

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**25 APRIL 2016**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 16/00187/FUL
<b>OFFICER:</b>	Mr C Miller
<b>WARD:</b>	Tweeddale East
<b>PROPOSAL:</b>	External redecoration and installation of extraction flue
<b>SITE:</b>	Dean Park, Peebles
<b>APPLICANT:</b>	A & R Peebles Ltd
<b>AGENT:</b>	Camerons Ltd

**SITE DESCRIPTION**

The site comprises of a former garage and, latterly, café premises at the corner of Dean Park and Northgate, Peebles. The building is partially single storey facing Dean Park and has a two storey element at the corner of Northgate. It currently consists of six display windows along the ground floor frontage and with entrance doors on the Dean Park and Northgate frontages. The building has a castellated eaves with pitched sheeting roof. It is not listed but lies within Peebles Conservation Area and, together with the adjoining premises, abuts a Category B Listed Building occupied by Holland and Sherry.

**PROPOSED DEVELOPMENT**

The application is for planning permission to install a new extract flue through the roof and repaint the application premises in a mid to dark grey – BS00A13. These works are part of overall works to run an Indian Restaurant from the premises. The flue will be taken through the southern roof slope on the Dean Park section of building. The plans indicate that the flue will be one metre above the ridge of the roof. The agent has provided information regarding the ventilation and odour control system served by the flue, stating it will designed in accordance with DEFRA guidance on commercial kitchen ventilation systems.

The entire frontage of the application premises will be painted in grey, signage details already having been agreed as part of a previous ADV application 15/01458/ADV. Other details shown on the submitted drawings do not require planning or advertisement consent, including the replacement extract grille and internal opaque film applied to windows.

**PLANNING HISTORY**

The building has a history of planning applications, permissions and advertisement consents, the most notable being as follows:

99/00066/COU – Change of Use to form job centre, childrens' nursery and 4 flats

02/01847/FUL – Alterations and subdivision to form garage, showroom and offices

03/01092/COU – Change of use and alterations to form learning centre

07/02101/CON: 07/02102/FUL – Demolition of buildings, erection of retail/office units and 8 flats (minded to approve subject to Legal Agreement)

09/00247/FUL – Change of use from education centre and alterations to form café and childrens' soft play area

09/01488/FUL – Change of use from garage/showroom and alterations to form restaurant and hot food takeaway (withdrawn)

15/01458/ADV – New illuminated and non-illuminated signage

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

#### **Environmental Health Officer:**

In relation to the external ventilation duct, there can be noise and odour problems unless installed, sited and maintained in accordance with DEFRA guidance on Commercial Kitchen Exhaust Systems. No objections, provided that any permission granted has an appropriate condition addressing these matters attached as well as conditions on noise limits and maintenance in relation to noise limits.

#### **Statutory Consultees**

**Peebles and District Community Council:** Response awaited.

**Peebles Civic Society:** No objections.

## **REPRESENTATION SUMMARY**

Objection representations have been received to the application from 16 occupants in the vicinity of the site, relating to ten different households. These can be viewed in full on the Public Access website and the main grounds of opposition can be summarised as follows:

- The application is not in accordance with the previous café approval. Disagreement that the new restaurant use falls within Use Class 3 of previous approval and the approved flue was not installed.
- The application is invalid as insufficient details of the ventilation system are provided and should be refused in accordance with the 1997 Act. There are also other errors in the forms.
- The external alterations are not in keeping or sympathy with the surrounding buildings, contravening Local Plan and Local Development Plan Policies on Quality Standards and Conservation Areas.
- The flue, in the absence of information to the contrary, could vent odours and noise to the detriment of residents in the vicinity, venting at bedroom level, contrary to Local Plan and Local Development Plan Policy on Air Quality. There is insufficient information and there could be more than one.
- The external alterations, by virtue of increased noise, traffic and odour, will have an adverse impact on the adjoining listed building, contrary to Local Plan and Local Development Plan Policy on Listed Buildings.

- The painting is only part of the overall premises and would result in unsatisfactory appearance in a Conservation Area.
- Asbestos removal is a danger from the roof if carried out inappropriately.
- The maintenance contract for the flue contains no access for residents.
- The use will increase disturbance from customers through additional noise, traffic and pedestrian movements, especially later in evening. Parking will create congestion and road safety risks. Increased impacts from take-away likelihood.
- Concerns over waste storage.
- Concerns over illuminated signage.
- Lack of adequate neighbour notification.

## **DEVELOPMENT PLAN POLICIES:**

### **Consolidated Scottish Borders Local Plan 2011**

Policy G1 Quality Standards for New Development  
 Policy BE1 Listed Buildings  
 Policy BE4 Conservation Areas  
 Policy EP5 Air Quality  
 Policy ED5 Town Centres  
 Policy H2 Protection of Residential Amenity

### **Proposed Local Development Plan 2016**

Policy PMD2 Quality Standards  
 Policy ED3 Town Centres and Shopping Development  
 Policy HD3 Protection of Residential Amenity  
 Policy EP7 Listed Buildings  
 Policy EP9 Conservation Areas  
 Policy EP16 Air Quality

## **OTHER PLANNING CONSIDERATIONS**

“Shop fronts and Shop signs” SPG  
 SHEP

## **KEY PLANNING ISSUES**

The main determining issues with this application are compliance with Development Plan Policies on external alterations to a property within a Conservation Area and defined Town Centre and consideration of potential impacts on adjoining residential properties.

## **ASSESSMENT OF APPLICATION**

### The Use

It will be noted that a number of the representations raise issues in relation to the perceived change of use of the premises as a result of the intention to re-open the former café/soft play facility as an Indian restaurant. Many of the comments made in representations relate to this and the perceived impacts of a more intensive use of the premises, including noise and parking disturbance resulting from later opening hours and the potentially increased take-away usage. It has also been contended

that no Class 3 “Food and Drink” has fully been implemented as a result of the lack of installation of the external flue approved under 09/00247/FUL.

The Department have considered this matter fully and responded to some of the objectors on the question of Use Class. The Council’s Chief Legal Officer has also verified the Department’s position on this matter. The 2009 consent for “Café and Childrens’ Soft Play Area” was implemented and established Class 3 “Food and Drink” Use within the premises, which remains the authorised use. Whilst the previous occupant only operated during the daytime and offered a limited range of food, operation on the basis of different hours and different cuisine is still within Use Class 3 and does not require planning permission as there is no change of use.

The removal of the ancillary play area does not alter this position nor does the lack of implementation of the previously approved roof flue (which was substituted with a rear wall vented solution). An element of take-away can feature in any Class 3 Use without there being a change to “Sui Generis”, depending on the scale of the take-away element. Whilst this is feared to be of greater scale upon operation of the new restaurant by some who have made representations, the Department is unable to allow speculation to affect consideration of the Use Class at this stage. As advised to some of the objectors, the Department can reassess the position, if need be, once the restaurant is established and in normal day to day operation.

The planning application is, therefore, only for the external extract flue and repainting of the property. Any representations relating to the perceived use or impacts arising from the way the property may be used cannot be considered to be valid for the purposes of assessing this application, nor can any comments on the previously approved signage, albeit further details on illumination and fascia treatment are still to be agreed by condition. The impacts only of the flue and repainting of the frontage are the matters that should be considered.

### Visual Impact

The visual impact of the flue should be assessed against the Consolidated Local Plan and Local Development Plan Policies governing Quality Standards, Residential Amenity, Conservation Areas and Setting of Listed Buildings. Whilst the representations claim there is insufficient information on the flue to enable it to be considered, it is considered that there is sufficient information on position, height, shape and width to enable the visual impacts to be properly assessed.

A flue was approved as part of the 2009 implemented consent for the café but not installed. This was a small flue on the front slope of the roof facing Dean Park towards the corner with the Northgate. There would have been visibility of this flue from Dean Park, though of lesser width, height and head profile than what is now proposed. The agent has demonstrated that, in the current proposal, only the cowl head is likely to be visible from the public realm although it is accepted that more of the flue will be visible from bedroom windows in Dean Park.

The full amount of projection visible above the roof ridge would be, at most, one metre. Although of thicker dimension than that previously approved, it will be set to the back slope of the roof as opposed to the front. Given this, the commercial nature and origins of the building, the projecting castellations, chimneys in the vicinity and the much higher two storey section of the building to the corner with Northgate, the impacts are not obtrusive to the extent that the visual amenity of the residents or Conservation Area would be significantly compromised.

The provision of a roof flue would not have any demonstrable visual impacts on the B Listed Building occupied by Holland and Sherry to the east of the premises. The principal elevation and setting of the building looks away from Dean Park and the character of the building would not be compromised by the proposed flue.

The minor nature of the visual change represented by the flue should also be considered in the context of the significant change that would result from redevelopment and rebuilding of the site through the addition of flats, shops and offices as minded to grant under application references 07/02101/CON and 07/02102/FUL

The new flue is seen as an alternative to that previously approved under the 2009 consent. Verification is awaited from the agent that the latter will not be implemented if the new flue is granted permission. To avoid roof clutter and duplication, it would be advisable to impose a planning condition to control this matter. The colour and surface finish would also be controlled by planning condition to ensure visual impact is further minimised.

Subject to the conditions mentioned, the proposed flue will not have an adverse impact on visual amenity and can be considered to be in compliance with the relevant Local Plan and Local Development Plan Policies on design, residential amenity, impact on Conservation Areas and Listed Buildings.

The same Policies should be used to assess the proposed change in paint colour on the frontage from a mid stone/mushroom colour to BS00A13, which is described as "Storm Grey". This could be more accurately described as a mid-dark grey and, despite representations to the contrary, is not considered to be an inappropriate colour for Peebles Conservation Area where darker colours are often encouraged. The colour picks up context from darker whinstone properties in Northgate and, although the remainder of the properties in Dean Park are lighter stone colour, there is no detriment in having a mix of building colours in a street scene provided the colour, in itself, is matching local vernacular. This variety of wall colours is demonstrated throughout Peebles Conservation Area and, more locally to the application site, in Northgate.

There has been representation that the remainder of the frontage to the Holland and Sherry building junction will be left in the current mid-stone colour and that this would not look appropriate in the street scene or Conservation Area. For the reasons mentioned above, it is not considered that variety in building frontage colour is inappropriate in itself provided the colour is sensitive and has local context – as per the proposed colour. It also assists that the division between the proposed and existing colour is defined by moulded quoins in Northgate and a vertical pilaster as part of the continuing frontage in Dean Park. This provides a stronger visual break and more logic to a change in colour. The colour will also integrate with the illuminated signage and window graphics approved as part of 15/01458/ADV.

It is therefore considered that the repainting will not have an adverse impact on visual amenity and can be considered to be in compliance with the relevant Local Plan and Local Development Plan Policies on design, residential amenity, impact on Conservation Areas and Listed Buildings.

#### Residential Amenity Impact

The property is located within defined Town Centre in the Consolidated Local Plan and Local Development Plan, covered by Policies ED5 and ED3 respectively. These

Policies encourage a mix of uses appropriate to commercial centres, including Class 3 “Food and Drink” uses. Whilst such uses are encouraged, potential impacts on residential properties still need to be considered, even if there may be an understanding that impacts are more likely as a result of the mix of uses that co-exist with each other in a town centre.

In Dean Park, it is appreciated that the southern side (including the application site) is within the town centre boundary and the northern residential side lies outwith. In such fringe areas, the impacts of town centre uses can be felt more acutely and assessment of the impacts against Policies covering residential amenity and air quality must also be considered and weighted, taking into account the fringe location.

For reasons previously mentioned, however, those impacts can only be restricted to assessment of the subject of the planning application – the external flue and its associated ventilation/odour control system. As there is no change of use, there can be no consideration given to other amenity impacts such as customer noise, increased parking, later opening hours etc.

There have been representations that the information submitted by the agent in relation to the flue extract system is inadequate and that the application should not be processed or determined until such information is provided. The agent has provided statements in answer to questions from officers, stating the following:

- The extract system and flue will be purpose designed by a competent and experienced mechanical engineer in accordance with the Best Practice Guide for design and operation of commercial kitchen ventilation systems published by DEFRA.
- The system is to achieve a high level standard of odour control with fine and carbon filtration, the extract fan, ductwork and flue terminal designed to minimise external noise.
- Appropriate maintenance contract in place, replacing fine filters fortnightly, carbon filters six monthly and ductwork cleaned six monthly in line with DEFRA guidance.

The agent has stated that this information has been passed to Environmental Health and the Committee will note the Environmental Health response. Whilst this acknowledges the potential for such installations to cause noise and odour problems if not properly installed and maintained, it goes on to accept the proposal subject to conditions controlling the installation and subsequent operation. These conditions would ensure DEFRA installation/maintenance, specific noise limits on the operation of the flue or extract machinery and maintenance/servicing to allow compliance with the noise limits. It is noted with the previous consent that the only condition attached related to noise limits. However, it is clear that the different nature and scale of proposed food production requires a greater level of filtration and extraction to satisfy Environmental Health, thus the suggested conditions.

Whilst there is concern from representations that additional detail should be available at this stage, Environmental Health have not requested it and are content that the suggested conditions provide adequate control and protection in terms of noise and odour impacts. They have similarly not considered it necessary to seek an Air Quality Assessment. As they are the Service within the Local Authority principally responsible for protection of residential amenity and pollution issues in relation to

noise and air quality, the response confirms that local residential amenity can be protected through imposition and enforcement of the suggested conditions without the need to seek additional details. This represents all reasonable precautions being taken to ensure minimisation of impacts in operation of the restaurant. If issues then still arise which lead to justifiable complaints, not only can the conditions be enforced but also Environmental Health have the backing of other appropriate regulations in handling resolution of the complaints. Whilst some objectors have asked for access to the maintenance contracts, this would be a matter for Environmental Health to enforce.

With the suggested conditions, the application can be considered to be in compliance with Local Plan and Local Development Plan Policies on protection of residential amenity and air quality.

### Other issues

Whilst other concerns have been raised by objectors, they mainly relate to issues regarding the intended usage of the premises which are not material factors in a decision on this planning application. There has been reference to works intended to the asbestos roof although the application is not taken to represent any form of alteration to the roof, except for the insertion of the flue. Advice has already been provided to objectors and the contractors over the necessary precautions and steps in relation to asbestos works – which are a matter primarily for the Health and Safety Executive to advise and enforce. It would be advisable, however, to attach an Applicant Informative to alert the applicant to the issue and to follow the right procedures, given what is known about the roof.

Comment was also made about potential lack of neighbour notification but this was checked and there were found to be no deficiencies. All premises within 20m were notified and a duplicate was sent out to the person who didn't appear to receive their first notification.

### **CONCLUSION**

Subject to the conditions and Applicant Informative listed below, the development is considered in compliance with Development Plan Policies on external alterations to a property within a Conservation Area and defined Town Centre with acceptable and controllable potential impacts on adjoining residential properties.

### **RECOMMENDATION BY CHIEF PLANNING OFFICER:**

I recommend the application is approved subject to the following conditions

1. The flue not to be installed until further details are provided of the colour and surface finish for the approval of the Planning Authority and, once approved, the flue to be installed in accordance with the approved details.  
Reason: To safeguard the amenity of the Conservation Area and surrounding properties.
2. The flue hereby approved under this consent shall be the only external flue installed on the premises.  
Reason: The implementation of the previously approved flue would be unnecessary and lead to a cluttered arrangement.

3. Any noise emitted by the flue or machinery attached thereto will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from the flue or machinery attached thereto should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2. The flue and machinery attached thereto shall be maintained and serviced in accordance with the manufacturer's instructions so as to stay in compliance with the aforementioned noise limits.  
Reason To protect the residential amenity of nearby properties.
  
4. The flue or machinery attached thereto shall be installed and maintained to the specification of the Planning Authority in accordance with the DEFRA guidance document "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems"  
Reason To protect the residential amenity of nearby properties.

Applicant Informative

1. The applicant should be aware that the roof may contain asbestos and that all statutory precautions are undertaken when carrying out any works to the roof to insert the approved flue. Guidance on asbestos should be viewed on the Health and Safety Executive website and all relevant precautions and mitigation followed.

DRAWING NUMBERS

Section - 9243-03-02  
Elevations – 9243-03-01  
Design Statement

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

The original version of this report has been signed by the Service Director (Regulatory Services) and the signed copy has been retained by the Council.

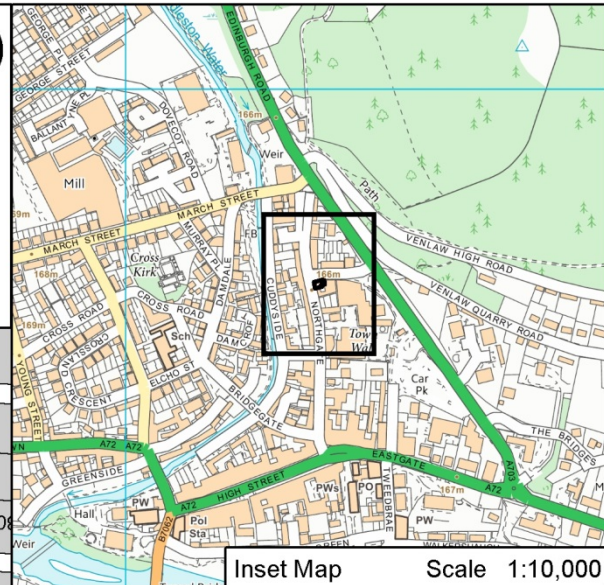
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Name	Designation
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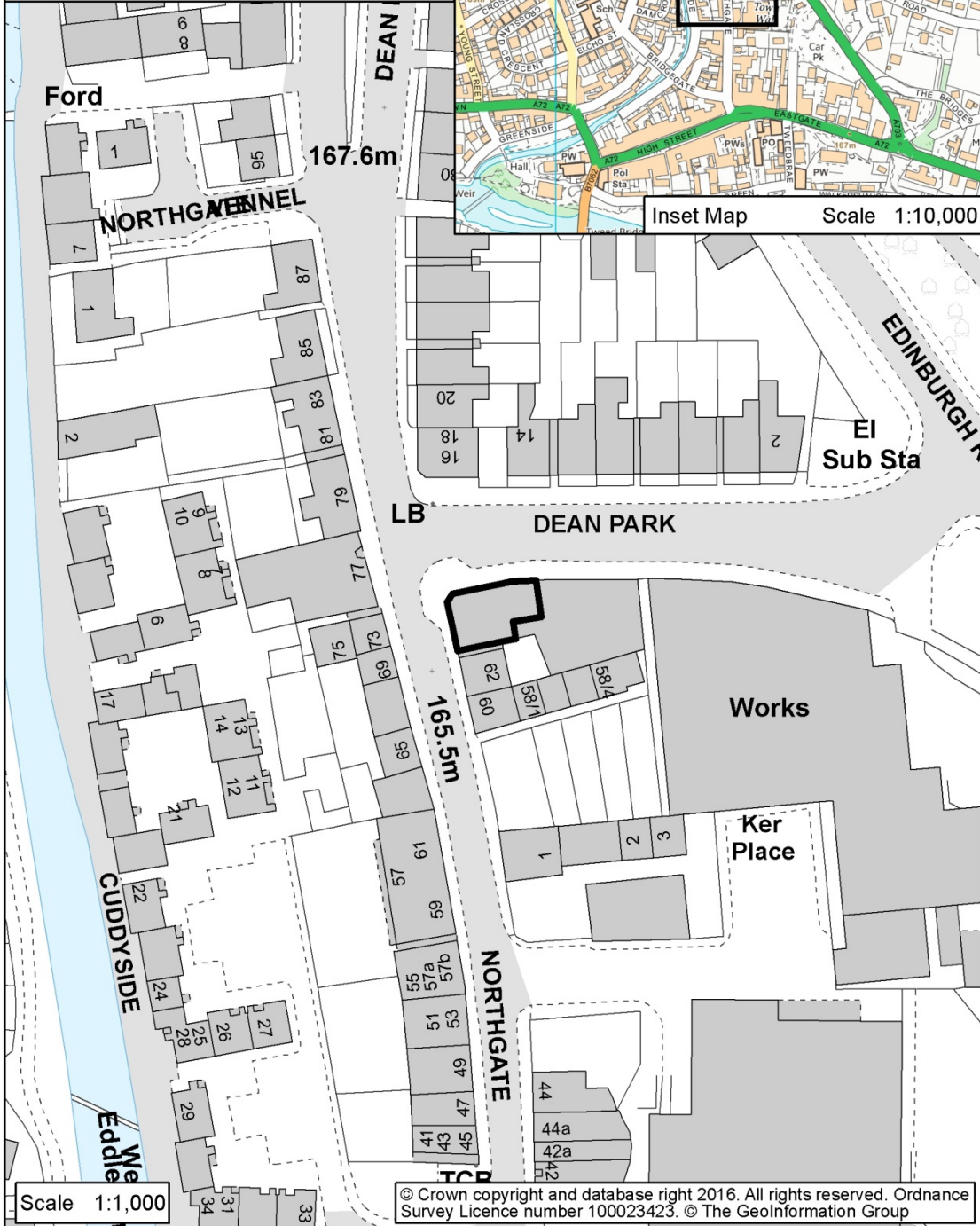




16/00187/FUL  
 Dean Park  
 Northgate  
 Peebles



Inset Map Scale 1:10,000



Scale 1:1,000

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