

**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: 21/00032/RREF

Planning Application Reference: 21/00836/FUL

Development Proposal: Siting of mobile catering truck and alterations to existing access

Location: Land At Station Yard Traquair Road Innerleithen

Applicant: Mr Gordon Bain

DECISION

The Local Review Body overturned the decision and indicated that it intended to grant planning permission for the siting of mobile catering truck and alterations to existing access subject to conditions.

DEVELOPMENT PROPOSAL

The application relates to the siting of mobile catering truck and alterations to existing access. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	01.19.05 rev 0
Photos	02.19.05 rev 021

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 17th January 2022

After examining the review documentation which included: a) Notice of Review b) Review Statement c) Letters of Support d) Photograph's e) Papers referred to in officer's report and f) List of Policies, the Review Body proceeded to determine the case.

Members 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 additional letters of support and a proposal to restrict the location of the catering unit to one place within the site. Members agreed that the information was new however, the new information did not meet the tests outlined in Section 43B(1) of the Act and was not considered , that it was material to the determination of the Review under Section 43(2) of the Act and so should not be considered.

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: ED1, PMD3, ED3 and HD3

The Local Review Body heard that the site was allocated as a District Site for Business and Industrial use within the Local Development Plan. The Review Body considered the proposal against Policy ED1 on Protection of Business and Industrial Land and Policy PMD3 on Land Use Allocations. Members accepted that the development did not provide a Class 4, 5 or 6 land use which is preferred on allocated District Business and Industrial Land.

The Review Body then went on to consider whether the siting of a mobile catering unit provided an exceptional form of development on the allocated employment land against the tests listed in criteria a) to d) of Policy ED1 and a) to d) of Policy PMD3. Members acknowledged that the development would represent the loss of employment land but also recognised that there was a business case for the proposal which would provide economic benefit. They noted that the site had not been used for its allocated use for some time and nor were there any current proposals to develop the site for Class 4, 5 or 6 uses. They were satisfied that the nature of the development would only require limited physical works, which was also helped by limiting the siting of the truck to one place within the site. The development was not viewed to prohibit the site being used for any business or industrial use in the future. The Review Body were satisfied that provided the development was restricted for a temporary three year period which could be controlled by planning condition, the proposal met the tests for an exceptional form of development on the allocated District site without leading to the permanent loss of employment land.

The Review Body agreed with the applicant and the appointed officer that the site was positioned out with Innerleithen's designated town centre. Members discussed that it was not uncommon to find snack bars located outside of town centres and this development would be no different to other similar catering units which operated towards the outskirts of other towns. It was recognised that the development may help ease congestion currently caused by cyclists at cafes on the High Street. The Review Body considered that the town required further catering services to meet the towns ambitions as a popular cycling destination and that this development would not undermine the role of the town centre or conflict with the aims of Policy ED3.

The Review Body discussed the impact of the development on residential amenity. Concerns were raised that the operation of a catering unit could impact on the amenity of neighbouring

properties. Members were content that the impact on residential amenity could be mitigated by seeking to control the hours of operation to between 0800 and 1800 Monday to Sunday by planning condition. This would ensure that the facility was only operational at appropriate times of the day to avoid upsetting the amenity of neighbouring residencies. Members requested that the condition allow for the operator to seek approval to operate out with these hours only when there were specific events i.e. cycling events and festivals. Litter was also identified as a potential nuisance but the Review Body were satisfied that a litter management plan via a planning condition would address this. Odour from the cooking facilities could impact on the amenity of residential properties but it was accepted that agreeing suitable means of extraction system by planning condition would mitigate against adverse impacts of smell.

Members moved on to other material matters. The Review Body did not find that the proposal would pose any road safety issues although final access details were necessary. In order to avoid customers bikes blocking Traquair Road, provision of a cycle parking area within the site was considered to encourage customers to use this space rather than parking on the footpath. Precise details of the new boundary fencing and gates were identified to be required. The site was acknowledged to be at risk of flooding but they noted the recommendation of the Flood Protection Officer that the flood risk could be mitigated by seeking the catering truck to be moved during times when flood warnings are issued by SEPA. The Review Body were of the opinion that appropriate conditions covering access, means of enclosure, cycle parking and flooding could satisfactorily address these matters.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that provided the proposal was limited to a temporary form of development which would not result in the permanent loss of allocated business and industrial land and provided that the hours of operation were restricted, and matters covering smell and litter were regulated by planning conditions, that the development would not adversely affect the amenity of neighbouring residential properties. Consequently, the application was approved, subject to conditions.

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. Permission is granted for a limited period of 3 years from the date of this consent and, unless application is made and consent granted for its continuation, the use shall be discontinued at the expiration of the period granted and the catering van and associated fixtures shall be removed from the site.
Reason: The type of development requires that the consent be reviewed periodically in the interests of safeguarding employment land and visual amenity
2. The mobile catering unit shall occupy the position shown on Drawing No 01.19.05 rev 0 to the north of the Station Yard building and the catering unit shall not trade from any other position within the site unless any alternative location has been agreed in writing by the Planning Authority.
Reasons: To protect the business and industrial land and the amenity of neighbouring residencies.

3. Prior to the commencement of operations, the following details shall be submitted to and agreed in writing with the Planning Authority;
 - i. Precise details of the disposal of refuse/waste arising from the development (including litter generated by customers) shall be submitted to and approved in writing by the Planning Authority.
 - ii. Precise details of the kitchen extraction systemThereafter the development shall be operated in accordance with the agreed details for the duration of operations on site.
Reason: To protect amenity of nearby residents and the environment.
4. The development hereby approved shall operate between the hours of 0800 and 1800 Monday – Sunday only, unless alternative hours have been agreed in writing by the Planning Authority.
Reasons: To protect the amenity of neighbour residences.
5. Prior to the commencement of operations, precise details of the access alterations from Traquair Road and provision for dedicated cycle parking within the site shall be submitted to and approved and approved in writing by the Planning Authority and thereafter the development shall be operated in accordance with the agreed details.
Reason: To ensure that the means of access pose no road safety issues and that bikes do not block the footpath on Traquair Road.
6. Prior to the commencement of operations, precise details of the boundary fence and access gates shall be submitted to and agreed in writing with the Planning Authority and thereafter the means of enclosure shall be erected in accordance with the agreed details.
Reason: To ensure and appropriate form of development which respects the character and appearance of the surrounding area.
7. During times of flood warnings issued from SEPA, the catering truck shall be moved to a safe location outwith the site.
Reason: To prevent the development being dislodged during a flood event and causing damage to buildings or roads.

INFORMATIVES

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 Section 21 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2008.

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.

Signed...

Councillor Mountford
Chairman of the Local Review Body

Date.....