

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**7 SEPTEMBER 2015**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 15/00687/FUL
<b>OFFICER:</b>	Carlos Clarke
<b>WARD:</b>	Lauderdale and Melrose
<b>PROPOSAL:</b>	Change of use from theatre and alterations to form artist's studio and gallery
<b>SITE:</b>	7 The Wynd Theatre, Buccleuch Street, Melrose
<b>APPLICANT:</b>	Mr K Rodgie
<b>AGENT:</b>	RM Architecture Ltd

**SITE DESCRIPTION**

This application relates to a building located within the centre of Melrose, within its Conservation Area, and comprises a two-storey brick-built building with a ground floor entrance fronting The Wynd, a popular lane that links Buccleuch Street to the High Street. It has residential property on the upper floor (not part of this application). The ground floor was last used as a theatre, and has an auditorium with seating for 77 people.

**PROPOSED DEVELOPMENT**

This application seeks consent to convert the ground floor of the building, last occupied by the theatre, to an art gallery and artist's studio, with ancillary accommodation (toilets, office, storage, framing room). Externally, the frontage onto the Wynd would be altered by way of a new glazed door entrance and two large windows, set within an oak frame, with a new arrangement of rooflights set in the lean-to roof above.

**PLANNING HISTORY**

The building had been used as a warehouse in the early 1990s when two applications to convert the property – one to form an indoor market within the ground floor and flats above, the other to convert the building to six flats – were refused in 1991 and 1992. Both were refused on grounds of overdevelopment. In 1995, planning consents were granted to convert the ground floor to a gallery (which included 'performance space') and upper floor to flats. The theatre opened shortly afterwards though was not, itself, subject to separate planning approval.

**REPRESENTATION SUMMARY**

A total of 12 representations have been received. The following is a basic summary of the key concerns raised. All original comments can be viewed on *Public Access*:

- Can't see an art gallery involving people or bringing them together in a local community. Local theatre can frequently give people the chance to mix and

enjoy good company. Since its loss, there has been an unbridgeable gap in the social, community and creative well-being of Melrose

- The theatre is a factor in people's decision to relocate to Melrose. The loss of the theatre would seriously undermine the community's ability to maintain and develop a vibrant and sustainable theatre arts sector. The loss of this unique asset would be a serious loss of amenity to the community
- The application is contrary to Policy Inf12 of the Local Plan as the change of use does not have proven locational need or viability. There are similar gallery and studio facilities in Selkirk, Melrose and surrounding areas that are underused. Previous outlets have proven unsustainable suggesting a gallery is unviable and there is already sufficient provision in Melrose now. There is only one dedicated theatre space however and a gallery can be opened elsewhere without loss of a theatre. It would not provide significant amenity benefits or be in the public/community interest.
- Principle 1 of the Local Plan seeks protection of built and cultural resources and support to community services and facilities
- Melrose and District Community Arts Trust is a new community body being established that have lodged a formal note of interest with the agent and owners, has no less than 20 members, and whose intention is to develop the theatre as a community creative arts hub. They are registering community interest as a community asset under the Land Reform (Scotland) Act and Community Empowerment Bill. No approval should be given until the community is given the chance to make the theatre the same as it once was
- Other venues are insufficient. St Mary's School is not available for public use and the Corn Exchange is often fully booked up. These aren't suitable substitutes for the "Black Box Theatre" setting the Wynd perfectly provides for the range of small scale productions it has become famously known for
- The Wynd was very successful and supported and though there was less activity recently this was in part due to ownership issues, but the support and demand has not diminished
- With thought and community involvement the theatre could be a real and irreplaceable asset to the people of Melrose again. The theatre could include a gallery. It would create local jobs and support the performing arts industry, and could again become a permanent hub for regular performances

## **APPLICANT'S SUPPORTING INFORMATION**

The original application was accompanied by a supporting Planning Statement, the key points of which are:

- The theatre has operated since 1996 with a change of ownership in 2005. It has been on the open market since June 2014 without sufficient interest or investment, or offers to continue its use as a theatre. A possible reason is that there is sufficient provision in Melrose for performing arts including the Corn Exchange and St Mary's School. The theatre previously supported the Borders Book Festival but that is now firmly established at Harmony Hall.

- The proposal would provide an artists' studio and public exhibition space so it would continue the use of a building as a visitor attraction.
- More lighting would be provided by way of the external alterations to the entrance, which will not adversely affect neighbours and serve to enhance the character of the building and visitor experience in Melrose
- The use would complement the existing mix of domestic and commercial property in The Wynd
- There would be a significant reduction in noise levels created by live entertainment
- The applicant has reached agreement with the owners to purchase the building and consider this has created an opportunity to bring the building back into use as a visitor attraction and venue for the visual arts and should be supported

## **DEVELOPMENT PLAN POLICIES:**

### **Consolidated Scottish Borders Local Plan 2011**

Principle 1 Sustainability

G1 Quality Standards for New Development

BE2 Archaeological Sites and Ancient Monuments

BE4 Conservation Areas

ED5 Town Centres

EP1 National Scenic Areas

H2 Protection of Residential Amenity

Inf4 Parking Provisions and Standards

Inf5 Waste water Treatment Standards

Inf12 Public Infrastructure and Local Service Provision

## **OTHER PLANNING CONSIDERATIONS:**

The Local Development Plan 2013 cannot yet be afforded any material weight, though it is worth noting that the objectives of Policy Inf12 would continue to be reflected in proposed Policy IS1. Principle 1 is also reflected in proposed Policy PMD1

## **CONSULTATION RESPONSES:**

### Scottish Borders Council Consultees

**Archaeology Officer:** There are no archaeological implications

**Roads Planning Service:** No roads objections

### Statutory Consultees

**Melrose Community Council:** No comments

**The Theatres Trust:** Object to the application. Though the Trust recognises the importance of investment and regeneration in town centres, where a new use is proposed for a former community or cultural facility, the Trust always advises the

local authority that it must be satisfied the building is surplus to the cultural requirements of the local community before granting the new use. This is because community or cultural buildings often occupy sites within town centres or local neighbourhoods where another use would be more lucrative and once lost within the catchment, they are virtually impossible to replace. The Trust is aware there is a need for a small scale venue in the area and that there is local community interest in reopening the theatre to fulfil this need.

While the applicant notes there is adequate provision at other venues in the town, local theatre groups have indicated to the Trust that the St Mary's venue is a school facility and rarely available for general public use, and that the Corn Exchange is too large and expensive to hire for amateur theatre groups, and therefore does not fully meet the need for a small scale theatre space. Retaining the Wynd as a theatre space will support, maintain and develop the performing arts in the area and the social and cultural well-being of the local community.

The Local Plan 2011 includes Principle 1 which seeks protection of built and cultural resources and support for community services and facilities. Policy Inf12 encourages retention and improvements to public infrastructure and local services. The LDP strengthens and continues these requirements in Policies PMD1 and IS1. Though not yet adopted, it is clear it is the Council's intention to provide stronger policies to support and safeguard valuable community and cultural facilities such as the Wynd Theatre.

Whilst there is demonstrable local need for a cultural facility that the Wynd Theatre has, and again could provide, the Trust is unable to support the application and recommends it be refused.

#### **KEY PLANNING ISSUES:**

Whether the proposed use would comply with the Consolidated Local Plan 2011, most notably with respect to Policy Inf12 which seeks to retain existing public services, and Policy ED5 which seeks to maintain the vibrancy and viability of the town centre; whether the proposed alterations would preserve or enhance the character and appearance of the Conservation Area; and whether the proposed use or alterations would safeguard the amenity of neighbouring properties

#### **ASSESSMENT OF APPLICATION:**

##### **Principle**

Principle 1 of the Consolidated Local Plan 2011 seeks to protect cultural resources and support local services. This proposal would not result in the loss of the theatre directly, since it has been closed for over a year. Though the conversion to the proposed art gallery would extinguish the lawful use of the property as a theatre (which it has achieved over time, despite not being subject to planning permission in its own right), this can be overcome by condition which allows the theatre use to be subsequently reinstated.

A gallery use is a cultural resource too, thus one would be replaced with another if this proposal were to proceed. Principle 1 also supports new jobs and support to the local economy. Here, the theatre use currently does not support any jobs and does not contribute to the local economy. The proposed use potentially will do both. While efforts are in place by a local action group to reinstate the theatre use and that,

undoubtedly, would be beneficial to the local economy, there is no firm evidence that their intentions are founded on a firm financial basis and timescale, at least not at the time of writing this report. The proposal would not conflict with Principle 1.

Policy ED5 supports uses that contribute positively to the town centre. An art gallery, along with associated studio, is an appropriate town centre use and would, in this location, contribute positively to the town centre by occupying a vacant building within its centre, located along a popular lane between shopping streets.

### **Loss of existing theatre use**

Policy Inf12 seeks to protect local services. A theatre is not specifically included in Policy Inf12, however, it constitutes a service which ought to be accounted for and this application should be assessed against this policy.

Policy Inf12 requires that an alternative use justify locational need. In this regard, while an art gallery would be an appropriate town centre use, there is no particular need to locate in this property that would override loss of a valuable local service and, as regards this specific criterion, the proposal would not comply with Policy Inf12

However, the proposal must be considered against Policy 12 as a whole. A second criterion is that the viability of the existing service should be considered. This does not require that the viability of the proposed use be considered, but the viability of the use being lost i.e. the theatre. In this case, the theatre does not exist and has not operated for over a year.

The last production of the theatre was in April 2014. The current owner has advised, through the applicant's agent, that the theatre had been in rental arrears in the last few years prior to closure, a situation exacerbated by a fall in productions and attendance which led to an increase in arrears by the time it closed.

Information from the selling agents suggests, within the year it has been on the market, only three offers have been made, none of which have been deemed to be viable by the sellers. One involved a proposal to use the property for art classes and sale of art and similar supplies, and the other to run an events avenue and publishing business, with occasional productions using temporary seating, and including functions and catering services. They advise that, though a local action group have declared their interest in purchasing the property to operate it as a theatre, they have not stated a purchase price or given a firm timescale for purchase.

The action group themselves have confirmed they have been interested in the property for some time, though there have apparently been delays in meeting the sellers. They have been asked by this department to confirm whether if/when they would have the funds available to purchase the property and, at the time of writing, have not been able to confirm their intentions. While it would be ideal to provide a local group with time to be able to purchase the property, there is clearly no definitive timescale for doing so. In the meantime, the property has been on the open market for over a year, and the current proposal represents the first serious offer made to purchase the premises. It has also been accepted by the sellers. This suggests that, at present, the most viable future use for this property is the proposed art gallery.

The policy also requires consideration of whether amenity benefits associated with the new use would be significant. The art gallery would potentially provide amenity benefits to the local area because activity associated with it should be less intense,

and noise will be less, than would be associated with a theatre. However, the value of this amenity benefit would be a relatively minor consideration, given this is a central town centre location where reasonable noise and activity associated with a theatre use is to be expected.

Policy Inf12 also requires consideration of wider public and community interest. Here, it is evident there is interest in the theatre being reopened. However, the number of objections is relatively low, and the Community Council have voiced no concerns or objections.

Ultimately, the loss of the theatre use would clearly be regrettable, and it may reasonably be contended that it would galvanise the local community more firmly than an art gallery would. However, even were permission refused, there is no guarantee that a viable theatre operation could be re-established and so the building would continue to remain empty, which could not be argued as being in the interests of the vitality of the town centre or good land use planning more generally.

Any decision should also be considered in the context that this proposal would also provide a new cultural attraction that would be of local value, providing such a facility within a building that has been vacant for over a year in a prominent location on a busy lane between shopping streets. This proposal would not result in loss of a historic theatre, but involve use of a building occupied by a theatre for twenty years, which is a relatively short span in the history of the building. It is not the only venue capable of accommodating performing arts within the town, albeit it does appear to have met a particular demand which other venues may not cater for so well. However, for the foreseeable future, an art gallery use would clearly be of more benefit than a vacant property. On balance, it is considered that this proposal does not conflict with Policy Inf12.

That said, reinstatement of the theatre would be welcome, if the proposed use were not to succeed. As the Theatre's Trust advises, once a theatre use is lost, it can often be difficult to reinstate it. In this case, it is considered that this can be overcome by imposing a condition which prevents another use of the property (including any other uses within the same use class) should the approved gallery use cease, and require that it be returned to the lawful theatre use (unless the alternative is subject to a planning application). This will ensure that any subsequent proposal to reinstate the theatre is not hindered by the planning process, and to ensure that any other alternative use will also contribute positively to the local town centre, local amenity and maintain road/pedestrian safety.

### **Parking, access and services**

There are no concerns with use of the building as an art gallery as regarding parking and access. The building also has existing water and drainage services.

### **Archaeology**

There are no implications in this regard.

### **Neighbouring Amenity**

The proposed use should result in fewer implications for neighbouring amenity in terms of noise and general activity, than the lawful theatre use. The proposed alterations should not lead to loss of neighbouring amenity either. The openings in the wall and roof will not allow for additional overlooking of neighbouring properties to

the detriment of their privacy. Residents above may have a clearer view of the art gallery use itself, though this would not have amenity implications for their properties.

### **Impacts on the character and appearance of the Conservation Area**

The proposed alterations would comprise a contemporary change to the frontage of the building. They would not, however, be out of character with the building itself, and they would serve to lighten the elevation treatment of the building at a key point in the narrow lane. The use of timber is endorsed as a sympathetic way to face the elevation, though the details of this will need to be considered by condition. Also, while the large windows and glass door are appropriate, it would be preferred if frames were either set behind the timber surround, or timber themselves. The applicant's agent has agreed this, though an amended proposal has not yet been submitted and would be required by condition. The rooflights will also not affect the character and appearance of this particular building, subject to further details of their profile, colour and external materials being agreed. Again, these can be sought by condition. Signage will need Advertisement Consent if it is illuminated.

### **Conclusion**

Though the loss of the existing theatre use is to be regretted, it is not an historic theatre and there is no firm evidence that its reinstatement is likely in the foreseeable future. The proposed use would comprise a cultural attraction that would contribute positively to the town centre by occupying a property that has been vacant for over a year. A decision to refuse permission would provide no guarantee that the theatre use would be reinstated and may result in the building remaining empty, so detracting from the vitality of the town centre more generally. The use would not impact negatively on neighbouring amenity, nor would alterations proposed to its exterior, and the character and appearance of the Conservation Area will be safeguarded. The development will accord with the Consolidated Local Plan 2011, subject to compliance with the proposed schedule of conditions, which include measures that provide for the reinstatement of the theatre use.

### **RECOMMENDATION BY CHIEF PLANNING OFFICER:**

I recommend the application be approved subject to the following conditions and informative note:

1. Notwithstanding the Town and Country Planning (Use Classes) (Scotland) Order 1997 (or any subsequent Order or revision), the uses of the building (i.e. the ground floor subject to this planning approval) shall be limited to those approved under this planning consent, as illustrated on the approved floor plans. The building shall not be used for any other purpose whether falling within the same Use Class or not. In the event that the approved development ceases to operate, the lawful use of the building shall revert to its previous use as a performing arts theatre  
Reason: To safeguard the future potential of the building as a theatre and ensure any other alternative uses are assessed as being appropriate to the town centre, local amenity, road and pedestrian safety
2. No development shall commence on the approved alterations to the exterior of the building until the following details have been submitted to and approved by the Planning Authority:

- I. A sample of the oak surround and a sectional drawing illustrating its relationship to the existing brick cladding
- II. Details of the framing of the windows and door, notwithstanding the details provided in the approved drawing
- III. The profile, external colour and materials of the approved rooflights

The development shall only be carried out in accordance with the approved details

Reason: To safeguard the character and appearance of the Conservation Area

**Informative**

The external advertisement illustrated on the approved elevation drawing shall require Advertisement Consent if illuminated. Any other signage proposed may also require formal consent depending on its location, size and specification

**DRAWING NUMBERS**

Location Plan (no drawing number)

Floors Plans (no drawing number)

Elevations (no drawing number)

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

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

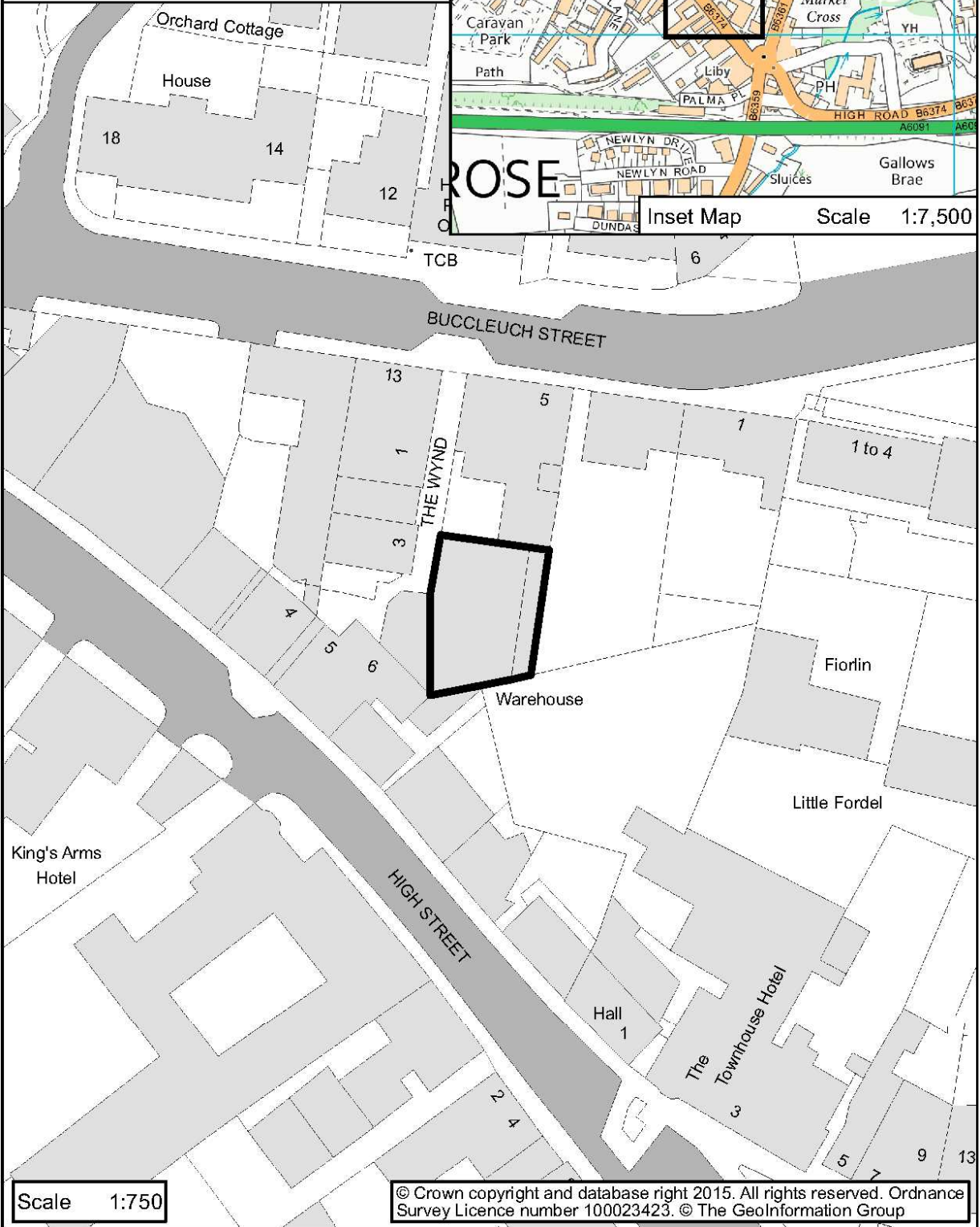
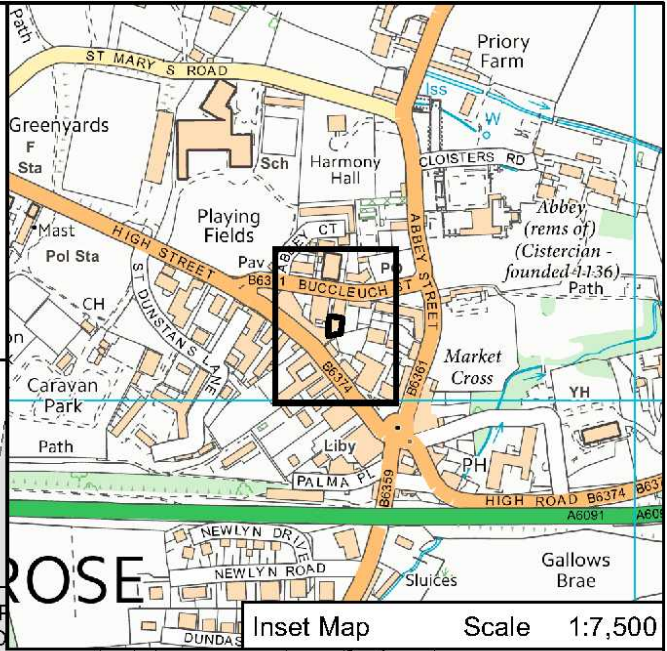
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