

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

5 FEBRUARY 2024

APPLICATION FOR PLANNING PERMISSION

ITEM: **REFERENCE NUMBER:** 23/01340/FUL

OFFICER: Mr Scott Shearer
WARD: Jedburgh And District
PROPOSAL: Modification of Condition 15 pertaining to pedestrian links to bus stop and condition 20 pertaining to contamination land assessment of planning permission 20/00109/FUL

SITE: Land North of Jedforest Hotel, Jedburgh
APPLICANT: Mossburn Distillers Ltd
AGENT: Ferguson Planning

SITE DESCRIPTION

The application site is located approximately 5km to the south of Jedburgh and is accessed directly to the east of the A68. It occupies the same site which obtained planning permission for the development of two distilleries and associated works on land of the former Jedforest Hotel, now known as Mossburn House.

The majority of the site is vacant land. An escarpment runs north/south through the site, with the eastern part sitting at a lower level within the floodplain of the Jed Water. A finger of planting extends into the site from the north adjacent to a pond. Further mature woodland is found in the southern half of the site around Mossburn House, Cleathaugh Stables and the three residential properties which sit in the site to the west of the former hotel. The southern corner of the site is enclosed by mature woodland out with the site. The former filling station is located towards the centre of the site on the east side of the A68. Two further residential properties lie directly out with the site to the northeast.

PROPOSED DEVELOPMENT

The application is submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, to seek to vary Condition 15 (sustainable travel and access) and 20 (land contamination) attached to consent 20/00109/FUL for the development of two distilleries and associated visitor centres.

It is proposed to vary Condition 15 to remove the need to upgrade the public road to satisfy criteria a) and b) of this condition which requires the nearest bus stop on the A68 to be replaced and pedestrian connections to be provided from the development to the improved bus stop.

The applicant has suggested the following wording:

No development shall commence until detailed plans are first submitted to and approved writing by the Planning Authority in consultation with Transport Scotland. The plans shall illustrate the following information:

- *Plans to demonstrate how the existing access road will be physically stopped up. Thereafter the development shall be carried out in complete accordance with the approved details before the development hereby approved is operational.”*

Condition 20 is proposed to be varied to allow land contamination to be addressed on a phased basis linked to the overall phasing of the development works. The applicant has suggested the following wording:

Unless otherwise agreed in writing and in advance by the Planning Authority, prior to the development of each phase of works, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved. The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents.

PLANNING HISTORY

16/00744/FUL – This application first obtained consent for the whisky distillery and associated works at the site. This consent subsequently lapsed before all suspensive conditions were discharged. This did not permit the original permission to be lawfully implemented within the period prescribed by the consent.

20/00109/FUL – Repeat consent was obtained from the distillery development after the original planning permission lapsed. Through 2023 significant progress has been made to discharging the vast majority suspensive conditions attached to consent 20/00109/FUL.

REPRESENTATION SUMMARY

No third-party representations have been received.

APPLICANTS' SUPPORTING INFORMATION

The application has been supported by a covering letter to explain the changes sought to the conditions and further information in response to Condition 20.

DEVELOPMENT PLAN POLICIES:

National Planning Framework 4

Policy 1 Tackling the climate and nature crisis

Policy 2 Climate mitigation and adaptation

Policy 3 Biodiversity

Policy 4 Natural places

Policy 7 Historic assets and places

Policy 9 Brownfield, vacant and derelict land and empty buildings

Policy 12 Zero waste

Policy 13 Sustainable transport
Policy 18 Infrastructure first
Policy 23 Health and safety
Policy 26 Business and industry
Policy 29 Rural Development

Local Development Plan 2016

PMD1: Sustainability
PMD2: Quality Standards
PMD4: Development outwith Development Boundaries
HD3: Protection of Residential Amenity
ED7: Business, Tourism and Leisure Development in the Countryside
EP1: International Nature Conservation Sites and Protected Species
EP2: National Conservation sites and Protected Species
EP3: Local Biodiversity
EP5: Special Landscape Areas
EP8: Archaeology
EP13: Trees, Woodland and Hedgerows
EP15: Development Affecting the Water Environment
EP16: Air Quality
IS4: Transport Development and Infrastructure
IS5: Protection of Access Routes
IS6: Road Adoption Standards
IS7: Parking Provision and Standards
IS8: Flooding
IS9: Wastewater Treatment Standards and Sustainable Urban Drainage
IS13: Contaminated Land

OTHER PLANNING CONSIDERATIONS:

Circular 4/98 Use of Conditions

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Environmental Health (Contaminated Land Officer): No objection following the submission of further information which provided assurances that a phased approach to Condition 20 is acceptable. Recommend that Phase 1C should only commence once the steading investigation has been completed and advise that various contamination proposals are consolidated to help expedite assessment of future submissions.

Statutory Consultees

Transport Scotland: No objection. Note in correspondence with the applicants that further investigations have confirmed that it is not reasonable or pragmatic to require this development to provide a formalised bus stop on the A68 and links to it.

KEY PLANNING ISSUES:

- Whether sufficient justification is provided to vary Condition 15 and remove the requirement to provide a bus stop on the A68 and connections to it.

- Whether a phased submission of land contamination assessments will ensure that development appropriately addresses all site pollution as required by Condition 20.
- Any other material changes since the original decision.

ASSESSMENT OF APPLICATION:

Existing consent

The proposed changes to the consented scheme relate to removing the requirement to provide a new bus stop, the provision of connections from the development to the bus stop and allowing land contamination to be handled in a phased manner. The application does not propose to make any other changes to the consent scheme. This Section 42 application was lodged within the period of implementation of the original consent and can therefore be considered in the normal manner. Only conditions 15 and 20 remain outstanding. All other suspensive conditions have been discharged barring Condition 24 (landscaping) where negotiations are at an advanced stage.

Should the proposed changes to Condition 15 and 20 be acceptable then it is anticipated that the development would be implemented, and a condition can be attached to this permission to ensure the development is undertaken in accordance with all plans and agreements in writing with the planning authority to conditions attached to the live consent (20/00109/FUL).

Condition 15

It is understood that the original requirement for a bus stop to serve this development was derived from Transport Scotland's original assessment of the proposals in 2016. The intention was to formalise a bus stop on the A68 close to the development and also ensure that there were suitable footpath connections from this development to the bus stop. Further investigations into how the bus stop improvements sought by Condition 15 could be addressed revealed that the bus service along the A68 only travels in each direction once a day. Also, the times of the solitary service were not necessarily helpful for visitors to and from this development.

LDP and NPF4 policies do support sustainable travel modes, however it is apparent that accessing the proposed visitor centre by bus is not currently a viable option and there are no suggestions that the frequency and timing of the bus service would improve as a result of this development. This is a matter which is out of the control of the applicants.

Circular 4/1998: The use of conditions in planning permissions lists six tests for all planning conditions and should a condition not meet one of the six tests it would not be suitable to impose the requirement or obligation sought by the condition. Included within these tests is the requirement for a condition to be necessary and reasonable.

Due to the limitations of the bus service which this development could utilise and the original consultee (Transport Scotland) who requested the bus stop is now no longer seeking it, it would not be necessary or reasonable for this development to provide the upgrades required to provide the bus stop and associated connections.

The development will still cater for the provision of visitors by private coaches and may be able to utilise private connections to the Borders Railway. This will provide additional sustainable travel options ensuring visitors can access the development by their own vehicle or pre-arranged coach trips if necessary.

The original condition is now longer judged to meet all relevant tests for a planning condition. The developers can encourage customers accessing the development to use other means of sustainable transport connections and it would be in their interest to do so. Under these circumstances, the proposed variation to the condition is considered to be acceptable. Members are advised that Roads Planning have also provided confirmation that they are satisfied with the proposals to address the retained element of Condition 15. This will ensure that the existing access is stopped up. Subject to agreeing the proposed change, the condition is in a position to be discharged.

Condition 20

The development of the Mossburn Distillery is a largescale development which requires significant investment and is usually carried out in a phased approach. Phasing has been agreed in writing with Officers in response to Condition 1 part a) of consent 20/00109/FUL. The initial two phases of development will allow the new A68 access to be formed (Phase 1A) then an access road within the site to be constructed (Phase 1B).

The original land contamination condition required the whole site to be fully assessed and any areas of land contamination remediated before any development works can commence on the site. Initial investigations have been carried out where two areas of localised land contamination have been identified: the former petrol filling station and the former steading. The applicants have advised that the extent of contamination at the steading building cannot be fully investigated until the building is demolished. These works can not take place until the new site access from the A68 (Phase 1A works) and internal access road is constructed (Phase 1B works) and therefore present a hurdle to the development being implemented. The proposed variation to Condition 20 will allow the works within Phase 1A and 1B to be implemented which in turn, will allow the steading block to be assessed and any land contamination remediated. The Council's Contaminated Land Officer is satisfied that the areas of the site which would be developed under Phases 1A and 1B present very little prospect of encountering any contamination.

The proposed variation will ensure that land contamination at the site will be fully assessed and, where necessary, mitigated in accordance with requirements of LDP Policy IS13 and Policy 9 of NPF4 while ensuring that other pre-development works can proceed on a manner that is tied to the overall phased delivery of the development.

Material Changes Since Decision

It is it is necessary to consider whether there have been any significant changes in planning policy or any other material considerations that would be of significance in terms of the acceptability of the development.

Planning Policy

The original application was considered against the Development Plan that was in place in 2016. This consisted of the Scottish Borders Local Development Plan 2016 and Southeast Scotland Strategic Development Plan 2013 (SESplan). Other material considerations also included Scottish Planning Policy (SPP) and National Planning Framework 3 (NPF3).

National Planning Policy

National Planning Framework 4 (NPF4) has replaced both NPF3 and SPP and brought a significant legislative change whereby NPF4 now forms part of the Councils statutory development plan. The proposed changes to Conditions 15 and 20 have therefore been considered against relevant policies within NPF4.

Key to establishing whether the principle of the development is suitable against NPF4 is its compatibility with Policy 29: Rural Development. This policy seeks to encourage rural economic activity, innovation and diversification whilst ensuring that the distinctive character of the rural area and cultural heritage are safeguarded and enhanced. This development represents a significant economic investment which will help diversify and provide a vital boost to the Borders rural economy. Subject to full compliance with the original schedule of conditions (subject to changes of Condition 15 and 20) it is considered that the impact of this rural development on the environment can be appropriately mitigated. The merits of the proposals have also been considered against other relevant NPF4 Policies including those covering biodiversity, historic assets, health and safety and residential amenity, and there are no areas of conflict that cannot reasonably be covered by condition where relevant.

Local Development Plan

The proposal was considered against the Proposed LDP which has been subsequently adopted and remains the current LDP. There is not considered to be any change to Local Development Plan Policy that would justify any re-examination of the original decision to consent the development or alter its proposed rate of extraction. The original planning conditions will remain in place, and will suitably mitigate and control the appropriate development and operation of the site in accordance with LDP requirements.

Other Matters

Since the last report to Members in 2020, there has been no significant changes to the context of the site. The mitigation which was sought by planning conditions and legal agreement requirements detailed within the previous Committee Report will continue to mitigate the impacts of the development against all relevant provisions of the LDP and also relevant Policy considerations within NPF4.

CONCLUSION

It is considered that the variations proposed to Condition 15 and 20 of consent 20/00109/FUL respond to specific matters which have arisen since the determination of the original approval. The proposed changes will enable transport and contaminated land requirements to be handled sensibly and ensure that this important rural diversification is delivered at Mossburn. There has been no significant policy or other material changes that would determine that the original decision should be re-examined and reversed. The proposed development remains compliant with Policies of the Local Development Plan and relevant Policy provisions of National Planning Framework 4 which now forms part of the Councils statutory development plan, subject to the development being undertaken in accordance with the requirements and mitigation specified by the conditions of the original permission.

RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:

1. With the exception of the conditions hereby approved by this consent, the development shall be implemented in accordance with the plans, drawings, supporting information and schedule of conditions approved under application 20/00109/FUL and in accordance with all agreements/approvals under the terms of those conditions.

Reason: To ensure the development is implemented and operated in accordance with all measures within the approved schedule of conditions under the original planning consent, to ultimately ensure compliance the Development Plan and relevant planning policy guidance.

2. No development shall commence until detailed plans are first submitted to and approved writing by the Planning Authority in consultation with Transport Scotland. The plans shall illustrate the following information:

- how the existing access road will be physically stopped up and a programme for completion.

Thereafter the development shall be carried out in complete accordance with the approved details before the development hereby approved is operational.

Reason: To ensure sufficient access to the development by sustainable transport methods and in the interests of road safety.

3. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to the development of each phase of works, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved. The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:

A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, and d of this condition; and thereafter;

- a) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- b) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- c) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- d) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved

commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.
Reason: To ensure that the potential risks to human health, the water environment, property, and ecological systems arising from any identified land contamination have been adequately addressed.

DRAWING NUMBERS

Location Plan AL(SK)001
Site Plan Existing AL(SK)002
Existing Topography AL(SK)003
Site Plan Proposed AL(SK)004

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

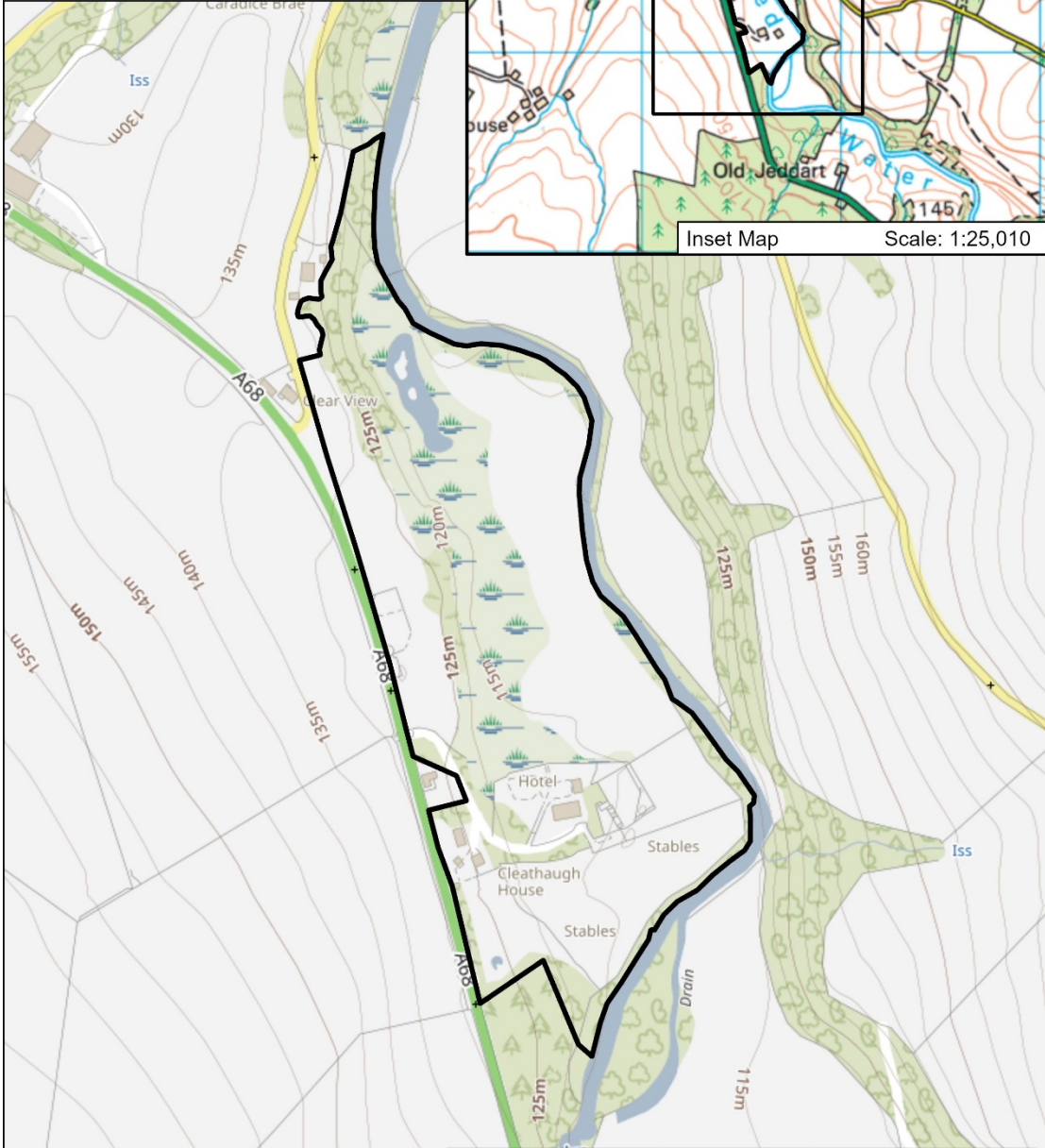
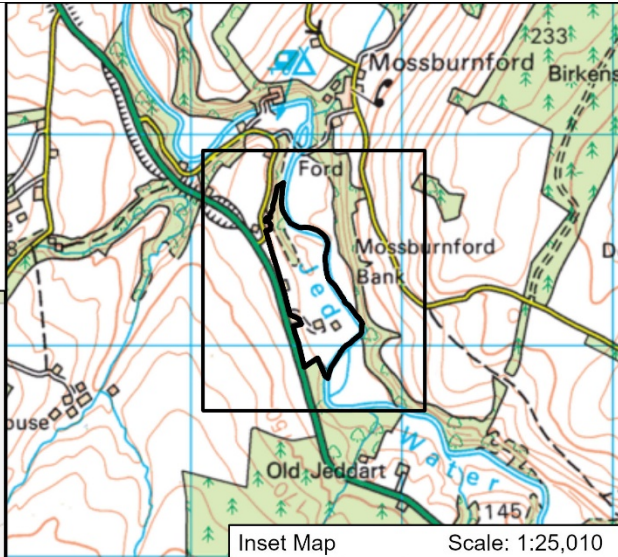
The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

Author(s)

Name	Designation
Scott Shearer	Principal Planning Officer (Local Review and Major Applications)



23/01340/FUL
Mosburn Distillery
Jedburgh



Scale: 1:5,010

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