

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 16/01363/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 (retrospective)

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

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
P449-SK-001 REV G	Block Plans	Approved

NUMBER OF REPRESENTATIONS: 0
SUMMARY OF REPRESENTATIONS:

Nine neighbours were notified and adverts placed in the Southern Reporter and PINS website for development contrary to Policy.

No responses were received.

Consultations:

Jedburgh Community Council: Object. Inadequate room to manoeuvre vehicles without damaging the Right Of Way and grass. Concerns about oil seepage and water from valeting contaminating ground/ Jed Water.

Outdoor Access Officer: There is a Core Path on and adjacent to the planning application site. It currently follows an existing pavement to cross the area of the proposed development site and joins the roadside path. Core Path 107 should be kept open and free of obstruction and encroachment.

Roads Planning: First response: Transport Scotland and the private owner of the road to the southern boundary should be consulted. The footway crossing must be constructed as per our standard detail DC10. Potential damaged by constant use by vehicles on pedestrian route and, if approved, there should be a suitably worded condition to ensure future maintenance of this area. There is adequate customer parking to the rear of the building.

Second response:

1. Proposed layout requires vehicles to reverse into or out of the site. Layout should be amended to allow access egress in a forward gear.
2. The existing footway will be damaged if it is not surfaced or diverted from the site.
3. A barrier and hedge to the west of the site will obscure views, which could cause concern for Transport Scotland, as Trunk Road manager.

Forward Planning/ Local development plan: First response: Object. Outright retail activities will not be allowed on District sites to protect from loss of business and industrial sites. Alternative uses must be avoided to prevent undesirable precedents. Retrospective applications should not be a reason of decision or a material planning consideration.

The site is allocated within the adopted Local Development Plan as a business and industrial safeguarded site (zEL33).

Criteria:

- a) the loss of business and industrial land does not prejudice the existing and predicted long term requirements for industrial and business land in the locality, and [whilst it is accepted that there has been limited demand for employment land in Jedburgh over recent years, the long term needs of the settlement must be considered.]
- b) the alternative land use is considered to offer significant benefits to the surrounding area and community that outweigh the need to retain the site in business and industrial use, and [it is not considered that the proposed development would result in any significant community benefit which would outweigh the need to retain the site in employment use.]
- c) there is a constraint on the site whereby there is no reasonable prospect of its becoming marketable for business and industrial development in the future, or the predominant surrounding land uses remain as business and employment and in view of the overall policy, it is important to retain this. [there are no known constraints on the site which would mean that there is reasonable prospect of it becoming marketable for employment in the future. No evidence has been provided to the contrary in the supporting documentation.]
- d) the predominant land uses have changed owing to previous exceptions to policy such that a more mixed use land use pattern is now considered acceptable by the Council. [the predominant surrounding land uses remain as business and employment and in view of the overall policy, it is important to retain this.]

Second response:

If the proposed hedge is considered acceptable to the Council's Landscape Architect in terms of screening the site, and provided this permission is only granted on a temporary basis, in order to monitor on-site activities and matters such as demand for other uses on industrial sites, it is considered that this proposal can be supported.

Flood Risk Officer: No objection. Within the 1 in 200 year inundation outline for the Jed Water. This is a small scale development that is unlikely to have a significant effect on the storage capacity of the functional flood plain or affect local flooding problems.

Economic Development: No comment.

Transport Scotland:

First response: Conditions required on any permission granted: A suitable barrier is to be erected along the site. Reason To prevent vehicles taking direct access to/from the trunk road.

Second Response: Does not propose to advise against the granting of permission

Landscape Architect

First response: This development would lead to a loss of amenity at a very conspicuous location at the entrance to the town and is not supported. Recommend refuse. If minded to approve, it be recommend that a beech hedge be established along the full length of the roadside boundary and maintained at a height of at least 1 metre. (This may be in conjunction with a fence.)

Second response: Do not support the application but do accept that it provides a more suitable finish if, for 'non landscape' reasons, the application is considered acceptable.

Estates Department: No objections to this proposal.

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 23rd March 2017

Full planning permission is sought for retrospective change of use of land to form a motor vehicle display and form sales office in a portion of an industrial unit, in Jedburgh. The application is retrospective further to planning enforcement action being taken (16/00091/UNUSE). The business has commenced operation without applying for change the use of the land. The applicant advertises digitally and is reliant on the prominent location for attracting passing trade.

Site and location

The site is visibly prominent on the northern approach into Jedburgh on the A68. This site is to the east of the roadside, fronting Riverside Industrial Units, while directly on the opposite side of the road is Jedburgh Woollen Mill, an incongruous appearing red brick building. Its grounds are laid to bitmac parking bays and grassland which gives clear views across the site.

This site appears as mown amenity grassland featuring a line (an avenue next to the A68) of specimen trees (sycamore). An aggregate footpath is sited back from the roadside and leads directly north, from a drop kerb, through the centre of this site, and on to Newmill or Jedforest Rugby Ground. This footpath is not wide enough to accommodate vehicular traffic owing to encroachment of grass however the applicant has used it as access to display cars at a perpendicular angle to the roadside. This display area fronts an industrial building to the east. Two buildings, one of brick and the other constructed in profile steel sheet, align with the Edinburgh Road, and form a backdrop to this amenity land. Attempts have been made to break views of these buildings with native hedge planting however this has not established to any significant degree.

Planning history

The planning history do not directly relate to the current application:

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)

Policy

Policy ED1 provides for protection 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. Development;

- i. Must respect the character and amenity of the surrounding area, and be landscaped accordingly.
- ii. Be compatible with neighbouring business and industrial uses.

In the preamble to this policy 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".

This land is identified as business and industrial safeguarded site (zEL33) however this "allocation" has taken no account of the actual present land use. This site serves as a landscape buffer to the industrial units however this landscape use has not been documented in the Local Development Plan.

The material consideration in this decision is whether this sui generis use can be accommodated without recourse to the character and appearance of the town.

Ownership

The applicant is the owner of this site, having purchased it from the Council in 2003. However the site remains unfenced and un-identifiable as being a separate land parcel. The Council's landscape operatives have continued to mow the whole site indiscriminate of ownership.

The site had been sold to accommodate staff and visitor parking (16 spaces) for Border Print and Packaging Ltd, which had previously occupied the industrial units. Draft plans demonstrate nose to tail parking for 16 bays fronting the A68 which were to be enclosed by a beech hedge/ post and wire fence. Planning permission was never sought and no development took place.

Precedence and supporting statement

There are several examples of car forecourts and sales areas spilling out over verges on entrances to other towns and cities. The applicant has been keen to demonstrate that this site should be no different. They consider the use to fit well with neighbouring uses; that there would be no residential amenity issues; that it would create two jobs; that the building has sat dormant and this will improve its viability and vitality; that there would be no significant amenity issues (to the town).

Proposal

There have been several revisions to the proposals since submission:

31 Oct 2016 - Rev B - A forecourt constructed in mixed gravel and drop kerb.

21 Dec 2016 - Rev C - Screen planting and hedging either end of the display forecourt.

01 Mar 2017 - Rev E - Knee rail fence within site boundary.

10 Mar 2017 - Rev F - Knee rail and hedge enclosing the elevation with A68.

30 Mar 2017 - Rev G - Introduction of surfacing and edging to the existing track.

A meeting was held with the Agent in January 2017 to discuss the proposals. The Council considered the proposal to appear as over-development. Concerns were raised by the Council that operations are presently having demonstrable harm on character and amenity of the entrance to the town. The grass surface is being damaged by vehicular movements and vehicles were being advertised on Council land rather than the applicant's. The advertisement and movement of cars onto the verge was also a concern for road safety, as highlighted in Transport Scotland's response.

I requested the following changes to proposals:

- i. A 1m high beech hedge to be formed on road ward side.
- ii. The boundary should be reinforced with a timber 3 bar fence or similar (essential for Transport Scotland requirements, which should enclose the site but not close or obstruct free pedestrian movement along the informal footpath).
- iii. Surfacing within and throughout this resulting enclosure.
- iv. Diagrams of swept path analysis to demonstrate how the cars (for sale) would achieve the parked locations.

The Council acknowledged that these requirements could obscure the display and advertisement of cars to passing trade.

Assessment

Policy ED1

In strict policy terms, the proposal is contrary to development plan policy. There was initial objection from colleagues in Forward Planning at loss of employment land:

1. Limited demand for employment land in Jedburgh is acknowledged but the long term needs of the settlement must be considered a priority.
2. No significant community benefits are identified which outweigh the need to retain the site in employment use.
3. There are no known constraints on the site which would mean that there is reasonable prospect of it becoming marketable for employment in the future. No evidence has been provided to the contrary in the supporting documentation.
4. The predominant surrounding land uses remain as business and employment which is important to retain.

At this meeting with the agent in January, Forward Planning acknowledged that this sui generis proposal would not displace current employment use and preamble to Policy ED1, LDP 2016, positively encourages these uses where they are considered to co-exist on an industrial estate.

Forward Planning have now issued a revised response offering conditional support provided the Council's Landscape Architect removes their objection and provided this permission is only granted on a temporary basis. A temporary permission would offer protection (to the aims of ED1 by allowing monitoring of on-site activities and monitoring demand for other uses on industrial sites.

I acknowledge that a neighbouring temporary permission (3yr) was granted, 13/01048/FUL, by Planning Committee, for retailing in the neighbouring warehouse. This is not precedent for this case, which is assessed on its own merits. This neighbouring permission has now expired and is not a comparable use change. Previous supermarket applications have also been refused as they raised serious concerns regarding loss of employment land and impact upon the town centre, for which neither could be mitigated. Again, it is contended that this proposal is different and would not raise such concerns.

Owing to the size, scale, nature and location of this proposal I am now satisfied that a departure from Policy ED1 is acceptable in this instance. In balancing this decision, I have taken account of the following material considerations:

1. The nature of use would have a neutral impact on the vitality and viability of the town centre. I am not aware of any other car sale forecourts or sales areas in Jedburgh. Potentially, this use could be a reason to visit Jedburgh for prospective purchasers.
2. Recent slow take up of employment land is acknowledged by the Council. The building has sat dormant for "a long period" and partial use could enhance viability. The building may otherwise continue to deteriorate, becoming a less attractive proposition for future investors.
3. Over half of the established employment land supply in Jedburgh is available immediately (SBC survey). This does not account for vacant buildings within employment sites (such as this). I consider this to be a very marginal loss in a climate of plentiful supply of employment land.
4. Although partial loss of a building is proposed, no material changes are being made to the external appearance or internal layout. I am confident that this building could be reverted to Class 4, 5 or 6 employment uses without significant change.
5. A temporary permission will allow for the Council to monitor the impact of onsite activities and allow for monitoring changes of demand for other uses on industrial sites. In the event that there are changes in economic climate in the forthcoming 3 years, or in the event that development has not proceeded in accordance with the Approved plans, the Council retains ability to protect the character and appearance of the town in accordance with policies ED1 and EP13.

PMD2 Quality Standards, Placemaking and Design SPG

I agree with the Forward Planning response that the retrospective nature of this application should be no basis for decision nor should it be a material planning consideration.

I am however satisfied that proposed material changes to develop a forecourt at this location can be undertaken in a sympathetic manner to contribute to character of the entrance gateway. The most recent Plan (Ref G) complies with policy PMD2: Placemaking and Design principles. On balance, and in

acknowledgement of the surrounding buildings, I find the sufficiency and adequacy of landscaping to be appropriate. Implementation of the entire scheme (knee rail/ beech hedging/ surfacing/ edging/ cherry specimen trees) will need to be ensured by condition (in a timely manner) given the applicant is already operating.

HD3: Protection of residential amenity

I identify no recourse to residential amenity. The site would be disparate from any residential receptors.

EP13: Trees, woodlands and hedgerows

The Landscape Architect, having first objected to the initial proposal, notes that the boundaries now provide a more suitable finish. For "non-landscape reasons", the application is considered acceptable.

I am minded to agree that, on balance, what has been achieved throughout the course of application is a proposal which largely acknowledges the sensitivity of the site (as a gateway to the town), opposite the Jedburgh Woollen Mill. Retrospective permission, in its initial guise, was unsupportable. These proposals will now be appropriately landscaped to assist with assimilating development in to the surrounding area.

This landscape scheme will formalise the current layout and protect surrounding character and amenity by introducing beech hedging which is used in the surrounding environments. There will always be tensions between roadside trading and landscape setting. Desire of commercial premises to maximise advertisement of their goods or services to passing trade must be balanced against the need to preserve and enhance landscape setting.

IS5 Protection of Access Routes

The Outdoor Access Officer has confirmed that the footpath through this development is a Core Path (107) which requires to be maintained open and free from obstruction. The Agent has confirmed that maintaining the route open is part of the development proposal and I find the two to be mutually beneficial, in that the footpath presence will encourage footfall to the site and see improvement of the surface for pedestrians. A condition will be placed to ensure the footpath is maintained open (policy IS5).

IS7: Parking provision and standards

Plan, Revision G, displays a knee rail, enclosing the site from the A68, which has addressed Transport Scotlands concerns "To prevent vehicles taking direct access to/from the trunk road." No planning conditions are required on the basis of implementing Rev G. The Roads Planning Officer;

1. Requires a footway crossing to be constructed as per standard detail DC10.
2. Requires amendments to allow access or egress in a forward gear.
3. Requires re-surfacing of the existing track to an appropriate width to accommodate continued vehicular use.
4. Identifies visitor parking as being adequate.

I have now liaised with the Agent and Roads Planning Officer to discuss proportionally of these requirements. 1 and 4 remain necessary to ensure quality standards however point 2 is not a material consideration. The Agent contends that use of the vehicular access will be minimal and the swept path analysis (reversing into site) has been accepted by Transport Scotland. The Roads Planning Officer now accepts to forego requirement of point 2. I agree however that surfacing of the existing track is a reasonable, necessary and a relevant requirement.

Surfacing of the existing track is proposed for 150mm depth of type 1 stone, 2.5m in width, edged either side with 33mm timber edging board. Plan (Rev G) has now addressed all material planning considerations, in accordance with policy IS7, in that it will secure road safety and sufficiency by design.

IS8: Flooding

The Flood Protection Officer has confirmed no objection to development although the site is within the 1 in 200 year inundation outline for the Jed Water. This is a small scale development that is unlikely to have a significant effect on the storage capacity of the functional flood plain or affect local flooding problems.

Council Estates Department makes no objection. The Council Neighbourhoods Manager sought reassurance over responsibility for maintaining the proposed plan. Scottish Borders Council has habitually maintained this private ground and I find this matter to be an operational issue and not a planning concern.

The applicant must implement this planning permission to continue operating from this site and a planning condition will require implementation of landscape works within the first season of operation.

Economic Development offers "No comment". Jedburgh Community Council have placed an objection and issue concerns over inadequate room to manoeuvre vehicles without damaging the Right Of Way and grass. I am satisfied that Rev G now addresses all these concerns. Concerns are also raised about oil seepage and water from valeting which may contaminate ground or the Jed Water. This proposal is not for commercial valeting/ car washing and I do not therefore identify oil seepage as a planning issue. I am satisfied that these issues will not arise. In any case, monitoring of the Jed Water by the statutory agency (SEPA) will ensure environmental protection.

In the absence of any third party objections I am minded to offer support to the amended proposals, which should ensure that the impacts to character and amenity of the surrounding area are no more than minor significance (opposite both the Jedburgh and Edinburgh Woollen Mill outlets).

REASON FOR DECISION :

The sui generis use is considered to be acceptable. 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. Subject to planning conditions, the proposal is acceptable and complies with policies of the Local Development Plan 2016.

Recommendation: Approved subject to conditions

- 1 Within 56 days of the date of this Decision Notice, the details of Block Plan (Rev G) shall be implemented in its entirety, as approved by the Planning Authority, except those Landscaping Works, which are to be implemented by condition 5 of this permission. Development shall be implemented in complete accordance with this Approved Plan unless prior written approval for an alternative timescale has been sought and confirmed in writing by the Planning Authority.
Reason: The present form of development is having an unacceptable impact on the character of the Jedburgh and is having an unacceptable impact on road safety with the A68 Trunk Road.
- 2 This permission shall exist for the benefit of Riverside Car Centre and for no other business.
Reason: This permission is granted exceptionally and only in view of the circumstances and nature of the business.
- 3 Consent is granted for a limited period of three years from the date of this consent and the approved use shall cease before the expiry of the period unless a planning application to retain the permitted use has been submitted to and approved by the Planning Authority. In the event that no such planning application has been so approved, the use of the premises shall revert to its current lawful use under Classes 4-6 of the Use Class (Scotland) Order 1997.
Reason: To ensure that the proposed use of this building does not compromise the long term availability of available employment land in Jedburgh.
- 4 The public path through the site, identified as Core Path 107, must be maintained open and free from obstruction in the course of development and in perpetuity. No stiles, gates, steps or barriers to access may be erected that would deter the potential future use.
Reason: To protect public access rights to this Core Path both during and after development.
- 5 The landscaping plan, Block Plan Rev G, as approved, shall be implemented within the first planting season from the date of this planning permission. These landscaping works will be maintained for a period of three years upon planting, during which time, all failed planting shall be replaced. The

applicant shall notify the Planning Authority that the approved planting (as per the approved Landscape Plan) is available for inspection after this three year period, at which point, the approved landscaping scheme shall have been implemented and landscaping established in its entirety.
Reason: To ensure effective assimilation of the development to its surroundings.

- 6 Details of 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 to be submitted to and approved in writing by the Planning Authority prior to any signage being displayed. Thereafter the works are to be carried out strictly in accordance with the approved details.
Reason: In accordance with the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1994.

Informatives

It should be noted that:

- 1 The Council's Flood Protection Officer advises:
 - i. As access and egress to the development may be affected by flood waters, the applicant should receive flood warnings from SEPA: sign up to FLOODLINE at www.sepa.org.uk or by telephone on 0845 988 1188.
 - ii. The applicant should develop an evacuation plan for the building during times of flood warning.
 - iii. The applicant should adopt water resilient materials and construction methods as appropriate in the development and the applicant should review the Online Planning Advice on Flood Risk.

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