

**SUPPORTING STATEMENT TO NOTICE OF APPEAL (LOCAL REVIEW)****In relation to Scottish Borders Council's Refusal to Grant Planning****Permission for****Change of use from Class 4 (office) to Class 1A(2) (Veterinary Practice)****2 ROWAN COURT, CAVALRY PARK, PEEBLES**

on behalf of

Two Rivers Veterinary Practice Ltd (The Appellant)

Scottish Borders Council Application ref: 23/00056/FUL

31<sup>st</sup> March 2023

## 1.0 INTRODUCTION

### **The Refused Planning Application**

1.1 This Statement is submitted on behalf of Two Rivers Veterinary Practice Ltd. against the decision of Scottish Borders Council to refuse to grant planning permission for the change of use of 2 Rowan Court, in Cavalry Park, from Class 4 (office) to Class 1A(2) (veterinary practice). Grounds of appeal are provided in section 3.0.

1.2 **It is important that this statement be read in conjunction with the Planning Statement which was submitted with the planning application as well as the Supplementary Statement which was submitted in response to the Planning Officer's comments upon the proposal during the processing of the planning application.**

### **Background**

1.3 Two Rivers Veterinary Practice Ltd is currently located in the Old Town in Peebles. The accommodation no longer meets with the needs of the Practice or its Clients. The Practice has outgrown the current property internally. Further, there is no outside space and there is a lack of parking near the surgery. The main reasons that the current premises in the town centre have become unsuitable are:

1. There is only space for one consulting room which is busy all day; the Practice has enough work to require two or, likely, three consulting rooms, so this aspect is materially limiting business growth.
2. Physical space is cramped in the current building. The kennel area doubles as a staff room and laundry room, and a cupboard under the stairs has been converted to a small 'office' with computer terminal. This aspect is limiting further staffing and student placements.
3. The sterile operating theatre is doubling up as a lab area, which means the Practice cannot work to desired standards in terms of sterility.
4. Limited kennel space means that numbers of inpatients sometimes have to be limited, which may have an impact on animal welfare.
5. Sick animals are currently walked outside in public areas to toilet by staff, as there is no outside space belonging to the practice.

6. There is no external space for bins (recycling, general waste or offensive waste). This currently has to be transported back to Biggar every evening.
  7. There is no space for cold storage of animal bodies prior to being collected for cremation, thus, currently, deceased pets have to be transported to Biggar every evening.
  8. Parking in Old Town is very challenging which leads to owners regularly having to carry a sick or injured patient a considerable distance to the surgery.
  9. Vets need to move heavy equipment, such as the xray machine, but cars cannot be located near enough to the surgery to permit easy loading and unloading.
- 1.4 The Practice purchased 2 Rowan Court on 31<sup>st</sup> March 2023 with vacant possession to enable a move to be made to suitable premises. The Practice has been searching for appropriate accommodation for over 5 years. A deal was almost reached in South Parks some years ago but the seller decided not to sell, after all, which came as a serious setback.
- 1.5 2 Rowan Court will provide much needed accommodation for this independent veterinary business. Two Rivers Veterinary Practice has surgeries in Biggar and Peebles and was established in 2005. Since then it has grown from a two vet practice to a six vet practice and from a team of six employees to twenty-six.
- 1.6 In the Peebles surgery, currently located in Old Town there are two full time veterinary surgeons, two full time and one part time veterinary nurses and four part time receptionists. The Practice also provides training for veterinary students, veterinary nursing students and animal care assistant students who are at college and require practical placements to complete their courses. The Practice continues to grow their client base and provide veterinary services, covering a wide area of the Scottish Borders and South Lanarkshire, as well as attracting business from the Lothians and Edinburgh, although business development is now being hampered by lack of suitable premises.
- 1.7 Until spring of 2023, 2 Rowan Court was occupied by 7 separate businesses as noted below. **It is clear that the majority (over 75%) of the occupiers' uses fell within Class 2 [now class 1A(2)]** despite most not having planning permission for change of use from class 4. The original historic planning permission for the block

requires the suites to be occupied by class 4 businesses. It is abundantly evident that the need and desire for class 2 [now class 1A(2)] space in Cavalry Park is high and that many businesses choose to ignore the class 4 restriction at their own risk. The Appellant is to be applauded for seeking to progress matters formally with a robust and substantiated case made as set out in the application and this appeal statement.

Suite	Occupier	Use	Use Class
1A	Pearson Donaldson Properties (Vacant Unit)	Vacant but last occupied by financial advisor.	<b>2 now 1A(2)*</b>
1B	Carol Henderson Therapies	Complementary Therapy – consulting	<b>2 now 1A(2)</b>
1C	Red Circles Locksmith	Locksmith	4
2	First Psychology Ltd	Psychology – consulting	<b>2 now 1A(2)</b>
3	Cambridge One	Dietician – consulting	<b>2 now 1A(2)</b>
4	JRW Chartered Accountants	Accountancy Services	<b>2 now 1A(2)</b>
5	K Graphic Design	Graphic Design	4
6	Holistic Therapies by Lesley	Complementary Therapies	<b>2 now 1A(2)</b>
7	JRW Chartered Accountants	Accountancy Services	<b>2 now 1A(2)</b>

**Fig 1:** Most recent known occupation of 2 Rowan Court (2023)

\* As of 31/03/23 legislative change to Use Class Order means these former Class 2 uses are now Class 1A(2)

1.8 The seller of 2 Rowan Court has confirmed that all former tenants have been relocated. Each business was offered space within Cavalry Park. Four firms took up opportunities to remain within the Park, two businesses have decided to work from home and one other business has relocated to Port Brae Business Centre in the town.

## 2.0 REFUSAL TO GRANT PLANNING PERMISSION

2.1 Scottish Borders Council refused planning permission for the proposal on 20<sup>th</sup> March 2023.

2.2 The Council's stated reason was:

*"The development would be contrary to Policy 26 of the NPF4 and Policy PMD3 and Policy ED1 of the Local Development Plan 2016 in that the use as a veterinary practice (falling within Class 2 of The Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended, would be a commercial activity that would not be complementary, or ancillary, to the Cavalry Park Strategic High Amenity Site and a use such as that would prejudice its primary function. Furthermore, it would ultimately lead to the loss of allocated business and industrial land when there is a known need for such sites. Other material considerations, including the applicant's need for new premises, are fully acknowledged but, on balance, do not override the loss of the site to Class 4 uses, nor the potentially undesirable precedent that would result from the loss of this extent of floorspace to a non-compliant use."*

## 3.0 GROUNDS OF APPEAL

### 3.1 Summary of Grounds

**Ground 1:** The development would not be contrary to policy 26 of NPF4 and policy PMD3 and policy ED1 of the Local Development Plan 2016. Use as a veterinary practice would be a commercial activity which would be complementary to Cavalry Park, offer significant community benefits and would not prejudice the Park's primary function.

**Ground 2:** There would be no material loss of allocated business and industrial land.

**Ground 3:** Other material considerations override the loss of 2 Rowan Court to class 4 uses during the occupation of the premises by the veterinary practice.

**Ground 4:** Creation of precedent of permitting a non-compliant use is an unreasonable reason for refusal. Material planning history exists.

**Ground 5:** A town centre location is inappropriate.

**GROUND 1:**

THE DEVELOPMENT WOULD NOT BE CONTRARY TO POLICY 26 OF NPF4 AND POLICY PMD3 AND POLICY ED1 OF THE LOCAL DEVELOPMENT PLAN 2016.

USE AS A VETERINARY PRACTICE WOULD BE A COMMERCIAL ACTIVITY WHICH WOULD BE COMPLEMENTARY TO CAVALRY PARK, OFFER SIGNIFICANT COMMUNITY BENEFITS AND WOULD NOT PREJUDICE THE PARK'S PRIMARY FUNCTION.

- 3.2 In NPF4's National Spatial Strategy, a key Priority in the "South Area", where Peebles lies, is to "**support local economic development**". This proposal facilitates local economic development and will sustain significant employment.
- 3.3 **Policy 26: 'Business and Industry'** includes the intent to "encourage, promote and facilitate business uses..." The policy includes the statement "*Development proposals for business and industry uses will be supported where they are compatible with the primary business function of the area. **Other employment uses will be supported where they will not prejudice the primary function of the area and are compatible with the business/industrial character of the area.***"
- 3.4 The proposed veterinary practice is a business and it provides substantial employment. The Planning Statement and Supplementary Statement, in demonstrating compliance with ED1 and ED3 showed that the proposed use is compatible with, and complementary to, other business uses within Cavalry Park and that it will enhance the quality of the Park as an employment location. The **material employment benefits** of the veterinary practice are acknowledged by the Officer in his report. In addition, the proposed use is compatible with the character of the area.
- 3.5 Further, the proposal offers **significant community benefits** through the provision of much needed animal health services for small animal owners, equine needs and farm services in the Peeblesshire area and beyond. The Officer's Report states "***It is acknowledged that Two Rivers Veterinary Practice do provide an important service which is of benefit to the community of Peebles and its surrounding area.***"
- 3.6 **Policy 27 of NPF4 City, Town, Local and Commercial Centres** provides that proposals for uses which will "*generate significant footfall, including commercial, leisure, offices, community, sport and cultural facilities, public buildings such as libraries, education and healthcare facilities, and public spaces will be supported in existing town centres*".

- 3.7 The Council's own approved Guidance on Core Activity Areas in Town Centres contains the settled view that veterinary surgeries exhibit the following features *"inactive frontage generally, footfall can be relatively low and the potential for linked trips is low"*.
- 3.8 Logically, NPF4 suggests, therefore, that a Veterinary Practice is not a use which would be supported in a town centre, as such does not generate significant footfall. This is contrary to the Officer's view expressed in his Report that the Veterinary Practice should seek a town centre location. Appeal **Ground 5** specifically deals with this point.
- 3.9 It is acknowledged that LDP Policy ED1 sets out a preference for Class 4 use in Strategic High Amenity Sites (of which Cavalry Park is one). It does however state that *"other complementary commercial activity may be acceptable if it enhances the quality of the business park as an employment location"*.
- 3.10 It should be noted that there are parts of Cavalry Park (e.g. Elm Court) where the original (c. 2007) planning permission does allow both class 2 (now class 1A) and class 4 use. It is unclear why class 2 (now class 1A) use is accepted in some parts of the Park and not others. The Officer's Report notes that the primary function of Cavalry Park is for class 4 use but ignores the fact that class 2 (now class 1A) use is allowed in parts (as well as classes 5 and 6).
- 3.11 It is undoubtedly the case that this proposal is for 'other high quality commercial activity which generates and sustains employment'. The proposal will enhance the quality of the high amenity business site as an employment location.
- 3.12 It is acknowledged that Policy **PMD3** (in both the adopted and emerging Plans) seeks development to be approved for allocated land uses as set out in Policy ED1, with the preference being for business use in the Park. Section (c) of PMD3 does, however, clearly state that any other use on allocated sites will be refused unless (c) *"the alternative use offers **significant community benefits** that are considered to outweigh the need to maintain the original proposed use"*.
- 3.13 The proposal for the veterinary consulting practice **offers significant community benefits** as noted at 3.5 above. The continued availability of the Two Rivers Veterinary Practice is of material benefit, and necessary, to the community of Peebles and beyond.
- 3.14 Further, the appellant has made it clear that they are willing to accept a planning condition in respect of the class 2 use [**now class 1A(2)**] (veterinary surgery/

consulting clinic) stating that the class 2 [now class 1A(2)] permission will be for that specific (veterinary) use only and that within six months of cessation of this use, the permitted use shall revert to class 4. Any subsequent use outwith class 4 would need to seek planning approval. It is noted that this condition has been used in connection with other consents elsewhere in the Park.

3.15 Non-conforming uses approved at LRB in recent years in Cavalry Park and seen as being complementary to the Park include those below. Planning history is dealt with in more detail under Ground 4.

- chiropractor (class 2) [now Class 1A(2)]
- dental surgery (class 2) [now Class 1A(2)]
- day centre for members of the public (class 10)
- training centre (class 10) and
- gymnasium (class 11).

3.16 The author is not aware of any policy requirement or other instances where applicants who have submitted applications for non-conforming uses in Cavalry Park have needed to provide evidence of 6 months marketing to prove that there is no demand for class 4 use in the subject building. The Officer sought such information during the processing of this case. The unit has not been marketed for 6 months for class 4 uses but it did recently used to be occupied by over 75% of class 2 [now class 1A(2)] businesses. Two Rivers Veterinary Practice has an urgent need for new premises and a deal has been reached between the seller and the applicant with the Practice owning the building as of 31<sup>st</sup> March 2023.

**GROUND 2: THERE WOULD BE NO MATERIAL LOSS OF ALLOCATED BUSINESS AND INDUSTRIAL LAND.**

3.17 As noted in the introduction, the majority of businesses which last occupied 2 Rowan Court were class 2 [now class 1A(2)] uses. Most of these uses did not seek planning permission for a change of use from class 4 to class 2 [now class 1A(2)] but it is an undeniable fact that the loss of class 4 space is not material when one compares the situation before and after the proposed veterinary use, given the number of former class 2 [now class 1A(2)] occupants against which enforcement action was not taken by the Planning Authority in 2 Rowan Court. **Over 75% of the last occupants of 2 Rowan Court were class 2 [now class 1A(2)] uses.** Please refer to Fig. 1 at section 1.7 for list of recent class 2 [now class 1A(2)] occupiers of 2 Rowan Court.



- 3.18 This high occupancy of 2 Rowan Court by (mostly unauthorised) class 2 [now class 1A(2)] uses was acknowledged by the Officer in his Report. This is interesting against the context of the Planning Officer seeking evidence that 2 Rowan Court had been marketed for Class 4 uses in order to provide evidence that there is no demand for class 4 uses. The building already was mostly occupied by class 2 [now class 1A(2)] uses.

**GROUND 3: OTHER MATERIAL CONSIDERATIONS OVERRIDE THE LOSS OF THE SITE TO CLASS 4 USES DURING THE OCCUPATION OF THE PREMISES BY THE VETERINARY PRACTICE**

- 3.19 Other material considerations must be taken into account, including:
- a) the specific circumstances surrounding the established local business of the veterinary practice and
  - b) the significant planning and appeal history in Cavalry Park relating to non-class 4 uses.

**(a) Specific Circumstances of the Practice**

- 3.20 2 Rowan Court is the only place available in Peebles which provides an appropriate setting for high quality veterinary care with its dedicated car parking, ground floor layout and a large well ventilated modern space suitable for consulting and clinical use.
- 3.21 The Two Rivers Veterinary Practice has been seeking alternative premises for well over 5 years. Discussions and design progressed to an advanced stage over an extended period which began c. 5 years ago with regard to a site in South Parks, but the deal was unable to conclude which came as a serious setback for the Practice. A potential site on Edinburgh Road was more recently reviewed, but this was bought by a third party.
- 3.22 The Practice has no other location from which it can operate in Peebles. There are no other premises in Peebles of suitable size which have ground floor access, necessary window ventilation and parking. There are no opportunities to buy land and build a suitable property. With a client base in excess of 5,000, it is imperative that the proposed new home for the surgery comes to fruition, in order for the Practice to continue to operate safely and effectively, to continue to offer excellent service to the animal-owning population of Peebles and the surrounding areas, and to enable business growth, and consequent employment opportunities, as well as further training positions for young people.

- 3.23 In terms of the assessment of available properties in the town centre, it must be appreciated that it is difficult for the applicant to prove a negative (i.e. that there are no suitable premises available), particularly given the way that properties are now marketed (on-line). There simply are no suitable premises for lease or for sale in the town centre of Peebles. The Applicant is well connected locally and has been searching thoroughly for an extended period of time. An online search of commercial and local agents' websites will confirm the lack of available suitable premises. Online marketing is used by the vast majority of agents and were premises available these would be apparent.

**(b) Planning History**

- 3.24 It is noted that there is material planning history in Cavalry Park where units that were built for class 4 use have been subsequently granted consent for class 2 [now class 1A(2)] and other uses. These permitted uses have been approved by the LRB as they have been seen to comprise "**other complementary commercial activity**" and to "enhance the quality of the Strategic High Amenity Business Park as an employment location."
- 3.25 Such planning history, together with other notable changes of use, is set out in more detail in **Ground 4** below. In common with those permissions, the proposal for the veterinary practice is absolutely considered to be **complementary to the wider business use of the Park, enhance the quality of the Park as an employment location, offer significant community benefits and ensure employment retention in Peebles**. It is in keeping with several other formally accepted and other established uses which are accommodated within the Park.

**GROUND 4: CREATION OF PRECEDENT OF PERMITTING A NON-COMPLIANT USE IS AN UNREASONABLE REASON FOR REFUSAL AND MATERIAL PLANNING HISTORY EXISTS.**

- 3.26 The Planning Authority's reasoning that this proposal should not be allowed in part because it would create a precedent for non-conforming uses is unreasonable because each case should be considered on its specific merits, although it has to be acknowledged that there is significant directly relevant planning history in the Park. Several applications for non-conforming uses, including several class 2 [now class 1A(2)] uses, have been permitted.
- 3.27 The appellant's proposal is in close proximity to a wealth of class 2 [now class 1A(2)] uses which have chosen to locate in Cavalry Park, including four

physiotherapist practices, chiropractors, podiatrists, sports massage, psychology services and two dental practices.

- 3.28 Several non-conforming uses have been considered, at appeal (LRB), to comprise “other complementary commercial activity” and to “enhance the quality of the Strategic High Amenity Business Park as an employment location.” Planning history is set out below:

**Suite 2, Unit 2 Rowan Court – CLASS 2 [now class 1A(2)] PERMITTED (Chiropractor)**

- 3.29 In October, 2006, under application **06/01787/FUL** permission was granted to change the use of this suite from class 4 office to class 2 [now class 1A(2)] chiropractor clinic.

**3 Cherry Court - 15/00275/FUL and 15/00011/RREF – CLASS 2 [now class 1A(2)] PERMITTED (Dental surgery)**

- 3.30 It is noted that all 3 blocks, comprising 11 units, in Cherry Court were built under permission 08/01574/FUL, approved November 2008, with a planning condition requiring class 4 use. In June, 2015 the LRB approved an application for part change of use from a dental lab (class 4) to form a dental surgery suite (class 2) [now class 1A(2)].
- 3.31 The LRB noted that Policy ED1 in the (then) Proposed Local Development Plan defined Cavalry Park as a Strategic High Amenity site, in which uses other than use class 4 would *generally* be refused. Members considered that this highlighted that there may be circumstances where alternative uses *would* be permissible. Members felt that this other complementary commercial activity would enhance the quality of the Business Park as an employment location.
- 3.32 Members felt unable to agree with the Officer’s/ Economic Development’s view that class 2 [now class 1A(2)] uses are generally not complementary to class 4 uses. Members were also unable to support the view that class 2 [now class 1A(2)] uses are necessarily more appropriately accommodated in town centres (out with prime retail frontages), where Economic Development had stated infrastructure is more conducive to the accommodation of visiting members of the public.

**Block 2, Unit 6, Cherry Court – Under 15/01498/FUL and 16/00013/RREF – CLASS 2 [now class 1A(2)] PERMITTED (Beauty Therapy)**

- 3.33 Permission was granted for change of use of a complete suite from class 4 office to class 2 [now class 1A(2)] use (beauty therapy salon). The LRB approved the proposal for the change of use to the beauty salon in June 2016 (under the extant

LDP) noting various vacant units were present in Cavalry Park and considered the proposed use to be complementary to other uses in the Park.

**3 Rowan Court, Suite 3 - 21/00486/FUL and 21/00015/RREF – CLASS 10 PERMITTED (day centre)**

- 3.34 This application for part change of use of ground floor to use class 10 and alterations to form additional office (class 4) space in attic floor was approved on 22<sup>nd</sup> October 2021. The LRB was of the view that the day centre for members of the public was in line with health and social care objectives in the area and that there was a clear local need for such a facility in the region. It was also recognised that the proposal would allow for job creation. Overall, the use was considered to be a complementary use to other uses within the Park.

**Unit C, 6A Elm Court – CLASS 10 PERMITTED (Training Centre)**

- 3.35 Under application **08/01525/FUL** permission was granted in October 2008 for change of use from office (class 2 [now class 1A(2)] and class 4) to form a training centre (class 10). It is acknowledged that at the time of development of Elm Court the units were approved for use as class 4 and class 2 [now class 1A(2)] space, for office and business use, under **07/01467/FUL**.

**Unit 5, Elm Court – CLASS 11 PERMITTED (Gym)**

- 3.36 In February 2018, permission was granted under retrospective application 18/01756/FUL for change of use from class 6 storage use to gym (class 11). This use was, in 2018, assessed as being complementary to the predominant class 4 use under the extant 2016 LDP.

**GROUND 5 – A TOWN CENTRE LOCATION (PREFERRED BY THE PLANNING AUTHORITY) IS INAPPROPRIATE**

- 3.37 The current practice does operate from a town centre location and this is wholly inadequate on account of the following:
- There is a lack of parking near the surgery for Clients bringing sick/ injured animals for treatment or euthanasia which is distressing and impractical for both animals and Clients.
  - Like many town centre properties there is a lack of space for the practice to operate which is materially limiting business growth. The material

operational issues arising from lack of internal space have already been detailed in the Planning Statement.

- Animals are currently walked outside in public areas to toilet by staff, as there is no outside space belonging to the practice. Little space is needed, but there is none in the town centre that can be used. 2 Rowan Court includes an area of grass.
- There is no external space for bins (recycling, general waste or offensive waste). This currently has to be transported back to the Biggar Practice every evening.
- The lack of parking means that vets have to move heavy equipment, such as the xray machine, between parking areas and the practice.
- Farmers and horse owners will sometimes bring an animal in a livestock trailer to be vaccinated. Parking close to the practice is needed.

3.38 The issues with parking on and around Old Town and Peebles High Street are well known. In working hours it can be very difficult to secure parking space and double parking for loading and waiting is common. Given the nature of the proposed veterinary clinic, the location in Cavalry Park is essential to enable parking close to the clinic.

2.39 During the processing of the application, the Officer suggested “surrounding infrastructure” makes a town centre location for a veterinary practice more conducive to the accommodation of visiting members of the public. The appellant questions the nature of this “infrastructure”. A town centre location is generally unsuitable for members of the public with sick animals, (including those contained in horseboxes) needing to visit a practice of this size.

2.40 The Planning Officer states in his Report that whilst usually a veterinary practice would be best suited to a town centre location, **“the Two Rivers Veterinary Practice’s large client base and their need to expand means that a town centre location may not be completely suitable in this instance”**. The Appellant strongly agrees with this conclusion.

2.41 The Planning Authority expresses the view that veterinary practices do not materially contribute to footfall in town centres within their own guidance, albeit such relates to core activity areas in town centres. It says “that veterinary surgeries

are considered to have ***“inactive frontage generally, footfall can be relatively low and the potential for linked trips is low”***.

- 2.42 As noted, if a veterinary surgery exhibits these features in a Core Activity Area, then logically a veterinary surgery will also exhibit these same features (low footfall) in the wider town centre – the location generally promoted by the Officer.
- 2.43 On many counts therefore, it is clear that the town centre is not a suitable location for the Two Rivers Veterinary Practice on account of the needs of the business and the characteristics of the business.