity of this high amenity gateway.

Informatives

It should be noted that:

- 1 The former use of the site is potentially contaminative and may have resulted in land contamination. The land is not currently identified as contaminated land and the Council is not aware of any information which indicates the level of risk the potential contamination presents.

The historic use of the site is recorded within a Council database. This database is used to prioritise land for inspection within the Council's Contaminated Land duties. Should the applicant wish to discuss these duties their enquiry should be directed to Environmental Health.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.