

SCOTTISH BORDERS COUNCIL

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

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 23/01003/FUL

APPLICANT : Mr M Campbell

AGENT : Ferguson Planning

DEVELOPMENT : Commercial storage facility comprising 30 no. storage containers with associated works

LOCATION: Former Gas Works
Princes Street
Innerleithen
Scottish Borders

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
L(-1)101	Location Plan	Refused
L(-1)102	Existing Site Plan	Refused
L(-1)151	Proposed Site Plan	Refused
L(-3)351	Proposed Sections	Refused

NUMBER OF REPRESENTATIONS: 6

SUMMARY OF REPRESENTATIONS:

Key issues raised in public representations are, in summary:

- o The site has never been a water treatment site but held two large gasometers
- o The land was cleared for hardstanding
- o The surrounding area is now residential
- o There has been an increase in vacant industrial premises and units recently. Innerleithen has several industrial units and areas that are underused
- o Road and pedestrian safety concerns on a designated walking route, including from increase in heavy traffic, traffic nuisance and risk of damage. The route was not designed for commercial use. If granted, conditions should limit the use of the containers and restrict vehicles
- o Water run-off since the groundworks were undertaken
- o Potential contamination
- o Effect on local bat populations
- o Confirmation the containers are for domestic storage and not workshops/industrial use would not be unreasonable

Consultations

Community Council: No reply

Roads Planning Service: Raised concerns initially regarding the traffic to be generated and queried how hours of operation would be policed; how limiting the use to low noise and traffic generation would be policed; and, what land the applicants have control over so any improvements can be carried out. Following the submission of a response from the applicant's agent, the RPS subsequently advised that the additional information addressed the issues they had previously raised. Therefore, they confirm support for the proposal.

Economic Development Service: No reply

Access Officer: No reply

Flood Officer: The site is at risk in a 1 in 200 year event according to SEPA mapping. Council flood modelling provides a more accurate assessment and its modelling outputs for this area show the southern half of the site at risk of flooding. The proposed land use is a Least Vulnerable Use under SEPA guidance. However, the concern with such a proposal is the loss of functional flood plain and displacement of flood water. Should the applicant wish to develop the full site, this would raise an objection from the Flood team without a flood risk assessment showing the development has a negligible impact on flood risk. Should the number of containers be reduced and confined to the northern half of the site, then the Flood Officer would be able to look more favourably on the proposal. As matters stand, they make a holding objection.

SEPA: Object in principle because the development may put people or property at risk of flooding which is contrary to national planning policy. A precautionary approach is required in line with National Planning Framework Policy 22 by avoiding flood risk areas. New development should be located outwith flood risk areas. Development should cause no reduction in floodplain capacity. They note the site is a former gas works, but this is an historic use, so they consider the site to be vacant. The site does not, therefore, fall within exceptions in Policy 22a and avoidance of flood risk is required. The majority of the site is at risk of flooding based on SEPA's mapping. There is a risk of flooding from the Leithen Water. The site is approximately 300m upstream of the confluence of the Leithen Water and River Tweed and may be at risk of flooding from the River Tweed.

Flood studies for the Council show flood extents for a range of return periods. Approximately half the site is shown to be inundated in a 1 in 200 year + climate change event. In addition, the site is shown to be surrounded by flooding in smaller return periods. The climate change event for the flood studies has a 33% uplift. SEPA's current climate change guidance is a 59% uplift. The resultant climate change flow from the Leithen Water would be greater than the assessed flow for a 1 in 1000 year scenario. This means the extents of flood risk would be larger than the 1 in 1000 year extent shown in the Leithen Water Fluvial Flood Map. In addition, the flood study used a 1 in 30 year event as the downstream boundary. If they felt it appropriate to request further modelling, they would request the sensitivity analysis is done on the downstream boundary. Based on information available, the site is within a flood risk area and the proposal is contrary to NPF4. Any updated modelling is likely to show more or all of the site in the flood risk area of the Leithen Water. SEPA object in principle as the development is expected to put people or property at risk of flooding.

Contaminated Land Officer: The former land use is potentially contaminative. Recommends a condition requiring a site investigation and risk assessment, including remediation and verification

PLANNING CONSIDERATIONS AND POLICIES:

National Planning Framework 4

Policies 1, 2, 3, 4, 9, 12, 13, 22, 23, 26

Local Development Plan 2016

PMD1, PMD2, PMD5, ED2, ED5, HD3, EP1, ED2, EP3, IS5, IS7, IS8 IS9, IS13

Local Development Plan 2016

SPGS Sustainable Urban Drainage Systems 2020; Waste Management 2015

Recommendation by - Carlos Clarke (Lead Planning Officer) on 13th November 2023

Site and application description

The site is a former gasworks on which the application proposes 30 storage containers, for the purposes of Class 6 storage use by local businesses. It is an existing hard surfaced and fenced yard (the hard surfacing having been renewed recently having previously becoming disused and overgrown) and is accessed via a shared vehicular and pedestrian access leading from Princes Street.

Policy principle

The proposed use of the site would generally be supported by Policies PMD5 and ED5 of the Local Development Plan 2016, and Policy 9 of National Planning Framework 4, in general principle. Detailed site considerations are accounted for further in this assessment.

However, Policy ED2 of the LDP and Policy 26 of NPF4 require that Class 6 uses on non-allocated employment sites justify the need for the location; significant economic/employment benefit; demonstrate no suitable allocated alternative sites in the LDP or Employment Land Audit; and that they can co-exist with existing uses, ensuring the nature and scale of activity will be compatible with the surrounding area. The latter amenity considerations are covered below under 'Land use conflict/amenity'.

As regards alternative sites, needs and benefits, the applicant responded to the policies' requirements in these regards. They advise that consideration was given to other sites allocated in the LDP and identified in the Employment Land Audit, and their conclusion that none are suitable for the proposed development is accepted. The proposal itself will not generate employment but will benefit local businesses who may then provide greater employment opportunities. The applicant has advised of businesses who are actively interested in using the proposed storage space and contended that using an allocated site for such purposes would most likely not generate employment like permanent buildings on the same sites would. Fundamentally, it is accepted that this proposal would reuse an underused brownfield site; would not require use of allocated employment land floorspace that would likely generate employment opportunities more directly; and would provide an amenity that would be attractive to many small business operators to use. It is not considered the proposal would, therefore, conflict with the requirements of Policies ED2 of the LDP or 26 of the NPF.

Flood risk

As noted in consultation responses from SEPA and our Flood Officer (who both object to the application), flood modelling identifies the southerly half at risk in a 1 in 200 plus climate change event. Policy IS8 of the LDP seeks to discourage developments from areas at risk of flooding; ensure no increase in risk of flooding to other sites; and, where considering developments on flood risk areas, that a flood risk assessment informs a decision. This proposal does not avoid a flood risk area and is not supported by a flood risk assessment. Further to that, it will potentially increase the risk of flooding elsewhere. The proposal does not, therefore, satisfy Policy IS8.

Policy 22 of NPF4 is the more significant policy consideration (given its more recent adoption), and this further requires that developments avoid flood risk areas unless meeting the policy's criteria. This proposal does not meet such criteria. Though the proposed use is within the 'least vulnerable category', the current site has a 'nil' use since its previous use was long since abandoned. In any case, the proposal would potentially lead to flooding for other properties, and regardless of the vulnerability of the proposed development, this proposal does not satisfy Policy 22 as a result.

It is accepted that the siting of storage containers within this site is, fundamentally a commercial risk taken both by the owner and the users of the containers. Provided the containers are affixed to the ground, and the commercial risk is understood, then its vulnerability is not considered determinative. However, siting the containers would lead to loss of floodplain capacity and, therefore, potentially increase flood risk to other properties. The applicant was advised to reduce the extent of development so it is limited to the northern half of the site, but they advise that would result in only 6 to 7 containers, making the use unviable economically. The viability of the development, however, is not a sufficient consideration when weighed against the

potential harm this development could cause to public safety and other properties, which include residential properties, as a result of increased flood risk. In the absence of a flood risk assessment that discounts such concerns, it is considered this proposal would conflict with the above-noted policies and this conflict is overriding. Further to this, Policies 1 and 2 of NPF4 are designed to ensure that climate change is accounted for whereas developing this site, despite the potential increased risk of flooding arising as a result of climate change, would conflict with these policies.

Land use conflict/amenity

The use would generate activity from comings and goings of vehicles and persons, though the intention is to restrict operational use to between 8am and 5pm. The applicant has confirmed the site would be locked out with those times with the key not available to users. There would be no business operations carried out on site, the containers being for storage only. Albeit there are residential properties nearby, this arrangement would appear to be compatible with a reasonable level of amenity for those neighbouring properties. Planning conditions could suitably regulate the development to that effect.

The proposals have the potential to adversely affect neighbouring amenity by way of daylight and outlook impacts, though detailed consideration of these (notably on the south-easterly residential neighbour), suggests no significant harm would arise. An updated site section plan slightly adjusts the position of container 8 to suit, albeit the site plan has not been similarly updated. Though the neighbour's window position suggests no harm would arise as regards light loss in any case, a condition should ensure this row of containers is adjusted to reflect the update, as that will minimise risk to outlook.

Ecology

The proposed development would not have determinative implications for ecological interests, and there are no mitigation measures required, nor justification for enhancements from this type of use.

Visual impact

The containers would be 2.8m high according to the sections and, on this relatively discrete site, their siting would not have adverse visual implications for the public realm, subject to suitable colours and design specifications being used (for which a planning condition can regulate). A temporary consent should also be applied by planning condition, given storage containers are not suitable for permanent retention.

Road and pedestrian safety

Concerns regarding traffic generation along the shared access route, which includes core and customary path rights, are understandable, and the Roads Planning Service sought further information from the applicants before drawing a conclusion as regards road safety considerations. However, since their conclusion is that the proposal can be accepted, and no mitigation is required, it is not considered there is any justification for concluding that road or pedestrian safety would be unreasonably compromised.

Contamination

A condition can be applied as per the Contaminated Land Officer

Services, including surface water drainage

No water or foul drainage services are required. Repairs to the hardstandings, involving overlaid hardcore to 'top off' (as described by the contractor) the repaired hardstandings may have implications for surface water drainage affecting neighbouring land. However, in this case, that is a matter for the site owner to address outside this application, including compliance with General Binding Rules (regulated by SEPA), since this work does not fall within the scope of this application

REASON FOR DECISION :

The development would be contrary to Policy IS8 of the Local Development Plan 2016 and Policy 22 of National Planning Framework 4 in that it would be sited within a flood risk area and would potentially lead to

increased flood risk affecting surrounding properties, thus putting the safety of persons at risk, and risking damage to property. Furthermore, the proposal would, by having such flood implications, fail to account for and adapt to climate change risks, to the detriment of neighbouring properties and public safety, thus conflicting with Policies 1 and 2 of National Planning Framework 4. Other material considerations do not outweigh these policy conflicts and the resulting harm that would potentially arise from the development

Recommendation: Refused

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