

## Appeal Decision Notice

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Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2026
- Site address: Soutra Mains Farm, Blackshiels, Pathhead EH37 5TF
- Appeal by Mr George Russell against the decision by Midlothian Council
- Application for planning permission 14/00293/DPP dated 14 May 2014 refused by notice dated 2 September 2014
- The development proposed: Erection of four retail units (part retrospective)
- Date of site visit by Reporter: 2 December 2014

Date of appeal decision: 15 December 2014

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### Decision

I dismiss the appeal and refuse planning permission.

The application description was for “*Change of use of 4 holiday cottages to Farm Shops*” but, on the committee report and refusal notice, the council changed the description to “*Erection of four retail units (part retrospective)*”. I agree with the revised description because the cottages have not been completed and used for their original purpose, so the proposal cannot be a change of use and is more correctly to complete the partially finished structures as four shops.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan, the main issues in the case are: 1. Whether or not an operational need has been demonstrated for the proposed retail development in the countryside, by means of applying the sequential test set out in Scottish Planning Policy; 2. The effect of the proposed shops on the vitality and viability of nearby town centres, Pathhead in particular and; 3. The impact of the proposed development on road safety on the A68 trunk road.
3. The development plan comprises the Edinburgh and South East Scotland Strategic Development Plan (2013) (SESPlan) and the adopted Midlothian Local Plan (2008) (MLP). In the reasons for refusal the council refer to SESPlan policy 3 (Town Centres and Retail),



MLP policies RP1 (Protection of the Countryside), SHOP5 (Retail development outwith Strategic Town Centres) and ECON8 (Rural Development). In addition the council draw attention to MLP policies RP1, 5, 6 & 7 relating to development in the countryside and policy IMP1 on the provisions to meet any needs resulting from the development.

4. The appeal site lies in open countryside and an area of great landscape value, and in a prominent position just below Soutra Hill looking out towards the Firth of Forth and Bass Rock. It comprises a roughly rectangular area of former agricultural land on which the appellant is erecting 4 single storey holiday cottages pursuant to outline planning permission 0800159/OUT, which also allowed a coffee shop ancillary to the use of the site as holiday accommodation. Applications 11/00199/MSC and 12/00067/MSC to discharge the conditions on this permission were submitted in 2011 and 2012, which were approved in part although some further conditions have yet to be satisfied. The coffee shop, its car park and the new access off the A68 have been completed and are in operation. Although the external shell of the cottages is complete, internal work has been suspended pending the outcome of this appeal.

5. Application 13/00370/DPP for the erection of 4 retail units (part retrospective) was refused in September 2013 against which the appellant appealed to the Local Review Body (LRB) who dismissed the review and upheld the original refusal.

#### *1<sup>st</sup> Issue*

6. Paragraph 68 of Scottish Planning Policy (SPP) requires development plans to adopt a sequential approach to retail developments which are likely to generate a significant footfall. This recommends the following order of preference: town centre, edge of town centre; other commercial centres identified in the development plan and, lastly, out of centre locations that are or can be made easily accessible by a choice of transport modes. This is the accepted process for considering new retail developments.

7. Although the appeal site clearly does not qualify for any of these options, the 4 small shops are unlikely to generate the footfall implied in SPP and SESPlan policy 3. However, being about 10 miles from Dalkeith, 5 miles from Pathhead and 10 miles from Lauder, the site is in a relatively remote location, a considerable distance from the nearest town centre. It is therefore not in a very sustainable location, even though it has a bus service every hour in both directions, so most visitors will be travelling by car.

8. While I acknowledge that the new coffee shop has proved successful, particularly as a convenient stopping point for passing motorists, its original purpose was to have been ancillary to the holiday accommodation provided by the 4 cottages. The approved scheme represents an acceptable form of farm diversification, rather like a farm shop selling produce from the farm itself, but this is unlikely to justify the provision of 4 retail units in this location. In the grounds of appeal, the appellant describes the proposals as “farm shops” which would retail various types of farm produce and other goods appropriate to a country location. Being a sheep and cattle farm, Soutra Mains Farm is unlikely to provide a sufficient variety of goods for sale in a farm shop, so most of the produce sold would have to come from other suppliers and brought in by road which is even less sustainable.

9. I note that there have been expressions of interest from 2 antique shop owners, and that a home bakery, ceramics and arts and crafts shops have been suggested, but there is no supporting statement or business plan to show any specific demand for retail units on this site, nor has it been shown that it would truly be a farm related diversification. I have taken account of the considerable possibilities for rural development in MLP policy ECON8, with which the current holiday accommodation and ancillary coffee house broadly comply, but the appeal proposal would be primarily of a retail nature and fails to accord with criterion (g) of that policy.

10. I therefore have to conclude that, even if the proposal is considered too small and remote to be judged against the sequential test, no operational need for the shops has been demonstrated to justify even a small retail development on the appeal site, which would also be contrary to MLP policy SHOP5.

### *2<sup>nd</sup> Issue*

11. Both Dalkeith and Lauder are thriving local shopping centres that are unlikely to be threatened by 4 little shops some 10 miles away. Pathhead is a small local village with a convenience store/post office, a bakery, a public house, a hot food takeaway and a recently closed bank, which could become another shop. The existing shops appear to be serving the immediate needs of local community, bearing in mind that Dalkeith's shopping centre is only about 5 miles away. Pathhead is a modest settlement on a trunk road which gives the existing shops the benefit of passing trade, which no doubt helps to maintain their vitality and viability.

12. There is no evidence to suggest that the new coffee shop has had a negative effect on the bakery or the public house, and the appellant indicates that the proposed shops will be selling specialised countryside orientated goods which do not feature in the village. However, once approved, this cannot be guaranteed in the future as, once permitted, any retail use could take over the shop units. I nevertheless conclude that the proposal is unlikely to pose a significant threat to the vitality and viability of nearby town centres, even the village of Pathhead.

### *3<sup>rd</sup> Issue*

13. As part of the approved holiday cottages and coffee shop permission, the appellant has closed the previous access into the farm and formed a new access off the A68 trunk road, which was approved by Transport Scotland, subject to conditions. Transport Scotland were again consulted on the appeal proposal and raised no objection to the use of the new access to serve the shops, subject to two conditions. These concerned the provision of 4.5 x 215 metre visibility splays in both directions, and alterations to the vehicular access arrangements originally approved on the outline planning permission (08/00159/OUT) (Drg.No.0863-SK-03) - Drawing 1 as submitted by Andrew Carrie Traffic and Transportation Ltd on 16 January 2014.

14. During the site inspection, I noted that there were freestanding walls on each side of the access with signs advertising the coffee shop which appeared to intrude on the

approved visibility splays set out in Transport Scotland's Condition 1, although I was not able to measure these with any accuracy. Even for the approved holiday cottages, these visibility splays will have to be strictly preserved, and this may result in the need to move the walls and signs. On balance, however, I conclude that subject to the suggested conditions, the proposal would have no major impact on road safety on the A68 trunk road.

### *Material considerations*

15. The LRB decision, dated 21 January 2014, reviewed application 13/00370/DPP and refused planning permission with three of the original four conditions, which endorsed the council's decision to refuse it. Despite this, the appeal application was submitted in May 2014 for the same development with no further submissions to address the concerns raised in the reasons for refusal. This is a material consideration of significant weight in the case against the proposal.

16. I have also noted the council's view that there is a demand for holiday accommodation in Midlothian which the approval of the holiday cottages would have helped to meet. The coffee shop was to be ancillary to that use but is now the primary use on the site, which was not the original intention. I recognise that it has proved to be successful in serving the needs of passing motorists and that it has provided employment for young people in the locality. Although the proposed shops would also provide some employment, the same could be said for the holiday cottages, so I am not persuaded that this is a major advantage of the proposed development.

17. While I accept that the proposed shops might prove to be more financially viable than the holiday cottages, in the absence of a business plan, this cannot be demonstrated but, in any event, the viability of the approved cottages is not a relevant planning matter in this appeal. I have therefore found no material considerations of sufficient weight to overcome the conflict with development plan policies.

18. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

19. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*John H Martin*

Reporter