

**SCOTTISH BORDERS COUNCIL  
LOCAL REVIEW BODY DECISION NOTICE**

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**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**

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**Local Review Reference:** 21/00015/RREF

**Planning Application Reference:** 21/00486/FUL

**Development Proposal:** Part change of ground floor to Class 10 and alterations to form additional office space from ground floor

**Location:** 3 Rowan Court Suite, 3 Cavalry Park, Peebles

**Applicant:** Mr Stephen Lamb

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**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 as set out below.

**DEVELOPMENT PROPOSAL**

The application relates to part change of ground floor to Class 10 and alterations to form additional office space from ground floor at 3 Rowan Court Suite, 3 Cavalry Park, Peebles. The application drawings and documentation consisted of the following:

<b>Plan Type</b>	<b>Plan Reference No.</b>
Location Plan	PA01
Site Plan	PA02
Existing Ground Floor Plan	PA03
Existing Elevations	PA04
Proposed Ground Floor Plan	PA05
Proposed First Floor Plan	PA06
Proposed Elevations	PA07

**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 16<sup>th</sup> August 2021.

After examining the review documentation at that meeting, which included a) Notice of Review (including the Decision Notice and Officer's Report); b) Papers referred to in Officer's Report; c) Consultations; and d) 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 information in the form of DDL Care Hub Ltd – Business Plan and Cavalry Park – List of Companies.

Members agreed that the information was new and considered that it met the Section 43B test, that it was material to the determination of the Review and could be considered. However, there was a requirement for further procedure in the form of written submissions to enable the Planning Officer, Economic Development and the Social Work Chief Officer to comment on the new information.

The Review was, therefore, continued to the Local Review Body meeting on 18<sup>th</sup> October 2021 where the Review Body considered all matters, including responses to the further information from the Planning Officer, Social Work Chief Officer, and the applicant's reply to those responses. The Review Body also noted that the applicant had requested further procedure in the form of a hearing but did not consider it 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: PMD1, PMD2, PMD3, PMD5, ED1, IS7 and IS9

Other Material Considerations

- Scottish Planning Policy 2014
- Circular 4/1998 "Use of Conditions in Planning Permission"

The Review Body noted that the proposal was for part change of ground floor to Class 10 and alterations to form additional office space from ground floor at 3 Rowan Court Suite, 3 Cavalry Park, Peebles.

Members noted that the proposal was for Class 10 use to replace Class 4 use on the ground floor of the building and that Class 4 use would be created within a new first floor to be formed within the roofspace of the building. It was noted that Class 10 use was not within the general Class 4 use required by Policy ED1 of the Local Development Plan on a Strategic High Amenity site such as Cavalry Park and Members stressed the importance of retaining

employment and industrial land, given the identified shortfall in industrial land supply in the Tweeddale area.

Nevertheless, the Review Body noted that the specific use proposed on the ground floor was a day care service for members of the public with ancillary office accommodation and were of the opinion that the supporting submissions had demonstrated a clear local need for the facility in the area. Members noted that the applicant was a current and well respected operator and that the proposals were acknowledged to be in line with health and social care objectives in the area. The Review Body also noted that there would be job creation from the proposals and that, provided the use was limited to that specifically applied for, there would be a complimentary relationship between the proposed use and other uses within Cavalry Park. For these reasons, Members considered that the proposal complied with Policies ED1 and PMD3 of the Local Development Plan, especially given the demonstrated local community benefits of the development which allowed an exception to be considered under Policy PMD3.

The Review Body also noted the mitigation measures proposed and accepted by the applicant to minimise the loss of Class 4 floorspace at the site. Firstly, they accepted that there would be replacement Class 4 floorspace created on the first floor of the building and that, together with a small area retained on the ground floor, the loss of such floorspace would not be significant. Members were not persuaded that such first floor accommodation would be less attractive than ground floor use as suggested by the Appointed Officer. Furthermore, Members noted that the applicant would accept other conditions on the timing of the Class 10 use to ensure the Class 4 accommodation in the roofspace was completed first and the reversion back to Class 4 use should the Class 10 use cease operation. Subject to conditions covering these controls and a condition relating to separation of the Class 10 use from the small area of retained Class 4 use on the ground floor, the Review Body were satisfied that the applicant had proposed sufficient mitigation to outweigh the impacts of the partial loss of Class 4 floorspace.

The Review Body finally considered other material issues relating to the proposal including parking provision, design, water and drainage but accepted that these issues were addressed by the development and did not materially affect their determination of the Review.

## **CONCLUSION**

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies ED1 and PMD3 of the Local Development Plan. The development was considered to be a complimentary use within Cavalry Park, created replacement Class 4 use on the first floor and offered significant community benefits that outweighed the need to retain Class 4 use on the ground floor. Consequently, the application was approved.

## **DIRECTIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

## **CONDITIONS**

1. The Class 10 use on the ground floor not to be operational until the Class 4 accommodation on the upper floor is completed and available for occupation.  
Reason: To maintain the supply of business and employment floorspace on an allocated Strategic High Amenity Site.

2. Within a six month period of the cessation of the Class 10 use on the ground floor, or subject to any alternative period agreed in writing with the Planning Authority, the use shall revert to Class 4 Business Use and any proposals for uses outwith Class 4 shall require new planning applications.  
Reason: To maintain the supply of business and employment floorspace on an allocated Strategic High Amenity Site.
3. The use hereby approved to be only for day care services for members of the public with ancillary office accommodation. Any other proposal within Class 10 of the Schedule to The Town and Country Planning (Use Classes) (Scotland) Order 1997 or any other Use Class is not permitted without an application for planning permission being firstly submitted and subsequently granted.  
Reason: To ensure that the specific use hereby granted is implemented within the building in compliance with the supporting case and community benefits outlined as part of the proposal.
4. No commencement of the Class 10 use on the ground floor should occur until a scheme of details are submitted to, and approved in writing by the Planning Authority, detailing how the Class 4 usage of part of the ground floor is separated and isolated from the Class 10 use.  
Reason: To maintain the supply of business and employment floorspace on an allocated Strategic High Amenity Site.

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, 4<sup>th</sup> 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.

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### **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.

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**Signed..**

Councillor S Mountford  
Chairman of the Local Review Body

**Date 22<sup>nd</sup> October 2021**

