

**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: 21/00027/RCOND

Planning Application Reference: 21/00965/FUL

Development Proposal: Erection of glazed covered pergola to existing outside seating area
(part retrospective)

Location: Waterloo Arms, Chirside, Duns

Applicant: Waterloo Arms

DECISION

The Local Review Body overturns 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 including amendment to Condition 2 of the original consent 21/00965/FUL by omission.

DEVELOPMENT PROPOSAL

The application relates to the erection of a glazed covered pergola to an existing outside seating area at the Waterloo Arms, Chirside. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	L01
Proposed Layout	P01
Existing Layout	EX01
Photographs	

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 13th December 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) Objection Comments; d) Consultation replies; e) Further Representations; and f) List of Policies, the Review Body considered whether certain matters included in the review documents constituted new evidence under Section 43B of the Act and whether or not this evidence could be referred to in their deliberations. This related to further information in the form of an annotated photograph offering to raise the height of the existing fence to the rear of the outdoor seating area in order to attempt to reduce disturbance and noise impacts.

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 Appointed Officer and Environmental Health to comment on the new information and also to advise on whether a Noise Impact Assessment would be required.

The Review was, therefore, continued to the Local Review Body meeting on 21st February 2022 where the Review Body considered all matters, including responses to the further information from Environmental Health and the applicant's reply to that response. The Review Body then 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, HD3, EP7 and IS7

The Review Body noted that the proposal was for the erection of a glazed covered pergola to an existing outside seating area at the Waterloo Arms, Chirside. Members noted that the pergola had been largely erected apart from the full roof covering.

The Review Body noted that the Review was submitted in relation to a condition attached to a planning permission but that, as the Review was not resulting from refusal of a Section 42 application, Members were required to re-assess the whole development and decision on a De Novo basis and not only in relation to the condition which was sought to be varied.

The Review Body, therefore, firstly considered the principle of the pergola within the grounds of the public house and had no issues with the design or siting of the structure, nor did they consider there were any adverse effects on the listed buildings adjoining. In terms of it being an appropriate structure in design, siting and visual impacts, Members had no issue and considered it in compliance with Policies PMD2 and EP7. The Review Body, therefore, were content with lifting of the temporary consent imposed by the original Condition 2 for these reasons, thus enabling the pergola to be retained permanently.

Members then considered the key issue of impacts on residential amenity, noting that this was the reason that Condition 2 had been imposed on the original consent, following advice and an objection from Environmental Health. The Review Body noted that the three month period granted by the condition for the pergola had now expired and that the applicant had submitted

the Review to seek omission of Condition 2, thereby allowing the pergola to remain permanently.

Members noted that both Policies PMD2 and HD3 of the Local Development Plan sought to avoid incompatible neighbouring uses and adverse impacts on existing residential amenity. All submissions relating to this issue were fully considered, including the revised responses to the Review submission and amended fence plan from the applicant, neighbours and Environmental Health. Members also noted the advice that a Noise Impact Assessment would not be appropriate in this instance.

Given the recent difficult times for the hospitality industry caused by the pandemic, the Review Body could understand the reasons why the pergola was erected to improve the outdoor seating area for patrons and were generally sympathetic to the proposal for this reason. After careful consideration of the potential impacts on residential amenity, the Review Body understood that there would be noise impacts from the outdoor seating area but they were not convinced that the pergola, in itself, would increase impacts to a level that would justify refusal and seeking its removal. They understood that this was already an existing outdoor seating area and that other forms of covering that would not require planning permission, such as parasols, would also encourage people to sit in the area and cause an element of outdoor noise impact. They also considered that houses being in close proximity to a public house would inevitably lead to a level of noise impact.

However, Members also noted and welcomed the offer from the applicant to raise the height of the rear fence to the height of the pergola. Whilst the comments from Environment Health were noted on this matter, Members still considered it to be necessary in order to assist with noise mitigation. In agreeing to the omission of the original Condition 2 and allowing the pergola to become permanent, the Review Body required a new condition to secure the fence extension within a timescale to be set by the Appointed Officer. It was considered that any further issues over noise impacts and disturbance to residential amenity would be a matter for Environmental Health under their specific legislation.

The Review Body finally considered all other material issues relating to the proposal, including issues of smoking under the pergola, but were of the opinion that these were matters that were either not influential in their decision or could be addressed under the auspices of Environmental Health.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was consistent with Policies PMD2, HD3 and EP7 of the Local Development Plan. The development was considered to be an appropriate structure within the grounds of a public house, without adverse impacts on listed building character. Members did not consider the potential consequent noise impacts on residential amenity as a result of the pergola to justify either removal of the structure or further temporary permission, especially as the seating area already existed and an increase in the existing fence height could be required by condition. Consequently, the application was approved.

CONDITIONS

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.

2. Within one month of this consent, further details of the proposed fence height increase to the rear of the pergola/seating area to be submitted to, and approved in writing by, the Planning Authority. The fence increase then to be carried out in full accordance with the approved details, within a timescale set by the Planning Authority.

Reason: To assist in mitigating impacts on adjoining residential amenity

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Under The Control of Pollution Act 1974, the Council recommends the following hours for noisy construction-related work:

Monday-Friday 0700-1900

Saturday 0800-1300

Sunday and Public Holidays - no permitted work (except by prior agreement with the Council)

Contractors will be expected to adhere to the measures contained in BS 5228:2009 "Code of Practice for Noise and Vibration Control on Construction and Open Sites".

For more information or to make a request to carry out works outside the above hours, please contact an Environmental Health Officer at the Council.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD

Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA

Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU

British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND

Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA

Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL

BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH

THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD

Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire NG18 4RG.

Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
 2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.
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Signed...Councillor S Hamilton
Acting Chairman of the Local Review Body

Date 8 March 2022

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