



T: [REDACTED]

E: [REDACTED]

Sent by e-mail to [REDACTED]

Our ref: NA-SBD-056  
Planning Authority Ref: 19/00509/FUL  
20 November 2020

Dear [REDACTED]

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS)  
(SCOTLAND) DIRECTION 2009  
ERECTION OF CLASS 1 RETAIL UNIT AND CLASS 3 DRIVE THRU RESTAURANT  
AND TAKEAWAY AND ASSOCIATED INFRASTRUCTURE, LAND WEST OF  
STORE AND R ELLIOT LTD, COMMERCIAL ROAD, HAWICK, SCOTTISH  
BORDERS, TD9 7AD**

1. This letter contains Scottish Ministers' decision on the above application submitted to Scottish Borders Council by Image Estates Queen Street Ltd.
2. The Scottish Borders Council was minded to grant the application, but it was required to notify it to Scottish Ministers because there was an unresolved objection by SEPA in respect of flood risk. The application was subsequently called in for Scottish Ministers' determination on 4 March 2020 because of potential conflict with national policy in that regard and inadequate justification for departing from the policy.
3. The application was considered by means of written submissions and an unaccompanied site inspection by [REDACTED], a reporter appointed for that purpose. A copy of the reporter's report, dated 29 September 2020 is enclosed.

**Consideration by the Reporter**

4. The reporter's overall conclusions and recommendations are set out in Chapter 5 of the report.

**Scottish Ministers' Decision**

5. Scottish Ministers have carefully considered the reporter's report. They agree with the reporter's overall conclusions and recommendation and adopt them for the purpose of their own decision. They, therefore, accept the reporter's recommendation that planning permission should be granted subject to the conditions and informatives set out in the reporter's report.

6. Scottish Ministers agree with the reporter's conclusions that the proposed development is in a location allocated for regeneration and is consistent with the criteria of the Scottish Borders Local Development Plan (LDP) policy ED5 which deals with regeneration.

7. Notwithstanding that the proposed development is within the 1-in-200-year floodplain, and therefore in a medium- to high-risk area in respect of flooding, Scottish Ministers accept the reporter's findings, that the proposed development is also consistent with LDP policy IS8 in respect of flood risk and consistent with Scottish Planning Policy's (SPP) flood-risk framework. Scottish Ministers accept the reporter's view that it would be in a built-up area and would be protected by flood protection measures of a standard identified as acceptable in SEPA's guidance. Scottish Ministers accept the reporter's view that even in the event that SPP is interpreted as requiring a higher standard of flood-protection measures than that set out in SEPA guidance for development of the type proposed, there are a number of material considerations that still weigh in favour of setting aside the policy restriction in this instance: the site is allocated for regeneration in the LDP; the site has had a previous use of a similar degree of vulnerability; and flood defences are being built that will make it better defended than before.

8. Scottish Ministers accept the reporter's finding that the predicted increase in flood level as a consequence of the proposed development would (subject to account being taken of it in the design of the flood protection scheme) have a neutral effect on flood risk. Scottish Ministers note that the reporter has identified a number of circumstances that justify the proposed land-raising, and agree with the reporter's considerations that these amount to exceptional circumstances, in terms of SPP. In particular, the reporter's view is that the proposed development would not go ahead if land-raising is not permitted, which would leave an unsightly brownfield site near the centre of Hawick. Scottish Ministers have taken into account the reporter's findings that similar development at a similar degree of flood risk (and which has involved land-raising) has been permitted to south and north, and that this is also a material consideration in favour of a grant of permission. Scottish Ministers agree with the reporter's view, that the circumstances are sufficient to justify the proposed land-raising under SPP.

9. Scottish Ministers agree with the reporter's findings that the proposed development accords with the development plan overall and that there are no material considerations that would indicate permission should not be granted.

10. Accordingly, Scottish Ministers hereby grant planning permission subject to the conditions and informatives set out in the reporter's report and as attached in the annex to this letter for the erection of a Class 1 retail unit and Class 3 drive thru restaurant and takeaway and associated infrastructure at land west of Store and R Elliot Ltd, Commercial Road, Hawick.

11. The decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If an appeal is made, the Court may quash the decision if

satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

12. A copy of this letter and the report has been sent to Scottish Borders Council and SEPA. Those parties who lodged representations will receive a copy of this letter.

Yours sincerely

  
Senior Planner  
Scottish Government  
Planning Decisions Team

## **ANNEX**

### **PLANNING PERMISSION FOR CLASS 1 RETAIL UNIT AND CLASS 3 DRIVE THRU RESTAURANT AND TAKEAWAY, LAND WEST OF STORE AND R ELLIOT LTD, COMMERCIAL ROAD, HAWICK, SCOTTISH BORDERS, TD9 7AD**

#### **CONDITIONS OF PLANNING PERMISSION AND INFORMATIVES**

1. Notwithstanding the details submitted in support of the planning application, no development shall commence until, EITHER:

(a) revised versions of all of the approved site layout plans have first been submitted to and approved in writing by the planning authority, which all consistently describe the footprint and foundations of the retail unit building hereby approved, set back such as to be at least a minimum distance of 4 metres away from the existing property boundary with the garden ground of Haig House, 23 Princes Street; OR

(b) an arboricultural report prepared by a qualified professional arboriculturalist, which identifies and describes the impacts of the proposal upon all trees along the western boundary of the site, has first been submitted to, and approved in writing by, the planning authority and includes appropriate mitigation of these impacts.

Thereafter, the development shall only be implemented and operated in accordance with the approved details including any and all measures specifically identified to conserve the trees in question.

Reason: To retain effective control over the development in the interests of conserving appropriately trees on neighbouring land and within a tree-preservation order, which make a valuable contribution to the visual amenities of the site and surrounding area and to the residential amenity of 23 Princes Street and its neighbours.

2 No development shall commence until an Arboricultural Method Statement (AMS) fully compliant with BS5837:2012, has first been submitted to, and approved in writing by the planning authority, which details in full the approach and measures that are to be taken - during the construction period and within the construction works themselves - to minimise impacts upon all trees within the area of tree-preservation order SBC57, including all such impacts upon and within the root protection areas and canopy spreads of all trees that root into, and/or overhang, the site. This shall include all measures that are to be put in place or operated in order to minimise such impacts during construction works (including excavations) to accommodate any and all services (including water supply) and within the formation of any and all areas that are to be surfaced in hard standing. Further to the approval of this AMS, the development shall then be implemented in accordance with the approved details, including any and all mitigation measures required to protect the root systems within the area concerned.

Reason: To retain effective control over the development in the interests of conserving appropriately trees on neighbouring land and within a tree-preservation

order, which make a valuable contribution to the visual amenities of the site and surrounding area.

3 No development shall commence until a written programme and timetable for the implementation of the development, which addresses in full the matters set out in Informative Note 1 attached to this planning permission, has first been submitted to, and approved in writing by, the planning authority after consultation with the council's Roads Planning Section and the Hawick Flood Protection Scheme project team. Thereafter, the development shall only be delivered and implemented in accordance with the details of the approved programme and timetable unless any subsequent change or changes to the approved details are first agreed in writing by the planning authority prior to the implementation of this change/these changes.

Reason: To retain effective control over the delivery and implementation of the development in the interests of road safety, by ensuring that sufficient measures are in place to manage vehicular and pedestrian movements at and around the site during the development period; and in the interests of mitigating appropriately the risk of any unacceptable flood risk impacts at the site and in the surrounding area during the same period by ensuring the delivery and effectiveness of the Hawick Flood Protection Scheme are not compromised by the development.

4 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the planning authority in advance of the commencement of construction on the retail unit building hereby approved, no development shall commence upon the superstructure of this aforementioned building until a scheme of details describing the proposed external materials and finishes of the external surfaces of this same building, has first been submitted to, and approved in writing by, the planning authority. Thereafter, the development shall be implemented in accordance with the approved details and the external walls of the aforementioned building shall be so finished, by a point in time that is no later than six months after the day of the first occupation of this same building.

Reason: To ensure a finished appearance for the same building that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

5 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the planning authority in advance of the commencement of construction on the restaurant building with drive thru and takeaway facilities hereby approved, no development shall commence upon the superstructure of this aforementioned building until a scheme of details describing the proposed external materials and finishes of the external surfaces of this building has first been submitted to, and approved in writing by, the planning authority. Thereafter, the development shall be implemented in accordance with the approved details and the external walls of the aforementioned building shall be so finished, by a point in time that is no later than six months after the day of the first occupation of this same building.

Reason: To ensure a finished appearance for the same building that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

6 Notwithstanding the details submitted in support of the planning application, none of the following ancillary structures shall be erected or installed on site, other than in accordance with a scheme of details for each, which shall in each case first have been submitted to, and approved in writing by, the planning authority, and which shall furthermore in each case also include full details of the proposed size (including dimensions) and proposed finished appearance (including design, materials and finishes) of each, and each type of, ancillary structure:

- (a) storage container;
- (b) trolley bay shelter;
- (c) cycle store; and
- (d) play area, including details of all proposed play equipment, the surfacing and any enclosure.

Thereafter, the development shall be implemented in accordance with the approved details.

Reason: To ensure a finished appearance for the site that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

7 No development shall commence until the developer has secured approval from the planning authority for a Written Scheme of Investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA). The WSI shall be submitted by the developer no later than 1 month prior to the start of development works and approved by the planning authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI. (Please see Informative Note 2 for related advice and guidance).

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

8 Unless otherwise agreed in writing and in advance by the planning authority, no development shall commence until a ground-investigation report has first been submitted to and approved in writing by the planning authority. The report shall include identification and assessment of potential contamination on the site (in accordance with PAN 33 (2000) and BS10175:2011 or subsequent revisions/replacements) and shall include (as applicable) a remediation strategy, validation report and monitoring statements, including timescales for the implementation of all such measures. Development shall not commence until the

report is approved by the planning authority. Thereafter, the development shall be carried out only in accordance with the approved report, including approved remediation, validation, monitoring measures and timescales for their implementation.

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.

9 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the planning authority in advance of the commencement of development, no development shall commence until all of the following have first been submitted to, and approved in writing by, the planning authority after consultation with Transport Scotland:

- (a) a scheme of details of street lighting (including the proposed locations, dimensions, materials and finishes of the columns; the proposed numbers, specifications, luminance and operation of the lamps; and the lighting design); and
- (b) a scheme of details describing the treatment of the site boundary with the A7 Trunk Road, including measures to regulate public access between the site and the carriageway of the Trunk Road.

Thereafter, the development shall be implemented and operated in accordance with the approved details and the site shall not be occupied for the first time, or be made accessible to the general public, until all of the approved street lights have all first been installed and are all fully operational; and the roadside boundary treatment has first been fully implemented, and the measures to regulate public access to and from the trunk road are first in situ.

Furthermore, the aforementioned measures shall thereafter be maintained and operated in perpetuity in accordance with the approved details (including any and all repairs and replacement as necessary, to maintain this boundary treatment in situ, and to the required specification).

Reason: To ensure that there is no distraction or dazzle to drivers on the trunk road and that the safety of the traffic on the trunk road is not diminished; and to minimise the risk of pedestrians and animals gaining uncontrolled access to the trunk road with the consequential risk of accidents.

10 Notwithstanding the details submitted in support of the planning application, no development shall commence until revised versions of the approved site layout plans, which address in full the concerns of the Roads Planning Service (set out within Informative Note 3), have first been submitted to, and approved in writing by, the planning authority. Thereafter the development shall be implemented and operated in accordance with the approved details. Furthermore, and unless otherwise agreed in writing and in advance by the planning authority, no part of the development hereby approved shall be opened to, or otherwise made accessible to, the general public until the road access, footways and car parking provision described on the approved drawings have all first been fully constructed and

completed, and made fully available to, and for use by, visiting members of the public.

Reason: To retain effective control over the construction and operation of the site in the interests of road and public safety.

11 Surface-water drainage from the site shall not be connected into the existing surface-water-drainage system which serves the carriageway of the A7 trunk road. No development shall commence until a revised version of the Approved Site-Drainage Plan, which addresses in full the matters set out in Informative Note 4, has first been submitted to, and approved in writing by, the planning authority. Thereafter, the development shall be implemented and operated in accordance with the approved details. Furthermore, and unless otherwise agreed in writing and in advance by the planning authority, no part of the development hereby approved shall be opened to, or otherwise made accessible to, the general public until the approved surface water drainage system has first been completed and fully implemented.

Reason: To retain effective control over the construction and operation of the site in the interests of road and public safety.

12 Notwithstanding the details submitted in support of the planning application, this consent shall not purport to grant consent for any of the following structures or installations that are described or indicated on the Approved Drawings, including the Approved Site Plan:

- (a) "Pumping station";
- (b) "Totem"; and/or
- (c) "Banner".

Please see Informative Note 8 for related advice and guidance.

Reason: To retain effective control over the development. The permission is not specifically an approval of the pumping station (or any other infrastructure) which is to be installed or operated by the Hawick Flood-Prevention Scheme under a different consent. Any advertisements require advertisement consent.

13 Notwithstanding the details shown on the approved drawings, the development hereby approved shall not take place except in strict accordance with a scheme of hard and soft landscaping works, which shall first have been submitted to, and approved in writing by, the planning authority before the commencement of development. Details of the scheme shall take full account of the advice and guidance of Informative Note 6, and shall include:

- (a) location and design, including materials, of any walls, fences and gates;
- (b) all soft and hard landscaping works;
- (c) a planting schedule and programme for subsequent maintenance;
- (d) the design specifically of the boundary treatment for the site's western boundary with properties on Princes Street and northern boundary with the present Aldi store;
- (e) a description of how the proposed landscaping scheme accords with the council's 2007 guidance Designing Out Crime in the Scottish Borders (or any replacement of that guidance).

Unless otherwise agreed in writing and in advance by the planning authority, all planting, seeding and turfing comprised in the approved details of new soft landscaping shall all be carried out during the first full planting and seeding seasons following the first occupation of the first of the two buildings hereby approved (regardless of whether this is the retail-unit building or the restaurant building), and shall be maintained thereafter and replaced as necessary for a period of five years from the date of completion of the planting, seeding or turfing. Further to the completion of all approved new planting during the first full planting and seeding seasons following the first occupation of the first of the two buildings hereby approved, written notice shall be given to the planning authority for its information and inspection.

Reason: To ensure the satisfactory form, layout and assimilation of the development and to ensure that the proposed landscaping is carried out as approved.

14 No trees within the application site shall be felled, lopped, lifted or disturbed in any way without the prior written consent of the planning authority. Further, and unless otherwise agreed in writing and in advance by the planning authority, there shall be no excavation or raising or lowering of levels within the root-protection area(s) of any retained tree(s).

Reason: To ensure that the trees to be retained will not be damaged during demolition or construction, because the existing tree(s) represent an important visual feature which the planning authority considered should be substantially maintained.

## **Informatives**

### **INFORMATIVE NOTE 1:**

The timetable and programme required under Planning Condition 3 attached to this Consent, should identify the precise times, periods (in calendar dates) and arrangements for the operation and management of all vehicular and pedestrian movements at, to, from and around the site, during all of the following phases of the implementation and progress of the development hereby consented, and any interludes in between these:

(a) the commencement, progress and completion of any use of the site for the accommodation of any and all operations relating to the progress of the Hawick Flood Protection Scheme works; and

(b) the commencement, progress and completion of the re-development of the site hereby approved, including the timetables and programmes for the completion of both the retail unit building and of the completion of the restaurant building.

The details shall include the proposed access arrangements to and from the site during all of these periods, and identify any and all measures required within the operation of the surrounding streetscape and wider road network, required to manage safely and expeditiously all vehicular and pedestrian movements at and around the site during these phases.

## **INFORMATIVE NOTE 2:**

The Written Scheme of Investigation required under Planning Condition 7 should include a proposed protocol for identifying whether or not there are any appropriate opportunities to conserve a record of the presence of the mill lade on the site, including any potential to conserve and display any actual physical remnant(s) in situ; and/or to provide any other interpretative resource to advise visiting members of the public about the site's industrial heritage.

## **INFORMATIVE NOTE 3:**

The details of the revised Site Plan Drawing required under Planning Condition 10, should be revised to address the following points highlighted by the Roads Planning Section:

- The radii on the left of the exit from the restaurant drive-thru should be larger and sweeter to ensure vehicles can manoeuvre out without having to use both lanes of the access road;
- The tie-in path with Aldi conflicts with a parking space in the Aldi layout and also has steps present. This should be an at-grade route. A revised detail for this area is required;
- The crossing point located adjacent to the two disabled bays at the corner of the access road should either be relocated so as not to conflict with the adjacent parking bay or omitted. Pedestrians from that corner of the parking area and the link path should be encouraged to travel to the crossing in front of the main access;
- The trolley store and goods display zones still interfere with the free-flow of pedestrians/customers, particularly the one at the south east corner of the store;
- an upstand kerb should be utilised where the link path passes through the parking areas to the right of the restaurant. This will prevent vehicles driving across this area, protect the pedestrians and protect the footpath. (If flush kerbs are retained, the construction of the path is not to a standard suitable for vehicles and may deteriorate quicker than expected); and
- A flush kerb should be provided between the two disabled bays to assist with access to the restaurant.

## **INFORMATIVE NOTE 4:**

The details of the revised Site Drainage Plan Drawing required under Planning Condition 11, should be revised to address appropriately all of the following points highlighted by the Roads Planning Section:

- As described on the Proposal Drawings, surface water may flow on to the pedestrian area in front of the restaurant due to the road levels and the flush kerb for the pedestrian crossing, to the left of the disabled bays;
- The levels indicate a low point in the corner of the parking area adjacent to Commercial Road [100.300]. This area may be susceptible to ponding as the construction does not appear to be porous;
- There does not appear to be any drainage for the access path around the store building; and

- The gullies indicated for the parking areas along the main access road would be better placed on the carriageway side of the flush kerb, rather than on the parking side.

#### **INFORMATIVE NOTE 5:**

Please note that the signage shown on the approved drawings is not approved under this planning consent. An advertisement consent application is required for the proposed signage unless the signage is compliant with exemptions under the Advertisement Regulations.

#### **INFORMATIVE NOTE 6:**

Planting plans must provide sufficient information to be enforceable by detailing the following:

- i.) Plan is to an identified true scale (e.g. 1:200).
- ii.) Boundary of the application site is clearly marked.
- iii.) Site orientation is indicated by a north point or Ordnance Survey grid lines.
- iv.) All existing trees, shrubs and hedges to be retained are clearly marked.
- v.) Take account of site factors such as slope, aspect, soil conditions, proximity of buildings and minimum distances from pipe and cable runs, when choosing planting positions. Where necessary, seek professional landscape advice.
- vi.) Planting positions are clearly marked showing individual trees and shrubs and / or planting area boundaries using dimensions as necessary.
- vii.) All species of plants identified using their full botanical name (e.g. oak - *Quercus robur*)
- viii.) All plant numbers to be identified individually or by group or area as appropriate. Species mixes can be identified by percentages and an overall number or a specified area and a planting density (e.g. Silver Birch - *Betula pendula* 30%, oak - *Quercus robur* 70%, 120 square metres @ 1 plant per 4 square metres = 9 B. pendula & 21 Q. robur)
- ix.) A planting schedule identifies all the proposed planting by species and specification indicating size and nature of plants to be used (e.g.: Extra heavy standard tree 14-16cms girth or shrub 60-75cms high in 2 litre pot.)
- x.) Notes on the plan describe how the planting is to be carried out and maintained to ensure successful establishment.
- xi.) The plan indicates when the work will be completed and ready for inspection taking account of planting seasons (e.g. November to end March each year for bare rooted plants.)

N.B. Planting conditions are only discharged following an inspection of the completed work

Please also note that the programme for completion and subsequent maintenance must include action points describing actions that will definitely be taken by the Applicant, and must also note precisely when these are to be carried out (i.e. definite actions to be carried out at clearly identifiable times). Use of ambiguous, vague or otherwise non-committal words or phrases (including "should", "could" or "may") must be avoided in favour of words and phrases that are clear and definite (such as "will" and "shall") when detailing these actions that the Applicant will carry out. A

critical concern is that the detail and timing of the measures are capable of being checked if necessary by a third party, rather than left as discretionary or optional.

**INFORMATIVE NOTE 7:**

The granting of planning consent does not carry with it the right to carry out works within the trunk-road boundary and that permission must be granted by Transport Scotland Trunk Road and Bus Operations. Where any works are required on the trunk road, contact details are provided on Transport Scotland's response to the planning authority which is available on the council's planning portal.

Trunk-road modification works shall in all respects comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by the HMSO. The developer shall issue a certificate to that effect, signed by the design organisation.

Trunk-road modifications shall in all respects be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation.

**INFORMATIVE NOTE 8:**

The Roads-Planning Section has raised concerns with regard to the need to manage the use of customer-parking provision at the site, including the restaurant's operation of its own dedicated customer-parking provision, as well as the temporary requirement for customer parking areas within the site to be set aside at times for the use and movement of delivery vehicles. Ultimately, the site's operators should be aware of the need for good and effective regulation of the parking and access arrangements on site work to ensure that these work optimally and safely, avoiding any and all unnecessarily exclusive, restrictive or overly elaborate arrangements that would be liable to reduce parking options available to customers, particularly during peak times of the day. Ultimately it is with the operators, and is in the operators' best interests, to ensure that these matters are addressed appropriately.