

APPENDIX III

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: 20/00015/RREF

Planning Application Reference: 19/01579/FUL

Development Proposal: Change of use from residential flat to business use

Location: 62 Shawburn Road, Selkirk

Applicant: Miss Penny Burgess

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 the change of use from residential flat to business use. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
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Location Plan	
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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 13 July 2020.

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 background and personal information including business and family histories and a tax related document. Members agreed that the

information was new but considered that it met the Section 43B test, was material to the determination of the Review and could be considered. The Review Body also noted that the applicant had requested further procedure in the form of written submissions, a hearing and a site visit. The Review Body did not consider further procedure necessary in this instance and 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: PMD5, ED2, HD3 and IS7

The Review Body noted that the proposal was to change the use of a residential flat to business use and that, as the use was being carried out, the application was retrospective. Members were clear that the use was located within a wholly residential area and that Policy ED2 would normally seek such business uses to be in more appropriate industrial or mixed use surroundings. However, they noted the full background to the use of the premises as explained by the applicant and also the various commitments and mitigation offered to minimise disturbance to her neighbours.

In the current fragile economic climate, the Review Body were sympathetic to the applicant's situation and immediate business needs for continued use of the premises, at least in the short term. They felt that in such difficult economic times, a more flexible approach may be necessary on occasion to support cases that may not previously have been supported. Taking into account the criteria in Policy ED2 used to assess business use within non-industrial areas, Members appreciated that although a modest one-person business, there was an economic benefit to allowing the business to continue as this could make a difference to viability. It was also apparent that the business was of a limited scale and nature that was not causing issues at present to the residential neighbours. Provided the use could be limited to a temporary period, then the Review Body felt that this would allow the applicant to continue to operate and grow her business whilst aiming to be taking on more appropriate premises in time. Members noted that the applicant herself had suggested a temporary consent and that this was also recommended by the Council's Economic Development Officer.

The Review Body then considered whether other controls were necessary to limit impacts on the residential neighbours and also what impacts other uses within the same Use Class could have. They acknowledged the concerns of the Appointed Officer over detrimental impacts caused by growth of the business or operation of other uses within the same Use Class. However, Members concluded that, provided conditions limited the use to that applied for and only for a limited period of five years, then there was no justification for consideration of other controls such as delivery and customer limitation.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies ED2 and HD3 of the Local Development Plan, subject to consent for a temporary period and limits on the nature of the consented use and operating hours. The development was considered to be appropriate in a residential area for a temporary period and had been justified by supporting material. Consequently, the application was approved for a temporary period of five years.

CONDITIONS

1. Notwithstanding the terms of Class 4 of The Town and Country Planning (Use Classes) (Scotland) Order 1997, this consent is only for the use of the premises for online sales of vintage textiles, haberdashery and needlework supplies and not for any other use within Use Class 4 or any other Use Class.
Reason: To protect surrounding residential amenity.
2. Consent is granted for a limited period of five years from the date of this consent and the approved use of the premises 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 as a residential flat.
Reason: To protect surrounding residential amenity.
3. The approved use of the premises to be operated only between the hours of 9am and 5pm Monday to Friday.
Reason: To protect surrounding residential amenity.

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 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.

Signed...Councillor T. Miers
Chairman of the Local Review Body

Date.....17 July 2020

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