

MURRAY LAND & BUILDINGS
Hillside Dean Place
Newstead
Melrose
TD6 9RL

Scottish Borders Council
Planning and Regulatory Services
Council HQ
Newtown St Boswells
Melrose
TD6 0SA

Appeal Statement with Notice of Review against refusal of Planning Application 21/00244/FUL for the erection of a new agricultural machinery dealership premises at Slaters' Yard Charlesfield St Boswells TD6 0HH

Site Location

Slaters' Yard is located on the north side of the road at the junction between the C43 (Charlesfield Road) and the A68.

Grid Reference NT59148 30228

Access into the site is via an existing vehicular access off the C43.

Applicant – AB Wight Engineering Ltd

Proposal

AB Wight Engineering Ltd wish to construct new premises with associated parking and curtilage area on their site at Slater's Yard, so that they may relocate all of their business under one roof from the units they currently let at Charlesfield Industrial Estate.

AB Wight Ltd currently occupy Unit 10a, 16 & 17 in Charlesfield Industrial Estate, with a building area footprint of 5,725 sq ft. Small yard areas are available alongside each unit.

They propose to construct a new building measuring 48m x 20m at Slaters Yard, with a footprint totalling 10,330 sq ft, to provide their agricultural machinery dealership services to their existing & growing customer base.

Slater's Yard is a windfall site. It is not within either the St Boswells or Charlesfield development boundaries but does have established Class 6 Storage Use and is *not* a Greenfield Development site.

Scottish Government defines windfall sites as-

'Sites which become available for development unexpectedly during the life of the development plan and so are not identified individually in the plan.'

Whilst the site is located out-with development boundaries and inside the Countryside Around Towns (CAT) area, the sites existing and proposed use is lawful and established.

The proposed building's ridge height is to be kept to 7m, to minimise the impact on its surrounds and to aid its assimilation into the surrounding environment.

Site access is existing. The current access offers good sight lines and connectivity.



Location/Proposed site outlined in red in relation to St Boswells & Charlesfield Local Development Boundary



Picture showing scuffy hedge and self-seeding trees prior to AB Wight taking ownership. Note – When in leaf, the Eildons were not visible from A68.



Existing view of site looking north from junction with A68



Proposed screen planting and trees will be adopted around the periphery in order to provide screening and assimilation of the building into its surrounds.

Business & Economic Case

AB Wight are a local business, currently employing 10 local people. They hold the Scottish Borders dealership for McCormick Tractors, Dieci Telehandlers and Maschio Tillage Equipment.

As part of their franchisor agreement, they are required to provide suitable space for the showing, storage and service of equipment being sold, maintained and developed from a single-premises.

AB Wight currently run their business out of three let units at Charlesfield Industrial Estate, including Unit 10a, 16 & 17. The total building footprint area occupied is 5725 sq ft. A relatively small yard area goes with each unit.

The existing units are let on short term leases which preclude further/large investment being made in the layouts and infrastructure because of the lack of long-term security. Even if longer term security was available within the current buildings, there is limited opportunity to create extra space, which the business needs to accommodate their current workload and for expansion.

AB Wight are hamstrung at present by their lack of both work and storage space. The current operation set up is being made to work by AB Wight, because that is what they do. However, it is far from satisfactory and does impact on the running of their business for numerous reasons including –

- Efficiency
- Communication
- Safety
- Security

Even with the best of intentions, having your business spread about in different units creates detachment which leads to a reduction of output and efficiency.

Unit 16 & 17 are adjoining, but the workshop space available to deal with servicing and repair of tractors and machinery is limited to 3-bays. With more service technicians/engineers than bays, this is not ideal for workflow and creates efficiency and safety issues.

Service demand is greater than output and expansion is required to meet with demand. The business has enough service demand to create a further 5 full time jobs, but at present there is not enough space to cater for this.

The proposed relocation and expansion would allow for the creation of at least 5 additional full-time jobs. This allows the business to meet with demand, grow and consolidate its position, whilst safeguarding existing jobs.

The proposed relocation to one single purpose-built premises will bring about improvements in all of the above encumbrances, thereby aiding the business' viability and ability to grow.

Long term investment in new premises is therefore a main objective for AB Wight. Without which they cannot operate at the levels required by themselves, their franchisor, and their customer base, in order to be competitive and provide a first-class service from modern, bespoke designed premises.

AB Wight support the local community through sponsorship and provision of employment. They support other local businesses wherever possible and believe strongly in the local economy and the Scottish Borders area.

Given the organic growth of the current business, site ownership is seen as a necessary requirement in order for the business to invest in their asset, whilst providing security and provision of long-term employment.

Slater's Yard came available to my client and has existing Class 6 Storage Use. My clients have tried to demonstrate that other land is not available at Charlesfield Industrial Estate and their findings would support this.

Appeal Grounds

This appeal is being made on the grounds that the planning officer has not paid cognisance to the reasoning and mitigation provided nor the status quo of the site and its established uses, as a windfall site.

Planning officer recommendation for refusal of planning application 21/00244/FUL was based on three reasons, outlined below –

- 1. The proposal would be contrary to policy PMD4 of the Local Development Plan 2016 as the site is outwith the Development Boundary for St Boswells and outwith Charlesfield Industrial Estate and is an isolated countryside location rather than a logical extension to the settlement. The proposed development would prejudice the character and natural edge of St Boswells and cause significant adverse effects on the landscape setting of the settlement. In addition, there are no significant community benefits of the proposal that justify development outwith the Development Boundary.***

Murray Land & Buildings respond to each of the Planning Officer's reasons for refusal beneath-

- Slater's Yard is a windfall site which has established Class 6 Storage use on it. The Scottish Government recognise windfall development given a site's existing use. The site is not necessarily a logical extension to the settlement, it is a site on its own, with established use.
- Policy PMD4 would be of more relevance if this was a Greenfield site, however given that the site's existing and proposed use is lawfully established, the only material consideration is the proposed building.
- The assertion that the proposal prejudices the character and natural edge of St Boswells and causes it significant adverse effects on the landscape setting is subjective at best. The site is only visible from the very southern edge of the St Boswells Conservation and Development Boundary when standing on the roadside of the A699. Furthermore, the arterial A68 route which passes through the Scottish Borders has similar developments at the edges of a number of the Villages and Towns, which it passes through, including the north side of St Boswells.
- **Alternative lawful land uses on the site include the storage of storage containers, stacked three high to 8m+, without screen, on any side.**
- The natural edge of St Boswells, on its southern boundary remains as the A699. There would still be two grass fields between the southern edge of the A699 and Slater's Yard as there was prior to this application.
- The creation of at least 5 jobs and the retention of 10 jobs is a **significant** community benefit by any measure. Due cognisance has not been paid to this by the Planning Officer in arriving at her decision.

Reason 2

The proposal would be contrary to policy ED7 of the Local Development Plan 2016 as the site is an isolated site within the countryside and it has not been substantially demonstrated that the proposal requires this particular countryside location or that the development proposed cannot be satisfactory accommodated within the nearby Charlesfield business and industrial site or another allocated business and industrial site within an identified settlement boundary. In addition, the development would not respect the amenity and character of the surrounding area.

The site has established use, though it is located in the countryside.

POLICY ED7: BUSINESS, TOURISM AND LEISURE IN THE COUNTRYSIDE

BUSINESS, TOURISM AND LEISURE

Proposals for business, tourism or leisure development in the countryside will be approved and rural diversification initiatives will be encouraged provided that:

- a) the development is to be used directly for agricultural, horticultural or forestry operations, or for uses which by their nature are appropriate to the rural character of the area; or
- b) the development is to be used directly for leisure, recreation or tourism appropriate to a countryside location and, where relevant, it is in accordance with the Scottish Borders Tourism Strategy and Action Plan;
- c) the development is to be used for other business or employment generating uses, provided that the Council is satisfied that there is an economic and/or operational need for the particular countryside location, and that it cannot be reasonably be accommodated within the Development Boundary of a settlement.

The proposal accords with point C of this policy in that there is an operational need for this location because it cannot be accommodated within the Charlesfield development or extension boundaries due to the lack of land availability.

Forward Planning have stated that there is 11.5ha of land immediately available in the Charlesfield Extension zEL19, following a business land audit. Whilst a box ticking exercise has no doubt been undertaken, this is not tangible evidence as to the land's availability. Tangible evidence as to the land's availability would include-

- Marketing for sale or let
- Planning & Building Warrant applications lodged
- Dialogues with landowners suggesting land will be made available for sale or let.

None of the land noted in the audit will be developed in the Local Plan Period.

Of the land within the zEL19, the only area marketed within the plan period has been forced by the administration of Alexander Inglis & Son recently. This site and land has been bought -currently under offer- and will continue as a grain plant.

We will look at the availability of the land at Charlesfield Industrial Estate and the zoned extension in more detail, later on in this document.

My clients require to remain in the locality of Charlesfield Industrial Estate, where their customer base exists, they should not have to relocate further afield for their business would suffer. Location is key.

Reason 3

- ***The proposal would be contrary to policy EP6 of the Local Development Plan 2016 as the site is within the area designated as Countryside Around Towns and it has not been adequately demonstrated that the development requires a rural location or that the use is appropriate for a countryside setting. In addition, the proposal would result in piecemeal and sporadic development in the countryside that would be visually intrusive and would erode the sensitive setting of St Boswells, resulting in adverse impacts on the undeveloped rural character and visual amenity of the area.***

The Slater's Yard site use pre-dates the Countryside Around Towns Policy EP6 and potentially its predecessor policy. Whilst the policy is in place to protect the Greenbelt areas around towns and villages in the Scottish Borders as well as to avoid coalescence, it fails to recognise that the existing site's use is no longer classed as Greenbelt or indeed Countryside.

The site's use is already established and so it follows that the construction of the proposed building, whilst development in its own right, is following the established use of the site and not changing or establishing the site's use. Therefore, it cannot be said that the proposed development would be sporadic or piecemeal, for the development's use has already occurred and is established. As to whether the proposed building becomes sporadic or piecemeal development of its own accord, I would suggest this is not the test, given that alternative development -Storage Containers to 8m+- can already lawfully occur. This type of development is more likely to have adverse effects on the surrounding rural character and visual amenity, than an assimilated and screened proposal which creates jobs.

Whilst the proposed building is material development and should only be assessed against Policy EP6 on the basis of the buildings siting and impact. The visualisations already show the building to be low key and not visually intrusive. Indeed, the building is only visible from the edge of the Village Green, adjacent to the A699. Furthermore, the building is screened to the south.

There is a lack of availability of suitable alternative land at Charlesfield Industrial Estate. We will expand on this matter later in the document.

Development through use has already been established. The construction of a well landscaped building and site into its surrounds does not erode amenity, setting or cause adverse impact. The building is screened for the most part.



Site outline -shown red- in relation to Countryside Around Towns area and zoned land of Charlesfield -shown white- directly to the south.

The Planning Officer makes further points in her report, these are numbered below with a response made in red by Murray Land & Buildings-

1. **It is accepted that the application site has a historic use as a builder's yard, falling within Class 6 of the Use Classes Order, but that appears to have ceased some time ago as the site was disused and overgrown when visited in 2019. However, storage use is the established planning use.**
 - The planning officer's pictures of the site taken in 2019 show the site to be in use, skips etc, confirming the continuing use.

2. **The Supporting Statement notes that, following enquiries, land at Charlesfield is not available, nor is it likely to be in the near future. This is not evidenced. The Forward Planning Section advises that the Council undertakes an annual Employment Land Audit, and the 2019 survey found that 11.5ha of business and industrial land is immediately available at Charlesfield with a further 4ha available within 1-5 years. It is not considered that sufficient justification has been presented to argue that the development proposed cannot be satisfactorily accommodated within the nearby business and industrial site or other allocated business/industrial sites within settlements.**
 - This is very difficult to tangibly demonstrate, though we will go into more detail later in the report. The assertion that 11.5ha of business and industrial land is immediately available cannot be evidenced by a survey or audit alone. There is no evidence of this land having been marketed for sale or let in the plan period*. Contact made by my client with the three landowners, have advised that it is not currently available to third parties.
My client's business requires to be located where it is, located close to the customer base whom they supply. Without location, their business would not survive.

3. The Supporting Statement argues that a change of use from Class 6 (Storage and Distribution) to Class 4 (Business) is permitted development. Class 4 use includes office uses and light industrial uses which could be carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. However, the proposal includes a workshop for the repair and servicing of tractors, which is potentially noisy and so classifying the proposed use as Class 4 rather than Class 5 is misleading. Whatever the use class, the proposed building requires planning permission and so the proposal must be assessed on its own merits against the relevant planning policies
 - Change of use from Class 6 Storage to Class 4 Business/Light Industrial is permitted development. This is not an argument, it is **statute**.
Classifying the use of the proposed building and site as Class 4 Business/Light Industrial instead of Class 5 Industrial is **not** misleading because the predominant use of the building will fall under the Class 4 Business/Light Industrial use. The proposed building will include workshop space for the service and repair of tractors and equipment with ancillary uses such as storage of parts and equipment, showroom, office space and a parts and consumables sales area. Works will be carried out within an insulated building providing some mitigation to the noise created by service and repair of agricultural equipment. Noise can be measured and mitigated against so that Class 4 – Light Industry use is achieved.

Class 4 - Business use, includes office use and light industrial use which could be –‘carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit’ per the Use Classes (Scotland) Order 1997.
4. This site is in a prominent position just off the A68 in the foreground of views of the Eildon Hills when approaching from the south. The proposed development would be highly visible from one of the main tourist routes into the Borders, with the building at 7m height rising above the existing 2m high fence. The site is in a countryside location, surrounded by fields and woodlands and the development would contrast significantly with the rural boundary treatments of hedges, fields, woodland and undeveloped roadsides. Despite the proposal for tree and hedge planting on the south-east side of the site, the building is likely to remain highly visible and intrusive in views. This is demonstrated in the visualisations submitted most particularly on the approach from the north looking south.
 - The building has been kept to a ridge height of 7m to minimise its impact on the surrounds. The ridge and gable will be visible, mainly from the south – heading north. The shed is not dissimilar to that seen all along the A68 route, crossing through the Scottish Borders towns and villages and beyond. The render /visualisations represent what will be seen, none of which is not already seen on this arterial route elsewhere and none of which could be described as harmful to amenity and surrounds.
5. The size and design of the proposed building are industrial in nature and would be out of keeping with rural character of the area and more in keeping with an industrial estate. Charlesfield Industrial Estate is close to the site but is well screened by mature planting and barely perceptible in views to and from the site and so there is no visual link with the industrial estate, adding to the impression that this is isolated and sporadic development in the countryside not related to any existing development.
 - Charlesfield Industrial Estate is visible from St Boswells Green and Cricket pitch at all times of the year, including both the grain silos and the Biogas plant. The proposed building at Slater’s Yard would only be visible from the very edge of these amenity areas when on the road edge of the A699 and junction with the A68. See visuals. Again, existing use of the site is lawful, as are many alternatives which would not be so aesthetically pleasing to the surrounds.
6. No details of the colour of the composite cladding for the building has been provided. There is also the issue of signage, additional development carried out at a later a date (the visualisation shows a container that is not included in the current application) resulting in clutter and further detrimental impacts on visual amenities.
 - Composite cladding is to be Grey or Green, to aid the buildings assimilation into its surrounds. All capable of conditioning.

- The current visualisation of the buildings east gable does not show a container, it shows a 'West' silage trailer as part of the goods for sale. This is not clutter and it is not detrimental to amenity because it can only be seen from the A68/A699, as can any business along the arterial route. Ironically the current use class of the site would allow the storage of storage containers on-site. Indeed, they could be stacked upto 8m in height, or more without screening, **lawfully**.
7. However, despite sending reminders that the planting had to be completed, it was never carried out. Instead, an application (21/00495/FUL) was submitted to vary the condition to allow the planting to be completed by 31st December 2021. The fencing was erected without planning permission and the failure to comply with the condition and carry out the proposed planting casts doubt on the willingness of the applicants to ensure that the fence is adequately screened in the future or that any additional planting or the green space/biodiversity creation proposed as part of this application would be implemented either.
 - I am not sure of the relevance of this comment, and I do not like the insinuation about doubt being cast as to whether the applicants are willing to ensure the fence is adequately screened. The reasons for delaying are perfectly adequate and a further planning application to extend the planning condition period was made on-time and has been consented, therefore any inference otherwise is conjecture. The planning condition is based purely on the fence. If the fence is removed and another is erected, compliant with the GPDO, then no screen is required.
 8. The proposal would be visually intrusive and would erode the sensitive nature and setting of St Boswells, having adverse impacts on the undeveloped rural character and visual amenity of the approach routes. For these reasons this application cannot be supported.
 - The proposal would be screened for the most part. The site is not Greenfield, therefore it is not undeveloped. New proposals are of scale whereby they are in-keeping with their surrounds and are of a similar type of building to the various other developments located along the arterial route.

Planning and Consultee response

The consultee responses received to the proposal include -

- Roads Planning
- Landscape Architect
- Community Council
- Forward Planning
- Flood Risk Officer
- Environmental Health

Consultee comments included no objections from Transport Scotland, Roads Planning & The Flood Risk Officer.

Consultee comments (objection) from the Landscape Architect in black. Murray Land & Buildings response is in red.

1. **In my opinion this development is contrary to policies PMD4 and EP6. It will be visually intrusive and will erode the sensitive nature and setting of St Boswells, having adverse impacts on the undeveloped rural character and visual amenity of the approach routes. For these reasons I am unable to support this application.**
2. **The cricket ground and green form part of St. Boswells Conservation Area on the outskirts of the village either side of the A68, giving the village a sense of place and distinct character. On approach from the south they provide 'an interesting and attractive entrance to the village against the backdrop of the Eildon Hills' (LDP Settlement Profiles - St Boswells). From this direction a sense of arrival is created by the narrow tree lined corridor opening out into the undeveloped road sides of open fields followed by the green and cricket ground before reaching the village buildings. Views of the Eildon hills are likely to be obscured by the proposed building which will appear incongruous in the setting and, in my opinion, have adverse impacts on the visual amenity of the area. In time and with rigorous maintenance it is possible that the hedge and tree planting may go some way to softening views of the development on the southern approach, though this will not be the case when travelling from the north where the northern and eastern elevations of the shed are likely to be highly visible from the A68 and across St. Boswells Green and Cricket Ground. There is very little space available for meaningful screen planting to mitigate the development in any reasonable way on these boundaries.**
 - **Views of the Eildons were previously obscured by a scruffy hedge and self-seeding trees -now removed. The proposal would incorporate the planting of a mature, mixed plant hedge, immediately establishing a 2m screen around the southern edge of the site. In addition, an avenue of Lime Trees would be planted at 6m centres. The proposed building is not visible from The Green or Cricket Pitch unless you are standing on or adjacent to the A699/A68. Visualisations confirm this and were included in the planning application and this appeal statement. Charelsfield Industrial Estate is visible from both The Green and the Cricket pitch at all times of the year.**
 - **The proposed building would include workshop space for the service and repair of tractors. Environmental Health has concerns that noise from the workshop element of the proposed development could impact on the amenity of the occupants of Midburn. The Supporting Statement claims that this will fall within Class 4: Business use, which includes office use and any industrial process that can be carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. All other industrial uses fall within Class 5. No information has been submitted with the application to demonstrate that this proposal falls within Class 4, in terms of the processes carried out, noise levels and mitigation. The applicant has been given the opportunity to provide this information. In the absence of this information, Environmental Health are unable to support the application.**

- See below.

Consultee Comment (objection without further information) from Environmental Health

Within the supporting information the agent states that a change of use from Class 6: Storage and Distribution to Class 4: Business does not require planning permission, and that Class 4 will be the predominant use. We have concerns that noise from the workshop element of the proposed development could impact on the amenity of the adjacent dwelling, known as Midburn. A Class 4 use is one which can be carried out in any residential area without detriment to the amenity of the area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. However, no information has been submitted with the application to demonstrate this. In the absence of this information we are unable to support the application at this time.

We note the EHO concerns on noise and its potential impact on the amenity of Midburn. We are in agreement and are willing to have a noise impact assessment carried out at the site to show the road and site noise generation as it is just now, as well as the noise which will be generated from the proposed usage. We would propose that the noise survey was a condition of any planning permission, if granted. It is the intention of AB Wight to assimilate their business into it's surrounds without detriment to their immediate neighbour(s). A leylandii hedge has been planted to screen the view of the proposed building from Midburn, though their own trees currently do a good job of this. The proposed building would be 135m from Midburn, further aiding the dissemination of any noise.

The Workplace, Health, Safety and Welfare Approved Code of Practice states that sufficient toilet and washing facilities should be provided to allow everyone at work to use them without unreasonable delay, and includes the minimum number of toilets and washbasins that should be provided. It is noted that the floor plan accompanying the application shows there to be one toilet cubicle for potentially up to 15 employees, which is not in accordance with the minimum numbers provided in the Approved Code of Practice. Advice on the number of facilities needed per number of people at work is provided. The toilet provision should therefore be reviewed by the applicant.

This a Building Standard's issue. The toilet provision noted on the planning drawing is indicative only. Building Standards and relevant workplace, Health & Safety would be complied with, should planning be granted.

Consultee Comment (objection without further information) from Forward Planning

Forward Planning's objection align with the planning officer's reasons for refusal.

Consultee Comment (objection) from Community Council

My client does not believe the objection comments made by the community council represent the actual St Boswells village community, of whom they employ residents. This is further evidenced by the few public objections received to this proposal, from residents of St Boswells.

The most salient public objection is that of the neighbouring property at Midburn. Their objection relates to the potential impact on their residential amenity. My client has discussed their proposals previously with the residents of Midburn, without any issues being raised. However, the matters raised in the objection are important to the proposed development and cognisance should be paid, for they are potentially the party who would be most affected by the proposed development, if mitigation of noise is not measured and managed.

Murray Land & Buildings respond to the material objection points raised by the owners of Midburn as follows-

1. The proposed development would be screened from Midburn by a Leylandii hedge, already under establishment on the western boundary. Indeed, an existing screen of trees already exists in Midburn's garden.

2. The objections main relevance is on the basis of noise. Noise is also the main basis of objection from Environmental Health. My client proposes to undertake a noise impact assessment, on the basis of the existing noise created by road traffic and use near to Midburn and the proposed noise, which would also involve monitoring the existing noise created by AB Wight at their existing premises.

It should be noted that the closest point of the proposed AB Wight building would be **135m** from Midburn. This and the insulated building would significantly reduce any potential noise pollution effecting amenity.

Mitigation and reasoning

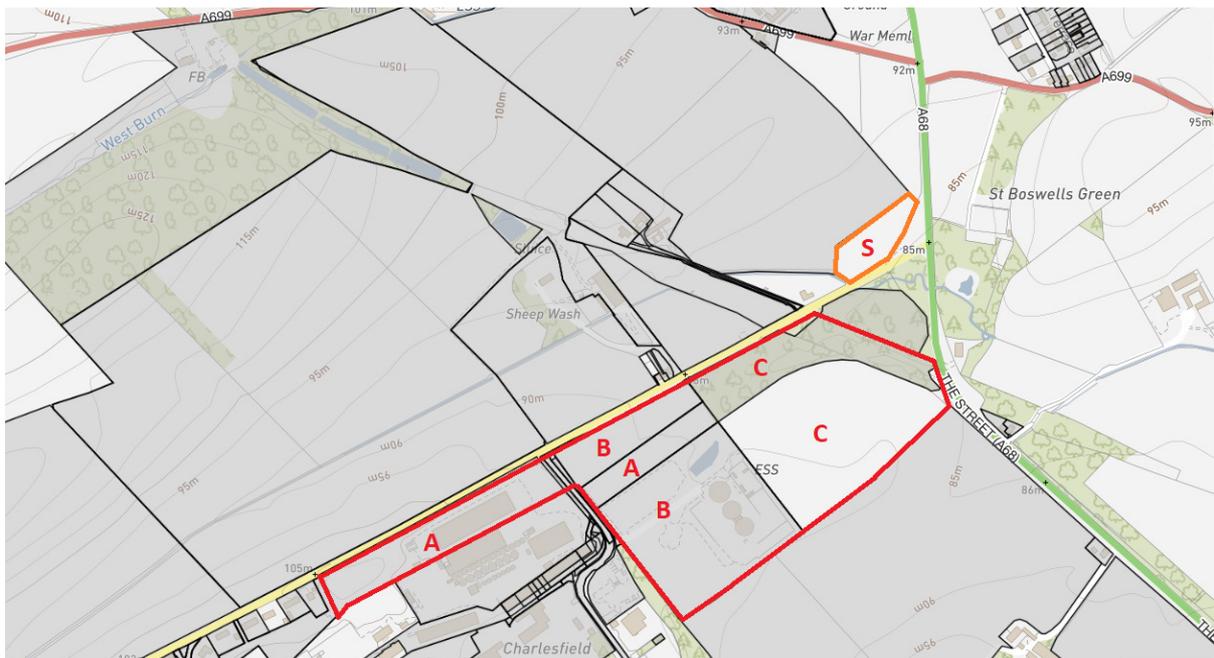
The proposed development at Slater's Yard is further mitigated by the following reasons-

- Land Availability
- Local Plan failure
- Amenity, Noise & View

Land Availability

Whilst the Planning Officer's refusal reasons are based on three Local Plan Policies, they all relate back to Visual Impact on amenity and potential noise. Policy PMD4, EP6 are irrelevant from a planning use perspective because Class 6 Use is already in place and being Lawfully exercised, as is the proposed change of use. Therefore, the crux of the matter relates to the proposed built development's look and the potential noise impact from some of the uses undertaken. The noise can be measured and mitigated against very easily and we have already suggested this should be conditioned if planning consent is to be issued.

The land zoned within the Charlesfield zEL19 is not available.



Source – Registers of Scotland – OS 100059842

Land outlined in red above is all part of the Charlefield Industrial Estate Extension zEL19. There are three owners of the zoned land, those noted A-C, divided up as per the Registers of Scotland. Slater's Yard site is outlined in orange with an S.

Zone A

The land owned by zone A is currently for sale because the former owners -Alexander Inglis & Son- have entered administration. This land houses a grain plant and this use will continue. The east land parcel is effectively a ransom strip and it will be sold as part of the whole grain plant.

Neither land parcels in zone A have been marketed or available prior to the former owners entering administration and there is nothing to suggest this will change.

Zone B

The land in Zone B is owned by the Iona Environmental Infrastructure Holdco Ltd, the company who owns and run the St Boswells Biogas Plant. Part of the larger southern parcel is under a planning application for a distillery. Again, this land is only ever likely to be developed by the owners of the land for their own use, it is not available to third parties and none of it has been marketed for sale or let in the local plan period.

Zone C

The land in Zone C is owned by a local farmer - James Mccorquodale. The site itself is not readily developable without significant infrastructure installation, based on a larger development. It is therefore not available in the short to medium term.

Whilst an Employment Land Audit was carried out by SBC in 2019, this is not a suitable rebuttal to the lack of this land's availability. A survey or box ticking exercise cannot get away from the fact that this land has not been marketed for sale or let in this period to date. Furthermore, discussions by my client with the three landowners, advised that none of these sites were available to them in the short to medium term.

Whilst the zoning of land has a place and it is a requirement of the Town & Country Planning (Scotland) Act, to include a Local Development Plan with policies, it does not offer any guarantees that the land zoned will become what it has been zoned for, or that it will be available to third parties, nor does the timeline have any real bearing. The council has sought to purchase land elsewhere in the recent past to control the outcome of their local plan. This does not always work though, as location, availability and the market dictates.

Furthermore, there is vacant, serviced business land throughout the Scottish Borders, particularly in the southern and eastern parts of the region, as evidenced by the Council's own website advertisements. This has been the case for some time. Whilst it is ideological to afford business and employment land opportunities in all of these towns, it also shows that location is key to business, and that the market dictates.

There is a distinct lack of land availability in and around Charlesfield Industrial Estate and my client has taken the opportunity to purchase a site with an existing use. That the site does not meet with all of the Council's Local Development Plan policies would appear to be trumped by Slaters Yard's established and existing use and the Local Plan's failure to provide alternative sites for development. The Charlesfield Extension land may end up being used for Employment, but only being available to the existing owners or large developers. Therefore, it has ultimately failed to provide business land opportunities to local businesses in a timeous manner.

Local Plan Failure

Local Plan Policy recognises market failure situations under Local Plan Policy ED1- Protection of Business and Industrial Land - 1.1 states-

‘The Policy recognises the financial difficulty in bringing forward new business and industrial land in a rural area such as the Borders where, in the provision of business premises, there is a market failure situation.’

Policy PMD3 below outlines the Land Use allocation constraints.

POLICY PMD3: LAND USE ALLOCATIONS

Development will be approved in principle for the land uses allocated on the Land Use Proposals tables and accompanying Proposals Maps.

Development will be in accordance with any Council approved planning or development brief provided it meets the requirements for the site and its acceptability has been confirmed in writing by the Council.

Sites proposed for redevelopment or mixed use may be developed for a variety of uses subject to other local plan policies. Where there is evidence of demand for specific uses or a specific mix of uses, these may be identified in a Planning Brief and the site requirements detailed within the Local Plan.

Within new housing allocations other subsidiary uses may be appropriate provided these can be accommodated in accordance with policy and without adversely affecting the character of the housing area. Planning Briefs and site requirements detailed within the Local Plan may set out the range of uses that are appropriate or that will require to be accommodated in specific allocations.

Any other use on allocated sites will be refused unless the developer can demonstrate that:

- a) it is ancillary to the proposed use and in the case of proposed housing development, it still enables the site to be developed in accordance with the indicative capacity shown in the Land Use Proposals table and/or associated planning briefs, or
- b) there is a constraint on the site and no reasonable prospect of its becoming available for the development of the proposed use within the Local Plan period, or
- c) the alternative use offers significant community benefits that are considered to outweigh the need to maintain the original proposed use, and
- d) the proposal is otherwise acceptable under the criteria for infill development.

Point B is relevant. Whilst there may be an argument that the latter planning application for a distillery, shows that development of the proposed use is occurring within the Local Plan period, this does not alter the fact that the land zoned is not available to the wider market and that it is in fact constrained.

Accordingly, the Local Development Plan has so far failed to provide employment land which is available to third parties via the Charlesfield Industrial Estate zEL19 area.

This is a material consideration, for if zoning land alone was enough to ensure that the land was developed for its intended purpose within a defined local plan period, and available to local businesses, then constraints would never occur.

Amenity, Noise & View



View from Conservation Green with Building in-situ – note AB Wight's proposed building is **not** visible. Grain silos at Charlesfield are visible.



View from junction between A68 & A699

The site is not prominently visible from St Boswell's or The Green as per the render visualisations.

The site is located 135m from the nearest residence, Midburn.

The question of Class Use and whether some of the processes undertaken by AB Wight in their workshop would fall under Class 4 Business/Light Industrial or Class 5 Industrial are largely based on what would be expected in an agricultural service and repair workshop.

Class 4 - Business use, includes office use and light industrial use which could be –‘carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit’ per the Use Classes (Scotland) Order 1997.

Of the works undertaken by AB Wight, noise is the only potential detriment which could breach the threshold of what could be carried on in a residential area without detriment to its amenity.

A lot of today's agricultural equipment is often diagnosed using laptops and other electrical diagnostics, though there are still some service and repair works/processes which will be undertaken on equipment which would ordinarily be deemed to be classified as a Class 5 Industrial process, by virtue of the noise creation.

The principal here is whether these processes could be mitigated by the use of control measures which limit the noise created by the processes undertaken effecting the site's surroundings, and therefore can be classified as Class 4 use instead of Class 5. Carrying out service and repair works inside an insulated building does provide noise reduction which can be measured to show the mitigation provided.

Significant noise is already generated in the site's vicinity by traffic on the A68 and C43 – Charlesfield Road so the base noise level is not 0, it is the existing background level, which can be measured.

We would propose to measure the existing background noise assessment at Slater's Yard and in the vicinity of Midburn, the residential property, located 135m to the west of the proposed building. Additionally, the proposed noise generated by that proposed could be measured with the mitigation included. If the noise generation proposed is no more or close to what already exists, then the proposed use is not of detriment to the amenity and residence of Midburn.

With regards to alternative development, I think it would be correct to remind the Planning Officer and the Local Authority that should my client wish, they may decide to import storage containers and stack them on-site to three high - 8m + high without screening. All of the aforementioned is futile and not what the Local Authority or my client wishes, but it is a material consideration because it could be lawfully carried out. Once again, I will remind the Planning Officer, that whilst the proposal may not sit within their ideological planning zones, it is a site with a lawfully established use and one which only the built element of the proposal requires planning permission for.

We believe the Local Authority wishes to support business & development which supports the local economy providing jobs for local people, whilst assimilating into its existing surrounds.

Furthermore, mitigation is being provided via controls and Status Quo for all that is proposed.

Conclusion

Slater's Yard is a windfall site outwith both the St Boswells and Charlesfield development boundaries.

Use of the site has been established over time and is now deemed to be Class 6 Under the Town & Country Use Classes Order 1997.

The General Permitted Development Order permits the change of use from Class 6 Storage to Class 4 Business/Light Industrial.

The existing and proposed use of the site is a material planning consideration in the wider context and in relation to the proposed construction of a building.

The proposed building has been kept to a scale in height, that sits below the tree line and with appropriate cladding, will assimilate into its surroundings.

The building will be seen from the A68 as all the buildings along the artery route are, including the commercial buildings on the north of the village and the Charlesfield Industrial Estate, when heading from the south.

My clients are creating upwards of 5 jobs and securing the future of the existing 10 jobs. By any measure, this is a significant community benefit.

LDP policy recognises market failure. It also needs to recognise land zone failure. There are numerous examples throughout the Scottish Borders.

AB Wight did not create the existing planning status or use of the site which has a history of alternative development proposals which the previous community council officers supported.

Alternative lawful uses for the site, which would be damaging to the amenity of the area are available to third parties, should my client be forced to sell the site.

In considering the above, we would ask that the Local Review Body members reverse the Planning Officer's decision and grant planning permission for the proposed development.