

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 23/00325/FUL

APPLICANT : U-Store Business Units Ltd

AGENT : Ray Cherry

DEVELOPMENT : Proposed change of use for Units 8-2 and 8-3 to mixed use include Classes 1 and 10

LOCATION: U-Stor Business Units
Spylaw Road
Kelso
Scottish Borders
TD5 8DN

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
A LOCATION PLAN	Location Plan	Refused
201	Proposed Plans	Refused
SITE PLAN SHOWING PARKING		Proposed Site Plan Refused

NUMBER OF REPRESENTATIONS: 91

SUMMARY OF REPRESENTATIONS:

21 neighbours were consulted by letter. There were 84 comments in support of development and 6 objections received, 5 of which were received within the statutory period of public consultation. The following issues were raised:

Objections:

- o Industrial facilities in the surroundings are not compatible with this use.
- o No toilet facilities.
- o No cafe facilities or other businesses that would complement this businesses.
- o Sets a precedent.
- o Building Rates are cheaper here than on the High Street, to the disadvantage of competitors.
- o A High Street location would support local cafes.
- o No public transport or amenities for users.
- o Contrary to local plan policies.
- o Health concerns from the former industrial use.
- o Noise.
- o Road safety concerns.
- o Abbey Row Centre classes are now being held on this site; adverse impact on the ongoing viability of community led hubs.

Support comments:

- o Community, health and wellbeing benefits.
- o Abundant on-site parking.
- o Spylaw Road is already in mixed use.
- o Avoids the use of on-line shops.
- o Contributes to footfall/ complementary spend to the town centre.

Consultations

Community Council: Supports the change of use to Class 1 and Class 10. The previous comment has been rescinded.

Roads Planning Service: No objections.

Environmental Health - Contaminated Land: No objection subject to condition. This is proposing the redevelopment of land which was previously operated as a saw mill and a depot. This land use is potentially contaminative and it is the responsibility of the developer to demonstrate that the land is suitable for the use they propose.

Forward planning: Objection.

This application is located at Spylaw Road/Station Road Industrial Estate, Kelso which is allocated as a Local Business and Industrial site (zEL205) within the Local Development Plan 2016 and is protected by Policy ED1: Protection of Business and Industrial Land. Policy ED1 states that 'development other than Classes 4, 5 and 6 are likely to be supported on local business and industrial sites' and 'retail may be acceptable on local sites where they are located within or adjacent to town centres'

This application proposes a change of use to Class 1 and Class 10 uses. However the main use of the unit is retail with almost 70% of the total floor space being used for retail purposes. Whilst it is acknowledged some of the building is used for Class 10 use, it is considered that overall the predominant use of the unit is use Class 1.

It is also acknowledged that within the industrial estate there are some established businesses which have a retail element however these sell bulky items that would not be appropriate or would be difficult to site within a town centre. It is not felt that the applicant has set out any exceptional circumstances explaining why it is necessary for the business to be located on an industrial estate.

Policy 26 within National Planning Framework 4 (NPF4) supports development proposals for business and industry uses on sites allocated for those uses in the LDP. It is therefore important that such allocations are safeguarded for such uses as it would be most undesirable if future Class 4, 5 and 6 businesses wished to locate and invest at Spylaw Road/Station Road and were unable to due to there being insufficient space to accommodate them.

It is considered that by allowing a retail use within a safeguarded business and industrial site, it would set an undesirable precedent especially at a time when we are trying to support town centres. There are two similar businesses located within Kelso town centre and it is considered that this business could be located within a town centre retail unit and does not need to be located within the safeguarded business and industrial site.

As the location of this proposal is within a safeguarded business and industrial site which is not located within or adjacent to the town centre of Kelso it is contrary to policy ED1.

PLANNING CONSIDERATIONS AND POLICIES:

National Planning Framework 4

Policy 26 Business and industry

Policy 27 City, town, local and commercial centres

Local Development Plan 2016

PMD2 Quality Standards

ED1: Protection of Business and Employment Land

ED3: Town Centres and Shopping Development

HD3: Protection of Residential Amenity

IS7: Parking Provision and Standards

Supplementary Planning Guidance:

Placemaking and Design 2010

Recommendation by - Euan Calvert (Assistant Planning Officer) on 25th April 2023

Site and Proposal

This is a retrospective application to change the use of part of this storage building to mixed use comprising Class 1 (retail) and Class 10 (Non-residential institutions).

In light of recent amendments to the GDPO, Class 1 now becomes Class 1A, "Shops, and financial, professional and other services" whereby a broader range of uses are within a single class which includes financial, professional services, amongst other uses.

For the purpose of the application, the predominant use of the application site is retail space extending to 136m² with a craft room measuring 61m².

A short supporting statement has subsequently been provided by the proprietor of the "Wonky Giraffe" outlining how the business operates. They state that retail is ancillary to the main function of manufacturing and craft work production. The retail space is said to have a dual function as a community space, training area and an area for provision of refreshments for patrons.

The proposals are within Units 8-2 and 8-3 within a larger subdivided site. The site plan identifies this proposal as a portion of the overall planning unit. There is a kitchen facility but no toilet facilities are identified within the units shown on the floor plans. The location plan identifies the entire building and curtilage within a red line boundary. A parking layout has now been provided demonstrating provision of 19 parking bays in-curtilage accessed by the existing vehicular access serving the whole site.

Other site occupants are identified as follows:

1. Unit 8-1 (Ground Floor) - G W Cockburn Water & Drainage Services
2. Unit 9-1 (First Floor) - Susan Gibson (Sports Massage)
3. Unit 9-2 (First Floor) - European Observatoire of Sport & Employment (EOSE UK Ltd)
4. Unit 9-3 (First Floor) - Darren Paxton Plumbing and Heating
5. Unit 9-4 (First Floor) - Peach Studio (Beautician)
6. Unit 9-5 (First Floor) - Andrew MacLean Design and Construction Management - Water & Wastewater Design Specialist (AMDCM LTD)
7. Unit 9-6 (First Floor) - Skin by Tanya (Beautician)
8. Unit 9-7 (First Floor) - KAOS (Kelso Amateur Operatic Society) - Upper Circle Costume Hire
9. Unit 9-8 (First Floor) Messrs Douglas Home (DH & Co)

Planning History

The following change of use applications have been considered previously:

11/00028/FUL

Change of use from farm machinery sales and alterations to form veterinary practice. Approved - lapsed.

Restriction of use: Condition 4: The premises shall be used for as a veterinary practice and for no other purpose (including any other purpose in Class 2 of the Schedule to The Town and Country Planning (Use

Classes) (Scotland) Order 1997, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

Reason: To ensure that the use remains compatible within the site.

14/00712/FUL

Change of use and alterations to form storage area on ground floor and meeting area for amateur operatic society on first floor - Approved - implemented.

Restriction of use: Condition 2: The area identified on the first floor of the approved plans is to be used as storage, rehearsal and meeting space for an operatic society, and for no other purpose other than Class 6 (Storage) of the Town and Country Planning (Use Classes) (Scotland) Order, unless first subject to a successful application for planning permission.

Reason: To maintain effective control over the future use of this part of the application building, in the interests of ensuring that any future use remains compatible with adjoining storage use within the application building, and with adjoining land uses.

14/01047/FUL

Part change of use from storage to form furniture manufacturing unit. Approved - implemented.

Restriction of use: Condition 2: The change of use to Class 5 manufacturing hereby approved is limited to the area highlighted in red on approved plan US-SP2 SHEET 5.

Reason: To maintain effective control over the development, and to ensure compatibility with neighbouring uses.

Planning Policy

It is appropriate to consider Policy 26 within National Planning Framework 4 (NPF4), which supports development proposals for business and industrial uses on allocated sites. Policy 27 is also considered, which identifies support for Town, Local and Commercial Centres. Development proposals are to be consistent with the town centre first approach.

Business and industrial allocations are safeguarded for Class 4, 5 and 6 by Policy ED1 in the Local Development Plan 2016. This application site is located at Spylaw Road/Station Road Industrial Estate, Kelso which is allocated as a Local Business and Industrial site (zEL205).

Policy ED1 - Protection of Business and Industrial Land - states that; 'development other than Classes 4, 5 and 6 are likely to be supported on local business and industrial sites' and 'retail may be acceptable on local sites where they are located within or adjacent to town centres'.

Policy ED1 within the Proposed Local Development Plan 2020 is presently under Examination by the Scottish Government Reporter.

The key planning issue is whether proposed use (retail and residential education/ training centre) is compatible with the surrounding uses and is compatible with the town centre first approach.

Assessment

This is a retrospective planning application. The fact this business is currently operating from these premises is not a material planning consideration.

Several of the 84 support comments highlight non-material planning matters, in particular, health and wellbeing benefits of the business are highlighted. Abundant on-site parking is being highlighted as a benefit over town centre locations. The community and health/ wellbeing benefits of this business are not a planning consideration. There is on-site parking and the Roads Planning Officer has considered the change of use and parking layout. They have no objections on road safety and road design grounds therefore the proposals can be considered to comply with policies PMD2 and IS7 concerning road safety.

Arguments are presented by supporters that this business is having combined retail and economic benefits to the wider town by attracting clientele from far and wide. Spylaw Road is said to already have a wide variety of businesses and this change is argued to be complementary to the uses. Those objecting counter

this argument and highlight concerns for the viability and vitality of the High Street. Concerns are raised by objectors that this development is occupying a site designed for industry and will detract or deter industry from locating to Spylaw Road Industrial Estate in the future.

Units 8-2 and 8-3 are located on the ground floor and form part of a larger 'U-Stor' unit which has been subdivided over two floors to create a number of smaller individual storage/ commercial units. This is a former industrial building constructed in brick and steel. It was formerly a tractor dealership/ agricultural engineers. The vernacular is best described as industrial in character. There have been modern additions made including new window and door reveals. The building has been re-roofed in insulated profile steel sheet.

There is first floor accommodation within the building and several of the neighbouring businesses (beautician, sports massage therapist and various other office accommodation) do not have planning consent. These are considered professional services which would now fall within Class 1A of the GDPO. Planning permission 14/00712/FUL was granted on this site subject to condition 2, which restricted the first floor to be used for storage, rehearsal and meeting space for an operatic society only. These other uses are therefore in breach of Planning Condition 2 of 14/00712/FUL. These non-permitted uses are not a material consideration in this decision.

This application proposes retail use over 70% of the public area outlined in blue on the submitted floor plan. The space given to the Craft Room (30%) is subordinate or secondary within the building. The proprietor has emphasised that the retail business space is dual purpose and provides for congregation of clientele/ patrons, where refreshments (teas and coffees) and community use takes place. It is acknowledged that the business contains Class 10 use but on a fact and degree basis, the predominant use of floor space is considered primarily as retailing. This would now be Class 1A of the GDPO. No pecuniary evidence has been provided to differentiate the proportion of retailing income against provision of classes/ workshops (Class 10, non-residential institution, use).

Compatibility

It is acknowledged that within the industrial estate there are some established businesses which have a retail element, however these sell bulky items that would not be appropriate or would be difficult to site within a town centre. These neighbours are considered as depots (Use Class 4, 5 or 6) with secondary/ ancillary retail counters which are predominantly for commercial/ account customers. The exception is Country Corner which is a long established retail use, 98/00016/COU. There is also a long established nursery facility in the surroundings, 07/00037/FUL. These neighbours should not be considered precedent to this application. This is a different site and different type of application combining both retailing and education/ congregation.

NPF4 identifies that business uses are only to be supported where they are compatible and will not prejudice the function of the area. The conclusion of the Planning Authority is that this business is not compatible with the business and industrial character of the area. Notwithstanding the two exceptions above, the wider site of Spylaw Road is characterised by both light and heavy industry. This retailing and congregation use is not compatible in the long term in that it is liable to detract from further industrial investment in the building and the surrounding area.

The Forward Planning Team have objected to the proposal as it does not comply with Policy ED1 of the adopted Local Development Plan. They highlight the updated version of Policy ED1 within the Proposed Local Development Plan 2020 strengthens the argument that retail uses should not be located on industrial estates. The policy states that 'Shops and outright retail activities which are not considered to be complementary nor ancillary uses to the estate will not be allowed'. As previously mentioned, this policy is subject to Examination with a decision expected in late spring/early summer, however it does indicate the direction of travel that the Council is taking to not allow retail uses within allocated business and industrial sites.

Policy 26 within NPF4 supports development proposals for business and industry uses on allocated sites. Safeguarding of allocated sites is intended to ensure adequate provision of employment generating land. It would be most undesirable if future Class 4, 5 and 6 businesses were detracted from locating and investing at Spylaw Road/Station Road due to there being insufficient space to accommodate them or because of an ever-widening variety of uses in the surroundings.

Kelso Town Centre

This application would set an undesirable precedent, especially at a time when the Council policies support town centres. On a fact and degree basis, the proportion of retailing space cannot be considered ancillary to the business. Furthermore, Class 10 use is not considered to be complementary to the predominantly industrial uses in the surroundings.

There are two similar businesses located within Kelso town centre and it is considered that this business could be located within a town centre retail unit and does not need to be located within the safeguarded business and industrial site (zEL205).

Policy ED3 identifies the extent of Kelso Town Centre where shopping development is to be located. Spylaw Road/Station Road Industrial Estate (zEL205) is not located within or adjacent to the town centre of Kelso, therefore this use is contrary to Policy ED1 and ED3.

Policy 27 of NPF4 identifies that proposals must be consistent with the Town Centre First Approach, which seeks to help town centres adapt positively to long term economic, environmental and social changes. Commercial uses that generate significant footfall will not be supported outwith those centres unless a Town Centre First Assessment demonstrates that all town centre and edge of centre options have been sequentially assessed; the scale of development cannot be altered to allow it to be accommodated in a centre; and the impacts on existing centres have been assessed and there will be no significant adverse effect on the vitality and viability of centres.

This site is not a retailing or commercial centre and does not have the character of such. Forward Planning colleagues identify that this proposal will set a precedent for Spylaw Road and will prejudice the long term provision of industrial space in Kelso.

The proposal does and will generate significant footfall therefore should be located in the local centre. No Town Centre First Assessment has been provided. No evidence has been provided that centre and edge of centre options have been sequentially assessed and discounted. It is considered that this scale of development can reasonably be accommodated in the Town Centre. No impacts on the centre have been assessed and an adverse effect on the vitality and viability of Kelso Town Centre is identified.

No site-specific justification has been advanced in the application. It has not been demonstrated that this proposal will create jobs, no marketing history has been provided to demonstrate any period of dormancy or vacancy in letting the buildings for Class 4, 5 or 6 uses nor has it been demonstrated that this retail use is a necessity to maintain viability of the site. The applicant has not set out any exceptional circumstances explaining why it would be necessary for the business to be located on an industrial estate.

Other Issues

The Contaminated Land Officer has identified the site is potentially contaminated owing to the previous use as a sawmill/ depot. A contaminated land investigation is a requirement of any permissions granted in future.

No residential amenity concerns are identified (policy HD3).

Conclusion

The proposals are contrary to national planning policy specifically Policy 26 of National Planning Framework 4 concerning protecting sites for business and industry and Policy 27 concerning the Town Centre First approach. Policies ED1 and ED3 of the Local Development Plan identify a town centric approach to retailing and requires proposals to be compatible with the predominant surrounding uses. This has not been demonstrated in the application.

REASON FOR DECISION :

The proposals are contrary to National Planning Framework 4 specifically Policy 26 concerning protecting sites for business and industry and Policy 27 concerning the Town Centre First approach. In addition, the proposals do not comply with Policy ED1 of the Local Development Plan in that the use is not compatible with the predominant surrounding uses and would dilute the industrial estate with other uses setting an undesirable precedent. The proposals are contrary to Policy ED3 which seeks to develop and enhance the town centre for retailing.

There are no material considerations identified which justify departure from these policies.

Recommendation: Refused

- 1 The proposal is contrary to National Planning Framework 4 Policy 26 as the proposal is not for business and industry uses on a site allocated for such uses in the Local Development Plan, and the Class 1 and Class 10 uses are not compatible with the business and industrial character of the area and would prejudice the function of the area.

In addition, the proposal is contrary to National Planning Framework 4 Policy 27 and the Town Centre First Approach, as it has not been adequately demonstrated that the proposed uses cannot be accommodated within the town centre or edge of centre or that there will be no significant adverse effect on the vitality and viability of the town centre; the proposal would set an undesirable precedent when town centres should be supported.

- 2 The proposal is contrary to Policy ED1 of the Local Development Plan 2016 in that the proposal would result in the loss of safeguarded business and industrial land and the Class 1 and Class 10 uses are not compatible with the predominant surrounding uses and would set an undesirable precedent for other retail uses, which are more suited to town centre locations, prejudicing the long term provision of business and industrial land in Kelso.

In addition, the proposal is contrary to Policy ED3 of the Local Development Plan 2016, which seeks to develop and enhance the role of town centres by guiding retail development to town centres.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.