



**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: 22/00005/RREF

Planning Application Reference: 21/00793/FUL

Development Proposal: Partial change of use of shop and alterations to form manager's flat

Location: 43 High Street, Hawick TD9 9BU

Applicant: Ms Ha Pham

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 an informative as set out below.

DEVELOPMENT PROPOSAL

The application relates to partial change of use of shop and alterations to form manager's flat at 43 High Street, Hawick TD9 9BU. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Existing Plans and Section A-A	2106-01A
Existing Elevations	2106-02A
Proposed Plans and Section A-A	2106-03
Proposed Elevations	2106-04
Location Plan and Block Plan	2106-05
Site/Roof Plan	2106-06

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 18th April 2022.

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) Consultation Replies; d) Design Access and Heritage Statement; e) Correspondence from the Agent; 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 various magazine and website excerpts relating to mixed uses within town centres, included as Appendix 3 in the applicant's Review submissions. After consideration, Members agreed that this information was new, met the Section 43B test and that it could be considered in the determination of the Review.

The Review Body also noted that the applicant had requested further procedure in the form of written submissions and a hearing session 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: PMD2, PMD5, ED3, ED4, HD3, EP9, IS2, IS4, IS7, IS8 and IS9

Other Material Considerations

- SBC Supplementary Planning Guidance on Privacy and Sunlight 2006
- SBC Supplementary Planning Guidance on Placemaking and Design 2010
- SBC Supplementary Planning Guidance on Waste Management 2015
- SBC Supplementary Planning Guidance on Development Contributions 2020
- Town Centre Core Activity Area Pilot Study
- Circular 1/1998 Use Classes Order

The Review Body noted that the proposal was for the partial change of use of shop and alterations to form manager's flat at 43 High Street, Hawick TD9 9BU.

Members firstly considered the principle of the development under Policy ED3. The Review Body understood that the proposal was for a change of use related to the rear part of the ground floor of the premises and basement and not for the use of the ground floor commercial frontage, nor any changes that may have occurred to the exterior of the frontage. Although the application site was in a central part of Hawick High Street, Members also noted that as a result of the continued application of the Core Activity Area Pilot Study, Policy ED4 would not apply and proposals on the ground floor would need to be assessed against Policy ED3. The

requirements of this Policy were to support a wide range of uses within town centres whilst retaining character and vitality.

The Review Body noted the concerns of the Appointed Officer on the potential impacts on character and vitality of loss of shop storage space and welfare facilities to residential use, the access to the flat through the shop floor, the precedent approval could set for further loss of shop units and the discouragement of residential uses in the Core Activity Area Pilot Study. However, Members also noted the submissions from the applicant and their lack of need for storage or support rooms to service their proposed Class 2 business.

Members generally welcomed the proposal as an effective and inventive use of space. Whilst the Review Body understood the negative impacts on vitality that could arise in the future if creation of the flat deterred potential occupants of the remaining ground floor commercial frontage, they were persuaded by the specific requirements of the applicant and noted that the flat would remain within the same ownership as the commercial frontage, intended for employee accommodation. Members also considered it significant that the proposal still allowed for retention of the ground floor commercial frontage with staff toilet facility.

Members then discussed what controls would be available by condition or legal agreement to ensure that the proposal could proceed without affecting the longer term operation and viability of the commercial unit, together with the character and vitality of the town centre. The Review Body wanted to ensure that the proposal did not unduly affect either the operation of the commercial unit nor the future attraction as a viable unit should an interested business no longer need the residential accommodation and require more floorspace. After discussion, Members concluded that the occupation of the flat should be linked to the business operating within the ground floor commercial frontage and that, should the flat no longer be required in the future, it could revert to a use matching that operating from the ground floor frontage, without needing planning permission. Subject to appropriate conditions, Members were satisfied that the proposal could meet the requirements of the applicant whilst still preserving the character and vitality of the unit and Hawick Town Centre, in compliance with Policies PMD2 and ED3 of the Local Development Plan.

Members then considered issues relating to the external changes required to convert the accommodation. They noted that all works were to the rear and were of the opinion that it would result in improvements to that part of the building, subject to precise details of the external alterations being required by condition to be submitted for further approval.

The Review Body finally considered other material issues relating to the proposal including residential amenity, waste storage and fire escape, but were of the opinion that such issues either did not outweigh their decision to support the proposal or were able to be addressed through appropriate conditions where appropriate.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2 and ED3 of the Local Development Plan. The development was considered to be an appropriate provision of supporting residential accommodation for the retained ground floor commercial unit and that, provided conditions were imposed linking occupancy and allowing the accommodation to revert to previous use, then the vitality of Hawick High Street and Town Centre would be preserved. Consequently, the application was approved subject to conditions.

DIRECTION

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 occupation of the flat shall be restricted at all times to an employee of the business operating within the ground floor commercial frontage of the premises, together with any partner and dependants, and shall not be sold or leased as a separate residential unit from the ground floor commercial frontage.
Reason: The relationship between the flat and commercial frontage would introduce use and access conflicts if the flat was occupied by residents unconnected with the commercial frontage business.
2. Should any Use Class 1 business intending to occupy the ground floor commercial frontage no longer require the flatted accommodation approved under this consent, then the accommodation may revert to Class 1 use without the need for planning permission for Use Class change, or to whatever use is subsequently approved within the ground floor commercial frontage.
Reason: To ensure flexibility of commercial floorspace and support the vitality of Hawick Town Centre, in the event that residential accommodation is no longer required to service the commercial frontage business.
3. No development to be commenced until details of waste storage are submitted to, and approved in writing by, the Planning Authority. Once approved, the approved details to be implemented before occupation of the residential accommodation.
Reason: To secure appropriate details of waste disposal.
4. No development to be commenced until details of all external materials, including windows, doors, rooflights and platform stairway, are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be implemented in accordance with the approved details.
Reason: To safeguard the visual amenity of the area.

Informative

1. The Council's Flood Risk Officer advises the following:

The applicant should be made aware that flooding can occur from other sources including run-off from surrounding land, blocked road drains, surcharging sewers and blocked bridges and culverts.

Please note that this information must be taken in the context of material that this Council holds in fulfilling its duties under the Flood Risk Management (Scotland) Act 2009.

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.
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Signed...Councillor S Mountford
Chairman of the Local Review Body

Date 27 April 2022

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