

Notice of Meeting and Agenda



Planning Committee

Venue: Council Chambers,
Midlothian House, Dalkeith, EH22 1DN

Date: Tuesday, 20 November 2018

Time: 14:00

Director, Resources

Contact:

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Further Information:

This is a meeting which is open to members of the public.

Recording Notice: Please note that this meeting will be recorded. The recording will be publicly available following the meeting. The Council will comply with its statutory obligations under the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

1 Welcome, Introductions and Apologies

2 Order of Business

Including notice of new business submitted as urgent for consideration at the end of the meeting.

3 Declaration of Interest

Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

4 Minute of Previous Meeting

- 4.1** Minutes of Meeting held on 9 October 2018 – For Approval 5 - 22

5 Public Reports

- 5.1** Supplementary Guidance: Food and Drink and Other Non-Retail Uses in Town Centres – Report by Director of Education, Communities and Economy 23 - 70

- 5.2** Major Applications: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage – Report by Director of Education, Communities and Economy. 71 - 76

- 5.3** Appeals and Local Review Body Decisions - Report by Director of Education, Communities and Economy. 77 - 84

Application for Planning Permission Considered at a Previous Meeting – Report by Director of Education, Communities and Economy.

- 5.4** Application for Planning Permission for the Erection of two Drive Through Restaurants; Formation of Access and Car Parking; and Associated Works at Land South West of Tesco Superstore, Dalkeith (18/00181/DPP). 85 - 118

Applications for Planning Permission Considered for the First Time – Reports by Director of Education, Communities and Economy.

- 5.5** Application for Planning Permission in Principle, for Planning Permission and for Listed Building Consent for the Conversion of Listed Buildings to Dwellings and Residential and Commercial Development in the Grounds of the former Rosslynlee Hospital, Roslin (17/00980/PPP, 17/01001/DPP and 18/00061/LBC). 119 - 150

- 5.6** Application for Planning Permission for the Erection of 4 Dwellinghouses at Airybank, Quarrybank, Cousland (18/00582/DPP and 18/00593/DPP). 151 - 164

- 5.7** Application for Planning Permission for the Change of Use of Retail Unit to Hot Food Takeaway at 70 Lothian Road, Bonnyrigg (18/00654/DPP).

165 - 174

THE COMMITTEE IS INVITED (A) TO CONSIDER RESOLVING TO DEAL WITH THE UNDERNOTED BUSINESS IN PRIVATE IN TERMS OF PARAGRAPH 13 OF PART 1 OF SCHEDULE 7A TO THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973 - THE RELEVANT REPORTS ARE THEREFORE NOT FOR PUBLICATION; AND (B) TO NOTE THAT NOTWITHSTANDING ANY SUCH RESOLUTION, INFORMATION MAY STILL REQUIRE TO BE RELEASED UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 OR THE ENVIRONMENTAL INFORMATION REGULATIONS 2004.

6 Private Reports

- 6.1** Application for Planning Permission and Enforcement Considerations: Pathhead – Report by Director of Education, Communities and Economy.
- 13. Information which, if disclosed to the public, would reveal that the authority proposes—(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.

7 Date of Next Meeting

The next meeting will be held on Tuesday 22 January 2019 at 13.00

Minute of Meeting



Planning Committee

Date	Time	Venue
9 October 2018	2.00 pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Baird	Councillor Cassidy
Councillor Curran	Councillor Hackett
Councillor Hardie	Councillor McCall
Councillor Muirhead	Councillor Munro
Councillor Parry (by video link)	Councillor Russell
Councillor Smail	Councillor Winchester

1. Apologies

Apologies received from Councillor Johnstone, Lay-Douglas and Milligan.

2. Order of Business

The order of business was confirmed as outlined in the agenda that had been circulated.

3. Declarations of interest

Councillors Smaill, Munro, Winchester and Hardie (non-pecuniary) all declared an interest in agenda item 5.3 - Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage – on the grounds that they all knew the occupant, who was a former Conservative Party candidate, of one of the application sites.

Councillors Hackett (non-pecuniary) and Baird (business) both declared an interest in agenda item 5.8 - Application for Planning Permission for the Erection of two Drive-Through Restaurants; Formation of Access and Car Parking; and Associated Works at Land South West of Tesco Superstore, Dalkeith (18/00181/DPP). Councillor Hackett on the grounds that he knew socially someone who was an employee of one of the companies that were prospective occupants of the units and Councillor Baird on the grounds that the application related to the food and drink industry.

Councillor Cassidy (non-pecuniary) declared an interest in agenda item 5.7 - Application for Planning Permission for the Erection of Residential Care Home and Associated Works at Land to Rear of 41 Newmills Road, Dalkeith (18/00430/DPP) – on the grounds that a family member was one of the objectors.

4. Minutes of Previous Meetings

The Minutes of Meeting of 15 May 2018 were submitted and approved as a correct record.

5. Reports

Agenda No	Report Title	Presented by:
5.1	Supplementary Guidance: Special Landscape Areas	Peter Arnsdorf
Executive Summary of Report		
With reference to paragraph 5.3 of the Minutes of 3 April 2018, there was submitted report, dated 2 October 2018, by the Head of Communities and Economy, advising the Committee of the responses received to the public consultation on the proposed supplementary guidance on 'Special Landscape Areas' and seeking agreement to the adoption of the Special Landscape Areas Supplementary Guidance.		

The report explained that the consultation period had run for six weeks from 24 April to 7 June 2018 with discussions with interested parties continuing after the specified period. Responses had been received from a wide spread of consultees including, community councils, individual members of the public, community organisations, third sector groups and Government agencies. In total 17 different parties had raised a range of separate points for consideration. A summary of the consultation responses, together with details of the Council's proposed response and a track change copy of the draft Supplementary Guidance document showing proposed deletions and additions (shown in red) to the document arising from the consultation had been lodged in the Member's Library.

Summary of Discussion

The Committee, having heard from the Planning Manager, welcomed the comments received as a result of the public consultation on the proposed Supplementary Guidance.

Decision

After further discussion, the Committee agreed:-

- a) to adopt the Special Landscape Areas Supplementary Guidance (as amended following the consultation process);
- b) that the Special Landscape Areas Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
- c) to instruct the Head of Communities and Economy to undertake the required notification/advertisement advising that the Special Landscape Areas Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
- d) to instruct the Head of Communities and Economy to notify the Scottish Ministers of the Council's intention to adopt the Special Landscape Areas Network Supplementary Guidance; and
- e) to be advised of the outcome of the notification of the Scottish Ministers procedure.

Action

Head of Communities and Economy/Planning Manager

Agenda No	Report Title	Presented by:
5.2	Supplementary Guidance: Housing Development in the Countryside and Green Belt	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 2 October 2018, by the Head of Communities and Economy, seeking the Committee's agreement to undertake a formal consultation on its proposed 'Housing Development in the Countryside and Green Belt' supplementary guidance; a copy of which was appended to the report.

The report explained that the Midlothian Local Development Plan 2017 (MLDP), which had been adopted by the Council at its meeting on 7 November 2017, had included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas (Section 7.2, pages 81 and 82 of the MLDP). Additional guidance was required to provide further detail and interpretation of the policies and strategy set out in its development plan. One of the topic areas which needed further detail was Food and Drink and Other Non-retail Uses in Town Centres.

The supplementary guidance set out the Council's position with regard residential development in rural locations, including:-

- details of what constitutes a housing group under policy RD1;
- guidance on identifying the most appropriate location for new dwellings at existing housing groups;
- guidance on when non-residential buildings can be redeveloped and the appropriate scale and design for replacement development; and
- details on what constitutes an acceptable steading conversion..

Summary of Discussion

The Committee, having heard from the Planning Manager, welcomed the Supplementary Guidance and looked forward to seeing the comments received as a result of the public consultations.

Decision

After further discussion, the Committee agreed to:-

- (a) approve the draft Development in the Countryside and Green Belt Supplementary Guidance for consultation;
- (b) instruct officers to screen the draft guidance for a Strategic Environmental Assessment (SEA) and Habitats Regulations Appraisal (HRA); and
- (c) consider a further report on the Development in the Countryside and Green Belt Supplementary Guidance following the proposed consultation.

Action

Head of Communities and Economy/Planning Manager

Agenda No	Report Title	Presented by:
5.3	Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage	Peter Arnsdorf

Executive Summary of Report
<p>There was submitted report, dated 2 October 2018, by the Head of Communities and Economy, updating the Committee with regard to 'major' planning applications, formal pre-application consultations by prospective applicants, and the expected programme of applications due for reporting to the Committee.</p> <p>The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants was outlined in the Appendices to the report.</p>
Decision
<p>The Committee, having heard from the Planning Manager, agreed:-</p> <p>(a) To note the current position in relation to major planning application proposals which were likely to be considered by the Committee in 2018 and 2019; and</p> <p>(b) To note the updates for each of the applications.</p>
Action
Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.4	Appeal and Local Review Body Decisions	Peter Arnsdorf
Executive Summary of Report		
<p>There was submitted report, dated 2 October 2018, by the Head of Communities and Economy, detailing the notices of review determined by the Local Review Body (LRB) at its meeting in September 2018, and advising that there were no appeals determined by Scottish Ministers to report.</p>		
Decision		
<p>The Committee noted the decisions made by the Local Review Body at its meeting on 4 September 2018.</p>		
Action		
Head of Communities and Economy		

Agenda No	Report Title	Presented by:
5.5	Pre-Application Consultation: Proposed Erection of Community Facility incorporating Secondary and Primary School; Early Years Provision and Family Learning; Library, Leisure and Healthcare Facilities, Sports Pitches and Associated Works at Former Site of Monktonhall Colliery, Monktonhall Colliery Road, Newton, Danderhall (18/00558/PAC)	Peter Arnsdorf

Executive Summary of Report
<p>There was submitted report, dated 16 August 2018, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding the proposed Erection of Community Facility incorporating Secondary and Primary School; Early Years Provision and Family Learning; Library, Leisure and Healthcare Facilities, Sports Pitches and Associated Works at Former Site of Monktonhall Colliery, Monktonhall Colliery Road, Newton, Danderhall (18/00558/PAC).</p> <p>The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.</p>
Summary of Discussion
<p>The Committee, having heard from the Planning Manager, acknowledged that any potential steps which could be taken to promote road safety, particularly in the vicinity of the A6106, would be welcomed.</p>
Decision
<p>(a) To note the provisional planning position set out in the report;</p> <p>(b) To note the comments made by Members; and</p> <p>(c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.</p>
Action
<p>Head of Communities and Economy</p>

Agenda No	Report Title	Presented by:
5.6	Application for Planning Permission in Principle for the Storage of Soil (Top Soil and Sub Soil) for a Temporary Period of 5 years at Shawfair Site F, Monktonhall Colliery Road, Dalkeith (18/00155/DPP).	Peter Arnsdorf
Executive Summary of Report		
<p>With reference to paragraph 5.4 of the Minutes of 20 February 2018, there was submitted report, dated 2 October 2018, by the Head of Communities and Economy concerning the above application.</p>		

Summary of Discussion

Having heard from the Planning Manager, the Committee welcomed the measures intended to promote road safety.

Decision

Thereafter, the Committee agreed that planning permission be granted for the following reason:

The proposed development site is an integral part of a committed development site as allocated in the Midlothian Local Development Plan 2017 and the proposed temporary use is an operational requirement to facilitate the wider development of Shawfair which has a grant of planning permission. The distance of the site from existing dwellinghouses, the nature and scale of the proposed development, the use and operations on the site and the temporary nature of the use means the development would not give rise to an unacceptable impact on amenity. The proposed development does not conflict with adopted policies STRAT1, ENV7, ENV11, ENV17, ENV18 and IMP3 of the Midlothian Local Development Plan 2017.

subject to the following conditions:

1. Planning permission for the storage of topsoil and subsoil on the site is granted for a temporary period of 5 years from the date of the grant of this planning permission. The use shall cease and any stored material on the land shall be removed by 10th October 2023.

Reason: *The temporary use is only acceptable on the site as it will facilitate the implementation of committed development sites at Shawfair including established strategic housing site h43 (Shawfair) of which the site lies within.*

2. No stockpile of topsoil shall exceed 3 metres in height above existing ground levels.
3. No stockpile of subsoil shall exceed 8 metres in height above existing ground levels.

Reason for 2 & 3: *In the interests of safeguarding the landscape character and visual amenity of the area.*

4. Development shall not commence until the four recorded mine entries located on the site are located, secured and fenced off in accordance with details to be submitted to and approved in writing by the planning authority.

Reason: *In the interest of safety.*

5. The development shall not commence until details of a formal wheel washing facility and/or other measures to be taken to minimise loose material being carried onto the public road have been submitted to and approved in writing by the planning authority. The approved wheel washing facility/other measures shall be in place prior to the operation first coming

into use and shall remain in place, remaining operational, for the duration of the use hereby approved.

Reason: *In the interests of road safety.*

6. The development shall not commence until details of measures to control the flow of surface water run-off from the site have been submitted to and approved in writing by the planning authority. The approved mitigation measures shall be in place prior to the operation first coming into use and shall remain in place/remain operational for the duration of the use hereby approved.

Reason: *In the interests of road safety.*

Action

Head of Communities and Economy

Sederunt

With reference to item 3 above, Councillor Cassidy, having declared an interest in the following item of business, left the meeting at 2.18 pm, taking no part in the consideration thereof.

Agenda No	Report Title	Presented by:
5.7	Application for Planning Permission for the Erection of Residential Care Home and Associated Works at Land to Rear of 41 Newmills Road, Dalkeith (18/00430/DPP).	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 2 October 2018, by the Head of Communities and Economy concerning the above application.

Summary of Discussion

The Committee, having heard from the Planning Manager who responded to Members' questions and comments, discussed the access arrangements, in particular whether or not there was scope to secure improvements/upgrades to the existing walkways and network of footpaths in the area. The Planning Manager in explaining the current position, offered to raise the matter with the applicants and report back directly to the local Members and the Chair.

Decision

The Committee agreed that planning permission be granted for the following reason:

The proposed development accords with the Midlothian Local Development Plan (2017). The application site is located within the built-up area of Dalkeith on previously developed land where there is a presumption in favour of development.

The layout, design, form and scale will not result in a detrimental impact upon the character or amenity of the area. The presumption for development is not outweighed by any other material consideration.

subject to the following conditions:

1. The buildings which are the subject of this permission shall be used only as a residential home with care for adults over the age of 65 and no other use notwithstanding the provisions of Class 8 of the Town and Country Planning (Use Classes) (Scotland) Order and the General Permitted Development Order 1992 (or any order superseding, amending or revoking this order).

Reason: *For sake of clarity. The use of the development proposal has been assessed on the basis of the buildings being used as a residential home with 24-hour care. Developer contributions would be required for other uses within Class 8 of the Town and Country Planning (Use Classes) (Scotland) Order and the General Permitted Development Order 1992 (or any order superseding or revoking this order).*

2. Development shall not begin until a programme of archaeological works has been completed in accordance with a written scheme of investigation comprising a trial trench evaluation and a deskbased/archive assessment. The written scheme of investigation shall be approved in writing by the planning authority and carried out by a professional archaeologist prior to any construction works or pre commencement ground works taking place. There shall be no variation therefrom unless otherwise agreed in writing by the planning authority.

Reason: *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policies ENV24 and ENV25 of the adopted Midlothian Local Development Plan.*

3. The development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings (coal working) has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
- ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
- iv the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential purposes; 1) the measures to decontaminate the site shall be fully implemented as approved by the planning authority; and 2) a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme and the planning authority have confirmed the validation.

Reason: *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment*

4. The design and installation of any plant, machinery or equipment being such that any associated noise complies with standard NR 25 when measured within any nearby living apartment.

Reason: *To minimise disturbance to nearby residential properties from the construction of the development.*

5. Construction and engineering operations (including deliveries) shall only take place during the specified times, and shall not take place outwith the specified times:

Monday to Friday from 8am to 7pm

Saturday from 8am to 1pm

Sunday and Public Bank Holidays - No working or deliveries

Reason: *To minimise disturbance to nearby residential properties from the construction of the development.*

6. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
- ii proposed vehicular, cycle and pedestrian access;
- iii proposed roads (including turning facilities), footpaths and cycle ways;
- iv proposed visibility splays, traffic calming measures, lighting and signage;
- v proposed construction traffic access and haulage routes;
- vi a green transport plan designed to minimise the use of private transport and to promote walking, cycling and the use of public transport;
- vii proposed car parking arrangements; and
- viii a programme for completion for the construction of access, roads, footpaths and cycle paths.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.

7. Development shall not begin until details of the provision and use of electric vehicle charging stations throughout the development have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: To ensure the development accords with the requirements of policy TRAN5 of the Proposed Midlothian Local Development Plan 2017.

8. Prior to the commencement on development, the following details shall be submitted to the planning authority for prior written approval:
- i. Details of the proposed design/construction of the foundations; and
 - ii. A construction method statement demonstrating how the proposed foundations are to be constructed in relation to the existing adit and in a way that limits incursion into the root protection areas of adjoining trees.

The foundations shall be designed so as to address any potential ground movement derived from any future collapse of the adit.

Reason: To ensure that the foundations are suitable for development given the previous coal workings in the area, so as to address any potential ground movement derived from any future collapse of the adit and to limit the impact of the development on existing trees.

9. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: In the interest of protecting the character and appearance of the area so as to comply with DEV2 of the adopted Midlothian Local Development Plan 2017.

10. Development shall not begin until a revised scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;

- iii proposed new planting including trees, shrubs, hedging and grassed areas;
- iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the development being occupied; and
- vii drainage details and sustainable urban drainage systems to manage water runoff and mitigate flood risk.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird nesting season (March-August) and bat roosting period (April – September).

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies ENV7 and ENV8 of the adopted 2017 Midlothian Local Development Plan 2017 and national planning guidance and advice.*

11. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the trees canopy unless otherwise agreed in writing with the local planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

Reason: *To ensure the development does not result in the loss or damage of a tree which merits retention in accordance with policy ENV11 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

Action

Head of Communities and Economy

Sederunt

Councillor Cassidy re-joined the meeting at the conclusion of the foregoing item of business at 2.28 pm.

With reference to item 3 above, Councillor Baird, having declared an interest in the following item of business, left the meeting at 2.28 pm, taking no part in the consideration thereof.

Agenda No	Report Title	Presented by:
5.8	Application for Planning Permission for the Erection of two Drive Through Restaurants; Formation of Access and Car Parking; and Associated Works at Land South West of Tesco Superstore, Dalkeith (18/00181/DPP).	Peter Arnsdorf
Executive summary of report		
There was submitted report, dated 2 October 2018, by the Head of Communities and Economy concerning the above application.		
Summary of Discussion		
<p>Having heard from the Planning Manager, who advised in response to a question from Councillor Hackett that it was intended to bring a report on the responses received to the public consultation on the proposed supplementary guidance on 'Food and Drink and Other Non-retail Uses in Town Centres' which closed on the 10 October to the November meeting, the Committee gave consideration to a possible continuation. The possibility of the applicants appealing to the Scottish Minister on the ground of non-determination was acknowledged as a potential possibility. The Planning Manager indicated the procedures that would be followed in the event that this occurred.</p> <p>After further discussion, Councillor Hackett, seconded by Councillor Smail, moved that consideration of the matter be continued in order to allow the application to come forward and be considered in conjunction with the proposed supplementary guidance on 'Food and Drink and Other Non-retail Uses in Town Centres'.</p> <p>In terms of Standing Order 11.3 (vii), the Chair directed that a vote be taken for and against the motion to continue consideration of the matter and if this was carried that would be the end of the matter. If however it fell then he would open the matter up for more detailed discussion.</p> <p>Thereafter, on a vote being taken, five Members voted against the motion and 6 for, which accordingly became the decision of the meeting.</p>		
Decision		
The Committee agreed to continue consideration of the application in order to allow it to come forward and be considered in conjunction with the proposed supplementary guidance on 'Food and Drink and Other Non-retail Uses in Town Centres' at the November meeting.		
Action		
Head of Communities and Economy/Democratic Services		
Sederunt		
Councillor Baird re-joined the meeting at the conclusion of the foregoing item of business at 2.44 pm.		

Agenda No	Report Title	Presented by:
5.9	Application for Planning Permission for the Erection of 79 Residential Units; Formation of Access Roads, Car Parking and Associated Works at Land South West of Newbattle Community High School, Newtongrange (18/00308/DPP)	Peter Arnsdorf
Executive summary of report		
There was submitted report, dated 2 October 2018, by the Head of Communities and Economy concerning the above application.		
Decision		
<p>The Committee, having heard from the Planning Manager, agreed to grant the planning permission for the following reasons:</p> <p><i>The proposed development site is within the built-up area as defined in the Midlothian Local Development Plan 2017. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions. The presumption for development is not outweighed by any other material considerations.</i></p> <p>subject to:</p> <ul style="list-style-type: none"> i) securing developer contributions towards education provision, children's play provision, Mayfield Town Centre Improvements and Borders Rail; and ii) the following conditions: <ul style="list-style-type: none"> 1. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. An enhanced quality of materials shall be used in the area of improved quality which shall comprise no less than 20% of the number of dwellings on the site and not any of the affordable units. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority. Reason: <i>To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.</i> 2. Notwithstanding that delineated on application drawing the development shall not begin until details of a revised scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include: 		

- i other than existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
- ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
- iii proposed new planting in communal areas, road verges and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
- iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi programme for completion and subsequent maintenance of all soft and hard landscaping;
- vii a woodland management plan for existing area of woodland to be trained;
- viii drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff;
- ix proposed car park configuration and surfacing;
- x proposed footpaths and cycle paths (designed to be unsuitable for motor bike use); and
- xi details of existing and proposed services; water, gas, electric and telephone

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV6 and DEV7 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

3. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii proposed vehicular, cycle and pedestrian access;
 - iii proposed roads (including turning facilities), footpaths and cycle ways;

- iv proposed visibility splays, traffic calming measures, lighting and signage;
- v proposed construction traffic access and haulage routes;
- vi a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport:
- vii proposed car parking arrangements; and
- viii a programme for completion for the construction of access, roads, footpaths and cycle paths.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

4. Development shall not begin until details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwelling. The delivery of high speed fibre broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

5. The development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings (coal working) has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
 - i. the nature, extent and types of contamination and/or previous mineral workings on the site;
 - ii measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
 - iii measures to deal with contamination and/or previous mineral workings encountered during construction work; and
 - iv the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential purposes; 1) the measures to decontaminate the site shall be fully implemented as approved by the planning authority; and 2) a validation report

shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme and the planning authority have confirmed the validation.

Reason: *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment*

6. Development shall not begin until a programme of archaeological works has been completed in accordance with a written scheme of investigation comprising a trial trench evaluation and a deskbased/archive assessment. The written scheme of investigation shall be approved in writing by the planning authority and carried out by a professional archaeologist prior to any construction works or pre commencement ground works taking place. There shall be no variation therefrom unless otherwise agreed in writing by the planning authority.

Reason: *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policies ENV24 and ENV25 of the adopted Midlothian Local Development Plan.*

7. Development shall not begin until details of the provision and use of electric vehicle charging stations throughout the development have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy TRAN5 of the Proposed Midlothian Local Development Plan 2017.*

8. The recommendations made within the Preliminary Ecological Appraisal Report dated February 2018 and docketed to this planning permission shall be implemented in full in accordance with an action programme and timetable to be submitted to and approved in writing by the planning authority.

Reason: *To ensure the development hereby approved accords with policy DEV5 of the Midlothian Local Development Plan 2017.*

9. The design and installation of any plant, machinery or equipment being such that any associated noise complies with standard NR 25 when measured within any nearby living apartment.

Reason: *To minimise disturbance to nearby residential properties from the construction of the development.*

10. Construction and engineering operations (including deliveries) shall only take place during the specified times, and shall not take place outwith the specified times:

Monday to Friday from 8am to 7pm

Saturday from 8am to 1pm

Sunday and Public Bank Holidays - No working or deliveries

Reason: *To minimise disturbance to nearby residential properties from the construction of the development.*

Action

Head of Communities and Economy

6. Private Reports

Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Planning Committee agreed that the public be excluded from the meeting during discussion of the undernoted item, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraph 13 of Part I of Schedule 7A to the Local Government (Scotland) Act 1973

Report No.	Report Title	Presented by:
6.1	Enforcement Report: Loanhead.	Peter Arnsdorf
Decision		
To approve the recommendations contained in the report.		

The meeting terminated at 3.03pm.



SUPPLEMENTARY GUIDANCE: FOOD AND DRINK AND OTHER NON-RETAIL USES IN TOWN CENTRES

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek agreement to the adoption of the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance.

2 BACKGROUND

- 2.1 At its meeting of 7 November 2017 the Council adopted the Midlothian Local Development Plan 2017 (MLDP). The MLDP included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas (Section 7.2, pages 81 and 82 of the MLDP). Additional guidance is required to provide further detail and interpretation of the policies and strategy set out in its development plan. One of the topic areas which needs further clarification is with regard to food and drink uses and other non-retail uses in Midlothian's Town Centres.
- 2.2 At its meeting of 19 June 2018 the Committee approved the draft Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance for consultation and agreed to consider a further report on the Guidance following the proposed consultation.
- 2.3 The consultation period ran for six weeks from 28 August 2018 to 10 October 2018.
- 2.4 The draft Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance was published on the Council's website and available for inspection at Fairfield House and in all Midlothian Council libraries. All Midlothian Community Councils were consulted, as were a variety of other Midlothian community groups, those who had commented on the town centres sections of the Proposed Midlothian Local Development Plan and other known parties considered to have an interest in the document, including third sector organisations.

3 REPRESENTATIONS

- 3.1 As part of the consultation process responses from six external parties were received. Responses were received from two Community Councils, two individual members of the public, a private business and Scotland's Town Partnerships.
- 3.2 A summary of the consultation responses received with the proposed officer response (Appendix A) and a track change copy of the draft Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance document showing proposed deletions and additions to the document arising from the consultation is attached to this report. New text within the Guidance document is shown in red.
- 3.3 A summary of the representations are as follows:
- General support for the aims and objectives set out in the guidance with regard the future of town centres;
 - Town centres need to meet the needs of residents whilst adapting to a changing role in society and the local economy;
 - Residents without access to online shopping should not be disadvantaged by any loss of retail units or their replacement with other non-retail uses, facilities or services;
 - Concerns over litter arising from commercial uses and the suggestion for better litter management and litter picking programmes;
 - New large housing developments should be served by town centres and facilities;
 - Health impacts of hot food takeaways and alcohol sales;
 - Support for a restriction on hot food takeaways around school boundaries, along with the suggestion of expanding these areas;
 - Town Centre Health Checks should be used to inform Council policies and to provide an understanding of the health of town centres;
 - Concerns raised over the provision of drive-through facilities and their potential impact on town centres; and
 - Ensuring adequate parking and public transport is provided.

4 STRATEGIC ENVIRONMENTAL ASSESSMENT

- 4.1 All Scottish public bodies and a few private companies operating in a 'public character' (e.g. utility companies) within Scotland are required to assess, consult and monitor the likely impacts of their plans, programmes and strategies on the environment. This process is known as Strategic Environmental Assessment (SEA).
- 4.2 As required by the Environmental Assessment (Scotland) Act 2005, screening for likely significant environmental effects resulting from the draft supplementary guidance is currently underway with the

Consultation Authorities - SEPA, Scottish Natural Heritage and Historic Environment Scotland. It is expected that the Consultation Authorities agree with the Council's opinion that no such detrimental environmental effects are likely and thereby exempting the supplementary guidance from any requirement for a formal SEA. However, the supplementary guidance cannot be considered adopted until this consultation has been completed and until such a 'formal' determination has taken place. The determination requires to be advertised in a local paper within 14 days and copied to the consultation authorities.

- 4.3 The guidance has also been screened for a Habitats Regulations Appraisal (HRA) and because of the protection of sites within the MLDP a HRA is considered not to be required.

5 FOOD AND DRINK AND OTHER NON-RETAIL USES IN TOWN CENTRES SUPPLEMENTARY GUIDANCE

- 5.1 The Midlothian Local Development Plan 2017 establishes a commitment for the Council to prepare supplementary guidance on food and drink and other non-retail uses in town centres. Not adopting the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance would weaken the Council's position in ensuring that food and drink and other non-retail uses in town centres do not compromise the amenity, environment and functioning of town centres in Midlothian.
- 5.2 The supplementary guidance sets out the planning authority's aims to protect and enhance town and local centres within Midlothian, adapting to the changing needs of society and creating diverse and successful areas. The guidance provides information on what should be taken into account in the preparation and assessment of development proposals.
- 5.3 Through the consultation process and the assessment of comments submitted, the following amendments to the draft supplementary guidance have been made:
- Changes to the restrictions of hot food takeaways in town centres to protect the amenity of nearby residential properties;
 - Changes to the restrictions of hot food takeaways around schools to include both primary and secondary and clarification of the planning authority's role in such restrictions;
 - Consolidation of the section considering class 3 uses;
 - Clarification on the planning authority's position regarding non-retail high footfall uses in town centres;
 - Clarification on the planning authority's position regarding overprovision and clustering of particular uses;
 - The description of 'Drive-Through Restaurants' to 'Drive-Through Units (Restaurants and Other Services)' to better reflect these uses;

- Clarification of information which should be submitted with specific proposals;
 - Changes to enable the consideration of litter in the assessment of specific proposals;
 - Changes in terminology to better reflect the Midlothian Local Development Plan;
 - Clarification of terminology; and
 - Better links between the main text and Appendices.
- 5.4 Section 22 of the Planning etc. (Scotland) Act 2006 requires the Council to send Scottish Ministers a copy of the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance intended for adoption, together with a statement setting out the publicity measures undertaken for the consultation, the comments received and how comments submitted were taken into account. Unless Scottish Ministers have directed otherwise, after 28 days the Council may adopt the Supplementary Guidance.

6 RECOMMENDATION

- 6.1 The Committee is recommended to:
- a) agree to the adoption of the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance (as amended following the consultation process);
 - b) agree that the Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
 - c) instruct the Planning Manager to undertake the required notification/advertisement advising that the Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
 - d) instruct the Planning Manager to notify the Scottish Ministers of the Council's intention to adopt the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance; and
 - e) require notification of the outcome of the notification of the Scottish Ministers procedure.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 8 November 2018
Contact Person: Mhairi-Anne, Planning Officer
Mhairi-Anne.Cowie@midlothian.gov.uk
Tel No: 0131 271 3308
Background Papers: MLDP 2017 adopted 7 November 2017.

Midlothian Council – 2018

Consultation on Draft Midlothian Supplementary Guidance: Food and Drink and Other Non-retail Uses in Town Centres

Respondent	Organisation	Q	Summary of Responses	Proposed Midlothian Council Response
Angela Price		1	The role of town centres and importance is clear.	Noted.
Evelyn Fleck	Dalkeith and District Community Council	1	This is a high level overview of the scope of the SG in supporting decision making of the Planning Authority in the assessment of applications.	Noted.
		2	<p>This section covers the potential issues but should include the following:</p> <p>1 - ensure shop owners/social clubs be required to take responsibility for litter outside their shops, regardless of the provision of litter bins;</p> <p>2 - schools should have programmes of litter picking outside the premises to a defined area;</p> <p>3 - enlarge the area for no hot food takeaways around schools to larger than 400m, if this distance is not statutory.</p>	<p>Noted.</p> <p>1 - not something which can be controlled by the SG; see section 10.1.17.</p> <p>2 - not something which can be controlled by this SG.</p> <p>3 - Research has shown that 400m, approximately a 10 minute walk, was the maximum distance that students could walk to and back from a lunch break. This is not a statutory figure, however this is recognised in numerous similar SGs and referred to in case law.</p>
		3	This sections covers the issues but suggest replacing the statement that development will be 'supported' to be 'considered for support'.	Noted comments but accurately reflects the position of the SG. No changes proposed.
		4	Question adequately addressed in section.	Noted.
		5	Question adequately addressed in section	Noted.
		6	Question adequately addressed in section	Noted.
		7	Would like to see a stronger statement against drive-through in town centres. Suggests a defined area around such outlets where operators are responsible for litter picking which should be carried out at a given time interval, such as every three hours.	Noted. Section 10.6.5 includes requirements for litter picking, which will be considered on a case by case basis.

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		8	This covers a number of issues. There should only be one separate retail unit per filling station, within which could include a small store and café.	Noted. SG considered to accurately reflect proposed guidance. No changes proposed.
		9	Section covers areas of concern. No suggested changes.	Noted.
		10	Concession stores within a garden centre should take up no more than 25% of total indoor retail space excluding cafes to prevent garden centres turning into out of town shopping centres	Noted. Consider that the restrictions in 10.9 and information needed to meet these will address concerns for garden centres to turn into retail centres. No changes proposed.
		11	Section covers areas of concern. No suggested changes.	Noted.
		12	Section covers areas of concerns.	Noted.
		13	Al fresco dining areas are good but each establishment should have a defined area and temporary barriers for each day it is in use.	Noted - amend SG to require details of area, associated furniture and barriers with applications.
		14	Very supportive of Farmers' Markets. No suggested changes.	Noted.
		15	Should this section include restrictions around schools? Should they be allowed to operate during school breaks if they are in the area? Should operators be responsible for litter beyond the provision of bins? If 400m distance is not statutory then encourage an increase in distance.	Noted. As stated, either these will be outwith the control of the Planning Authority or will be subject to the same restrictions as other hot food takeaways, including proximity to schools. No changes proposed.
		16	No suggested changes.	Noted.
		17	No suggested changes.	Noted.
		18	No suggested changes.	Noted.

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Margaret Littlewood	Roslin and Bilston Community Council	1	<p>The principles are generally thought out and supported. Town Centre Health Checks are a must and should be used to inform other action plans, including Green Networks, Core Paths and Active Travel. Publically available toilets are a necessity.</p> <p>With the amount of development proposed at Bilston and Roslin, there will effectively be two new town centres created. It is essential that some arrangement is made to support or create essential local services and developers should be required to contribute land and finance this. If this is not done, there will be two unsustainable out-of-town dormitories housing a ghost population of unhappy and unhealthy people.</p> <p>Effective public transport should be in place at the time of development, if not before.</p> <p>3.5 Wording should be tighter to ensure the outcomes that are needed.</p> <p>4.3 Wording is too passive, this should lead, guide or encourage this in this direction.</p> <p>6 - Town Centre Health Checks section excellent.</p>	<p>Noted. TCHC are available for use to inform other documents. See sections 6.1 and 6.3.</p> <p>The provision of toilets is not a matter for this SG.</p> <p>The MLDP requires developer contributions to improve leisure facilities/shops; develop local health provision and ensure community cohesion in Bilston. The MLDP states that the existing community facilities in Roslin will be safeguarded.</p> <p>The provision of public transport is not a matter for this SG.</p> <p>Noted. Amended wording to make the position more clear.</p> <p>Noted. Consider wording fulfils the requirement. No changes proposed.</p> <p>Noted.</p>
			<p>7 - Important not to lose the needs of disadvantaged people, such as those without computer access/who do online shopping. How can town centres help modify this?</p> <p>8 - Easy access to poor food should be limited and hot food takeaways and vans should be restricted. Health services are under-strain and further pressure should be reduced through limiting hot food takeaways. Consider the promotion of healthy food takeaways. Access to alcohol should be considered carefully due to the impact on</p>	<p>The SG seeks to maintain diverse town centres which include retail along with other uses.</p> <p>Noted. See section 10.1. The control of alcohol sales is not something which can be controlled in this SG - would be for Licencing to consider.</p>

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			health, public safety, noise nuisance and littering.	
		2	<p>The provisions in this section are sensible and comprehensive. The recommendations about litter and restrictions on hot food takeaways near schools are excellent.</p> <p>When granting permission for hot food takeaways, it is necessary to consider the whole area. Conditions should be attached to prevent adjoining properties to be sold separately.</p> <p>Provision of toilets is necessary.</p> <p>10.1.14 Add a note about restrictions about noise of flues and ventilation equipment.</p> <p>10.1.11 Cafes should be looked on favourably as providing essential outlets for socialising. Should the section make reference on the provision of off-licence alcohol? This needs to be considered in the context of the area and this causes health, crime and littering problems.</p> <p>10.1.16 is excellent.</p> <p>10.1.17 should include a requirement to ensure bins are not allowed to overflow.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted. Any applications would consider the wider town centre in line with this SG and the impact on neighbouring properties. Amend SG to make this position clearer.</p> <p>Not something which can be controlled by the SG.</p> <p>Noted. Covered by ventilation section.</p> <p>Noted. SG states these will generally be supported where appropriate.</p> <p>Not something which can be controlled by the SG.</p> <p>Noted.</p> <p>Noted. Wording amended to include the requirement for a litter management plan.</p>
		3	<p>Support of the provisions in this section.</p> <p>Suggestions of other high foot-fall uses such as beauticians, hairdressers, podiatrists.</p> <p>For town centres to flourish, parking provision must be adequate. Also 20mph limits would help. There needs to be collaborating between Planning, developers and roads to ensure public transport is available, walking and cycling are encouraged and through traffic is limited and organised.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted although this is outwith the control of this SG.</p>
		4	<p>It is good to know that planning permission is required for betting shops and pay day lenders. These should not be supported and if an existing unit is for sale, it should</p>	<p>Noted. The requirement for planning permission for these uses allows the Planning Authority to assess their impact on town centres on a case by case basis, rather than not</p>

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			be considered that this premises must no longer be for these uses.	supporting outright. No proposed changes.
		5	Permitted changes of use are understood.	Noted.
		6	It is not clear what a neighbourhood centre is.	Noted. Amend SG - the term 'Neighbourhood centres' to be replaced with 'Local Centre', which relates to the MLDP that has clear definitions of these areas.
		7	Drive-throughs are unsustainable and should be avoided. These put strain on health services and every attempt should be made to discourage people from using these.	Noted. The SG has to provide guidance for assessing such applications, as noted in section 10.6. No proposed changes.
		8	This section is sensible. Adequate parking is required to ensure no queuing on main roads. There must be adequate provision of electric charging points. Is consideration given to the hand car wash facilities that replace vacant petrol stations?	Noted. Noted - covered in 10.7.2. Noted. This aspect will be covered in other policy. Noted. Car washes along with filling stations are acceptable. To operate car washes only would require planning permission and would be assessed accordingly. No changes to SG proposed.
		9	Public houses should serve good food to reduce a tendency consume too much alcohol too quickly. Are miners and bowling clubs included as these perform the function of public houses and function rooms? 10.8.3 Is welcomed for replacing public houses. 10.8.4 is endorsed.	Noted - this is outwith the control of the SG. Noted. These are not included in the SG as these are generally membership led. Any application which results in their loss will be assessed on its own merits. No proposed changes. Noted. Noted.
		10	It is not clear what these units are. The conditions are unclear and hard to reinforce.	Noted. It is considered section 10.9 adequately describes these uses and relevant criteria. No proposed changes.
		11	There are concerns over the visual impact and longevity of these units and this section is endorsed.	Noted.
		12	Vacant units can be a problem however the consideration of the impact of pop up shops on the long-term viability of the area is valid. Can a checking system be in place to ensure these are to a	Noted. As planning permission is not likely to be required for pop up shops, this is outwith the control of the SG. Where planning permission is required,

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			reasonable standard? Is it possible to place limits on the numbers in any particular location?	applications will be assessed in line with policy TCR1. No proposed changes.
		13	Agreement with general principles but should make reference to buggies and children and people who use walking aids.	Noted - Bullet point 3 makes reference to disabled access and not significantly reducing the capacity of pedestrian routes. No change proposed.
		14	These are good additions but all provisions should be met as where these are not, or there is not enough room, such markets flounder.	Noted.
		15	Clarification over what is static is required. Should parking be mentioned?	Noted. No changes required. As stated, either these will be outwith the control of the Planning Authority or will be subject to the same criteria as other hot food takeaways, including parking requirements. No proposed changes.
		16	This is too vague to be meaningful, what is meant by this? Are these only acceptable on a temporary basis?	Noted. This highlights that the Council is generally supportive of community projects in such areas. Such proposals would be dealt with on a case by case basis to assess the impact on the town centre and compliance with policy. Amend SG to clarify.
		17	This is an attitude rather than a condition. More detail is required. Could this be combined with 10.15?	Noted. This highlights that the Council is generally supportive of such uses in town centres. Such proposals would be dealt with on a case by case basis to assess the impact on the town centre and compliance with policy. Amend SG to clarify.
		18	Can 'Living Streets' principles be included? Pavement widening and furniture can look good but should be done on case by case basis. 10.17.4 and 5 should be included at the building stage. 10.17.6 these may be necessary for security reasons. The recommendations for acceptable types are welcomed. 10.18.7 Temporary shopfronts seems a sensible strategy.	Noted. This is reflected in the SG. Noted. Noted. Noted.

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Anon, Mayfield		16 or 17?	Is there potential for a cinema or a theatre to Dalkeith for clubs and groups to use instead of travelling elsewhere in the Lothians?	Sections 10.15 and 10.16 encourages flexible spaces in town centres which could be used in this way. It is outwith the control of the SG to state where this could be or deliver this. No changes proposed.
Phil Prentice	Scotland's Town Partnerships	SG	Supports the SG in the push for a more vibrant and sustainable approach for town centres and the Planning Authority in determining applications and for agreeing a policy in line with an analysis of market conditions, wider social and economic trends and a desire for higher quality place-making.	Noted.
Iain Hynd	Barton Willmore (for London and Scottish Investments)	All SG	The SG should ensure that guidance and practice accords with the definitions and practice in SPP in regards to sequential approach and any assessments of impact.	Noted.
		7	This section should be renamed 'Drive-Through Units' or 'Facilities' or 'Formats'. Amending the title would allow all formats of drive-through to be considered equally, without potential for debate or inconsistent application of guidance that could result from consideration if a unit is a restaurant, cafe, coffee shop, bakery/cafe or a mix of these. The removal of the requirement for a vitality and viability test for these units. Such units are of a distinct style and function from town centre units and are complementary to these, rather than in competition. The scale of drive-through are below a level that would have a material impact on the vitality and viability of town centres. If the SG retains the requirement for this test, this should only be for units of a certain scale, such as individual units of 250 square metres or over. Developments of a smaller scale are unlikely to have any material impact on town centres. Such a requirement would cause	<p>Noted. Section has been renamed to 'Drive-Through Units (Restaurants and Other Services). Drive-through are sui-generis and will be assessed as such in any application.</p> <p>Noted. The potential impact of these units on town centres needs to be assessed in line with the town centre first approach. If these comments are correct, applicants should be able to address this requirement in future applications, regardless of size.</p>

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			extra delay and expense for applicants of smaller proposals.	
			The SG indicates that drive-through uses are specific and do not conform with the town centre first approach. However Appendix 2 asks for a sequential test to show town centres have been investigated for sites. It is requested that this requirement be removed from Appendix 2 as this contradicts the text in 10.6 and is contrary to the SPP (para 68) and the MLDP (4.6.1 and 4.6.2), which set out uses subject to the sequential approach/town centre first principles. A drive-through format is a business and trading model that relies of capturing trade from existing footfall/trips/pass-by traffic rather than generating significant footfall in its own right.	The SPP provides scope to ask for a sequential test for commercial leisure uses, which drive-through are considered to be.
Internal PA comments		1	8 - Clarified the Planning Authority's role in assessing applications for hot food takeaways near schools.	Noted. Amended SG.
		2	<p>Can we hook 10.1.8 to any MLDP policies?</p> <p>Include distances of 400m around schools, town and neighbourhood plans in the Appendices?</p> <p>Include primary with secondary. Is it worth mapping out established HFTs in TCs to give a baseline for current situation?</p> <p>10.1.4 remove last sentence?</p> <p>10.1.8 remove second sentence - does this undermine what the policy can do/achieve?</p> <p>10.1.9 remove 'solely' - surely HFT approvals will allow some form of ancillary takeaway?</p> <p>10.1.11 should this be separate from 10.1.9? Restaurant, café and tea room all class 3.</p> <p>10.1.17 should we be asking for bins for all uses? What if apps don't own land? Who maintains this? Think of the ramifications.</p>	<p>See Section 8.</p> <p>Noted. The MLDP includes town centre boundaries. No intention to include the other plans.</p> <p>Noted. Amended SG.</p> <p>Noted. Not necessary.</p> <p>Noted. SG amended to clarify the planning requirements and scope.</p> <p>Noted. Clarifies the position rather than undermines the Planning Authority. No changes proposed.</p> <p>Noted. See point below for amendments.</p> <p>Noted. See amended SG to include all as Class 3 uses.</p> <p>Noted. SG and requirements amended.</p>

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		3	<p>10.2.3 bullet point 1 - link to Appendix.</p> <p>10.2.3 bullet point 2 - how verify, judge what's ok?</p> <p>10.2.3 bullet point 3 - how verify?</p> <p>10.2.3 bullet point 5 - include windows so can see activity? Clarify PA's position on non-retail change of uses.</p>	<p>Noted. Amend SG to include reference to Appendix 2.</p> <p>Noted. SG amended to clarify information to be submitted.</p> <p>Noted. Based on other information and assessment of the proposal. No changes proposed.</p> <p>Noted. See amended section 10.2.5.</p> <p>Noted. Amended SG 10.2</p>
		4	10.3.1 Remove the sentence beginning 'The Council...' as this may weaken our position. Focus on what we can control.	Noted. Clarifies the position rather than undermines the Planning Authority. No changes proposed.
		5	10.4.3 This be included as this may weaken our position. Focus on what we can control. Include details of uses which raise overprovision or clustering concerns.	<p>Noted. Clarifies the position rather than undermines the Planning Authority. No changes proposed.</p> <p>Noted. Section 10.4.2 amended.</p>
		7	<p>10.6.2 are we assessing the impact on existing restaurants or whole town centre?</p> <p>Need to tighten up any permission as drive-through may have permitted development rights to change use to retail.</p>	<p>Noted. Impact on all town centre.</p> <p>Noted. Potential impact of future changes of use will be assessed on a case by case basis. No changes proposed.</p>
		8	Is a separate section on this necessary, covered elsewhere?	Noted. This section provides clarity on this specific type of development which has emerged in recent times. No changes proposed.
		9	<p>Is a separate section on this necessary, covered elsewhere?</p> <p>10.8.3 final sentence - does this have to be social interaction? What if have a pub that's closed and no interest for social but have a shop interested?</p>	<p>Noted. These uses contribute to town centres, should be protect where possible. No changes proposed.</p> <p>Noted. Social interaction could involve residential uses. Still has to meet other criteria. No changes proposed.</p>
		15	Is this section necessary? Either it needs PP and is covered elsewhere or it's not development	Noted. This section provides clarity on an issue which arises on a regular basis. No changes proposed.
		SG	Clarifying terminology to match MLDP.	Noted. SG amended accordingly.
		SG	Clarifying requirements for applications for specific uses.	Noted. SG amended accordingly.

Food and drink and other non-retail uses in Town Centres Supplementary Guidance

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1. Introduction

1.1 This Supplementary Guidance (SG) relates principally to policies TCR1 (*Town Centres*) and TCR2 (*Location of New Retail and Commercial Leisure Facilities*) within section 4.6 of the Midlothian Local Development Plan 2017 (MLDP). This document seeks to provide detailed guidance and clarity in relation to developments within Midlothian's town centres and developments which may affect or undermine the performance of those town centres.

1.2 The abovementioned policies seek to protect and enhance Midlothian's town centres and the amenity and range of services provided to local communities. This document aims to provide a local context to national aspirations to support town centres whilst being realistic about the role town centres play in today's society, the facilities provided and how to respond to people's needs as town centres change as people's shopping habits evolve particularly in respect of the rise of online retail.

1.3 While the main focus of this document is clarifying the aims, objectives and criteria of policies TCR1 and TCR2, applicants should be aware that all policies in the Local Development plan can apply to any proposal. This Supplementary Guidance should be read in conjunction with the Midlothian Local Development Plan and with other MLDP policies, in particular DEV2 (*Protection Amenity within the Built-Up Area*) and ENV18 (*Noise*).

2. Importance of Town Centres

2.1 The National Planning Framework (NPF) and Scottish Planning Policy (SPP) emphasise that town centres are a key element of the economic and social fabric of the country. Town centres are at the heart of their communities and, if successful, can be hubs for a range of activities. At their best they are places which encourage economic development and social interaction. At their worst they stigmatise areas. It is important that town centres are supported and allowed to thrive in order to meet the needs of residents, businesses and visitors.

2.2 Whilst the nature of the use of these areas may have changed from being predominantly retail hubs to a more holistic range of facilities, town centres remain places people visit and utilise and, therefore, their vitality and viability must be protected. They must be attractive in terms of the range of services they provide but also aesthetically pleasing, safe and welcoming places.

2.3 Planning's role in town centres should be proactive and reasonably flexible, enabling a wide and diverse range of uses which bring people into these areas and by discouraging development which would harm them. Town centres, rather than being solely retail centres, should be hubs for social interaction, where there is a confluence of a range of sustainable activities. The planning system encourages a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening. A healthy town centre

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will encompass a varied mix of activities, including retail, commercial, leisure and community facilities such as health centres, hospitals and schools, along with an emphasis on town centre living. The integration of residential and other uses is important as this encourages active town centres throughout the day and evening. This combination of uses encourages people into town centres, creating a high level of footfall and vibrancy.

3. Protection of Town Centres

3.1 The NPF and SPP adopt a town centres first approach which not only protects and enhances town centres but encourages local job creation. The town centres first principle applies to activities which attract significant numbers of people and footfall including shopping, commercial leisure uses, offices, community and cultural facilities, as well as the promotion of residential uses in these areas. The NPF, SPP and MLDP advocate sequential testing for developments of these uses, which ranks the preferred locations for these uses as follows:

- town centres (including local centres);
- edge of town centres;
- other commercial centres identified in the development plan; and
- out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

3.2 The town centre first principle promotes an approach to wider decision-making which puts the health and vibrancy of town centres at the forefront of decision making for retail, some commercial and leisure uses. As the role of town centres has changed, with less emphasis on retail and more focus on providing a range of services, including community assets, this approach works with highlighting town centres as locations for a range of uses appropriate to such areas.

3.3 The MLDP further clarifies the sequential approach by setting out a network of centres in Midlothian. The Council will apply the sequential approach with reference to the network of town centres, having regard to the expected catchment of the development. There are no regional or strategic town centres within Midlothian (as defined by the Strategic Development Plan for South East Scotland, [SESPlan]), therefore the Council's network of town centres is as follows:

Town Centre	Bonnyrigg, Dalkeith, Gorebridge, Loanhead , Mayfield, Newtongrange, Penicuik, Shawfair
Commercial centre	Straiton Commercial Centre
Potential out of centre location	Main corridor from Gorebridge/Redheugh to Newtongrange

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Local Centres	Danderhall, Bonnyrigg/Hopefield, Bonnyrigg/Poltonhall, Dalkeith/Thornycroft, Dalkeith/Wester Cowden, Dalkeith/Woodburn, Eskbank Toll, Gorebridge/Hunterfield Road, Bilston, Penicuik/Edinburgh Road, Roslin and Pathhead
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3.4 The creation of retail and commercial ~~leisure facilities development~~ outwith town centres must comply with policy TCR2 of the MLDP. As a town centre first sequential test applies, applications for such development outwith town centres must demonstrate this will not undermine the vitality and viability of town centres within the expected catchment of the proposed development. Retail Impact Assessments will be required for all proposals of more than 2,500 square metres gross floor area, and also smaller proposals where the Council is of the view these may pose a threat to existing centres.

3.5 Where new development gives rise to a need, the local development plan gives scope for the Planning Authority to secure measures which will mitigate specific adverse impacts in terms of local infrastructure. ~~Where planning applications are approved and a potential adverse impact has been identified, this will have to be mitigated through an appropriate developer contribution or such other action (possibly under a Section 75 Agreement) in order to ensure that the adverse impact is off-set.~~ Opportunities to improve town centres are set out in the settlement statements within the MLDP, however other measures may be brought forward during the lifetime of the plan and this Supplementary Guidance.

4. Identifying Town Centres

4.1 The physical extent of the town centres and the commercial centre at Straiton, set out in the network of centres, are identified on the maps attached to the MLDP, including within the settlement statements. Each town centre has its own distinct character and range of services.

4.2 The town centres serve needs arising in Midlothian, primarily. Dalkeith is Midlothian's administrative centre, and attracts shoppers from across the county. The other centres are more localised in scale.

4.3 The role of the commercial hub at Straiton is to accommodate development serving the regional catchment. It is envisaged that Straiton may acquire the characteristics of a traditional town centre through diversification of uses and local residential growth.

4.4 Local/~~neighbourhood shopping~~ centres vary in size. Should clarity be required in connection with identifying the extent of ~~neighbourhood, or local;~~ centres this can be advised by the Planning Authority.

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5. Principles

5.1 The Scottish Government's *Town Centre Action Plan*, which was its response to the *National Review of Town Centres* carried out by an External Advisory Group in 2012, sets out six key themes to support town centres:

- Town Centre Living: To encourage more people to live in town centres;
- Vibrant Local Economies: To support sustainable economic growth and promote job creation;
- Enterprising Communities: Community led regeneration supported by local people;
- Accessible Public Services: Encouraging the location of public services in town centres;
- Digital Towns: Supporting the delivery of digital towns to enhance opportunities for town centres and businesses;
- Pro-active Planning: Undertake town centre health checks which assess the strengths, weaknesses and resilience of a town centre.

6. Town Centre Health Checks

6.1 Scottish Planning Policy highlights the importance of monitoring the vitality and viability of our town centres. Regular review of the network of centres, development activity and a town centre's performance are all parts of the monitoring process, which includes Town Centre Health Checks. The purpose of these health checks is to assess the strengths, vitality, viability, weaknesses and resilience of Midlothian's town centres. These are a means of assessing the state of these areas and can provide a sound information base to identify any future actions in forthcoming local development plans. The results of these checks can also inform other action plans.

6.2 The TCHC pulls together a range of information from a wide range of sources and presents this under a list of indicators for each town centre. These are carried out every two years involving planning, transportation and economic development officers.

6.3 There is potential for these TCHCs to inform future guidance to support improvements in hard to adapt areas of town centres. The undertaking of TCHCs can contribute to a clear agenda for poorly performing town centres.

7. Trends in retailing

7.1 Fluctuations in the performance of the national economy and the rise in online retailing are changing the way town centres function. The increase in internet shopping is likely to continue and impact on retailing within town centres. Therefore, the service offered by retailers in town centres will need to diversify. The Council will support diversification which enhances the vitality and viability of town centres. The Council will also encourage the utilisation of technological advances, such as town centre wifi, to support town centres.

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8. Health

8.1 The Council is concerned regarding the impact that unhealthy lifestyles are having on the health and wellbeing of local communities. While the Council is committed to addressing the matter of protecting open space and places for exercise, through separate Supplementary Guidance, it is also necessary for the Council to consider the impact of unhealthy eating and diets on its communities. Unhealthy eating, a poor diet and being overweight has a significant impact on health. People who are overweight have a higher risk of developing type 2 diabetes, heart disease and certain cancers. Being overweight can also affect self-esteem and mental health. The Council recognises that hot food takeaways and mobile takeaway vans are a contributing factor to unhealthy diets, particularly where they are located in close proximity to schools.

8.2 In 2014 the Scottish Government's publication Beyond the School Gate recognised that the food environment around schools has an important role in promoting a healthy diet and addressed the matter of the role of the planning system in restricting particular food outlets. Where the Council can make planning decisions which positively affect the health and wellbeing of its communities it should do so. **The proximity of schools to proposed hot food takeaways is a material planning consideration in the assessment of applications. Other Local Authorities have experienced similar issues regarding hot food takeaway units near schools and have introduced Supplementary Guidance to address these concerns. The use of such guidance in assessing applications have been supported in case law.**

9. Delivery

9.1 This SG provides a detailed position statement to set out a framework for assessing applications for food and drink and other non-retail uses within and outwith town centres, neighbourhood centres and other related developments. The majority of the provisions of this SG will be delivered through the Planning Authority's assessment and determination of planning applications in compliance with the development plan.

9.2 However, that can only be a contributing factor in promoting and protecting town centres. The range and complexity of factors which influence the health of town centres also requires actions by many other public and private sector stakeholders through various economic and other levers.

Question 1

Does this section adequately explain the role and importance of successful town centres?

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10. Guidance on Topics

10.1 Food and Drinks in Town Centres

10.1.1 Food and drink uses, including hot food takeaways, and other class 3 uses generally positively contribute to the vitality and viability of town centres, adding to the vibrancy of these areas throughout the day and into the evening. Consequently there is a general presumption in favour of these operations being located within town centres. However, these types of uses can result in a number of undesirable impacts for neighbouring properties and the surrounding area in general. These problems can include increased noise levels, disturbance, smell, litter and traffic generation, particularly out with normal shopping hours. Specific requirements relating to food and drink operations are provided below:

Hot Food Takeaways

10.1.2 Hot food takeaways will not be permitted in premises where there are residential properties on the floor or floors above or immediately on either side, and on the floors above such adjacent properties. ~~; unless the affected properties are owned and occupied by the applicant or their immediate family, or by an employee working in the proposed hot food establishment. This is because there is potential for this use to have a significant detrimental impact on the amenity of neighbouring residents that would render the use unacceptable.~~ The only exception to this is where it can be demonstrated that the hot food takeaway will have no adverse impact on neighbouring residential amenity.

10.1.3 Consideration will be given to the cumulative effect of additional hot food takeaway establishments on the vitality and viability of the town centre. The dominance of any one use in town centres could have a detrimental impact on their health and character. Planning permission will not be granted if this is assessed to be seriously harmful to the surrounding town centre. Hot food takeaways in town centres will not be supported where 50% or greater of ground floor commercial units within 100 metres of the unit are in use as hot food takeaways. Applicants will be expected to provide details of the uses of all units within this catchment of the application site as a supporting statement submitted with their planning application (See Appendix 2 - Submission Requirements).

10.1.4 Planning permission will also not be granted for hot food takeaways where these would cause significant harm to residential amenity or to the general environment of the area as a result of noise, disturbance ~~or ; smell. or litter.~~ ~~Although a~~ A number of these issues can be mitigated to an extent, ~~however~~ careful consideration will be given to the location and the impact that the hot food takeaway use could have on the surroundings. ~~Careful consideration needs to be given to the impact of litter in such proposals.~~

10.1.5 Planning permission will not be supported where it would present a threat to road safety, for example by encouraging illegal or inconsiderate parking or on-street parking at a dangerous location. These types of uses can generate considerable levels of traffic and so

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road safety is a significant issue. It is likely that in town centres there will be sufficient on and off-street car parking nearby, particularly since the busiest times for such uses tend to be in the evenings when other businesses may be closed.

10.1.6 Hot food takeaways are generally expected to open late into the evening and play a part in the mix of uses to support town centre vitality throughout the day and into the evening. In general terms, where hot food takeaways are considered acceptable they will be restricted to opening hours of no later than 10pm on Sundays and midnight on other days.

10.1.7 Any external alterations for hot food takeaway shops, including any external flues or other ventilation equipment, must not be detrimental to the character and appearance of the building and the surrounding area (see section 10.1.13).

Hot Food Takeaways in Proximity to School Premises

10.1.8 The Council is concerned that the proximity of hot food takeaways to secondary schools encourages school pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale, from shops, of unhealthy foods to school pupils. However, it is reasonable and appropriate for the Council to prevent provision of new premises (including temporary vehicles/structures) and the change of use of premises to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a primary or secondary school. ~~For the avoidance of doubt, this specific provision applies across the whole of Midlothian including town centres. It may also be applied in relation to primary schools and other premises predominantly used by children.~~

Class 3 Uses (Restaurants, Café, Snack Bars, etc) Restaurants

10.1.9 Planning applications for class 3 uses, (food and drink as defined in the Town and Country Planning (Use Classes)(Scotland) Order 1997), ~~restaurants solely~~ for the consumption of food and drink on the premises will be considered on their individual merits, taking the following factors into account: the size of the proposed establishment; the relationship to adjoining uses particularly residential properties; its likely traffic generation and parking provision; and, its acceptability in terms of other relevant planning policies of the MLDP.

~~Where planning permission is granted for a restaurant solely for the consumption of food and drink on the premises, a condition will likely be imposed preventing its subsequent change of use to, or inclusion of, a hot food takeaway facility without the submission of a further planning application. This approach is a reasonable way for the Planning Authority to fully assess any potential impact on the surrounding area, in line with the above criteria on hot food takeaways and related MLDP policies. There may be some instances where the use of a site as a restaurant only is acceptable but that an associated takeaway element would not be appropriate.~~

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Cafes, Tea Rooms, Coffee Shops

10.1.10 ~~Applications for cafes, tea rooms and coffee shops will generally be supported subject to a number of criteria. Cooking facilities at these uses will be limited to a domestic scale, e.g. domestic cooker, microwave oven etc. where there may be an adverse impact on neighbouring properties as a result of noise and smell from more traditional commercial kitchen equipment.~~ In order to encourage vibrant town centres and encourage use by the public throughout the daytime and evenings, the opening hours of these uses can match those recommended for hot food takeaways, unless there are particular amenity reasons to restrict the hours (Refer to Appendix 2 for Submission Requirements for such applications).

10.1.11 Conditions will be imposed, as appropriate, restricting the hours of opening of the premises; requiring the provision of adequate ventilation equipment; or otherwise as necessary to ensure that the use does not have an adverse environmental impact on its neighbourhood.

10.1.12 Such Pproposals ~~within this category~~ may include an element of takeaway trade provided that it remains clearly ancillary to the principal use of the premises for the consumption of food and drink on the premises. This is unless they fall within the 400m 'no hot food takeaway buffer' around primary and secondary schools or there are other material planning concerns which require there to be no takeaway element, such as road safety.

Guidance for all Food and Drink Uses**Ventilation**

10.1.13 An effective system for the extraction and disposal of cooking odours will be required for all such uses where the method of cooking is likely to cause smell or fumes. Details of the proposed system will be expected to be submitted with the planning application so that both its effectiveness and any external visual impact can be considered. Extract ventilation systems must:

- Be located in order to minimise the visual impact on the streetscene;
- Be of a colour, finish, design and material to be in keeping with the building it is attached to;
- Terminate at a level to permit the free disposal of exhaust fumes;
- Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open; and
- Prevent the emission of cooking odours likely to cause nuisance to neighbouring properties.

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10.1.14 Where ventilation systems are required, they will be implemented before the use commences on site. Particular consideration should be given to ventilation systems where the site is within a conservation area or **comprises** a listed building (refer to MLDP policies ENV19 and ENV22).

Noise

10.1.15 Food and drink uses have the potential to create noise and disturbance in their immediate vicinity, either from equipment or hours of operation. Effective noise management must be undertaken to ensure these uses do not have a detrimental impact on the surrounding area (see MLDP policy ENV18), which will include the following:

- No amplified music or sound reproduction equipment used will be audible either within or at the boundary of any nearby residential or noise-sensitive properties, depending on the site;
- The design and installation of any ventilation system, plant or equipment will be such that any associated noise complies with specified noise ratings as required for the individual site; and
- The design and installation of any ventilation system, plant or equipment will be such that there will be no structure borne vibration within any living apartment of adjoining property, depending on the site.

Litter/Refuse

10.1.16 Food provision uses, particularly hot food takeaways, can result in littering and issues over refuse storage. In order to ensure a satisfactory standard of amenity and to safeguard the appearance of the Town Centre, **the Planning Authority may require the provision of a litter bin any such uses approved shall require a litter bin** located at the front of any premises with a takeaway element. **The applicant will be required to demonstrate through the submission of a litter management plan that negotiation has taken place with the Council regarding the positioning, maintenance and provision of a bin to the satisfaction of the Council for all food and drink premises hereby approved.**

10.1.17 Details of the location and type of refuse storage facilities are required to ensure there will not be a detrimental impact on the character or amenity of the area or neighbouring uses.

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Parking

10.1.18 Food provision units must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where this would present a threat to road safety.

10.1.19 Details of the submission requirements for Food and Drink Uses can be found in Appendix 2.

Question 2

Does this section adequately explain potential issues over food and drink uses in town centres?

10.2 Other Non-Retail Uses in Town Centres

10.2.1 It is clear that retail uses play an integral part of successful town centres. However, as shopping habits evolve the role of the town centre has also changed, as have people's expectations of their town centres. Town centres must now focus on a variety of uses and services, attracting footfall, in order to remain relevant.

10.2.2 The town centre first principle encourages activities which attract significant numbers of people including shopping, commercial leisure uses, offices, community and cultural facilities. The promotion of residential properties in town centres can add to the variety which improves the vitality of the centres, including in the evenings. This combination of uses would attract and maintain visitors whilst complementing a constant retail element. Town centres should promote diversity through the range and quality of facilities provided, although a retail core should be retained.

10.2.3 The Council seeks to maintain a sustainable level of retail within town centres whilst also supporting other appropriate uses in order to enhance the vitality of these areas. The change of use of shops to non-retail uses in town centres will be supported provided the proposal:

- demonstrates to the satisfaction of the Council that there is no realistic prospect of a site continuing in retail use (see Appendix 2 Submission Requirements);

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- protects or enhances the level of footfall through the submission of information detailing the likely number of customers per day, **such as through the submission of existing and projected footfall to the site;**
- will lead to an improvement of the image and vitality of the town centre;
- will not result in 50% or greater of ground floor commercial units within 100 metres of the site being in low footfall level use; and,
- retains an active street frontage.

10.2.4 The Council will generally expect a retail unit to have been vacant and marketed for no less than 12 months (or 18 months if the unit is a significant Class 1 unit, such as a large supermarket) before it can be demonstrated that there is no realistic prospect of it continuing in retail use and be considered for a low level footfall use. This level of information is not necessary where retail units are proposed to be changed to other high footfall uses.

10.2.5 Acceptable high footfall uses in town centres could include: class 2 including financial, professional or other services which are provided principally to visiting members of the public; food and drink provision uses; pubs; hot food takeaways; hotels; non-residential institutions; leisure; and community uses. **Where such change of uses are acceptable, the street frontage must remain active through the use of windows.**

10.2.6 Residential accommodation within town centres is also encouraged as this will help the vitality and viability throughout the day and into the evening. The Council welcomes residential properties above commercial units and within town centres, but not at the expense of commercial uses. The conversion of ground level retail space to residential uses will not be supported as this would detract from the range of services offered within the town centre. **It is also the case that the Planning Authority will resist the change of use of high footfall commercial uses to residential at ground level unless it can be demonstrated that there will be no adverse impact on the vitality and viability of the town centre.** Careful consideration must be given to the amenity of proposed occupants to ensure that this would not be detrimentally affected by neighbouring uses. **The creation of flatted dwellings, in premises immediately adjacent to, but unrelated to, operational hot food takeaways are unlikely to be supported as these are likely to be detrimentally affected by smell, noise and disturbance from the established use.** Applicants must demonstrate that upper floors or basements are not required for storage or offices in terms of retaining viable commercial operations in town centres.

10.2.7 The impact that non-retail uses would have on the surrounding town centre must be assessed and considered to be acceptable otherwise such uses may not be supported. A number of specific uses are addressed elsewhere in this SG, however in general terms any proposed use will be required not to have a detrimental impact on the amenity or

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environment of surrounding properties and occupants in terms of noise, smell or disturbance. These uses must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where there would be a threat to road safety.

Question 3

Does this section adequately explain potential issues over non-retail uses within town centres?

10.3 Changes of Use and Permitted Development Class 1 and 2

10.3.1 The Town and Country Planning (Use Classes)(Scotland) Order 1997 allows for the change of specific uses to others without the requirement for planning consent, **unless conditions restricting the change of use have been attached to any permission**. Class 2 uses (e.g. banks, estate agents and beauty salons) and class 3 uses (e.g. cafes) can generally change to class 1 uses (retail) as permitted development. However, all other changes of uses generally require planning permission. The Council, as Planning Authority, is restricted in the control it can exercise over some operations, e.g. there is little that can be done by the planning authority where there is a perceived oversupply of one particular type of shop (such as charity shops) as these fall within the same planning use class as other retail operations.

10.3.2 Over recent years, concerns have been expressed by the Scottish Government and the Council about the number of pay day lending and betting shops in town centres. The impact that these uses would have on the character and amenity of the town centres and the wellbeing of communities have been cited as the main reasons for concern.

10.3.3 The Scottish Government amended the abovementioned Use Classes Order to remove betting shops and pay day lenders from Class 2 and created a new Class (13A) for these. Planning permission is now required for such change of use which allows the Council the opportunity to assess the impact these would have on the vitality and viability of town centres, as well as preventing clustering which may affect the range of services in the town centre.

10.3.4 Any applications will be assessed in accordance with the criteria previously stated, including: if the proposed use would significantly reduce the range of services offered in the town centre; would lead to the concentration of a particular use to the detriment of the town centre's vitality and viability; assess the contribution the proposed use would make to the vibrancy of the town centre by increasing footfall; and if the unit affected by the proposal has

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been vacant and suitably marketed for retail or other appropriate use. Details of marketing should be submitted in line with the details required in relation to Appendix 2 for 'Applications for the change of use from retail to other uses'.

Question 4

Does this section adequately explain the change of uses which require or do not require planning permission and the impact this may have on the success of town centres?

10.4 Prevention of Overprovision and Clustering of Particular Uses in Town Centres

10.4.1 Successful town centres are those which provide a variety of services and attract a high amount of footfall. A balance must be struck in order to ensure that a healthy mix of uses ~~are is~~ provided rather than the over provision of particular services and the weakening of the town centre. It is important that the variety of uses provided within town centres does not detract from the primary retail function, the loss in shops to the detriment of local residents or the vitality or viability of town centres.

10.4.2 Applications for ~~hot food takeaway, betting shops and pay day lender non-retail~~ uses will be refused where they would result in a significant over-concentration which would have a detrimental impact on the vitality and viability of town centres. ~~Such instances include where there would be a proliferation of hot food takeaways where these may only be open in evenings and not promote a vibrant town centre through the day.~~ Retail uses form part of healthy town centres and it is expected that there be one retail unit for every 100 metres of commercial units in a town centre area.

10.4.3 As detailed in the previous section the Council, as Planning Authority, is restricted in the control it can exercise over some operations and the overprovision concerns these create. For example, there is little that can be done by the planning authority where there is a perceived oversupply of one particular type of shop, as these fall within the same planning class as other retail operations and do not require planning permission to change occupants provided these remain retail units.

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Question 5

Does this section adequately explain potential concerns about overprovision of uses in town centres?

10.5 Food and Drink Provision Outwith Town Centres

10.5.1 Not all food and drink uses are provided within town centres. Some food and drink uses aim to serve more local communities. It is appropriate to locate some element of food and drink provision in ~~local neighbourhood~~-centres in the interests of sustainability and convenience and to encourage small scale business. ~~Local Neighbourhood~~-centres form a legitimate part of the network of centres and, therefore, it is appropriate to site food and drink uses in these areas. However, food and drink uses will not be permitted outwith the areas identified in the ~~local centres as defined in the MLDP network-of-centres~~ unless it has been demonstrated that there will be no adverse impact on the viability of ~~nearby local~~ town centres or where the development is required in order to support an existing business, e.g. a café supporting a farm shop or a tourist destination. ~~Such applications should be accompanied by a Town Centre Impact Assessment. However, the local planning authority can exercise its discretion not to request such an assessment where an application is submitted for the change of use of a high footfall use to a food and drink use, where there is no reasonable prospect of the original use being retained.~~

10.5.2 Despite there being general support for food and drink uses in ~~local neighbourhood~~ centres the Council is concerned that the overprovision of some uses will adversely affect the range of services in these areas and, in turn, also impact on their vitality. Therefore, development proposals will not be permitted for food and drink uses (including hot food takeaways) in ~~local neighbourhood~~-centres where they will result in 50% or more of the units in the ~~local neighbourhood~~ centre being in a food or drink use (including hot food takeaway). These uses will be permitted in ~~local centres neighbourhood-shopping-areas~~ where the applicant provides details to show the change of use will not result in 50% or more of ground floor commercial units within 100 metres of the site being in food and drink use, as well as compliance with the above criteria.

10.5.3 As with the section on hot food takeaways in town centres the Council is concerned that the proximity of hot food takeaways to secondary schools encourages pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale of unhealthy foods to school pupils from shops. However, it is reasonable for the Council to prevent the change of use of premises

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to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400metres of the curtilage of a primary or secondary school.

10.5.4 Food provision units must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

10.5.5 The Council does not support major retail development (e.g. proposals of more than 2,500 square metres gross floor area) anywhere other than in town centres, the Straiton commercial centre or the potential out of centre location on the A7 between Gorebridge and Newtongrange.

10.5.6 Guidance for all food and drink uses can be found in sections 10.1.14 to 10.1.20 of this Supplementary Guidance and submission requirements in Appendix 2.

Question 6

Does this section adequately explain potential issues over food and drink and retail uses outwith town centres?

10.6 Drive-Through Units (Restaurants and Other Services)

10.6.1 By their nature drive-through ~~restaurants-units~~ are unlikely to be located within Midlothian's town centres, which are relatively small and intimate with little opportunity to accommodate the scale of these developments without significant land clearance and disruption. Town centre locations are unlikely to fit with the business models of drive-through ~~restaurant-unit~~ operators, who seek to maximise on convenient accessibility for vehicles. Therefore, planning applications for drive-through ~~restaurants units~~ are likely to fail to satisfy the town centre first approach. ~~However, d~~Drive-through ~~restaurants-units~~ represent a valid and important part of the provision of food and drink and other facilities in the contemporary landscape of our towns and cities.

10.6.2 ~~However, t~~There is potential for drive-through ~~restaurants units~~ to have an adverse impact on other ~~restaurants-commercial units~~ within nearby town centres. Planning applications must be accompanied by a sequential assessment in accordance with the 'town centre first approach' and information to demonstrate that proposed drive-through ~~restaurants units~~ will not undermine the vitality and viability of nearby town centres.

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10.6.3 Where drive-through **restaurants units** have been demonstrated to not undermine the vitality and viability of nearby town centres there will be scope to support their development in the built-up area adjacent to the strategic road network. Drive-through **restaurants-units** will not be permitted on established or committed economic development land unless specifically supported by the policies of the MLDP.

10.6.4 Proposed drive-through **restaurants units** must comply with the terms of policy ENV17 (Air Quality) of the MLDP, which states that further assessment to identify air quality impacts would be required where the Council's Environmental Health service and the Scottish Environment Protection Agency considers it requisite. The Council's statutory duties in relation to monitoring air quality are undertaken by the Council's Environmental Health service who would be consulted as part of any planning application for drive-through **restaurants units**.

10.6.5 Planning applications for drive-through **restaurants units** must demonstrate that the matter of littering has been fully considered by the applicant. Planning permissions for these uses are likely to include a planning condition which will require details of the extent of the area around the site where litter is to be picked.

10.6.6 Drive-through **restaurants units** must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where the development would present a threat to road safety. **Submission requirements in connection with drive-through units can be found in Appendix 2.**

Question 7

Do you have any suggestions for changes to this section?

10.7 Petrol Filling Stations

10.7.1 Petrol filling stations could be acceptable depending on their location. Ancillary retail units may also be acceptable, however this would depend on the scale of the retail unit proposed. If these retail operations are large and not ancillary to the petrol filling station they are likely to have an adverse impact on nearby town centres. Therefore any retail units associated with proposed petrol stations must not have a gross floor area larger than 100 square metres. The Planning Authority would have to assess any larger shops to assess the impact of these and if this is considered detrimental to nearby town centres they will not be permitted.

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10.7.2 Petrol filling stations, with an acceptable ancillary retail element, must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

Question 8

Do you have any suggestions for changes to this section?

10.8 Public Houses

10.8.1 Public houses can have an important role to play in town centres and can positively contribute to the range of uses, including community space and generally contribute to a more vibrant evening economy.

10.8.2 Applications for new public houses will only be permitted where it is demonstrated that these would not have a detrimental impact on the character or amenity of the surrounding area and residents, as per policy DEV2 of the MLDP. Particular care must be taken where there are residential properties in the surrounding area.

10.8.3 Planning applications which would lead to the loss of a public house from a town centre must demonstrate that the premises are no longer viable as a public house and that the replacement use will either protect or enhance the vitality and viability of the town centre by providing a facility with similar opportunities for social interaction.

10.8.4 Over recent years the Council has been asked to consider planning proposals which relate to the consumption of alcohol in industrial units, ancillary to established breweries. Whilst the breweries themselves are generally acceptable in industrial estates, the creation of public houses or events space in these areas raises a number of concerns, including the compatibility of an increased number of pedestrians and members of the public within active and successful industrial estates. In addition, the scale of some of these operations are such that they could undermine the viability of public houses within town centres and elsewhere. Development will not be permitted where it will have an adverse impact on town centres, or where there is a risk to pedestrian safety.

10.8.5 Public houses must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

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Question 9

Does this section adequately explain potential issues over the creation and retention of public houses both within and outwith town centres?

10.9 Concession Shops and Units

10.9.1 The Council has previously supported concession stores selling non-garden related items within the grounds of garden centres. Future applications may be supported where evidence demonstrates they would not undermine the success and vitality of nearby town centres and the proposal is in compliance with policy TCR2 of MLDP. If these retail operations are large and not ancillary to the garden centre they are likely to have an adverse impact on nearby town centres. Therefore any concession shops and units associated with garden centres must not have a gross floor area larger than 100 square metres. Planning applications should be accompanied by: information to demonstrate that the applicant has investigated sites within town centres and why these have been discounted; information to demonstrate that the proposed use would not undermine the vitality and viability of nearby town centres; and details of parking provision and likely traffic generation.

10.9.2 Concession units within large retail units, e.g. superstores, are becoming more common. These operations generally do not require planning permission, provided the units are ancillary to the store within which they are sited. The Council expects that these concessions will only be accessed from within the host store and will operate wholly within the larger store. Where planning permission is required, these should comply with policy TCR2 of MLDP.

Question 10

Do you have any suggestions for changes to this section?

10.10 Pod/Container Retail Units

10.10.1 There has been a proliferation of applications across the country for individual pod/container retail units within retail parks or adjacent to superstores. These units are generally for class 1 uses, such as barbers, key cutters and watch and shoe repairs, and are essentially temporary structures or containers with improved finishing materials.

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10.10.2 These proposals are generally of a size which would be expected and appropriate within town centres and are therefore contrary to the town centre first approach. These also could have an adverse impact on the related retail park/unit.

10.10.3 The Council considers concession stores units within larger retail units an appropriate alternative to the provision of standalone retail pods or containers. **Thesey** would be within retail units which have been assessed in terms of related policy with the impact on town centres addressed.

10.10.4 Any applications for pod or container retail units should be accompanied by a sequential test and details to demonstrate that all options within nearby town centres are exhausted before proposing such uses at Straiton Commercial Hub or superstores. A report must be submitted with applications to demonstrate there are no vacant or available commercial units of a size, or indeed other sizes, appropriate for the proposed retailer within nearby town centres. Any other supporting information will be considered, including the applicant's business strategy or operations. The cumulative impact of such proposals on retail parks or superstores will be assessed to ensure that there is no detrimental impact on these areas which are designated and defined to contain larger retail units or town centres.

10.10.5 The Council also has concerns over the visual impact these units would have as **thesey** are generally structures which would not be acceptable on a long term basis. Where the principle of siting a pod/container is acceptable it is likely that the Council will restrict the approval of these pods/units for a period of three years in order to allow the applicant **the sufficient** opportunity to prepare a more suitable permanent solution which respects the amenity and character of the surrounding area.

Question 11

Does this section adequately explain potential issues over small pod/container units within retail parks and superstores and the potential impact of these on town centres?

10.11 Pop Up shops and other temporary commercial activities

10.11.1 Pop up shops can be an effective way of bringing vacant units within town centres into use for short term periods. Such uses are becoming more common in town centres and are examples of how the role and function of these have changed, encouraging more flexibility for these areas as well as support for smaller businesses.

10.11.2 Planning permission for these is not required where no change of use takes place. Where permission is required, these will generally be supported provided they are not to the detriment of other uses in town centres or are outwith town centres or undermine the town

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centre first approach. Although this will encourage flexibility of town centres, it should be ensured that these do not detrimentally affect the long term use of units which may improve the vitality and viability of the town centre.

Question 12

Does this section adequately explain potential issues over pop up shops in town centres?

10.12 Alfresco Eating

10.12.1 Outdoor eating and drinking areas can create an active and lively atmosphere in town centres. Planning permission is not always required for such areas but there are occasions where developers will need to submit planning applications for change of use. Applications shall include details: of the extent of the outdoor eating area; any proposed furniture; any proposed barriers; the hours of operation; and confirmation if furniture and barriers are to be removed on a daily basis. The Council will support alfresco eating areas in the following circumstances:

- Where they are associated with, and immediately adjacent to, established food and drink premises;
- Where there will be no significant adverse impact on the amenity of neighbouring residents or businesses as a result of noise and disturbance; and
- The proposal does not impede disabled access or significantly reduce the capacity of pedestrian routes.

Question 13

Do you have any suggestions for changes to this section?

10.13 Farmers' Markets

10.13.1 Open air markets are a popular way of diversifying town centres and creating a vibrant shopping experience. Proposals for open air markets and farmers' markets will be permitted provided that:

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- They are located within a town centre;
- They contribute to the viability and vitality of the town centre;
- The amenity of any property, especially dwellings, is not adversely affected to a significant degree; and
- The site can be easily accessed by both vehicles and pedestrians, and parking provision for traders and customers is adequate.

Question 14

Do you have any suggestions for changes to this section?

10.14 Mobile hot food takeaways

10.14.1 The casual or temporary parking of a mobile hot food takeaway vehicle is not likely to be development and, as such, will unlikely require planning permission. Where a mobile unit becomes 'static' planning permission may be required and in these cases they will be subject to the same restrictions as other hot food takeaway proposals.

Question 15

Do you have any suggestions for changes to this section?

10.15 Community Projects, Stalled Spaces and Vacant Land

10.15.1 The Council will encourage community projects in town centres. Town centres are generally easily accessible by different members of the community and are well placed to provide services and facilities to people in need.

10.15.2 There are relatively few vacant spaces within Midlothian's town centres. However, the Council encourages the early development and use of these places in order that they contribute fully to the health and wellbeing of the towns. **Such proposals would be considered on a case by case basis to assess the impact on town centres and compliance with policy.**

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Question 16

Do you have any suggestions for changes to this section?

10.16 Events and cultural activities

10.16.1 The Council will encourage flexible spaces within town centres. These spaces could be utilised for different cultural events and exhibitions, thereby enhancing the vitality of Midlothian's towns. **Such proposals would be considered on a case by case basis to assess the impact on town centres and compliance with policy.**

Question 17

Do you have any suggestions for changes to this section?

10.17 Urban Realm

10.17.1 While other Supplementary Guidance is focused on creating quality of place and good placemaking it is also relevant to provide some general guidance in this document regarding the Council's support for improvements of the urban realm of Midlothian's towns.

10.17.2 Where opportunities arise, pavement areas within town centres should be widened in order to create safe and pleasant pedestrian areas. This will also allow flexibility with regards to the use of areas for different purposes in the interests of encouraging a vibrant atmosphere.

10.17.3 Signage, barriers and other street furniture **can** result in excessive clutter in town centres. They can impede pedestrian routes and restrict disabled access. The proliferation of street clutter does not contribute positively to the physical environment of town centres and the Council will support measures to reduce unnecessary street furniture.

10.17.4 While some street furniture negatively impacts on the character and appearance of an area other features can be positive and encourage people to come to town centres. Features such as benches, street trees and planting contribute positively to the town centre environment.

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10.17.5 Scotland is expected to experience more extreme weather conditions as a result of global warming. It is important that town centres are welcoming places, serving the needs of their communities, whatever the weather conditions may be. There is scope for development proposals to incorporate features to accommodate different conditions, such as the installation of canopies, recessed doorways and surface water management.

10.17.6 Roller shutters can create an unattractive and intimidating atmosphere in some commercial areas. The Council will not support the installation of external box-housed roller shutters within town centres or neighbourhood centres. If it has been demonstrated that roller shutters are essential these must be internally installed in a stretcher bond design, to allow some visibility through the shutter to maintain an active street frontage.

10.17.7 Where there are numerous empty units within a town centre these can have a significant adverse impact on the character and appearance of an area. A common solution to this issue is to install temporary shopfronts within the premises. These temporary shopfronts can act as an advertisement, showing what businesses could achieve by moving in to the unit.

10.17.8 In an effort to encourage people to come in to town centres and stay for a while, contributing the vibrancy of the area the Council will encourage the installation of town centre wifi.

Question 18

Do you have any suggestions for changes to this section?

Appendix 1 - MLDP Policies

Policy TCR 1

Town Centres

Proposals for retail, commercial leisure development or other uses which will attract significant numbers of people, will be supported in Midlothian's town centres, provided their scale and function is consistent with the town centre's role, as set out in the network of centres and subject to the amenity of neighbouring uses being preserved.

Change of use from retail will only be permitted if the subsequent use is one which contributes positively to footfall in, and the vitality of, the town centre* and subject to the Council being satisfied that the proposals are acceptable in terms of the amenity, environment, traffic and parking arrangements of the town centre, with reference to the relevant Supplementary Guidance (paragraph 4.6.4).

Conversion of ground level retail space to residential uses will not be permitted. The conversion of upper floors to housing and the formation of new residential space above ground-level structures in town centres is supported.

Proposals for open air markets will be supported in Midlothian's town centres provided the amenity of neighbouring uses and the functioning of the road network is not adversely affected.

* Acceptable uses in this regard would be: financial, professional or other services which are provided principally to visiting members of the public; premises where food and drink is consumed; pubs; hot food takeaways; hotels; non-residential institutions; premises for assembly and leisure; or other 'one of a kind' uses which contribute to the objective.

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Policy TCR 2**Location of New Retail and Commercial Leisure Facilities**

The Council will apply the sequential approach set out in this policy with reference to the network of centres, as described in Table 4.1, insofar as it relates to locations within Midlothian and having regard to the expected catchment of the development.

Development in town centres

Proposals must accord with policy TCR1 above.

Development at Straiton Commercial Hub

Within Straiton Commercial Hub, as identified on the Proposals Map (and including site Ec3, where proposals are in accordance with a site masterplan to be agreed with the Council), proposals for new retail and commercial leisure development, or extensions to existing facilities, will be supported in principle provided that:

- A. there are no alternative sites in or on the edge of Edinburgh City Centre (where the proposed development has an anticipated catchment from across the city region); OR there are no alternative sites in, or on the edge of, Dalkeith town centre (where the proposed development has an anticipated catchment wholly or predominantly within Midlothian);
- B. they address a quantitative or qualitative deficiency within the catchment;
- C. they do not, either individually or cumulatively with other developments, undermine the vitality and viability of regional, strategic or other town centres, within the expected catchment of the proposed development; and
- D. they are accompanied by measures to improve the environmental quality of the commercial hub and its accessibility by public transport, walking or cycling.

Out of centre location for retail development

The Council will support retail development at an out of centre location in the corridor from Gorebridge/ Redheugh to Newtongrange as indicated on the settlement statement maps. This should be of a primarily convenience nature, and may be in the form of a new town centre for Redheugh. It should be demonstrated that any specific proposals do not (either individually or cumulatively with other developments) undermine the vitality and viability of town centres within the expected catchment of the proposed development.

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The Council does not support major retail development at any other out of centre locations.

Local centres and neighbourhoods

Proposals to change the use or redevelop existing shopping facilities within local centres and neighbourhoods will only be supported where their loss can be justified. New shopping facilities (up to a scale of 1,000 square metres gross floor area) will be permitted within local centres, provided they do not undermine the vitality and viability of any of Midlothian's town centres. Elsewhere within the built-up area, such facilities will be supported where new housing developments are not adequately served by existing centres. Any such development should not have a negative effect on the amenity of the adjoining residential area, including traffic and parking considerations.

Policy DEV2

Protecting Amenity within the Built-Up Area

Development will be permitted within existing and future built-up areas, and in particular within residential areas, unless it is likely to detract materially from the existing character or amenity of the area.

Policy ENV18

Noise

The Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or require to be modified so that no unacceptable impact at sensitive receptors is generated. Applicants may be required to carry out a noise impact assessment either as part of an Environmental Impact Assessment or separately. Where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.

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Appendix 2 - Submission Requirements

Applications for hot food takeaways should be accompanied by the following:

- Details of the proposed hours and days of operation;
- Details of the proposed ventilation system;
- A litter management plan, including details of areas of refuse storage; ~~Details of areas of refuse storage; and~~
- ~~Details of a litter bin to be positioned at the front of the site.~~
- Details of the uses of all ground floor commercial units within 100 metres of the application site; and
- Confirmation if the applicant or their immediate family or an employee working at the proposed hot food takeaway owns and occupies any residential properties on the floor or floors above the application site, and on the floors above such adjacent properties.

Applications for ~~Class 3 Uses restaurants~~ should be accompanied by the following:

- Details of the proposed hours and days of operation;
- Details of any proposed ventilation system;
- ~~Details of the types of foods to be sold from the unit;~~
- ~~Details of the proposed cooking apparatus;~~
- If a there is to be a takeaway element to the proposal;
- If so, details of the expected percentage of customers eating the unit and taking away food;
- A litter management plan, including details of areas of refuse storage; ~~Details of areas of refuse storage; and~~
- Details of a litter bin to be positioned at the front of the site.

~~Applications for cafes, tea rooms and coffee shops should be accompanied by the following:~~

- ~~Details of the proposed hours and days of operation;~~
- ~~Details of the types of foods to be sold from the unit;~~
- ~~Details of the proposed cooking apparatus;~~
- ~~Details of any proposed ventilation system;~~
- ~~If a there is to be a takeaway element to the proposal;~~
- ~~If so, details of the expected percentage of customers eating the unit and taking away food;~~
- ~~Details of areas of refuse storage; and~~
- ~~Details of a litter bin to be positioned at the front of the site.~~

Applications for the change of use from retail to other uses should be accompanied by:

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- Details of how long the unit has been vacant;
- Details of how this has been marketed, including signage, medium, frequency and if target marketing has taken place;
- Details if there have been interested parties and for what uses/purposes; and
- Details of the hours of operation for the proposed use.

Applications for drive-through ~~restaurants~~ units should be accompanied by:

- Information to demonstrate that sites within town centres have been investigated for the use and reasoning why these have been discounted;
- Information to demonstrate that the proposed use would not undermine the vitality and viability of nearby town centres;
- Details of parking provision and likely traffic generation, which may include a Transport Assessment; and
- Details of any proposed litter picking proposals.

Appendix 3 - Relevant Documents

National Planning Framework 2014

Scottish Planning Policy 2014

The Town and Country Planning (Use Classes)(Scotland) Order 1997

The Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016

The Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (Amended 2014)

Adopted Midlothian Council Parking Standards

COMMUNICATING CLEARLY

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如有需要我們樂意提供翻譯本，和其他版本的資訊與刊物，包括盲人點字、錄音帶或大字體。

Zapewnimy tłumaczenie na żądanie oraz dostarczymy informacje i publikacje w innych formatach, w tym Braillem, na kasecie magnetofonowej lub dużym drukiem.

ਅਸੀਂ ਮੰਗ ਕਰਨ ਤੇ ਖੁਸ਼ੀ ਨਾਲ ਅਨੁਵਾਦ ਅਤੇ ਜਾਣਕਾਰੀ ਤੇ ਹੋਰ ਰੂਪਾਂ ਵਿੱਚ ਪ੍ਰਕਾਸ਼ਨ ਪ੍ਰਦਾਨ ਕਰਾਂਗੇ, ਜਿਨ੍ਹਾਂ ਵਿੱਚ ਬਰੇਲ, ਟੇਪ ਜਾਂ ਵੱਡੀ ਛਪਾਈ ਸ਼ਾਮਲ ਹਨ।

Körler için kabartma yazılar, kaset ve büyük nüshalar da dahil olmak üzere, istenilen bilgileri sağlamak ve tercüme etmekten memnuniyet duyuyoruz.

اگر آپ چاہیں تو ہم خوشی سے آپ کو ترجمہ فراہم کر سکتے ہیں اور معلومات اور دستاویزات دیگر شکلوں میں مثلاً بریل (تایپا افراد کے لیے) بھرے ہوئے حروف کی لکھائی میں، ٹیپ پر یا بڑے حروف کی لکھائی میں فراہم کر سکتے ہیں۔



MAJOR DEVELOPMENTS: APPLICATIONS CURRENTLY BEING ASSESSED AND OTHER DEVELOPMENTS AT PRE-APPLICATION CONSULTATION STAGE

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report updates the Committee with regard to 'major' planning applications, formal pre-application consultations by prospective applicants, and the expected programme of applications due for reporting to the Committee.

2 BACKGROUND

- 2.1 A major application is defined by regulations and constitutes proposed developments over a specified size. For example; a development comprising 50 or more dwellings, a business/industry use with a gross floor space exceeding 10,000 square metres, a retail development with a gross floor space exceeding 5,000 square metres and sites exceeding 2 hectares. A major application (with the exception of a Section 42 application to amend a previous grant of planning permission) cannot be submitted to the planning authority for determination without undertaking a formal pre application consultation (PAC) with local communities.
- 2.2 At its meeting of 8 June 2010 the Planning Committee instructed that it be provided with updated information on the procedural progress of major applications on a regular basis.
- 2.3 The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants is outlined in Appendices A and B attached to this report.

3 DEVELOPMENT PLAN UPDATE

- 3.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan June 2013 (SDP1) and the Midlothian Local Development Plan 2017 (MLDP). The MLDP was adopted by the Council at its meeting of 7 November 2017. The proposed Strategic Development Plan (SDP2) has been subject to examination by Scottish Government Reporters and is with the Scottish Ministers for final consideration.

4 RECOMMENDATION

- 4.1 The Committee is recommended to note the major planning application proposals which are likely to be considered by the Committee in 2018 and 2019 and the updates for each of the applications.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 8 November 2018
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Background Papers: Planning Committee Report entitled 'Major Developments: Applications currently being assessed and other developments at Pre-Application Consultation stage' 8 June 2010.

APPENDIX A

MAJOR APPLICATIONS CURRENTLY BEING ASSESSED

Ref	Location	Proposal	Expected date of reporting to Committee	Comment
17/00408/DPP	Land at Old Craighall Road, Millerhill	Erection of 506 residential units; formation of access roads, SUDs features and associated works	January 2019	Pre-Application Consultation (14/00415/PAC) carried out by the applicants in June - September 2014.
17/00409/DPP	Land at Wellington Farm, Old Craighall Road, Millerhill	Erection of 116 residential units; formation of access roads, SUDs features and associated works	January 2019	Pre-Application Consultation (14/00415/PAC) carried out by the applicants in June - September 2014.
17/00435/DPP	Land at Newbyres, River Gore Road, Gorebridge	Erection of 125 residential units; formation of access roads, SUDs features and associated works	Being held in abeyance at the request of the applicant	Pre-Application Consultation (13/00609/PAC) carried out by the applicants in August - November 2013. The applicant is currently reviewing their layout following advice from officers that the layout and form of the development is unacceptable and contrary to the development plan.
17/00980/PPP	Land adjacent former Rosslynlee Hospital, Roslin (Site AHs1)	Residential development and associated works and ancillary commercial use	November 2018	Pre-Application Consultation (16/00266/PAC) carried out by the applicants in April - June 2016. The site is identified as an additional housing opportunity in the adopted MLDP with an indicative 120 – 300 units. This application is reported to this meeting of the Committee
17/01001/DPP	Land at the former Rosslynlee Hospital, Roslin (Site AHs1)	Alterations and conversion of former hospital and buildings to form 71 dwellings, erection of 30 dwellinghouses and associated works	November 2018	Pre-Application Consultation (16/00267/PAC) carried out by the applicants in April - June 2016. The site is identified as an additional housing opportunity in the adopted MLDP with an indicative 120 – 300 units. This application is reported to this meeting of the Committee
18/00099/DPP	Land at Gore Avenue and Newbyres Crescent, Gorebridge	Erection of 46 flatted dwellings; 17 dwellinghouses and 12 extra care units; formation of access roads and car parking; SUDs features and associated works	Being held in abeyance pending additional information from the applicant	Pre-Application Consultation (17/00913/PAC) carried out by the applicants in November 2017 – February 2018. This application is being held in abeyance subject to the applicant submitting additional information regarding mine gas mitigation measures.

18/00403/DPP	Land between Rosewell Road and Carnethie Street, Rosewell	Erection of 100 dwellinghouses and associated works	January 2019	Pre-Application Consultation (15/00774/PAC) carried out by the applicants in September 2015 – December 2015.
18/00495/DPP	Land west of Burnbrae Terrace Bonnyrigg	Erection of resource facility including offices; practical skills training suites, stores, workshop, motor transport workshop, ambulance depot and enterprise units; formation of car parking, access roads and external storage areas; and associated facilitating groundworks	February 2019	Pre-Application Consultation (17/00721/PAC) carried out by the applicants in September 2017 – December 2017. The applicant is currently reviewing the details of their proposal – it is expected that further information will be submitted for consideration.
18/00528/S42	Land at Calderstone, Biggar Road, Lothianburn	Section 42 Application to amend conditions 3, 4, 5, 6 and 10 of planning permission 15/00113/PPP, for the erection of hotel (to amend the phasing of the development)	Being held in abeyance pending additional information from the applicant	Section 42 applications do not require to go through the Pre-Application Consultation process. The conditions relate to the phasing of development, landscaping, building design and layout and transportation matters. Awaiting the submission of an Environmental Statement.
18/00628/S42	Land at Calderstone, Biggar Road, Lothianburn	Section 42 Application to amend conditions 4 and 5 of planning permission 15/00113/PPP, for the erection of hotel (to amend the phasing of the development)	Being held in abeyance pending additional information from the applicant	Section 42 applications do not require to go through the Pre-Application Consultation process. The conditions relate to the landscaping and building design and layout. Awaiting the submission of an Environmental Statement.
18/00535/PPP	Land north west of Moat View, Roslin	Residential development and associated works	January 2019	Pre-Application Consultation (18/00139/PAC) carried out by the applicants in February 2018 – May 2018.
18/00703/DPP <i>New addition to the table</i>	Land 65m west of Rosslyn Bowling Club, Main Street, Roslin	Erection of 54 dwellings and associated works	January 2019	Pre-Application Consultation (17/00693/PAC) carried out by the applicants in September 2017 – November 2017.

18/00735/DPP <i>New addition to the table</i>	Land at Danderhall Primary School and Danderhall Recreation Ground, Edmonstone Road. Danderhall	Erection of a community facility incorporating primary school; early years provision; library and leisure facilities.	January 2019	Pre-Application Consultation (18/00350/PAC) carried out by the applicants in May 2018 – August 2017.
18/00740/DPP <i>New addition to the table</i>	Part of Site Hs11, Dalhousie South, Bonnyrigg	Erection of 248 dwellinghouses and associated works	February 2019	Pre-Application Consultation (17/00402/PAC) carried out by the applicants in May 2018 – August 2017. A separate planning permission in principle application (18/00743/PPP) has been submitted for the provision of affordable housing on the wider Hs11 site.
18/00771/DPP <i>New addition to the table</i>	Land east of Conifer Road, Mayfield, Dalkeith	Erection of 28 dwellinghouses and 44 flatted dwellings and associated works	February 2019	Pre-Application Consultation (18/00476/PAC) carried out by the applicants in July 2018 – September 2018.

APPENDIX B

NOTICE OF PRE-APPLICATION CONSULTATIONS RECEIVED AND NO APPLICATION HAS BEEN SUBMITTED

Ref	Location	Proposal	Date of PAC submission	Earliest date for receipt of planning application and current position
16/00830/PAC	Land east of junction with Greenhall Road Barleyknowe Road Gorebridge	Residential development This site is not allocated for housing	24 November 2016	10/02/17 - no application yet received. A pre-application report was reported to the January 2017 meeting of the Committee.
17/00296/PAC	Land to the east of Lawfield Road and to the north of Ash Grove, Mayfield	Residential development This site is not allocated for housing	19 April 2017	06/07/17 - no application yet received. A pre-application report was reported to the June 2017 meeting of the Committee.
17/00367/PAC	Site Hs12 Hopefield Farm 2 Bonnyrigg	Residential development The site is identified for an indicative 375 residential units in the MLDP.	9 May 2017	02/08/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00606/PAC	Land south east of Auchendinny, The Brae, Auchendinny (Site Hs20)	Residential development The site is identified for an indicative 350 residential units in the MLDP.	27 July 2017	20/10/17 - no application yet received. A pre-application report was reported to the November 2017 meeting of the Committee.
17/00663/PAC	Land bounded by A7, Stobhill Road and Pentland Avenue, Gorebridge	Mixed use development comprising residential and commercial land uses	16 August 2017	09/11/17 - no application yet received. A pre-application report was reported to the October 2017 meeting of the Committee.
17/00670/PAC	Land to the north of Hardengreen House, Dalkeith	Mixed use development including Class 1 (Shops); Class 2 (Financial, Professional and Other Services); Class 3 (Food and Drink); Class 4 (Business); Class 9 (Houses); and Class 10 (Non-Residential Institutions).	22 August 2017	15/11/17 - no application yet received. A pre-application report was reported to the October 2017 meeting of the Committee.
18/00558/PAC	Land at the former Monktonhall Colliery Site, Monktonhall Colliery Road, Newton, Danderhall	Erection of a community facility incorporating secondary and primary school; early years provision; family learning provision; library, leisure and healthcare facilities, sports pitches and associated works.	1 August 2018	25/10/18 - no application yet received. A pre-application report was reported to the October 2018 meeting of the Committee.



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in October 2018; and an appeal decision received from Scottish Ministers.

2 BACKGROUND

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes a decision on appeal which has been considered by Scottish Ministers.

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 16 October 2018 the LRB made the following decisions:

	Application Reference	Site Address	Proposed Development	LRB Decision
1	18/00369/DPP	Unit 1, 40 Hardengreen Business Park, Dalhousie Road, Dalkeith	Change of use from office (class 4) to fitness studio (class 11)	Permission granted at LRB meeting of 16.10.2018
2	18/00402/DPP	Units 7 and 8, 40 Hardengreen Business Park, Dalhousie Road, Dalkeith	Change of use from office (class 4) to mixed use of fitness studio (class 11) and beauty salon (class 2)	Permission granted at LRB meeting of 16.10.2018

4 APPEAL DECISIONS

- 4.1 An appeal against a refusal of planning permission for the erection of petrol filling station and shop; restaurant with drive thru, café with drive thru and associated works at Sheriffhall South, Melville Gate Road, Dalkeith has been dismissed. The Reporter appointed by the Scottish Ministers concluded that the proposed development is contrary to the sites allocation for Class 4 uses (office, research and development and light industrial uses) and is in the green belt as set out in the Midlothian Local Development Plan 2017 (MLDP). As such the proposed development is contrary to the requirements of Policy 2 of SESplan and policies ECON1 and ENV1 of the MLDP. Furthermore the proposed retail unit is of a significant size that it cannot be considered ancillary to the petrol filling station and as such when assessed against local and national planning policy with regard retail development it does not accord with the principle of 'town centres first' and is therefore contrary to policy TCR2 of the MLDP and the Scottish Government's policy position set out in Scottish Planning Policy. A copy of the appeal decision accompanies this report.

5 RECOMMENDATION

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting in October 2018 and the appeal decision by Scottish Ministers.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 8 November 2018
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

Background Papers: LRB procedures agreed on the 13 June 2017.



Decision by Sue Bell, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2045
- Site address: Sheriffhall South, Melville Gate Road, Dalkeith
- Appeal by EG Group Ltd / Buccleuch Property against the decision by Midlothian Council
- Application for planning permission 17/00537/DPP dated 14th July 2017 refused by notice dated 18th May 2018
- The development proposed: Erection of petrol filling station and shop; restaurant with drive thru, café with drive thru and associated works
- Date of site visit by Reporter: 23rd August 2018

Date of appeal decision: 17 October 2018

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The relevant development plan is the Midlothian Local Development Plan 2017 and the South East Scotland Strategic Development Plan 2013 (SESplan).
2. Having regard to the provisions of the development plan I consider the main issues in this appeal are:
 - the extent to which the proposals are in accordance with the site's allocation for business use within the development plan;
 - the effects of the proposals on town centres in Midlothian; and
 - the extent to which the proposals are in accordance with the site's location within the green belt.

The extent to which the proposals are in accordance with the site's allocation for business use within the development plan

3. The proposal site is located within the A7/A68/Borders Rail Corridor (Midlothian) Strategic Development Area identified within SESplan (2013). The emphasis for Strategic Development Areas is on providing additional employment opportunities to reduce the need for commuting; and on the implementation of transport infrastructure to accommodate further planned growth.



4. Both the appellant and Midlothian Council agree that the proposed development would generate employment opportunities on the proposed site (although the authority disputes the quality of employment offered by the proposal).

5. Policy 2 of SESplan (2013) requires local development plans to identify strategic employment land and sets targets for the quantity of land to be identified within each local development plan area. The type of employment land to be identified is not specified, but the policy requires there should be a range and choice of marketable sites to meet anticipated requirements. The proposed development would occupy part of a site (e32 Sherrifhall South) identified within Midlothian Local Development Plan 2017 for Class 4 business use. Thus, the proposed site contributes towards the strategic employment land target required by Policy 2 of SESplan.

6. Class 4 business use is defined by the Town and Country Planning (Use Classes) Scotland Order 1997 (as amended) as:

- use as an office (other than a use within class 2);
- for research and development of products or processes; or
- for any industrial process,

provided it is a use which can be carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

7. The proposed development comprises a number of elements, none of which fall within Class 4 business use. The café/ restaurant falls within Class 3 food and drink for consumption on the premises and the retail unit falls within Class 1 shop use. The petrol filling station and the hot food takeaway/ drive-thru are considered to fall outwith the uses defined by the Use Classes Order (*sui generis*). I have considered whether these uses would be compatible with the allocation of the proposed site for Class 4 business use within the context of the wider aims of the development plan.

8. The Midlothian Local Development Plan 2013 includes protection for land allocated for business through Policy ECON1 Existing Employment Locations. This safeguards existing business and industrial locations against loss, although economic development (excluding retail) will be supported in these areas, subject to certain criteria. I consider that the proposed development, which includes an element of retail, does not meet these criteria. Policy STRAT1 Committed development, seeks the early implementation of all committed development sites including those allocated for economic development. Whilst the proposals would result in development, this would not be for the purpose that the site has been allocated.

9. In conclusion, the proposed site lies within an area identified by SESplan (2013) as a Strategic Development Area where employment will be encouraged, and it would occupy part of a site identified for employment use within the Midlothian Local Development Plan 2017. However, the proposed developments, whilst generating economic activity, do not fall within Class 4 business use and would lead to a loss of business land. Hence I do not consider that the proposals accord with policies STRAT1 and ECON1 of the Midlothian Local Development Plan 2017.

The effects of the proposals on town centres in Midlothian

10. Policy TCR 1 of the Midlothian Local Development Plan 2017 supports uses in Town Centres that generate significant numbers of people. This includes retail activities; premises where food and drink is consumed and hot food takeaways.

11. I have considered the appellant's view that the development proposals are road-side services and should be viewed in their entirety, with the different elements of the proposed development (including the retail) forming integral parts of the whole. In that respect, the appellant considers the retail unit, hot food takeaway/ drive-thru and restaurant/ café to be ancillary to the petrol filling station. Such developments, the appellant argues, must by their very nature, be located close to roads rather than town centres. The appellant thus considers that it is inappropriate to apply the 'town centre first' criterion when assessing such developments.

12. I accept that the proposed mix of development has been formulated with the intention of providing road-side services, and in that case a town centre location would be unlikely to be suitable to the developer. To that extent, I do not consider that the provisions of Policy TCR1 Town Centres are directly relevant in this context. However, whilst the proposed nature and mix of development may provide an economically sound model, I do not accept that the different elements are ancillary to the petrol filling station. The proposed Café/ restaurant/ drive-thru and restaurant/ hot food takeaway/ drive-thru are clearly designed as self-contained units operating independently of the petrol filling station. There is no intrinsic or dependent relationship between them, other than in economic terms. In addition, the scale of the retail unit associated with the petrol filling station exceeds what could reasonably be considered to be ancillary to the role of providing a kiosk or similar for paying for fuel. Even if I did accept that the development should be considered as a single feature, it would still require to be assessed in terms of its overall suitability for a site allocated for Class 4 use and its likely effects upon the town centres of Midlothian.

13. Policy TCR 2 Location of New Retail and Commercial Leisure Facilities, discourages major retail development at any other than specified out of centre locations. The proposed site is not located in one of those areas, and hence is not supported by policy TCR 2 of the Midlothian Local Development Plan 2013.

14. In response to the authority's concerns about the effect of the proposals on the town centres in Midlothian, particularly Dalkeith, Bonnyrigg and the proposed town centre at Shawfair, the appellant has provided an indicative retail impact assessment. This has considered the effects of the proposed retail element and the café/ restaurant/ drive-thru proposals. This concluded that the impacts on defined town centres in Midlothian would be in the range of -1% to -3% for all retail goods within these centres and in the range of -2% to -5% for convenience goods. In terms of the food-related uses, the estimates were in the range of -2% to -7% in defined town centres in Midlothian. The report further suggests that the greatest potential impact from the food related uses would be on the Costa café in Tesco at Hardengreen, which is approximately 3 km to the south of the proposed site and the Dobbies café/restaurant, which lies a little to the west of the proposed site.

15. Based on the above, I conclude that the proposed development would not be consistent with the requirements of TCR2 as it would not be located in one of the agreed

out-of-centre locations. Nevertheless, based on the retail impact study, I am satisfied that the proposed development would not have a significant adverse impact upon the town centres within the study area. However, I conclude that it would have a significant impact upon similar facilities located nearby.

The extent to which the proposals are in accordance with the site's location within the green belt

16. In addition to being allocated for employment use, the proposed site lies within the green belt. The purpose of retaining the site within the green belt is explained within the local development plan as to avoid pressure from and loss of the site to alternative uses and to ensure that the layout, design and open space provision of the development respects green belt objectives and the character of the surrounding area. The stated intention is that the site would remain in the green belt until it is fully developed for the employment purpose for which it has been identified i.e. Class 4 business use.

17. Policy ENV1 protection of the green belt of the Midlothian Local Development Plan 2017 sets out the criteria for when development will be allowed in the green belt. The proposed development does not meet any of these criteria. I do not accept the appellant's view that applying policy ENV1 would preclude any development from occurring at this site; the local development plan clearly allows for Class 4 business use at Sherrifhall South.

18. In conclusion, the proposed development does not meet the definition of Class 4 business use and does not make provision for the development of the whole site. Nor does the nature of the proposals meet any of the criteria for allowing development within the green belt. Thus I conclude that the development proposals are contrary to the requirements of Policy ENV1 of the Midlothian Local Development Plan 2017.

Other matters

19. The appellant has made a number of general policy and economic arguments in support of the proposed development. The appellant considers that the proposals are broadly in line with the over-arching objectives of supporting employment and investment opportunities set out in SESplan 2013. It does not consider that SESplan is prescriptive about what Class of employment should be promoted, and that there is an 'over-supply' of employment land within Midlothian. The appellant considers that if the terms of policies STRAT1 and ECON1 are strictly applied, then it would be unlikely that development would come forward at the appeal site. Further, in the appellant's view, there is no market demand for Class 4 use at this site and if the current proposals are not permitted, then it is unlikely that the site would be developed. By contrast, the appellant considers that its proposals would introduce development to an allocated employment site and generate around 50 Full Time Equivalent jobs.

20. As noted above, SESplan sets targets for the amount of employment land to be allocated within each local development plan and requires that a range of sites are identified. Allocation of particular sites to different uses is consistent with this approach, as it ensures that provision is made for a variety of different uses. It is correct that the site could have been allocated for additional or alternative employment uses, which would have been consistent with the requirements of the SESplan spatial strategy. However, choices

were made in the development of the Midlothian Local Development Plan 2014 to allocate this site specifically for the purposes of Class 4 use. I consider this is compliant with both the spatial strategy and national policy. Identifying specific uses for sites helps to ensure the right development in the right place, rather than allowing development at any cost. This is in line with the requirements of paragraph 28 of Scottish Planning Policy 2014 and the presumption in favour of development that contributes to sustainable development set out by the same document.

21. In support of its view of allowing alternative forms of economic development at the site, the appellant has referred to the granting of permission for the Elginhaugh pub/restaurant. I note that the authority granted permission for this development to generate interest in developing the wider employment site. I am not persuaded that the proposed development would act as catalyst for business development elsewhere within the land allocated for Class 4 use at Sheriffhall South.

22. There is no doubt that the proposals would generate employment. However, I am persuaded by the authority's evidence that a greater number of jobs could be generated from Class 4 business use on the site. I note that the marketing efforts to date have not yielded substantial interest in Class 4 uses, which would enable those jobs to be realised. Nevertheless, the site was allocated for Class 4 business use in the recently adopted Midlothian Local Development Plan 2017. I therefore consider that the plan is up-to-date. Disregarding the allocation of the site for Class 4 use, at this stage of the plan's life, without compelling reasons, appears to me to be counter to the purpose of the development plan process.

23. I have considered the appellant's comments concerning the welfare benefits to travellers arising from the proposed development. However, I am not persuaded of the benefits, given the proximity of similar facilities nearby, namely the 24-hour supermarket and petrol filling station approximately 3 km south of the site on the A7 and the recent planning permission for a take-away and drive-thru restaurant at the same location. In addition, I observed that there are both retail and refreshment opportunities immediately to the west of the proposed site at Dobbies restaurant, and the Elginhaugh Inn.

24. I note the concerns raised by the authority concerning the layout of the site, and the consequential prominence of the secondary elevations to the A7 and Gilmerton Road. However, I agree that these are aspects that could be mitigated through an amended layout and soft landscaping, both of which could be subject to a condition to any permission that was granted.

25. I am also content that biodiversity features, including protected species (badger and bats) and features of archaeological and cultural interest could be safeguarded through conditions to any permission that was granted.

26. A number of issues have been raised in representations. These include concerns about the effect of the proposals on traffic and vehicle movements in the wider area, effects on amenity from litter and noise, and the loss of agricultural land. In terms of the latter concern, loss of agricultural land has already been considered as part of the allocation of the site for Class 4 business development.

27. Having reviewed the appellant's Transport Assessment, the response from the authority's Policy and Road Safety Manager and the response from Transport Scotland, I am content that any transport issues could be addressed through condition to any permission that was granted and a S75 agreement to secure a financial contribution towards the A7 Urbanisation Scheme. I therefore conclude that the scheme could be implemented without unacceptable impacts on the road system.

28. Likewise, I am content that conditions could be applied to any permission that was granted to address concerns relating to litter and noise.

Conclusions

29. The proposed development would provide employment on a site located within an area identified within SESplan 2013 for the promotion of employment opportunities. The site of the proposed development has been identified within the Midlothian Local Development Plan 2017 specifically to provide for Class 4 business use, contributing to the provision of a range and choice of strategic employment land, in line with Policy 2 of SESplan 2013. The proposed site has also been identified as part of the green belt, and is protected within the Midlothian Local Development Plan 2017 for that use, unless and until a Class 4 business use comes forward. Consequently, the use of the appeal site for non-business purposes would reduce the area of strategic employment land available for business use, contrary to the requirements of Policy 2 of SESplan 2013 and Policies ECON1 and ENV1 of the Midlothian Local Development Plan 2017.

30. The proposal includes elements of retail and café/ restaurant provision, which are considered uses in their own right, and not ancillary to the petrol filling station. Location of these uses at the proposed site is not considered to be in accordance with Policy TCR2 of the Midlothian Local Development Plan 2017.

31. The allocation of the site for Class 4 business use has been retained in the adopted local development plan, which is considered up-to-date. It is not considered that the proposed development would act to stimulate Class 4 business use on the rest of the site, nor is it anticipated that it would generate as many jobs as use of the land for Class 4 purposes. In addition, some of the facilities included within the proposal are already in place immediately to the west and south-west of the site. I therefore conclude that there is not a compelling need for the development, which would justify use of the land for the proposed development rather than business use.

32. 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.

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

Sue Bell
Reporter



APPLICATION FOR PLANNING PERMISSION 18/00181/DPP, ERECTION OF TWO DRIVE THROUGH RESTAURANTS; FORMATION OF ACCESS AND CAR PARKING AND ASSOCIATED WORKS AT LAND SOUTHWEST OF TESCO SUPERSTORE, DALKEITH

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the erection of two drive through restaurants; formation of access and car parking; and associated works. The application site is an area of unoccupied scrubland to the southwest of the existing car park at Tesco, Hardengreen, Dalkeith. There has been three representations and consultation responses from the Coal Authority, the Bonnyrigg and Lasswade Community Council, the Eskbank and Newbattle Community Council, the Midlothian Health and Social Care Partnership, the Council's Environmental Health Manager and the Council's Policy and Road Safety Manager. The relevant development plan policies are DEV2, DEV5, DEV6, DEV7, TRAN1, TRAN2 TRAN3, TCR1, TCR2 and IMP2 of the Midlothian Local Development Plan 2017. The recommendation is to grant planning permission subject to conditions and securing developer contributions.
- 1.2** At its meeting in October 2018 the Committee deferred consideration of the application to allow the Committee to first consider a report on the consultation of the draft Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance.

2 ADDITIONAL INFORMATION SUBMITTED BY THE APPLICANT

- 2.1** The applicant has submitted an additional supporting document entitled "Response to Emerging Food & Drink Supplementary Guidance". The applicant's agent has carried out town centre health checks for both Dalkeith and Bonnyrigg town centres; the results have been used to provide an assessment of the proposal's impact on the vitality and viability of the said town centres. The document also contains information on the need for a sequential assessment; and information on the need for a town centre impact assessment.

- 2.2 The applicant's agent visited Dalkeith town centre on October 23 and carried out a health check assessment using the guidance contained in Annex A of the Scottish Planning Policy (SPP). The health check identified 174 units within the town centre of which 80 (46%) are in use as class 1 (shops); 44 (25.3%) are in use as class 2 (financial, professional and other services); 7 (4%) are in use as class 3 (food and drink); and 12 (6.9%) are in use as sui generis uses, including public houses and hot food takeaways. The health check identified 6 vacant units, this represents a vacancy rate of 3.4% which is significantly below the national average of 11.2%. Overall the health check assessment indicates that Dalkeith town centre is currently operating in good health.
- 2.3 The applicant's agent visited Bonnyrigg town centre on October 23 and carried out a health check assessment using the guidance contained in Annex A of the Scottish Planning Policy. The health check identified 72 units within the town centre of which 37 (51.4%) are in use as class 1 (shops); 13 (18.1%) are in use as class 2 (financial, professional and other services); 2 (2.7%) are in use as class 3 (food and drink); and 11 (15.3%) are in use as sui generis uses, including public houses and hot food takeaways. The health check identified 3 vacant units, this represents a vacancy rate of 4.2% which is significantly below the national average of 11.2%. Overall the health check assessment indicates that Bonnyrigg town centre is currently operating in reasonable health.
- 2.4 The assessment of the proposal's impact on the vitality and viability of Dalkeith and Bonnyrigg town centres concludes that the two proposed drive-throughs are of too small a scale to undermine the vitality or viability of the town centres. Both town centres have a range of businesses that provide food and drink, for consumption both on and off the premises. Given the relatively small scale of the proposed development and the comparative health of the existing town centres it is not considered that the proposed development will have a significant impact on the vitality and viability of the town centres. The most likely businesses to be affected are the existing Costa coffee within Tesco and the café at Dobbies.
- 2.5 The applicant is of the view that the format and scale of the proposed development means that it falls below the thresholds required for a sequential assessment, as set out in the SPP. Notwithstanding, the additional information supplied explains the siting requirements for contemporary drive-through formats and, briefly, considers the available units within Dalkeith and Bonnyrigg town centres.
- 2.6 The business model for modern drive-through units relies on roadside locations, adjacent to significant transport routes, or locations close to existing uses that attract significant footfall (such as retail parks, large leisure uses or large supermarkets). Suitable sites require ease of access for vehicular traffic and space for dedicated parking. The

specific site requirements of drive-through units mean that they are of a different style and function to traditional town centre units. The nine vacant units identified during the town centre health checks do not provide the necessary unit size, the necessary vehicular access and the necessary space for parking.

- 2.7 The scale of the development means that a Town Centre Impact Assessment is not required. The proposed development is for a gross floorspace of 396 sqm while the SPP only requires such assessment for developments over 2,500 sqm and which are contrary to the development plan. Notwithstanding this, the additional supporting information offers comments on this topic using the recent Sheriffhall South appeal as an example (a copy of the appeal decision is elsewhere on the Committee agenda).
- 2.8 The application at Sheriffhall South was for a petrol filling station and shop and two drive-throughs. The combined floorspace of the drive-throughs was 600 sqm. The appeal was dismissed, due to the proposed use being contrary to the site's allocation for business use and due to the site's location within the green belt. The reporter considered that the town centre impact assessment submitted in support of the appeal demonstrated that the proposed development would not have a significant adverse impact on town centres in the area. The applicant contends that this recent (issued on 17 October 2018) decision by a Scottish Government reporter in relation to a larger proposal close to the application site is sufficient to demonstrate that the current proposal will not undermine the vitality and viability of Bonnyrigg and Dalkeith town centres.
- 2.9 While it must be acknowledged that there is a local perception that Bonnyrigg and Dalkeith town centres are struggling, the town centre health checks indicate that the town centres are functioning well and that vacancy rates are below national averages. The two town centres may not have the range of shops that they once had, however this reflects wider retailing trends and is not indicative of local failings. Both Dalkeith and Bonnyrigg town centres are functioning well within the context of modern retail trends. The additional information submitted is consistent with the assessment of the application contained in the original 9 October 2018 committee report.
- 2.10 The planning authority has previously refused applications for retail development at this location with significant weight being given to those proposal's impact on existing town centres. Existing permitted development rights allow for a change of use to class 1 (shops) from uses as hot food takeaways or class 3 (food and drink). The application is for the erection of two drive through restaurants/cafes; the use is for the sale of food and drink for consumption on the premises and off the premises and is therefore a sui generis use. There are no permitted development rights that would allow a change of use to a retail use, without the need for an application for planning permission. For the

sake of clarity and in order to protect the vitality and viability of the town centres it would be reasonable to attach a condition specifying that the use of the units is sui generis. This will ensure that any change of use to retail, which could undermine the existing town centres, will require an application for planning permission.

3 SUPPLEMENTARY GUIDANCE

- 3.1 At its meeting in June 2018 the Committee approved supplementary guidance for food and drink and other non-retail uses in town centres for consultation. The consultation period for the guidance commenced on 28 August 2018 and finished on 10 October 2018. A report on the consultation exercise has been prepared for consideration by the Committee and is elsewhere on the agenda. The consultation has not identified a need for significant changes to the section on drive-through units. Minor changes have been made to the text to clarify the terms and scope of the guidance set out in the original draft document.
- 3.2 The section on drive-through units within the emerging guidance states that by their nature such developments are unlikely to be located within Midlothian's town centres which are not of a scale that could accommodate drive-through units; and that town centre locations are unlikely to fit with the business models of drive-through operators. Therefore, planning applications for drive-through units are likely to fail to satisfy the town centre first approach. However, drive-through units represent a valid and important part of the provision of food and drink and other facilities in the contemporary landscape of Scotland's towns and cities.
- 3.3 There is potential for drive-through units to have an adverse impact on other commercial units within nearby town centres. Planning applications must be accompanied by information to demonstrate that proposed drive-through units will not undermine the vitality and viability of nearby town centres. Where drive-through units have been demonstrated to not undermine the vitality and viability of nearby town centres there will be scope to support their development in the built-up area adjacent to the strategic road network.
- 3.4 Proposed drive-through units must comply with the terms of MLDP policy ENV17 (Air Quality), which states that further assessment to identify air quality impacts would be required where the Council's Environmental Health service and the Scottish Environment Protection Agency (SEPA) considers it requisite. The Council's statutory duties in relation to monitoring air quality are undertaken by the Council's Environmental Health service who would be consulted as part of any planning application for drive-through units.
- 3.5 Planning applications for drive-through units must demonstrate that the matter of littering has been fully considered by the applicant. Planning permissions for these uses are likely to include a planning condition

which will require details of the extent of the area around the site where litter is to be picked.

- 3.6 Drive-through units must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where the development would present a threat to road safety.
- 3.7 The emerging guidance contains guidance for all food and drink uses on ventilation, noise, litter/refuse and parking. In relation to public health the emerging guidance states that hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a primary or secondary school.
- 3.8 The application is supported by sufficient information to demonstrate that air quality, litter management and parking have been satisfactorily addressed. The applicant has demonstrated that the proposal will not have a detrimental impact on the vitality and viability of Dalkeith and Bonnyrigg town centres. The proposal complies with the guidance on drive-through units (restaurants and other services) set out in the emerging Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance.

4 REPRESENTATIONS

- 4.1 Two additional objections have been received since the original committee report was prepared. One representation was received on the day prior to the committee meeting and members were verbally advised, by the Planning Manager, of the contents of the representation. The grounds for objection are as follows:
 - The land is valuable to local wildlife and is an area of biodiversity;
 - The site contains nine species of fruit; various plants; and various fungi;
 - The site has a lot of natural biodiversity and is important for local species; and
 - Local areas which support local wildlife should remain undeveloped.
- 4.2 The second representation was received on 24 October 2018. The grounds for objection are as follows:
 - The development will add traffic to an already over used roundabout;
 - An increase in traffic will make it harder for pedestrians to cross the roads at the roundabout; and
 - A safe crossing should be provided adjacent to the roundabout.

Comments in response to representations

- 4.3 The Council screens all planning applications against a range of biodiversity constraints such as Nature Conservation Sites, areas of Ancient Woodland and areas with recorded sitings of protected species. If the screening process identifies constraints within an application site the Council may ask an applicant to submit reports demonstrating that the constraints have been considered and, if necessary, mitigation measures prepared. Where appropriate mitigation measures are identified they will be secured via condition. The biodiversity screening process did not identify any biodiversity constraints that apply to this application site. Notwithstanding this, draft condition number 13 requires the submission of a scheme of sustainability/biodiversity (including measures to encourage and enhance biodiversity) for the site. Such measures should be proportionate to the scale of the proposed development and could include planting to encourage certain species or to enhance existing wildlife corridors; structures to encourage safe passage of mammals; and/or structures to encourage bat and bird roosting.
- 4.4 As the transport statement concludes that the additional trips generated will not cause significant capacity issues for the road network there is unlikely to be significant changes to pedestrian use of the junction. In the longer term the urbanisation of the A7 is intended to make the route more accessible for public transport, cycling and pedestrians; the applicant will be required to provide a developer contribution towards this project.

5 SUMMARY

- 5.1 The Committee is requested to refer to the report on the application submitted to the Planning Committee meeting on 9 October 2018 which sets out all of the policy matters and other material considerations. Having considered the additional information submitted by the applicant; and the further representations received, the recommendation remains as per the earlier report i.e. to grant planning permission for the reasons outlined below.

6 RECOMMENDATION

- 6.1 That planning permission be granted for the following reason:

The proposed development is situated within the built-up area of Dalkeith and Eskbank and will not detract materially from the existing character or amenity of the area. The proposal therefore complies with policies DEV2, TRAN2 and IMP2 of the Midlothian Local Development Plan. Any perceived issues associated with litter, anti-social behaviour and healthy eating are not significant enough material considerations to warrant refusal of the application.

Subject to:

- i) the prior signing of a legal agreement to secure the provision of developer contributions towards A7 Urbanisation. The legal agreement shall be concluded prior to the issuing of the planning permission and shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.
- ii) the following conditions:
 - 1. Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:
 - i the nature, extent and types of contamination on the site;
 - ii measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii measures to deal with contamination encountered during construction work; and
 - iv the condition of the site on completion of the specified decontamination measures.
 - 2. On completion of the decontamination/remediation works referred to in Condition 1 above and prior to any building on the site being brought into use, a validation report or reports shall be submitted to the Planning Authority confirming that the works have been carried out in accordance with the approved scheme. No building on the site shall be brought into use unless or until the Planning Authority have approved the required validation.

Reason for conditions 1 and 2: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

- 3. Development shall not begin until a scheme of investigation and remediation to deal with previous mineral workings has been submitted to and approved in writing by the Planning Authority. The scheme shall include:
 - i. a scheme of intrusive site investigations;
 - ii. a report of findings arising from the intrusive site investigations; and
 - iii. a scheme of remedial works for approval by the Coal Authority.

Before any work starts onsite on the proposed development the investigation schemes and remediation works shall be fully implemented as approved by the Planning Authority and the Coal Authority.

Reason: *To ensure that any risks posed by the coal mining history of the area are identified and addressed prior to development commencing.*

4. Development shall not begin until a detailed scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained, removed or protected during development;
 - iii proposed new planting in planting areas, including trees, shrubs, hedging and grassed areas;
 - iv location and design of all proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi a programme for completion and subsequent maintenance of all soft and hard landscaping. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
 - vii drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff; and
 - viii proposed car park configuration and surfacing.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs (existing or planted) that are subsequently lost through removal, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the next available planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

5. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the physical development is of an appropriate standard in terms of its impact on the character and appearance of the area. To ensure compliance with local and national planning guidance and advice.*

6. Prior to either restaurant opening to the public details of a litter collection plan for the surrounding area, including an agreed length of the National Cycle Network Route 196, shall be submitted to and approved in writing by the Planning Authority. All the measures identified in the approved plan shall be in place and fully operational for the opening of either of the restaurants to members of the public and shall continue in operation for the duration of the approved use, unless otherwise approved in writing by the Planning Authority.

Reason: *To protect the character and amenity of the surrounding area.*

7. Prior to each restaurant opening to the public a Travel Plan, for the said restaurant, shall be submitted to and approved in writing by the Planning Authority. Each Travel Plan shall include details of the measures to be taken to encourage staff to use sustainable modes of transport when travelling to the site. All the measures identified in the approved plans shall be in place and fully operational for the opening of each restaurant to members of the public and shall continue in operation for the duration of the approved use, unless otherwise approved in writing by the Planning Authority.

Reason: *To ensure that the number of vehicle trips generated by staff of the restaurant is minimised.*

8. Unless otherwise approved in writing by the Planning Authority the vehicular access and parking arrangements shown on the approved Proposed Site Plan (Drawing number G2713-AL(0)003 P2-2) shall be operational prior to the restaurant being opened to the public.

Reason: *To ensure that queuing and disruption to Eskbank Roundabout is minimised.*

9. The kitchens of the restaurants shall be ventilated by extraction ventilation system which shall:
 - a) Be designed to achieve 30 air changes per hour;

- b) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
 - c) Prevent the emission of cooking odours likely to cause nuisance to neighbouring commercial units and surrounding residential properties; and
 - d) Terminate at sufficient height to permit the free disposal of exhaust fumes.
10. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an acceptable noise rating level based on an international standard) when measured within any nearby living apartment and no structure borne vibration is perceptible within any living apartment.
11. The sound emitted by any tannoy/loudspeaker system serving the restaurant's drive through facilities shall be controlled to ensure that no amplified speech is audible within any nearby living apartment.

Reason for conditions 8, 9 and 10: To safeguard nearby residential amenity.

12. Development shall not begin until details for the provision and use of electric vehicle charging stations throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.

13. Development shall not begin until a scheme of sustainability/biodiversity (including measures to encourage and enhance biodiversity) for the site has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan 2017.

14. The buildings hereby approved shall be used as drive through restaurants/cafes. Consent is granted for the sale of food and drink for consumption on the premises and off the premises. The use of the buildings is a sui generis use.

Reason: *To ensure that the use of the buildings reflects the terms of the application; and to safeguard the vitality and viability of local town centres by ensuring that the buildings cannot be used for retail purposes.*

Dr Mary Smith
Director of Education, Communities and Economy

Date: 8 November 2018

Application No: 18/00181/DPP
Applicant: SC Dalkeith Limited, 349 Bath Street, Glasgow
Agent: Iain Hynd, Barton Wilmore, 68-70 George Street,
Edinburgh
Validation Date: 20 March 2018
Contact Person: Graeme King
Tel No: 0131 271 3332
Background Papers: Planning Committee Report of 9 October 2018



APPLICATION FOR PLANNING PERMISSION 18/00181/DPP, ERECTION OF TWO DRIVE THROUGH RESTAURANTS; FORMATION OF ACCESS AND CAR PARKING AND ASSOCIATED WORKS AT LAND SOUTH WEST OF TESCO SUPERSTORE, DALKEITH

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the erection of two drive through restaurants; formation of access and car parking; and associated works. The application site is an area of unoccupied scrubland to the south west of the existing car park at Tesco, Hardengreen, Dalkeith. There has been three representations and consultation responses from the Coal Authority, the Bonnyrigg and Lasswade Community Council, the Eskbank and Newbattle Community Council, the Midlothian Health and Social Care Partnership, the Council's Environmental Health Manager and the Council's Policy and Road Safety Manager. The relevant development plan policies are DEV2, DEV5, DEV6, DEV7, TRAN1, TRAN2 TRAN3, TCR1, TCR2 and IMP2 of the Midlothian Local Development Plan 2017. The recommendation is to grant planning permission subject to conditions and securing developer contributions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The site is situated at the western edge of Dalkeith and Eskbank, between the A7 and a distribution road that serves a large supermarket, a petrol filling station and a vehicle coachworks. The site measures 0.55 hectares and is currently unoccupied scrubland covered with a mix of trees and scrub grassland.
- 2.2** The western boundary of the site is demarcated by a long established hedgerow which has been significantly pruned during the past year; beyond the hedgerow is a grass embankment leading down to the A7. To the north of the site is a petrol filling station with areas of long established structure planting along its southern, western and northern edges. To the east of the site is the distributor road, beyond which lies the car park that serves the Tesco superstore and the yard associated with the vehicle coachworks. To the south of the site is an embankment on top of which is sited a cycle path between Eskbank and Bonnyrigg.

- 2.3 The site is situated within the Bonnyrigg and Lasswade Community Council area. The boundary with Eskbank and Newbattle Community Council is 7m from the site boundary.

3 PROPOSAL

- 3.1 The proposal relates to the erection of two single storey drive-through restaurants. The northern unit (hereinafter referred to as Unit 1) will be sited parallel to the A7; it will be 11m from the northern boundary and 10m from the western boundary. The building will be 12.2m wide, 29.8m long and have a maximum roof height of 5.1m. The walls will be clad with composite cladding panels; the windows and doors will have powder coated aluminium frames; and the roof will be clad with powder coated aluminium roof panels. Unit 1 is intended for occupation by a national drive-through restaurant chain; the provisional occupant is KFC (formerly known as Kentucky Fried Chicken).
- 3.2 The southern unit (hereinafter referred to as Unit 2) will be sited perpendicular to the A7; it will be 13.1m from the southern boundary and 12.6m from the western boundary. The building will be 11.3m wide and 17.7m long. The roof of the building will have a maximum height of 4.2m and there will be a vertical brick feature projecting through the roof that will have a maximum height of 7.2m. The walls will be clad with black coloured cladding panels with timber detail panels; the windows and doors will have powder coated aluminium frames; and the roof will be clad with a single ply roofing membrane. Unit 2 is intended for occupation by a national coffee chain; the provisional occupant is Starbucks.
- 3.3 The units will have a combined car parking capacity of 55 spaces. The access to the site will be at the eastern side of the site from the distributor road. The site will be landscaped; with particular emphasis on the western (A7) and southern (cycle path) boundaries.
- 3.4 The application is accompanied by the following supporting documents:
- Air Quality Impact Assessment;
 - Coal Mining Risk Assessment ;
 - Drainage Strategy Plan;
 - Flood Risk Assessment;
 - Landscape and Visual Appraisal;
 - Landscaping Strategy;
 - Planning Statement;
 - Transport Assessment; and
 - Tree Survey and Arboricultural Constraints.

4 BACKGROUND

- 4.1 Outline planning permission was previously granted at appeal in 2002 for a licensed restaurant, bar and indoor play area (application

reference 00/00516/OUT). This development was not implemented, and the planning permission has since expired.

- 4.2 A subsequent detailed planning application for the erection of a restaurant, bar and children's play area with associated access, car parking and landscaping (application reference 01/00169/FUL) was refused and then upheld at appeal in 2002, but again was not implemented and this permission has also expired.
- 4.3 A planning application for the erection of a residential care home, including formation of vehicle access and associated car parking, (application reference 04/00531/FUL) was approved in 2005 and was also not implemented and this permission has since expired.
- 4.4 In late 2015, a planning application for the erection of retail unit and associated garden centre, formation of access and car parking (application reference 15/00921/DPP) was refused as the Council considered that the site was not acceptable for retail development as it did not conform to the criteria specified in the sequential town centre first approach as detailed in Scottish Planning Policy or the then adopted local plan (Midlothian Local Plan 2008). No sequential test had been submitted, nor was it demonstrated to the satisfaction of the planning authority that the site would be appropriate for the proposed use and that there are no other more sustainable sites which could accommodate the development more appropriately. It had also not been adequately demonstrated that the unit would not undermine the vitality and viability of Midlothian town centres or that there is a qualitative or quantitative deficiency which would be addressed through the approval of the application. In addition, the site was not considered to be in a neighbourhood shopping centre, and was therefore contrary to the then adopted local plan. There was also a concern that the size, design, materials and position of the building, and the lack of opportunities for landscaping of the development, would have a significant detrimental impact on the visual amenity of the area.
- 4.5 In 2016 a revised application for the erection of retail unit, formation of access and car parking (application reference 16/00618/DPP) was refused by the Committee. The reasons for refusal were similar to the 2015 application. The applicant appealed the decision and the appeal was dismissed.
- 4.6 With regard the site to the north, north east of the application site, in 1995 outline planning permission was granted for a private housing development of 45 houses (Hardengreen Lane) and a superstore (Tesco) and associated parking spaces at Hardengreen (application reference 237/92). The planning permission was granted by the Secretary of State following an inquiry which considered four outline applications relating to superstores; three of the applications were for sites close to the A7 and the fourth was for a site in Dalkeith. In 1996

outline consent was granted for the erection of a petrol filling station and associated services (application reference 342/92).

- 4.7 Planning permission was granted in 1997 for the erection of a foodstore (Tesco) and petrol filling station with associated car park, service yard, ancillary plant and equipment (application reference 115/97). This permission was subsequently amended via application 0071/98 which increased the area of the foodstore by 1519 sqm to 5964 sqm.
- 4.8 Planning application 17/00944/DPP for the erection of a two storey drive through restaurant (McDonald's) and alterations to the existing car park and access roads was granted permission by the Committee at its meeting in April 2018.
- 4.9 The application has been called to Committee for consideration by Councillor Hackett to consider local community objections.

5 CONSULTATIONS

- 5.1 The **Coal Authority** initially objected to the application, on the grounds that insufficient information had been provided on the location of a mine entry that the Coal Mining Risk Assessment (CMRA), submitted in support of the application, had identified as being within the application site. Subsequently the applicant provided additional information and the Coal Authority withdrew its objection subject to a condition being used to secure a scheme of investigation and, if necessary, a scheme of remediation prior to development commencing.
- 5.2 **Bonnyrigg and Lasswade Community Council** object to the application. The Community Council question whether the gains in employment are worth the potential loss of facilities in nearby town centres; however it is also noted that many residents would like to see the drive through outlets come forward. The response also notes that traffic on the access roundabout from the A7 is already very heavy during the peak evening period and that additional vehicles generated by the development, and by the neighbouring McDonald's site, are not welcomed. The Community Council considers that the following issues should be addressed by condition:
- The site must be well screened by trees and hedges;
 - Advertising signage should be modest, with minimal large signage on the A7;
 - A programme of litter mitigation should be secured with funding to deal with litter dropped remotely from the application site;
 - Fencing on the cycle path should be improved;
 - A link should be established from the cycle path to the application site; and

- A zebra crossing should be established to provide safe access from the application site to the main Tesco car park.

5.3 **Eskbank and Newbattle Community Council** object to the proposal on the following grounds:

- Midlothian Council should carry out its own traffic impact analysis for the application and should not rely on the information submitted by the applicant;
- Midlothian Council should seek to adopt measures to secure retrospective contributions for road improvements in situations where traffic congestion is worse than originally forecasted;
- The impact of the development on air quality, with particular reference to the traffic generated by the development and by neighbouring sites, should be assessed; and
- The Community Council considers that the hedgerow along the western boundary was cut back with the deliberate intention of diminishing the visual quality of the area, thereby making development appear as an improvement on the existing situation.

5.4 The **Midlothian Health and Social Care Partnership (H&SCP)** objects to the application. The grounds for objection are as follows:

- In the last 5 years 1451 people within Midlothian were diagnosed with Type 2 Diabetes;
- Being overweight or obese is the main modifiable risk factor for Type 2 Diabetes;
- The H&SCP considers its location at a large supermarket will make the proposed development a convenient venue of choice for families after school; for younger people travelling home from High Schools and from Edinburgh College; and for shoppers;
- Midlothian Community Planning Partnership has begun to consider a local strategy to tackle obesity and Type 2 Diabetes;
- An initial draft strategy will be considered by the Community Planning Partnership in April 2018;
- The draft strategy's aims are:
 - a. Prevent obesity and Type 2 Diabetes in people of all ages;
 - b. Early detection of obesity, pre-diabetes and Type 2 Diabetes;
 - c. Reverse obesity and Type 2 Diabetes;
 - d. Care and support of people living with obesity and/or Type 2 Diabetes that is person centred, efficient and effective.
- The H&SCP believes that Planning is an important partner in this strategy;
- The Scottish Government is committed to building evidence and good practice on the relationship between the planning system and the food environment, with a view to informing the review of Scottish Planning Policy;

- There are examples of local authorities elsewhere taking positive action across departments, such as limiting the number of fast food outlets, using planning as the mechanism; and
 - Other areas such as licensing take into account the effect on health and wider society.
- 5.5 The Council's **Environmental Health Manager** has no objection to the proposal subject to any consent including conditions relating to the noise of plant, machinery and equipment; noise from the speaker system associated with the restaurant's drive through facilities; details of the ventilation system being supplied; a scheme of investigations and, if necessary, a scheme of remediation to deal with any possible ground contamination; the submission of an air quality assessment; and the submission of a litter management plan.
- 5.6 Having viewed the consultation response the applicant's agent submitted an Air Quality Assessment report. The Environmental Health Manager has confirmed that the assessment and conclusions within the report are acceptable.
- 5.7 The Council's **Policy and Road Safety Manager** has no objection to the proposal. The response notes that the application is supported by a Transport Assessment which models the impact of the development on the private four arm roundabout within the Tesco site and on the public five arm roundabout (A7 North and South, Eskbank Road, Bonnyrigg Road and the Tesco access). The Transport Assessment has been based on the assumption that 50% of the trips to the units would be new trips to the road network. This is a higher percentage than was used in the recent application for the neighbouring site, however the use of a higher figure indicates that the projected traffic impact is based on a robust model. The findings of the Transport Assessment is that the additional traffic generated by the units can be accommodated on the existing road network.
- 5.8 The response notes that the A7 is a main traffic route in Midlothian with current traffic flows in excess of 23,000 vehicles per day. Traffic volumes can vary noticeably on a day to day basis with variations of plus or minus 10% being not uncommon. The overall traffic generated by the proposal would result in a very small increase in the overall volume of traffic using Eskbank roundabout and does not raise any significant road capacity or safety issues.
- 5.9 If the application is recommended for approval details of the proposed surface water management scheme should be secured by condition. Furthermore, it is recommended that the applicant enter into a legal agreement to secure contributions towards the Council's A7 Urbanisation project. This scheme is designed to improve walking, cycling and public transport access along the A7.

6 REPRESENTATIONS

- 6.1 There have been three representations received, of which two are objections and one is in support. All representations can be viewed fully online. The reasons for objecting are as follows:
- The application, in conjunction with the recently consented drive-through at the neighbouring site, will cause congestion;
 - The businesses will result in litter being deposited locally;
 - The Transport Assessment uses data from 2015;
 - Queuing within Tesco car park will result in queuing traffic on Eskbank roundabout;
 - Deliveries will cause congestion;
 - The development has poor pedestrian links with the existing Tesco store and car park;
 - The jobs created will be of low quality with poor pay and conditions;
 - The drive through restaurants will encourage unhealthy eating;
 - The restaurants will create noise;
 - The restaurants will encourage anti-social behaviour; and
 - National chains weaken the local economy and undermine local businesses.
- 6.2 The representation in support of the proposal did not provide any reasons for supporting the application.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017. The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **DEV2: Development within the Built-up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.3 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.4 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.
- 7.5 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.

- 7.6 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.7 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A7 urbanisation.
- 7.8 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.9 Policy **TCR1: Town Centres** supports proposals for retail, commercial leisure development or other uses which will attract significant numbers of people in Midlothian's town centres, provided their scale and function is consistent with the town centre's role. In support of this policy the Council will prepare supplementary guidance on food and drink and other non-retail uses in town centres; this guidance will also include guidance in respect of food and drink and hot food takeaways outwith town centres. The public consultation on the guidance commenced on 28 August 2018 and will run until 10 October 2018.
- 7.10 Policy **TCR2: Location of New Retail and Commercial Leisure Facilities** states that the Council will apply a sequential town centre first approach to the assessment of such applications. The policy does not refer to or apply to food and drink uses or hot food takeaways.
- 7.11 Policy **IMP2: Essential Infrastructure Required to enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development. Amongst the projects identified as being essential requirements is the A7 Urbanisation.

Food and drink and other non-retail uses in Town Centres
Supplementary Guidance

- 7.12 At its meeting in June 2018 the Committee approved supplementary guidance for food and drink and other non-retail uses in town centres for public consultation. The public consultation period for the guidance commenced on 28 August 2018 and runs until 10 October 2018. The section on Drive-Through Restaurants within the draft guidance states that by their nature such developments are unlikely to be located within Midlothian's town centres which are not of a scale

that could accommodate drive-through restaurants; and that town centre locations are unlikely to fit with the business models of drive-through operators. Therefore, planning applications for drive-through restaurants are likely to fail to satisfy the town centre first approach. However, drive-through restaurants represent a valid and important part of the provision of food and drink facilities in the contemporary landscape of Scotland's towns and cities.

- 7.13 There is potential for drive-through restaurants to have an adverse impact on other restaurants within nearby town centres. Planning applications must be accompanied by information to demonstrate that proposed drive-through restaurants will not undermine the vitality and viability of nearby town centres. Where drive-through restaurants have been demonstrated to not undermine the vitality and viability of nearby town centres there will be scope to support their development in the built-up area adjacent to the strategic road network.
- 7.14 Proposed drive-through restaurants must comply with the terms of policy ENV17 (Air Quality) of the MLDP, which states that further assessment to identify air quality impacts would be required where the Council's Environmental Health service and the Scottish Environment Protection Agency considers it requisite. The Council's statutory duties in relation to monitoring air quality are undertaken by the Council's Environmental Health service who would be consulted as part of any planning application for drive-through restaurants.
- 7.15 Planning applications for drive-through restaurants must demonstrate that the matter of littering has been fully considered by the applicant. Planning permissions for these uses are likely to include a planning condition which will require details of the extent of the area around the site where litter is to be picked.
- 7.16 Drive-through restaurants must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where the development would present a threat to road safety.
- 7.17 The draft guidance contains guidance for all Food and Drink uses on ventilation, noise, litter/refuse and parking. In relation to public health the draft guidance states that hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a secondary school. The Planning Authority may also consider applying this provision in relation to primary schools and other premises predominantly used by children.

8 PLANNING ISSUES

- 8.1 In dealing with a planning application the Planning Authority shall have regard to the provisions of the development plan, so far as material to

the application, and to any other material considerations. Any representations and consultation responses received are material considerations.

Principle of development

- 8.2 The application site is situated within the built-up area of Dalkeith and Eskbank and adjacent to the site of an existing retail unit. Policy DEV2 provides support for development in such areas unless it detracts materially from the existing character or amenity of the area; subject to the assessment of the proposal's impact on the character and amenity the principle of the development is acceptable.
- 8.3 Consent has previously been granted for the erection of a restaurant, bar and children's play area (00/00516/OUT and 01/00169/FUL); and for the erection of a residential care home (04/00531/FUL). Neither of these schemes were implemented; however the planning history of the site clearly demonstrates that the principle of development on the site is acceptable. The planning history of a site is a material consideration in the assessment of a planning application.

Impact on Town Centres

- 8.4 The applications in 2015 and 2016 for retail development (15/00921/DPP and 16/00169/FUL) on the application site failed to establish a principle in favour of retail development at this location. The applications failed to satisfactorily demonstrate that a sequential town centre first approach had been followed and that they would not undermine the vitality and viability of Dalkeith or Bonnyrigg town centres.
- 8.5 The fundamental difference between those two applications and the current application is the nature of the development being proposed; the current application relates to drive through restaurants and MLDP policies TCR1 and TCR2 promote a sequential town centre first approach for retail uses rather than food and drink uses. While the impact on the established town centres could still be considered as a material consideration in the assessment of the application; it is important to acknowledge that what is being proposed are drive through restaurants which are not a type of development that would be expected to be accommodated within a town centre.
- 8.6 The draft Supplementary Guidance on food and drink and other non-retail uses in town centres states that applications for drive-through restaurants must be accompanied by information to demonstrate that the proposal will not undermine the vitality and viability of nearby town centres. The application was submitted prior to the publication of the draft guidance; accordingly no information was provided in relation to this provision. The draft guidance was published for consultation on 28 August and it would therefore be unreasonable to ask the applicant to

provide additional information to comply with guidance that was not publically available at the time of the application submission or elected member call-in.

- 8.7 The business model of the type of development proposed relies on proximity to the major road network and to existing traffic generating uses, such as the supermarket. The chosen site clearly meets those requirements; furthermore it is situated within the built-up area and is not situated on land allocated for a specific use such as economic land or housing.

Traffic and Parking

- 8.8 The application is supported by a transport assessment which has modelled the impact on Eskbank Roundabout of the additional traffic generated by the development. The figures for the additional traffic have been generated using data from TRICS which is a system that compiles the results of over 7150 directional transport surveys relating to more than 110 types of development. The system uses data from across the UK and Ireland and allows users to set various constraints in order to generate estimated figures based on surveys from similar sites. TRICS is a widely used by transport consultants and roads authorities.
- 8.9 The assessment uses the results of a traffic survey and queue count from November 2015. Forecasted growth rates have been used to create projected background traffic flows for 2019, when the applicant hopes to complete the development. The 2019 figures include the neighbouring drive-through site as a committed development.
- 8.10 The assessment forecasts that the proposed development will generate an additional 92 trips (as a worst case scenario), over and above the projected 2019 figure of 826 trips, on the Tesco Access arm of Eskbank Roundabout during the 08:15-09:15 am peak. A vehicle leaving the roundabout, visiting the development site and then re-joining the roundabout is counted as 1 trip on this arm of the roundabout. During the 15:45-16:45 pm peak the development is forecast to generate 76 additional trips, over and above the projected 2019 figure of 1338 trips. These predicted peak times differ from the peak times of the recently granted McDonald's application (17/00944/DPP) which had a Friday lunch time and Saturday evening peak. Furthermore the overall traffic increase resulting from this proposed development is predicted to be less than that of application 17/00944/DPP.
- 8.11 The A7 is a main traffic route through Midlothian with current traffic flows in the order of 23,000 vehicles per day. General traffic volumes can vary on a day to day basis; with plus or minus 10% not being unusual.

- 8.12 The performance of priority type junctions is measured using two standard outputs, these are Ratio of Flow to Capacity (RFC) and Mean Max Queue (MMQ). Priority junctions are considered to be operating successfully if the RFC figure is less than the practical capacity threshold of 85% or within operational capacity of 100%.
- 8.13 The figures generated for the four arm roundabout that provides access to the Tesco car park and the petrol filling station indicate that the proposed development will result in maximum RFC figure of 44% during the AM peak and 59% during the PM peak.
- 8.14 The figures generated for Eskbank Roundabout indicate that the proposed development will result in a maximum RFC figure of 48% during the AM peak and 87% during the PM peak. These results indicate that the junction will be operating over practical capacity but within operational capacity during the PM peak. The queuing will relate to traffic exiting the Tesco site and entering Eskbank Roundabout; the majority of this arm is a private road that is not adopted by the Council. The maximum RFC for the remaining 4 arms, which relate to public roads, is 67% for the A7 North (i.e. traffic coming from the north) arm. The Council's Policy and Road Safety Manager is satisfied that the figures indicate that the operation of the Eskbank Roundabout will not be impaired by the proposed development.
- 8.15 Midlothian Council's parking standards require restaurants to provide spaces at the rate of 12 per 100 sqm of public floor area. As the final operators have not been confirmed detailed floor plans are not available at this stage however the two proposed restaurants have a combined floor area of 396 sqm which would require 48 spaces to comply with standards. The proposed allocation of 55 spaces complies with standards.
- 8.16 Eskbank and Newbattle Community Council has stated that it considers that Midlothian Council should carry out a traffic survey at Eskbank roundabout and should carry out its own traffic impact analysis rather than relying on information supplied by the applicant. The Transport Assessment submitted in support of the application has been prepared by a reputable firm of transport consultants and the Council is satisfied that it has been prepared using accepted industry standards and practises. The information has been assessed by a suitably qualified member of Council staff with years of experience in the assessment of such submissions. Accordingly, there would be no added benefit for the Council to commission independent third party assessments of such submissions or commission its own assessments; such an approach would also have significant unnecessary financial implications for the Council.

Design

- 8.17 The buildings will have a contemporary design with gently sloping roofs, large areas of full height glazing and a modern palette of finish

materials. The designs reflect contemporary architectural trends in both shop and restaurant design. A mix of materials and architectural details is used to create variety on all four elevations of the buildings. While the buildings will be a corporate design that is utilised throughout the UK, they have the appearance and character of modern urban buildings; the designs share many characteristics with modern office and housing developments.

Landscaping

- 8.18 The reasons for refusal for both application 15/00921/DPP and application 16/00618/DPP referred to the loss of landscaping and the lack of effective screening. Application 16/00618/DPP was the subject of an appeal to the Scottish Government's Planning and Environmental Appeals Division; the Reporter considered that the trees along the A7 frontage had "significant amenity and landscape value due to the sensitive location at the edge of the built up area" and agreed with the Council that effective screening was necessary along this boundary of the site.
- 8.19 The current proposal relates to single storey buildings of a significantly smaller scale than the buildings proposed as part of the previous applications. The smaller scale means that there is some scope to relax the width of the land necessary to provide effective screening. The applicant undertook significant pruning of the boundary hedgerow planting in early 2018 and this has altered the appearance of the site; however the previous boundary planting was a result of years of neglect of the hedgerow which had resulted in it becoming very overgrown. The hedgerow has been pruned back and the applicant intends to maintain it so as to create a hedgerow in keeping with the appearance of a well maintained rural field boundary.
- 8.20 Negotiations have been ongoing between the case officer and the applicant's agent with regard to the proposed landscaping along the A7 boundary. After the production of a number of versions of the landscaping plan agreement has been reached on a scheme that will provide an acceptable number of trees and deliver an effective level of screening along the A7 boundary.

Signage

- 8.21 The consultation response from Bonnyrigg and Lasswade Community Council comments on the need for minimal signage on the A7 and notes that details of signage have not been included with the application. Advertising signage does not require planning permission; consent is granted via a separate process known as Express Advertisement Consent and is regulated by separate legislation. It is not possible to attach conditions relating to signage to a consent for planning permission. The Planning Authority has consistently sought to ensure that signage along the A7 is kept to an absolute minimum, and

will maintain this approach with future applications for express advertisement consent.

Litter

- 8.22 Following assessment of the proposal for a drive-through restaurant at the neighbouring site Midlothian Council considered it reasonable to condition that a litter management plan be submitted for that application. The draft Litter Management Plan for the neighbouring site sets out the standard approach adopted by McDonald's which is to carry out 3 litter picks per day. These litter picks aim to pick all litter within the site boundary of the McDonald's and all McDonald's litter within 100 metres of the site boundary. In recognition of the concerns raised by the Committee in determining planning application 17/00944/DPP the finalised Litter Management Plan extends the outer limit of the pick to 200 metres from the site boundary.
- 8.23 The applicants for the current application are aware of the litter management requirements for the neighbouring site and are also aware that the Committee are extremely concerned about the negative impacts on residential and visual amenity resulting from litter associated with drive-through restaurants. The Committee's previous decision and concerns on a similar type of application at a neighbouring site are a material consideration in the assessment of the current application. Given the very recent decision of the Committee it would be reasonable to attach a similar condition to the current application to secure a similar scale of litter management.

Anti-Social Behaviour

- 8.24 Drive through restaurants are common features of urban areas throughout Scotland and the UK. There are currently three such facilities operating in Midlothian, all in the Straiton area; and consent has been granted for a further facility at the neighbouring site. No evidence has been presented to the planning authority to demonstrate that such facilities create excessive levels of anti-social behaviour; it would not be reasonable for the planning authority to refuse the application on the basis of a perceived risk of anti-social behaviour.
- 8.25 The supporting statement submitted with the application states that both of the units will be open 24 hours a day. The existing supermarket and petrol filling station both currently operate 24 hours a day; and no condition restricting hours was attached to the consent for the drive through restaurant at the neighbouring site. Given the proximity of these uses to the proposed restaurants it would not be reasonable to seek to restrict the hours of operation by virtue of a planning condition. It is worth noting that catering premises that wish to operate between the hours of 23:00 and 05:00 require a Late Hours Catering Licence issued under the Civic Government (Scotland) Act 1982; as part of the process of assessing such applications the Council consults with the

Police. The guidance provided to planning authorities by the Scottish Government makes clear that planning conditions should not seek to duplicate powers and functions that are undertaken via existing alternative legislation.

Noise and ventilation

- 8.26 The Council's Environmental Health Manager has recommended that if consent is to be granted conditions should be attached to the permission to ensure that the amenity of nearby residential properties are safeguarded. A condition to ensure that any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an internationally recognised standard developed by the International Organization for Standardization (ISO) to determine acceptable noise levels for indoor environments) will safeguard the amenity of local residents. A further condition will ensure that sound from speakers associated with the drive through function will not be audible in any nearby living apartment. It is Midlothian Council's standard practise to attach a condition specifying details of ventilation equipment to applications for restaurants and hot food takeaways; the standard condition would be appropriate in this instance.

Air Quality

- 8.27 The Council's statutory duties in relation to monitoring air quality are undertaken by the Council's Environmental Health Service. The consultation response from the Environmental Health Manager recommended that an Air Quality Assessment be secured via condition. Having viewed the consultation response the applicant's agent has opted to submit the requested assessment as part of the application process.
- 8.28 The Assessment uses the figures from the Transport Assessment and software for modelling road traffic pollution to produce predicted pollutant concentration figures for Nitrogen Dioxide (NO₂) and particulate material. The overall effect on local air quality of the proposed development is assessed as not significant. The submitted report has been assessed by the Environmental Health Manager and its findings and conclusions are considered to be acceptable.

Healthy Eating

- 8.29 The MLDP does not contain any policies relating to healthy eating; there are no planning policy grounds on which to refuse the application on such a basis. Planning case law is mixed on the issue of whether or not healthy eating initiatives can be considered to be a material consideration in the assessment of planning applications.
- 8.30 The impact of drive-through restaurants on healthy eating initiatives was considered by the Committee during their consideration of the

application for the erection of a drive-through restaurant at the neighbouring site (17/00944/DPP). The impact was not considered significant enough to warrant refusal of that application. It must be acknowledged that there is the potential for there to be a cumulative impact from the current proposal and the recently consented scheme; however given the relatively short period of time (6 months) since the neighbouring application was considered by the Committee it would be unreasonable for the planning authority to take an alternative view, with regard to healthy eating, on the current application.

- 8.31 The draft guidance states that hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a secondary school. The guidance does not offer any guidance in relation to further education institutions. Edinburgh College is 400m from the edge of the application site.
- 8.32 It is important to acknowledge that the application must be assessed on its planning merits and not on any perceived failings of a prospective operator. While one of the prospective operators is KFC any consent could in theory be implemented by an alternative operator with a different range of products. If the Council considers that the impact on healthy initiatives is a significant enough material consideration to warrant refusal of the application then for such an approach to be effective it would need to be consistently adopted on other applications for drive-through facilities; restaurants with a takeaway element; and hot food takeaways.

Neighbour Notification

- 8.33 The site boundary identified on the location plan relates to the area of the car park that the application relates to. Neighbour notification has been sent to notifiable addresses within 20 metres of the boundary of the application site, as per Scottish Government regulations. While it is acknowledged that this means that residential properties at Muirpark and Hardengreen Lane did not receive neighbour notification the Planning Authority is satisfied that the statutory requirements have been complied with.

Developer contributions

- 8.34 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:
- Necessary to make the proposed development acceptable in planning terms (paragraph 15)

- Serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
- Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)
- Fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)
- Be reasonable in all other respects

8.35 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).

8.36 This proposed development of which the principal element is the provision of two drive through restaurants has been assessed in relation to the above guidance and it is considered that a Planning Obligation is required in respect of the Council's A7 urbanisation proposals.

8.37 The MLDP identifies the urbanisation of the A7 as being key to encouraging safe pedestrian and cycle routes within this transport corridor. A proportionate contribution will be required from this development.

9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

The proposed development is situated within the built-up area of Dalkeith and Eskbank and will not detract materially from the existing character or amenity of the area. The proposal therefore complies with policies DEV2, TRAN2 and IMP2 of the Midlothian Local Development Plan. Any perceived issues associated with litter, anti-social behaviour and healthy eating are not significant enough material considerations to warrant refusal of the application.

Subject to:

- i) the prior signing of a legal agreement to secure the provision of developer contributions towards A7 Urbanisation. The legal agreement shall be concluded prior to the issuing of the planning permission and shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.
- ii) the following conditions:

1. Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:
 - i the nature, extent and types of contamination on the site;
 - ii measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii measures to deal with contamination encountered during construction work; and
 - iv the condition of the site on completion of the specified decontamination measures.
2. On completion of the decontamination/remediation works referred to in Condition 1 above and prior to any building on the site being brought into use, a validation report or reports shall be submitted to the Planning Authority confirming that the works have been carried out in accordance with the approved scheme. No building on the site shall be brought into use unless or until the Planning Authority have approved the required validation.

Reason for conditions 1 and 2: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

3. Development shall not begin until a scheme of investigation and remediation to deal with previous mineral workings has been submitted to and approved in writing by the Planning Authority. The scheme shall include:
 - i. a scheme of intrusive site investigations;
 - ii. a report of findings arising from the intrusive site investigations; and
 - iii. a scheme of remedial works for approval by the Coal Authority.

Before any work starts onsite on the proposed development the investigation schemes and remediation works shall be fully implemented as approved by the Planning Authority and the Coal Authority.

Reason: To ensure that any risks posed by the coal mining history of the area are identified and addressed prior to development commencing.

4. Development shall not begin until a detailed scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained, removed or protected during development;
 - iii proposed new planting in planting areas, including trees, shrubs, hedging and grassed areas;
 - iv location and design of all proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi a programme for completion and subsequent maintenance of all soft and hard landscaping. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
 - vii drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff; and
 - viii proposed car park configuration and surfacing.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs (existing or planted) that are subsequently lost through removal, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the next available planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

5. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the physical development is of an appropriate standard in terms of its impact on the character and*

appearance of the area. To ensure compliance with local and national planning guidance and advice.

6. Prior to either restaurant opening to the public details of a litter collection plan for the surrounding area, including an agreed length of the National Cycle Network Route 196, shall be submitted to and approved in writing by the Planning Authority. All the measures identified in the approved plan shall be in place and fully operational for the opening of either of the restaurants to members of the public and shall continue in operation for the duration of the approved use, unless otherwise approved in writing by the Planning Authority.

Reason: *To protect the character and amenity of the surrounding area.*

7. Prior to each restaurant opening to the public a Travel Plan, for the said restaurant, shall be submitted to and approved in writing by the Planning Authority. Each Travel Plan shall include details of the measures to be taken to encourage staff to use sustainable modes of transport when travelling to the site. All the measures identified in the approved plans shall be in place and fully operational for the opening of each restaurant to members of the public and shall continue in operation for the duration of the approved use, unless otherwise approved in writing by the Planning Authority.

Reason: *To ensure that the number of vehicle trips generated by staff of the restaurant is minimised.*

8. Unless otherwise approved in writing by the Planning Authority the vehicular access and parking arrangements shown on the approved Proposed Site Plan (Drawing number G2713-AL(0)003 P2-2) shall be operational prior to the restaurant being opened to the public.

Reason: *To ensure that queuing and disruption to Eskbank Roundabout is minimised.*

9. The kitchen of the restaurant shall be ventilated by an extraction ventilation system which shall:
 - a) Be designed to achieve 30 air changes per hour;
 - b) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
 - c) Prevent the emission of cooking odours likely to cause nuisance to neighbouring commercial units and surrounding residential properties; and
 - d) Terminate at sufficient height to permit the free disposal of exhaust fumes.
10. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an

acceptable noise rating level based on an international standard) when measured within any nearby living apartment and no structure borne vibration is perceptible within any living apartment.

11. The sound emitted by any tannoy/loudspeaker system serving the restaurant's drive through facilities shall be controlled to ensure that no amplified speech is audible within any nearby living apartment.

Reason for conditions 8, 9 and 10: To safeguard nearby residential amenity.

11. Development shall not begin until details for the provision and use of electric vehicle charging stations throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.

12. Development shall not begin until a scheme of sustainability/biodiversity (including measures to encourage and enhance biodiversity) for the site has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan 2017.

Ian Johnson
Head of Communities and Economy

Date:	2 October 2018
Application No:	18/00181/DPP
Applicant:	SC Dalkeith Limited, 349 Bath Street, Glasgow
Agent:	Iain Hynd, Barton Wilmore, 68-70 George Street, Edinburgh
Validation Date:	20 March 2018
Contact Person:	Graeme King
Tel No:	0131 271 3332
Background Papers:	None



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Erection of two drive through restaurants; formation of access and car parking and associated works at Land South West Of Tesco Superstore, Dalkeith

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File No. 18/00181/DPP

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Application A

APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE (17/00980/PPP) FOR RESIDENTIAL DEVELOPMENT UP TO 280 DWELLINGS; COMMERCIAL DEVELOPMENT FOR USE CLASSES 1, 2, 3 AND/OR 4 WITH A FLOORSACE OF UP TO 250SQM AND ASSOCIATED WORKS AT LAND AT ROSSLYNLEE, ROSLIN.

Application B

APPLICATION FOR DETAILED PLANNING PERMISSION (17/01001/DPP) FOR THE ALTERATIONS AND CONVERSION OF FORMER HOSPITAL AND EXISTING BUILDINGS TO FORM 72 DWELLINGS; ERECTION OF 24 NEW DWELLINGHOUSES AND ASSOCIATED WORKS AT THE FORMER ROSSLYNLEE HOSPITAL, ROSLIN.

Application C

APPLICATION FOR LISTED BUILDING CONSENT (18/00061/LBC) INTERNAL AND EXTERNAL ALTERATIONS TO THE FORMER ROSSLYNLEE HOSPITAL AND ASSOCIATED LISTED BUDILINGS TO FORM 69 DWELLINGS AND AN OFFICE INCLUDING; DEMOLITION OF THE FORMER BOILERHOUSE, OUTBUILDINGS AND ALTERATIONS TO EXISTING WINDOW AND DOOR OPENINGS AND ASSOCIATED WORKS AT THE FORMER ROSSLYNLEE HOSPITAL, ROSLIN.

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATIONS AND RECOMMENDED DECISION

- 1.1 The applications are for the conversion of the former Rosslynlee Hospital into residential accommodation and for planning permission in principle for residential and commercial development on land adjacent to the grounds of the former hospital.**
- 1.2 Application A is for planning permission in principle for residential development of up to 280 dwellings; commercial development for use classes 1, 2, 3 and/or 4 with a floorspace of up to 250sqm and associated works at land at Rosslynlee, Roslin.**

- 1.3 Application B is for detailed planning permission for alterations and conversion of former hospital and existing buildings to form 72 dwellings; erection of 24 new dwellinghouses and associated works at the former Rosslynlee Hospital, Roslin.**
- 1.4 Application C is for Listed Building Consent for Internal and external alterations to the former Rosslynlee Hospital and associated listed buildings to form 68 dwellings and an office including; demolition of the boiler house, outbuildings and elements of the main building, alterations to existing window and door openings and associated works at the former Rosslynlee Hospital, Roslin.**
- 1.5 There have been 18 representations and consultation responses from the Coal Authority, Scottish Water, the Scottish Environment Protection Agency (SEPA), The Wildlife Information Centre, the Council's Head of Education, the Council's Policy and Roads Safety Manager, the Council's Environmental Health Manager, Rosewell and District Community Council and Roslin and Bilston Community Council**
- 1.6 The relevant development plan policies are policies 5, 7, 8 and 11 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan), and policies STRAT4, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN5, IT1, TCR2, ENV2, ENV7, ENV9, ENV10, ENV11, ENV22, ENV23, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017.**
- 1.7 The recommendation is to refuse planning permission and listed building consent for the three stated applications on the basis that; the proposed development will have a detrimental impact on highway safety, the applicant will not make the required developer contribution to mitigate the impact the development will have on the local infrastructure and the applications do not deliver the required level of affordable housing as set out in the development plan.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is at Rosslynlee, a rural part of Midlothian between Rosewell and Penicuik. At its heart is the Category C listed former Rosslynlee Hospital and its associated buildings (a number of which are also Category C listed). The hospital site is surrounded by farmland including two fields which are the subject of Application A. The application sites are accessible by an unclassified road (Firth Road/Farm Road) connecting to the B7026 (heading towards Auchendinny/Howgate) or unclassified roads connecting to the A6094 (heading towards Rosewell) or the B7003 (heading towards Roslin). The former hospital is within a landscape comprising tree belts and woodlands.**

- 2.2 The hospital was listed as a Category C Listed Building in 1998. It closed as an NHS medical facility in 2010 and has remained redundant since its closure. To the north of the site is the former Edinburgh to Peebles railway line which closed in 1967. Rosslynlee Hospital had its own station until passenger trains ceased in 1962.
- 2.3 The hospital complex comprises an array of buildings - the original stone buildings being designed by Robert Lambie Moffat in 1874. Significant extensions/additions were added in 1902 (designed by Robert Rowand Anderson). It's these components which have the most architectural value. Further extensions and infills were added in the late 20th century for the function of the hospital, but have little or no architectural merit. To the southwest of the former hospital there is a large formal open space with large terraces, steeped embankments and a gentle north-facing slope. Located to the north between the former hospital and old railway line is an area of open space that was formerly a walled garden. The wall remains largely intact but the wider area is now overgrown. To the southeast along Firth Road and Farm Road there are a number of farm buildings and staff accommodation buildings associated with the hospital, these are in a poor state of repair.
- 2.4 The listed buildings on the site comprise; the principal hospital building, the morgue, the boiler-house, the entrance gate-piers, the gate lodge (Pentland House), a number of residential properties in Firth Road, the farm managers house and the cart shed.

3 PROPOSAL

- 3.1 The three applications together propose a predominantly residential led redevelopment of the former Rosslynlee Hospital and its surrounding land. Application A seeks planning permission in principle for up to 280 new dwellings in the two fields adjoining the hospital grounds (the North Field and the South field). Application B proposes the conversion of the listed hospital buildings to form 72 residential dwellings together with detailed permission for 24 dwellings in the grounds of the hospital. Application C seeks listed building consent for alterations to the listed hospital buildings and the demolition of the former boiler house and works to individual listed buildings within the hospital site.
- 3.2 In total the applications propose up to 376 dwellings. Up to 280 units in principle (the details relating to the size and form of the units does not form part of the applications) and 96 units in detail comprising:
- 1 x 1 bed house;
 - 8 x 2 bed houses;
 - 32 x 3 bed houses;
 - 21 x 4 bed houses;
 - 8 x 5 bed houses;
 - 1 x 1 bed apartment;

- 11 x 2 bed apartments; and
- 14 x 3 bed apartments

3.3 In October 2018 amended plans and additional supporting information was submitted in respect of Applications B and C and resulted in the following changes to the original submission:

1. The omission of the previously proposed new build parcels 4 and 5 (six dwellings);
2. The retention of the previously proposed to be demolished former morgue and its conversion into two dwellings;
3. Amendments to the main hospital building arising from the retention of the morgue, resulting in the omission of one dwelling in the main building and changes to the proposed external treatment of the building;
4. The omission of the proposed removal and replacement of all windows that were not otherwise the subject of alteration;
5. Revised details of the proposed approach to the replacement of roof treatments;
6. Additional justification for the demolition of the boiler house;
7. Additional justification for the removal of the glazed link corridors; and
8. The retention of a greater number of chimneys than previously proposed.

3.4 The applicant has submitted the following documents in support of their application:

- A Design and Access Statement;
- A Flood Risk Assessment;
- A Drainage Impact Assessment (including SUDS proposals);
- Planning Statement;
- A Transport Assessment;
- Contaminated Land Assessment;
- Habitat Survey;
- Landscape and Visual Appraisal;
- Building Condition Survey;
- Archaeological Report;
- Energy Sustainability Statement; and
- Bat Survey.

4 BACKGROUND

4.1 The applicant carried out a pre application consultation (16/00267/PAC) for residential development and complementary uses in April – June 2016. The pre application consultation was reported to the Committee at its meeting of May 2016.

4.2 Planning application 16/00716/DPP and listed building consent 16/00720/LBC for the conversion of outbuildings into eight dwellings and the erection of five new build dwellinghouses was granted

permission in 2018. The proposed units granted permission are also incorporated into the current applications.

5 CONSULTATIONS

- 5.1 The **Coal Authority** does not object to the application subject to securing, by way of a condition on any grant of permission, a site investigation and appropriate remediation measures to mitigate the sites coal mining legacy.
- 5.2 **Scottish Water** does not object to the application. However, Scottish Water are unable to confirm if there is capacity to accommodate the development until the applicant makes an application to Scottish Water.
- 5.3 **The Scottish Environment Protection Agency (SEPA)** does not object to the applications subject to securing, by way of a condition on a grant of permission, drainage details and flood mitigation measures. The application site is adjacent to a small watercourse and as a result could be at risk of flooding. The applicant has provided drawings showing the existing and proposed culvert and in response SEPA advise that the route shown is acceptable subject to the realignment details being secured by condition. The new culvert shall be outwith any individual property boundary and not built on. SEPA note the Coal Authorities response to the application and therefore state it is unlikely that stabilisation of mine workings with pulverised fuel ash (PFA) grouting will be necessary. SEPA has confirmed they are satisfied with the drainage on site. The proposed SUDS and connection to Roslin Waste Water Treatment Works are acceptable. The proposed development is within 600m of an existing waste landfill site regulated by SEPA and as such consideration of the neighbouring land uses shall be considered.
- 5.4 **The Wildlife Information Centre** does not object to the applications.
- 5.5 The Council's **Head of Education** has stated that the development will result in additional pressure on primary and secondary school provision and as such a developer contribution would be required. The development lies within the following school catchment areas:
- | | |
|------------------------------|----------------------------------|
| Non-denominational primary | - Rosewell Primary School |
| Denominational primary | - St Matthew's RC Primary School |
| Non-denominational secondary | - Lasswade Community High School |
| Denominational secondary | - St David's RC High School |
- 5.6 In respect of Application A, the Council's **Policy and Road Safety Manager** objects to the application and has expressed concerns over the suitability of the site to accommodate a residential development of the scale proposed. The site is remote from any existing facilities, with no dedicated pedestrian or cycling routes linking the site to Rosewell (the nearest settlement to the development). The site also does not

have any public transport services with the nearest scheduled bus services terminating in Rosewell (over 2 miles away). The local access roads are narrow and not designed to accommodate large volumes of traffic. The main access roads leading to the site would be the narrow rural road from the Gourlaw Crossroads, which passes Gourlaw Farm, and the Kirkettle Road which joins the B7003 Roslin Glen Road. The developers Transport Assessment identified Gourlaw Crossroad as an accident problem area and has identified some alterations which would improve driver visibility at this junction. The rest of this road is narrow with no pedestrian footways and limited road verges with a section in cutting enclosed by retaining walls on both sides. This road would not be suitable to safely accommodate a major increase in traffic levels. The Kirkettle Road also has no pedestrian facilities with sections of narrow road verge and some very sharp bends. This road starts from the B7003 Roslin Glen Road which is also a rural route with difficult horizontal geometry, steep gradients and sections of reduced width. The Roslin Glen Road is signed as being unsuitable for use by long vehicles. None of the above roads have street lighting.

- 5.7 There have been a number of road injury accidents reported on the local road network during the current 3-year accident period and the introduction of a large scale housing development in the area would add to the relatively low level of traffic using these routes resulting in an increase in the potential for vehicle conflict. Also given the remoteness of the site and the lack of any scheduled public transport services or convenient walking/cycling routes it is likely that the majority of trips to and from the development would require to be made by private car.
- 5.8 This proposal does not appear to be in keeping with the Council's aims of reducing reliance on the use of the private car, increasing the use of public transport and increasing opportunities for 'active' travel.
- 5.9 In respect of Application B the scale of development would result in an increase in the current volume of traffic using the substandard local road network which does not have adequate pedestrian/cycling access and poor public transport provision. However, it could be viewed that the change of use of the former hospital building to residential use would produce a broadly similar level of traffic generation to the former hospital use, although residential use/traffic tends to be tidal with traffic during morning and evening peaks periods. Residential development also results in school and recreational trips which would not have occurred with the hospital use.
- 5.10 The Council's **Environmental Health Manager** does not object to the application subject to conditions being attached to any grant of planning permission ensuring ground contamination remediation works are undertaken.
- 5.11 The **Rosewell and District Community Council (RDCC)** has made the following comments:

- Current infrastructure will not be able to support the development;
- RDCC are against the principle of planning permission being granted for development on green fields and does not agree with the premise that planning permission is granted to financially assist developers;
- The development does not comply with the principals of sustainable living and the vision set out in the Midlothian Local Development Plan;
- The existing access to the site is not considered adequate in its current condition and improvements and/or alterations will be required to serve the development;
- There is no connection to any existing footway network;
- Developer contributions should be sought towards Midlothian's Green Network and Core Path Network;
- RDCC disagree with the applicants transport assessment;
- Concerns over high traffic levels on the local roads due to increased house building in the area;
- Concerns for the safety of cyclists on the narrow roads between Rosewell and Roslin;
- Concern over the impact of increased levels of traffic on the Roslin Glen Road, which is again showing signs of subsidence;
- Concern over increased traffic at the Gourlaw Junction (an accident blackspot);
- There are concerns that although the site is out with the Rosewell settlement boundary, it is within RDCC's boundary map, and as a result the residents will use Rosewell community facilities. RDCC therefore feel that developer contributions should be sought to support community facilities and infrastructure;
- The proposed community facilities within St Margret's (Rosslynlee Hospital) are sparse for this isolated community;
- The proposed bus service offers no benefits to Roswell community if it coincides with the times of the 49 bus service; and
- The proposed bus service could be of benefit to the elderly and less mobile residents if it continues on to the rail station as the transport plan states.

5.12 The **Roslin and Bilston Community Council (RBCC)** objects to planning application 17/00980/PPP and have made the following comments:

- The B7026 is unsuitable for use by the Rosslynlee residents;
- RBCC are concerned a through road will be maintained using the road past Firth Mains and Auchendinny Mains to the B7026;
- The schools are outwith the 2 mile walk distance, therefore a school bus would be essential, however none of the access routes to the site are suitable for a school bus;

- The cycle route from Rosslynlee to the Bush, referenced in the transport assessment, is unsafe;
- Increased use of Straiton Park and Ride would increase traffic through the Roslin Glen, Roslin village and the A701, which are already badly congested;
- Concerns regarding the lack of public transport to and from the site. RBCC question if there is capacity at Eskbank railway station, particularly during peak times;
- There is inadequate footways along the access road;
- No consideration has been given to the junctions and road beyond those immediately surrounding the site;
- There are concerns surrounding visibility at the Gourlaw/A6094 junction;
- There are no suitable roads for construction vehicles to access the site;
- Concerns surrounding the viability report and its credibility;
- RBCC are not satisfied that the proposal will reach the standards of sustainability required by planning policy - the sustainability statement provided by the applicant is inadequate; and
- Concerns about the handling of sewage from this site.

6 REPRESENTATIONS

6.1 There have been 18 objections, all of which can be viewed in full on the online planning application case file. A summary of the objections are as follows:

- The current road infrastructure will not accommodate the proposed number of dwellinghouses and associated traffic;
- There are limited plans to upgrade the roads and junctions that will serve the development - the roads and junctions are unsuitable. The roads most effected will be, the Gourlaw Junction on the A6094, the Roslin Glen B7003 and the road to the west leading to Auchendinny, the B7026;
- The development will have a detrimental impact on the condition of the already badly damaged Roslin Glen road;
- The roads surrounding the site are unsuitable for the large vehicles that will need to access the site during the construction process and thereafter;
- Due to the isolated nature of the development the future residents will be car dependent generating far higher levels of traffic;
- The proposed development represents an overdevelopment, given the site was allocated for 120-300 dwellings and the applicant is proposing 381 dwellings;
- There are equestrian properties in the local community that use the roads surrounding the application site and any increase in traffic could be potentially dangerous as the roads are not wide enough

for a car to pass a horse. This could have a detrimental effect on local livery businesses;

- The proposed development makes no provision for continued equestrian access;
- Concerns that the increased number of dogs in the area will effect sheep farmers;
- The proposed development does not make provision for extra facilities or amenities in the area;
- The proposed development would have an unacceptable impact on local services, facilities, infrastructure, GP services, schools and sewage infrastructure;
- The applicant did not adequately notify the surrounding residents;
- The applications are overwhelming, making it hard for local residents to understand the full impact the development will have;
- The proposed development goes against current environmental policy;
- The proposed development will have an adverse effect on the existing countryside and rural environment;
- The development of the green field sites (North Park and South Park) is not an appropriate way to fund the renovation of the former hospital;
- The proposed development goes against Midlothian's policies to promote the use of brownfield sites over green field sites; and
- The proposed development of green field sites will have an adverse effect on wildlife species and biodiversity.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

Edinburgh South East Scotland Strategic Development Plan 2013 (SESPPlan)

- 7.2 **Policy 5 (HOUSING LAND)** requires local development plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing requirements for each period.
- 7.3 **Policy 7 (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY)** states that sites for greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) The development will be in

keeping with the character of the settlement and local area; (b) The development will not undermine Green Belt objectives; and (c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

- 7.4 **Policy 8 (TRANSPORTATION)** seeks to promote the development of a sustainable transport network and ensure that new development minimises the generation of additional car traffic.
- 7.5 **Policy 11 (DELIVERING THE GREEN NETWORK)** seeks to ensure that major developments in the SESplan area have a positive contribution to the creation, maintenance and enhancement of the green network.

Midlothian Local Development Plan 2017 (MLDP)

- 7.6 Policy **STRAT4: Additional Housing Development Opportunities** supports residential development on those sites identified as additional housing development opportunities in the MLDP settlement statements, provided that they comply with all other relevant MLDP policies.
- 7.7 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.8 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.9 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.10 Policy **DEV6 Layout and Design of New Development** requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet listed criteria.
- 7.11 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.12 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council

assess applications for new development against the open space standards as set out in Appendix 4 of that Plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility). Supplementary Guidance on open space standards is to be brought forward during the lifetime of the plan.

- 7.13 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.14 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.15 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.16 Policy **TCR2: Location of New Retail and Commercial Leisure Facilities** states that the Council will apply a sequential town centre first approach to the assessment of such applications. The policy does not refer to or apply to food and drink uses or hot food takeaways.
- 7.17 Policy **ENV2 Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the *Midlothian Green Network*.
- 7.18 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.19 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.20 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system

(SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.

- 7.21 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.22 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.23 Policy **ENV22: Listed buildings** does not permit development which would adversely affect the character or appearance of a listed building, its setting or any feature of special architectural or historic interest.
- 7.24 Policy **ENV23: Scheduled Monuments** states that development which could have an adverse effect on a scheduled monument, or the integrity of its setting, will not be permitted.
- 7.25 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.26 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.27 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.
- 7.28 Policy **IMP1: New Development** This policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation

interests affected; archaeological provision and 'percent for art' provision.

- 7.29 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.30 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

National Policy

- 7.31 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. The individual and cumulative effects of infill must be sustainable in relation to the social and economic infrastructure of a place, and must not lead to over-development.
- 7.32 The SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of the SPP are developed within the local plan and local development plan policies.
- 7.33 The SPP states that *design is a material consideration in determining planning applications* and that *planning permission may be refused and the refusal defended at appeal or local review solely on design grounds*.
- 7.34 The SPP supports the Scottish Government's aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.
- 7.35 The SPP notes that "high quality electronic communications infrastructure is an essential component of economic growth across Scotland". It goes on to state that

"Planning Authorities should support the expansion of the electronic communications network, including telecommunications, broadband and digital infrastructure, through the development plan and

development management decisions, taking into account the economic and social implications of not having full coverage or capacity in an area”.

- 7.36 The Scottish Government policy statement **Creating Places** emphasises the importance of quality design in delivering quality places. These are communities which are safe, socially stable and resilient.
- 7.37 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.38 **The Scottish Government’s Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.
- 7.39 The Scottish Government policy statement **Designing Streets** emphasises that street design must consider place before movement, that street design guidance (as set out on the document) can be a material consideration in determining planning applications and that street design should be based on balanced decision-making. Of relevance in this case are the statements that:
- “On-plot parking should be designed so that the front garden is not overly dominated by the parking space.”
- “Parking within the front curtilage should generally be avoided as it breaks up the frontage, can be unsightly and restricts informal surveillance. On-plot parking may be suitable in restricted situations when integrated with other parking solutions and when considered in terms of the overall street profile.”
- 7.40 **Historic Environment Scotland Policy Statement 2016** replaces Scottish Historic Environment Policy (SHEP) for operational matters. The policy statement should be used by local authorities when considering planning applications which have an historical or cultural dimension. The policy statement was prepared in response to changes introduced by the Historic Environment Scotland Act 2014. Chapter 3: Consents and Advice; provides guidance for local authorities on the consideration of listed building consent applications. It sets out the legal and administrative requirements of the listed building consent process.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining these applications is whether the proposals comply with development plan policies unless material planning considerations indicate otherwise.

The representations and consultation responses received are material considerations.

Principle of Development

- 8.2 The Rosslynlee site is identified in the MLDP as an Additional Housing Development Opportunity, site AHs1 and as such there is a presumption in favour of residential development, if the proposal complies with development plan policies and the details of the scheme mitigate any infrastructure requirements arising from the development. Additional Housing Development Opportunity sites are seen as potential housing sites, but because of identified challenges to delivery they are not relied upon to meet the Council's housing targets in the same way that an 'allocated housing site' is.
- 8.3 The MLDP settlement statement for Rosslynlee states "The site includes the C Listed Rosslynlee Hospital which is now redundant. As a means to protect and bring the listed building back into use there is support for its conversion to residential use. There is likely to be potential for 70-80 units within the main building and associated structures. However it is recognised that there may be a requirement for complementary development to assist the funding of the conversion and there is support for some additional new build residential development. This will be in the range c.40-200 units, depending on the detailed proposals and the choice of access solution. The existing access is not considered adequate in its current condition and improvement or an alternative access will be required to serve this development. The site is not considered to meet the sustainability criteria as it is not well related to Rosewell, being some distance south of the village. As a result it is not allocated in the MLDP but identified as an additional housing development opportunity. Despite the distance from Rosewell village, the development will be expected to use Rosewell Primary school and Lasswade High School for education and leisure facilities and developer contributions to these facilities will be sought. The development will be expected to be in sympathy with the listed building and its rural location".
- 8.4 The settlement statement goes on to identify inter alia that the development of this site is specifically required to contribute towards Borders Rail, additional capacity at Rosewell Primary School, additional secondary school capacity at Lasswade High School and St David's RC High School, provide 25% affordable housing as required by policy DEV3 and community facilities in Rosewell.
- 8.5 The general principle of housing is accepted at the site subject to any proposals achieving compliance with all other development plan policies in particular; making suitable infrastructure provision including affordable housing, the development proposals being sympathetic to the host listed building and an appropriate access solution being identified. The MLDP acknowledges the potential benefits of the

suitable conversion and restoration of the listed building (Rosslynlee hospital) but this is qualified by the above requirements being met in order for the development to be acceptable in principle, i.e. the ostensible planning benefit of securing the future of the listed building does not in itself outweigh other planning considerations as outlined above.

Housing Land supply

- 8.6 The SPP (paragraph 123) states planning authorities should actively manage the housing land supply to ensure a generous supply of land for house building is maintained and there is always enough effective land for at least five years. Policy 5 of SESplan requires local development plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing required. Midlothian has an up to date adopted local plan which sets a development strategy which includes sufficient housing allocations (12,997 residential units) to meet its housing requirements (12,490 houses) for the period 2009–2024 and in doing so having an established housing land supply. The MLDP was adopted on 7 November 2017 following a local plan examination where the Reporter concluded that there is a 5-year effective housing land supply in Midlothian. The housing allocation figure (12,997 units) does not include the ‘safeguarded sites’ or ‘additional housing opportunities’ identified in the MLDP or windfall developments which provide Midlothian with sufficient generosity to meet its housing targets if an allocated housing site does not come forward. Approximately 5,000 of the required units have been constructed.
- 8.7 The Council must maintain a five year effective supply of housing land at all times which means that the sites must have a reasonable prospect of being built within the five-year period. The Council’s 2017 Housing Audit, which was agreed with Homes for Scotland (HfS) – the umbrella group which represents the house building industry, identified that there is a realistic prospect of 5,583 homes being built in the next five years in Midlothian, exceeding the 4,336 units required. This position, in terms of meeting its housing requirements, is reflected in Midlothian’s draft 2018 Housing Audit (not yet agreed with HfS).
- 8.8 Therefore whilst the principle of housing is supported at this site in order to support the suitable conversion of the listed buildings, subject to meeting the requirements of other local development plan policies, the housing proposed through the applications is not necessary in order for the Council to meet its housing targets.

Transportation and Access Issues

- 8.9 Paragraph 87 of SPP states “Planning permission should not be granted for significant travel generating uses at locations which would increase reliance on the car and where:

- Direct links to local facilities via walking and cycling networks are not available or cannot be made available;
 - Access to local facilities via public transport networks would involve walking more than 400m or the transport assessment does not identify a satisfactory way of meeting sustainable transport requirements;
 - Development plans and development management decisions should take account of the implications of development proposals on traffic, patterns of travel and road safety.”
- 8.10 The two planning applications together propose a total of up to 376 dwellings together with a modest amount of commercial floor space (up to 250 sq m). This is a significant travel generating use and therefore it is incumbent on the applicant to address the transportation and access challenges which arise from the development.
- 8.11 The Policy and Road Safety Manager objects to Application A and has expressed concerns over the suitability of the site to accommodate a residential development of the scale proposed. The site is remote from any existing facilities, with no dedicated pedestrian or cycling routes linking the site to Rosewell (the nearest settlement to the development). The site also does not have any public transport services with the nearest scheduled bus services terminating in Rosewell. The local access roads are narrow and not designed to accommodate large volumes of traffic. The main access roads leading to the site would be the narrow rural road from the Gourlaw Crossroads, which passes Gourlaw Farm, and the Kirkettle Road which connects the B7003 Roslin Glen Road. The applicant’s transport assessment identified Gourlaw Crossroad as an accident problem area and has identified some alterations which would improve driver visibility at this junction. The rest of this road is narrow with no pedestrian footways and limited road verges with a section in cutting enclosed by retaining walls on both sides. This road would not be suitable to safely accommodate a major increase in traffic levels. The Kirkettle Road also has no pedestrian facilities with sections of narrow road verge and some very sharp bends. This road starts from the B7003 Roslin Glen Road which is also a rural route with difficult horizontal geometry, steep gradients and sections of reduced width. The Roslin Glen Road is signed as being unsuitable for use by long vehicles. None of the above roads have street lighting.
- 8.12 There have been a number of road injury accidents reported on the local road network during the current 3-year accident period and the introduction of a large scale housing development in this area would add to the relatively low level of traffic using these routes resulting in an increase in the potential for vehicle conflict. In addition, given the remoteness of the site and the lack of any scheduled public transport services or convenient walking/cycling routes it is likely that the majority of trips to and from the development would require to be made by private car. The routes are of a suitable standard to safely

accommodate the increase in traffic levels the proposed development would generate. This proposal does not appear to be in keeping with the Council's aims of reducing reliance on the use of the private car, increasing the use of public transport and increasing opportunities for 'active' travel.

- 8.13 In respect of Application B the scale of development would result in an increase in the current volume of traffic using the substandard local road network which does not have adequate pedestrian/cycling access and poor public transport provision. However, it could be viewed that the change of use of the former hospital building to residential use would produce a broadly similar level of traffic generation to the former hospital use, although residential use/traffic tends to be tidal with traffic during morning and evening peaks periods. Residential development also results in school and recreational trips which would not have occurred with the hospital use.
- 8.14 The applicant's transportation assessment promotes a package of mitigation measures which includes:
- Transportation improvements including; a contribution towards the upgrading of National Cycle Route 176 and the access to it;
 - Upgrading the road junction leading from Kirkettle Farm Road;
 - The upgrading of the current private access road leading to the site to an adoptable standard;
 - The provision of a bus service from the site (for a temporary period of time);
 - The provision of a bus turning area; and
 - Changes to nearby road speed limits.
- 8.15 Whilst the package of measures is welcome, it does not mitigate the highway safety concerns identified by the Council's Policy and Road Safety Manager or by the representors, nor does it meet the conditions set out in the SPP.
- 8.16 In relation to Application B, the proposed development achieves the Council's required car parking standards. In relation to Application A, the detailed design and layout, including provision of car parking would be a matter for a subsequent matters specified by condition application if planning permission was granted.
- 8.17 If the proposed housing scheme is granted planning permission, because of the sites remoteness, it would be necessary for the Council to provide a school bus service (for both primary and secondary) and as a consequence the development layout would need to make provision for a bus turning area. Application B does not make this provision and Application A is in principle. Any grant of permission would need to meet the requirement for a bus turning area.

Alterations to the Listed Buildings and the Impact on their Setting

- 8.18 MLDP policy ENV22 states that development will not be permitted if it would adversely affect the character or appearance of a listed building, its setting or any feature or special architectural or historic interest. Demolition will only be permitted in exceptional circumstances.
- 8.19 SPP paragraph 141 advises; "Change to a listed building should be managed to protect its special interest while enabling it to remain in active use. Where planning permission and listed building consent are sought for development to, or affecting, a listed building, special regard must be given to the importance of preserving and enhancing the building, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed building or its setting should be appropriate to the character and appearance of the building and setting. Listed buildings should be protected from demolition or other work that would adversely affect it or its setting. SPP defines a listed buildings setting as "... more than the immediate surroundings of a site or a building, and may be related to the function or use of a place, or how it was intended to fit into the landscape of (or) townscape, the view from it or how it can be seen from areas around about, or areas that are important to the protection of the place, site or building".
- 8.20 It is proposed that the boiler house building be demolished as part of the redevelopment proposals. The case for the demolition is:
- Its position to the front of the main building prejudices the setting of the principal hospital building;
 - Its position prejudices the provision of an access road to a number of the proposed dwellings;
 - The building cannot be converted to a residential dwelling;
 - Its retention would adversely impact on the viability of the proposed conversion of the principal hospital buildings; and
 - It is of limited architectural merit.
- 8.21 As the building is Category C listed it is for the Council to assess the listed building implications of the proposal – this position has been confirmed by Historic Environment Scotland who has no comment. The proposed loss of the boiler house should be considered in the context of the overall proposal for the redevelopment of the hospital site. Firstly the boiler house building by reason of its functional purpose is of less significance in terms of its architectural merits when considered against the principal hospital buildings. Furthermore, its architectural significance has been further diminished by various alterations and extensions over a number of years. The form of the building does not enable conversion to residential use. Its position to the front of the hospital diminishes the sense of arrival at the main hospital buildings and also inhibits to the provision of access routes to more important elements of the hospital complex. On this basis, it is

considered that the case has been made for the demolition of the boiler house building if there were to be an acceptable scheme for planning permission for the conversion of the principal hospital buildings.

- 8.22 Further proposed alterations to the exterior and interior of the listed buildings comprise:
- The removal of internal walls;
 - The insertion of new internal walls;
 - The removal of some chimneys and parapets;
 - The removal of the 20th century additions to the principal buildings;
 - The alterations of some ground floor window opening into doorways;
 - The lowering of some ground floor windows cills;
 - The raising of upper floor levels;
 - The creation of new window openings;
 - The infilling of some existing window openings; and
 - The removal of the two glazed connecting corridors.
- 8.23 The listing of a building means that most proposed physical interventions (interior and exterior) in such a building will require listed building consent. In the House of Lords judgement in *Shimizu (UK) Ltd v Westminster City Council (1997)* it was determined that the whole building is to be treated as a listed building and therefore removal of part of a building does not constitute demolition but rather alteration unless the work is so extensive as to amount to the clearing of the whole site. Having regard to the Shimizu judgement it is evident that the proposed works to the listed buildings (other than the boiler house removal) constitute alterations not demolition.
- 8.24 There are a number of proposed works which relate to window openings. These works comprise; lowering the cills of a number of windows, the blocking up of a small number of existing windows, the creation of a small number of new window openings and the alteration of some ground floor windows to doors ways. These works, along with the reconfiguration of some internal walls, are required to facilitate the conversion of the building into dwellings and if the principle of conversion is accepted then these alterations are acceptable and can be undertaken without detriment to the historical character of the buildings.
- 8.25 The proposed works to the roof of the listed buildings includes; the removal of some parapets and some chimney stacks and the installation of roof lights (to facilitate residential accommodation in the roof space). Of the 49 chimney stacks, 40 are proposed to be retained. The need for the removals arises from the removal of internal walls which provide structural support for the chimneys. The balance between retention and removal is acceptable – the character of the buildings will be retained.

- 8.26 The removal of two glazed link corridors between the different wings of the hospital is also proposed. Whilst they form an attractive element of the hospital buildings, given their nature they do not lend themselves to conversion and their continued retention prevents the conversion of those parts of the principal buildings to which they join. Their proposed removal is acceptable in order to facilitate the overall proposals for the conversion of the hospital buildings.
- 8.27 The hospital buildings, at various times in the late 20th century, have had a number of modest functional extensions. Although now part of the listed building these additions have a detrimental impact on the character and appearance of the listed building and therefore their removal is a positive proposal.
- 8.28 The proposals include removing all the roof coverings and then re-slating of the roof reusing the original slates where possible. Any new slates shall match those lost/damaged through the re-roofing process.
- 8.29 In respect to the proposed developments impact on the setting of the listed buildings; the views of the primary elevations are protected and enhanced (by the removal of unsympathetic additions and the demolition of the boiler house), the degree of separation of the proposed new build in the North and South Fields and the retention of existing trees and woodland. The proposed new build dwellings in the Firth Road/Farm Road cluster are of a scale and form that reflect their location and proximity to the listed buildings. Furthermore, they replace buildings which previously provided staff accommodation. It is considered that the development does not impact on the setting of the listed building.

Is the Proposal Enabling Development?

- 8.30 Enabling development is not a statutory term, but was confirmed as a legitimate planning tool in 1988 when the Court of Appeal, in its landmark judgement in *R v. Westminster City Council ex parte Monahan*, upheld the validity of a planning permission authorising office development, even though contrary to the development plan, on the basis that it would provide funds to improve the Royal Opera House, Covent Garden, unobtainable by other means.
- 8.31 The principal guidance on enabling listed building development is Historic England's "Enabling Development and Historic Places". There is not an equivalent guidance note from Historic Environment Scotland. The Historic England's guidance is also seen as best practice in Scotland and identifies that in an enabling development case there are seven key principles. In an enabling case, development that is contrary to planning policy is unacceptable unless:
- a. It will not materially harm the heritage values of the place or its setting;
 - b. It avoids detrimental fragmentation of management of the place;

- c. It will secure the long-term future of the place and, where applicable, its continued use for a sympathetic purpose;
- d. It is necessary to resolve problems arising from the inherent needs of the place, rather than the circumstances of the present owner, or the purchase price paid;
- e. Sufficient subsidy is not available from any other source;
- f. It is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the place, and that its form minimises harm to other public interests; and
- g. The public benefit of securing the future of the significant place through such enabling development decisively outweighs the disbenefits of breaching other public policies.

8.32 The applicants have promoted the development as an enabling case. However, whilst the objective of the applicants is to promote residential development at Rosslynlee to support the conversion of the listed hospital buildings in order to secure their future, it is not enabling development as identified in the said guidance. This is because residential development is not contrary to planning policy because the site is identified as an Additional Housing Development Opportunity (site Ahs1). In order for development to be an enabling development the guidance specifically identifies that development provided for in a local plan by definition would not be enabling development. The application has the benefit of an allocation and cannot therefore also seek the benefit of being an 'exception to the rule' as an enabling development. The additional 'green fields', the North Field and South Field, were identified in site Ahs1 to provide the scale and opportunity for new development to fund the restoration and conversion of the listed buildings and the developments obligations in terms of infrastructure and development plan policy compliance.

8.33 It is worth noting in this context that were the proposals considered to be enabling development, the applicants would be required to demonstrate that the proposed new build housing was the minimum necessary to support the conversion of the listed buildings.

Layout and Form of Development

8.34 MLDP policy DEV 6 requires good design and a high quality of architecture in both the overall layout of development and their constituent parts. The applications proposed residential scheme is in five distinct areas:

- The conversion of the hospital buildings (Applications B and C);
- Three new build dwellings in the immediate hospital grounds (Application B), referenced in the application as Plot 3;
- Dwellings where the hospital farm and staff accommodation were historically located on Firth Road/Farm Road. This is a mixture of new build dwellings, conversion of unlisted buildings and conversion of listed buildings (Applications B and C) referenced in the applications as the Village Core;

- Residential development in principle in the field (known as North Field) adjoining the hospital (Application A); and
 - Residential development in principle in the field (known as South Field) adjoining the hospital (Application A).
- 8.35 The proposed dwellings within the listed hospital buildings are acceptable and the details of the conversion have previously been discussed elsewhere in Section 8 of the report. In terms of the three new build dwellings at Plot 3 in the hospital grounds these are detached dwellings of a contemporary design. They are two storeys in height with slate pitched roofs, vertical timber cladding and smooth render construction. By means of their distance of separation from the hospital buildings and the intervening landscaping they do not have an adverse impact on the setting of the listed buildings. Their contemporary design is well articulated and detailed though the use of the materials described.
- 8.36 The dwellings at the village core follow the existing liner street pattern of Firth Road/Farm Road and as previously noted are a mixture of conversions of existing buildings and the provision of new buildings including in part, dwellings already consented through the approval of applications 16/00720/LBC and 16/00716/LBC (Parcel A of the Village Core). The village core comprises 29 dwellings, 13 in Parcel A and 16 in Parcel B:
- 1 and 2 Firth Road (Listed) converted into a single dwellinghouse;
 - 3 and 4 Firth Road (Listed) converted into two dwellinghouses;
 - The farm manger's house (Listed) converted into a single dwellinghouse;
 - The cart shed (Listed) converted into a single dwellinghouse;
 - The steading building (unlisted) converted into three dwellings; and
 - 21 new build dwellings (8 semi detached and 13 detached).
- 8.37 The new build dwellings are for the most part 1.5 storeys, albeit three of the plots are two storeys in height. As regards materials, slate pitched roofs, light coloured wet dash render walling and stone cills are proposed.
- 8.38 The renovated listed buildings are proposed to be renovated using appropriate materials such as stone and slate with timber windows. Where there are new build additions such as a single storey extension to the listed cart shed a contemporary approach is taken with the extension being a wet dash render finish.
- 8.39 The proposed new build dwellings achieve a respectful relationship with the adjoining listed buildings by reason of their positioning on Firth Road/Farm Road and their scale. The introduction on some plots of differing heights of buildings introduces an appropriate interest and variety to the street scene. The new build plots use quality materials and are well articulated.

- 8.40 In relation to the proposed development in the North and South Fields the application is in principle with all matters of detail – layout, form, design, means of access and landscaping reserved for future submission and approval in the event that planning permission is granted. Indicative layout plans have been submitted demonstrating 280 dwellings with suitably sized gardens, the retention and enhancement of landscaping, pedestrian routes and the provision of public open space. Given the sites rural location close to a complex of significant listed buildings, if development were approved it would be of particular importance to achieve a high quality of design for the proposed dwellings. This can be achieved through the imposition of conditions if the scheme were to be granted planning permission.

Landscape and Visual Impact

- 8.41 MLDP policy ENV7 states that development will not be permitted where it may have an unacceptable effect on local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New proposals will normally be required to incorporate proposals to maintain the diversity and distinctiveness of local landscapes and to enhance landscape characteristics where they have been weakened.
- 8.42 In this instance the proposed development is located in the countryside with impressive views of the Pentland Hills. By the nature of the development it would bring a degree of urbanization through the introduction of dwellings to a green field site. The applicant's visual assessment nonetheless demonstrates that with suitable landscaping and tree planting; including the retention of existing features and the dwellings in the North and South Fields being limited to two storeys, there would be a limited visual impact upon the wider landscape. The hospital buildings are a case in point; these substantial buildings in a countryside location are largely hidden until the point of actual arrival because of the comprehensive and significant surrounding landscaping.
- 8.43 The MLDP settlement statement in relation to the site advises that there will be a need to protect, retain and enhance existing woodland belts within the site (along the north western, north eastern and south western boundaries) as well as along north eastern, south eastern edges of the hospital grounds. A 10-15 metre wide hedgerow should be incorporated along the south eastern edge.
- 8.44 One of the most notable landscape features of the site is the large rear lawn which enhances the setting of the principal hospital building – this should be retained. Application B proposes enhanced landscaping of the grounds immediately adjoining the hospital buildings and new walkways. The proposed interventions (subject to conditions to secure matters of detail in the event of planning permission being granted) will

provide an appropriate backdrop to the listed hospital buildings and the overall rural setting of the site.

- 8.45 Landscaping and open space would also be provided in the North and South Fields, the details of which would be the subject of a further application if the planning permission in principle application is approved.

Proposed Commercial Uses

- 8.46 Application A proposes up to 250 sqm of floor space for either Class 1 (Shops), 2 (Financial and Professional Services), 3 (Restaurants and cafes) or 4 (Business) uses which would be located in a new build unit within the site. The limited floor space of the commercial unit would not cause harm to the vitality and viability of Midlothian's town centres or local centres and is of a scale which could be seen as supportive of the main residential development and therefore accords with MLDP policy TCR2.

Planning Obligation/Affordable Housing

- 8.47 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The circular advises that planning obligations should only be sought where they meet all of the following tests:
- necessary to make the proposed development acceptable in planning terms (paragraph 15);
 - serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 - relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
 - fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23); and
 - be reasonable in all other respects.
- 8.48 The MLDP requires (policies IMP2 and IMP2) proposed residential developments to mitigate their impact on local services by funding, by way of developer contributions, the capital cost of education provision, public transport infrastructure (including Borders Rail) and community facilities and in doing so meet the demand arising from a proposed development. If the applicant is not mitigating the need arising from their development the Council in effect subsidises the development – this applies even in cases where a development is to restore a listed building.
- 8.49 MLDP policy DEV 3 sets out a requirement that allocated housing sites (including Additional Housing Development Opportunity sites) shall

provide 25% of the total number of units as affordable. An alternative offsite provision may be an option which the Council will consider. At the time of drafting the report the applicant could not demonstrate that the affordable housing requirement (up to 94 units) could be delivered.

- 8.50 The Rosewell Settlement Statement of the MLDP identifies that the development of site AhS1 is require to make developer contributions towards additional primary school capacity at Rosewell Primary School, Secondary provision at Lasswade High School (of an alternative) and St David's RC High School, the Borders Rail and Community facilities in Rosewell.
- 8.51 In relation to the Borders Rail the site is a 15 minute drive from Eskbank Station and is specifically identified in the MLDP as being located within the A7/A68/Border Rail Strategic Development Area and therefore required to contribute towards the Border Rail project. The applicant's contribution proposals would not fund the required payments towards the Borders Rail or towards any other public transport provision.
- 8.52 The application site is with the Rosewell catchment area. As regards Rosewell Primary School, the school was extended by 3 classrooms in 2012 to accommodate growth from the planned development (now constructed/under construction) set out in the now superseded 2008 Midlothian Local Plan. The school operates at capacity and as such those new sites in the Rosewell catchment area identified in the MLDP, including the application site, must fund an extension to the school to meet the required primary education demands.
- 8.53 In relation to secondary schooling the site currently sits within the catchment of Lasswade Secondary school which is at capacity (as are all of the other non-denominational secondary schools in Midlothian). Therefore a contribution would be required towards additional secondary capacity including St David's RC High School in Dalkeith. Even if there were to be a review of catchments in respect of Lasswade High school, all of the other potential alternative high schools which might serve Rosewell such as Beeslack, Penicuik or Newbattle are all at capacity. Therefore contributions towards additional secondary capacity would be required irrespective of which high school serves Rosewell.
- 8.54 Section 51 of the Education (Scotland) Act 1980, as amended, requires education authorities to make such arrangements as they consider necessary for the provision of transport to and from school. Section 42 (4) of the Education (Scotland) Act 1980 sets a statutory walking distance of 2 miles for any pupil under the age of 8, and three miles for any other pupil. Scottish Executive Education Department Circular 7/2003 states that Education Authorities have a common law duty of care for the safety of pupils under their charge and this duty extends to pupils using transport to and from school. Having regard to the stated

provision, it would be necessary for this development to contribute financially towards the provision of bus services to enable pupils to be transported to school.

- 8.55 The applicant's developer contribution proposals would fund approximately 78% of the required payments towards their education requirements.
- 8.56 The applicant's contribution proposals would not fund the required payments towards community facilities.
- 8.57 The applicant is advising there are very high costs associated with the conversion and restoration of the listed buildings and as such the residential units proposed in the planning application in principle application (on a green field site) are required to cross subsidise this work. Therefore the applicants consider that it would be only viable to contribute a partial amount (circa two thirds of the overall amount sought, additional school capacity being the single largest category of contribution) of what the Council would be seeking towards planning obligations and not meet the required affordable housing requirements.
- 8.58 To give the above some context; in relation to the provision of additional school capacity the applicant is in effect needing the Council to underwrite a seven figure sum. In relation to the Borders Rail, the Council is required to underwrite millions of pounds worth of Border Rail costs irrespective of where it recovers contributions from developers. Therefore to not recover contributions in relation to Border Rail would potentially result in the Council needing to underwrite a substantial six figure sum.
- 8.59 The applicant's case is that the development would be rendered unviable if it were required to make the full gambit of developer contributions. Furthermore the applicant is securing the future of the listed building and this should outweigh the shortfall in contributions and the provision of affordable housing.
- 8.60 Whilst there is planning benefit to securing the future of the listed hospital buildings as recognised in the MLDP this needs to be weighed by the Council against the other pertinent considerations also identified in the MLDP. Firstly, in the context of the MLDP, the proposed housing is not necessary for the Council to meet its housing supply requirements. Secondly the development is considered to lead to conditions prejudicial to highway and pedestrian safety, contrary to national planning guidance and thirdly the development falls significant short of making the necessary infrastructure requirement through developer contributions to mitigate the consequential impact of the development. Taken together any ostensible planning benefits arising from securing the future of the listed building are outweighed by the disbenefits arising from the scheme.

Ecology and Biodiversity

- 8.61 A species protection plan has been submitted; setting out the status of protected species across the site, possible adverse impacts of the development and appropriate and effective mitigation. Both planning applications have been accompanied by habitat assessments which have been assessed by the Council's ecology adviser who has raised no objection to the proposed developments.

Flooding and Drainage

- 8.62 The applicant has submitted drainage and flooding assessments which set out the provision of a sustainable urban drainage system which includes retention basins to mitigate surface water runoff. Scottish Water, SEPA and the Council's Flooding adviser have been consulted on both planning applications and are satisfied with what is proposed subject to the imposition of suitable conditions.

Residential Amenity

- 8.63 MLDP policy DEV2 requires development, within existing and future built up areas and in particular within residential areas, not to detract materially from the existing character or amenity of the area. All the proposed residential units contained within Application B would receive acceptable levels of daylight, sunlight, outlook and privacy whilst not being exposed to unacceptable levels of noise or poor air quality. The levels of amenity in Application A would be subject to a further application if planning permission in principle is granted.
- 8.64 In relation to existing residential properties, the closest are those at Firth Mains Farm, Firthwell and Auchendinny Mains, but given the distance from the proposed development there is no loss of privacy, daylight or sunlight or will they be exposed to unacceptable levels of noise.

Other Matters

- 8.65 In terms of the issue raised by objectors about an increase in the number of dogs affecting sheep farmers. This issue is addressed by other legislation, namely the Dogs (Protection of Livestock) Act 1953. If a dog worries sheep on agricultural land, the person in charge of the dog is guilty of an offence. The Act considers sheep worrying to include attacking sheep, chasing them in a way that may cause injury suffering, abortion or loss of produce or being at large (not on a lead or otherwise under close control) in a field or enclosure in which there are sheep. Furthermore under the Land Reform (Scotland) Act 2003, access rights do not allow members of the public on to land with a dog which is not under proper control.

- 8.66 One of the points of objection made a representor is that the applicant did not adequately notify surrounding residents. However, in relation to planning applications the requirement to carry out neighbour notification rests with the local planning authority, which has followed the requirements set out in the regulations.
The Condition of the Listed Buildings (Rosslynlee Hospital)
- 8.67 It is appropriate to give consideration to the scenario that the applications are refused planning permission and listed building consent. In that circumstance the applicant has the right of appeal to the Scottish Ministers. It is acknowledged that the objective of the applicant has been to secure the future of the listed buildings through bringing forward residential development. The buildings have been unoccupied for some years. The deterioration in the condition of the buildings which might anyway occur has been exacerbated by the stealing of piping and lead flashing and general vandalism such as the breaking of windows. These criminal activities have increased the incursion of wind and rain and there is now the presence of wet and dry rot in parts of the buildings.
- 8.68 The applicant has sought to put in place security measures to reduce the likelihood of vandalism and theft occurring; however on a large remote site it will be difficult to wholly exclude those with determined criminal intent. In essence the applicant's case is that the proposed development is necessary in order to safeguard the future of the listed buildings and that if the applications were to be refused there is not an alternative identified approach. The future of the listed building is a material consideration, but it is one of several important considerations for the Council, not the single overriding issue.
- 8.69 The primary responsibility for the condition and state of a listed building is the owner. Historic Environment Scotland note in their guidance "as with any asset, the owners of listed buildings are responsible for repairing and maintaining their property. However, planning authorities have powers available to them pursuant to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 which they can use to address listed buildings in a poor condition in their area. Planning authorities can carry out any urgent work needed to preserve an unoccupied listed building, or unused parts of a listed building, as long as they give the owner notice first. Planning authorities can claim the cost of urgent work back from the owner.

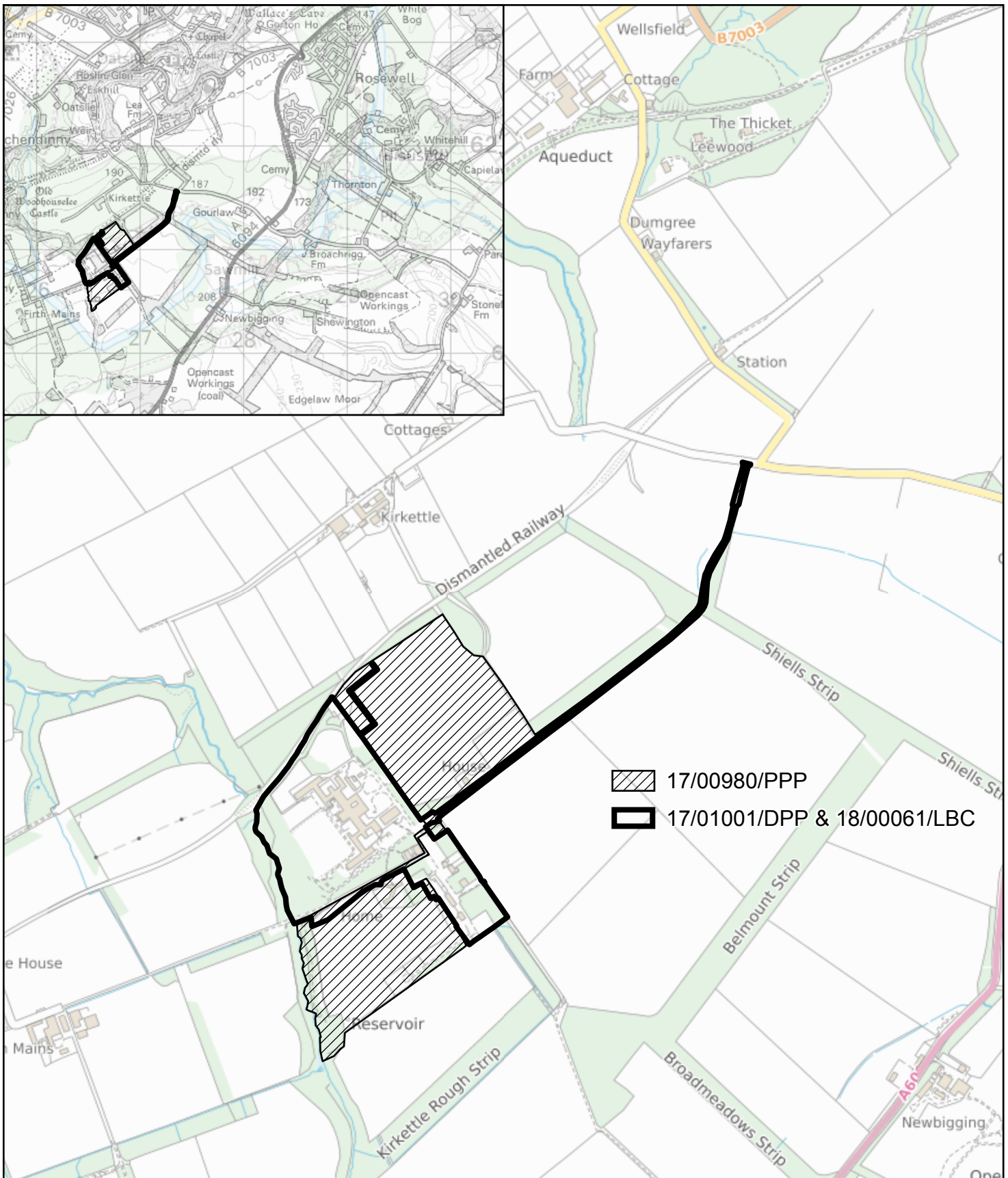
9 RECOMMENDATION

- 9.1 That planning permission 17/00980/PPP (Application A) for residential development, up to 280 dwellinghouses, and commercial development on land adjoining the former hospital at Rosslynlee be refused for the following reasons:

1. The development by reason of; the number of dwellings proposed and the consequent trip generation, the remote location of the site and the narrow roads of the local highway network would lead to conditions prejudicial to highway and pedestrian safety contrary to paragraph 187 of Scottish Planning Policy.
 2. The application does not make the necessary provision towards essential infrastructure (developer contributions) to mitigate the impact of the proposed development and is therefore contrary to policies IMP1 and IMP2 of the Midlothian Local Development Plan 2017.
 3. The applicant has not demonstrated to the satisfaction of the local planning authority that the proposed development includes the required affordable housing provision (25% of units) either by the delivery of onsite provision, a compensatory commuted sum towards off site provision or by an alternative methodology and as such the proposed development is contrary to policy DEV3 of the Midlothian Local Development Plan 2017.
- 9.2 That planning permission 17/01001/DPP (Application B) for the conversion and alteration of the former hospital and associated buildings to 72 dwellings and the erection of 24 new dwellinghouses at the former hospital at Rosslynlee be refused for the following reasons:
1. The application does not make the necessary provision towards essential infrastructure (developer contributions) to mitigate the impact of the proposed development and is therefore contrary to policies IMP1 and IMP2 of the Midlothian Local Development Plan 2017.
 2. The applicant has not demonstrated to the satisfaction of the local planning authority that the proposed development includes the required affordable housing provision (25% of units) either by the delivery of onsite provision, a compensatory commuted sum towards off site provision or by an alternative methodology and as such the proposed development is contrary to policy DEV3 of the Midlothian Local Development Plan 2017
- 9.3 That listed building consent 18/00061/LBC (Application C) for the conversion and alteration of the former hospital and associated buildings to 69 dwellings and the demolition of outbuildings at the former hospital at Rosslynlee be refused for the following reason:
1. As there is not an acceptable scheme for the conversion of the listed building which makes the necessary provision towards infrastructure and affordable housing provision it is not appropriate to grant listed building consent and the scheme is thereby contrary to policy ENV22.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 8 November 2018
Application No: 17/00980/PPP, 17/01001/DPP and 18/00061/LBC
(Available online)
Applicant: Oakridge Group
Agent: Geddes Consulting
Validation Date: 13 December 2017, 10 January 2018 and
1 February 2018
Contact Person: Matthew Atkins
Tel No: 0131 271 3346
Background Papers:



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Detailed planning application and listed building consent to convert former hospital and associated buildings to 72 dwellings together with 24 new build dwellings.

Planning permission in principle for up to 280 dwellings"

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File Nos.17/00980/PPP,17/01001/DPP & 18/00061/LBC

Scale: 1:10,000 (Inset: 1:50,000)

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TWO APPLICATIONS FOR PLANNING PERMISSION, ONE FOR THE ERECTION OF A DWELLINGHOUSE (18/00582/DPP) AND THE SECOND FOR THE ERECTION OF THREE DWELLINGHOUSES (18/00593/DPP) AT LAND AT AIRYBANK, QUARRYBANK, COUSLAND

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The applications (two applications forming a single development proposal) are for the erection of four dwellinghouses on land to the north, south and west of Airybank, Quarrybank, Cousland. There have been fourteen representations and consultation responses from the Coal Authority, The Wildlife Information Centre, the Council's Head of Education, the Council's Policy and Road Safety Manager and the Council's Environmental Health Manager.**
- 1.2 The relevant development plan policies are STRAT2, DEV2, DEV5, DEV6, DEV7, TRAN5, IT1, ENV7, ENV11, ENV15, IMP1 and IMP2 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to refuse planning permission for both applications.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application sites comprise part of an area of ground within the curtilage of Airybank House, located at the northwest edge of Cousland. The site was a former quarry which was infilled in 2005.**
- 2.2 The site is 1.26 hectares (application 18/00592/DPP is 0.44 hectares and application 18/00593/DPP is 0.82 hectares) and accessed from Quarrybank (also known as Cousland Kilns Road). The site slopes down towards the north and is visible from public roads to the north and west. There are rows of mature trees to the west and north of the site and a group of trees to the northeast adjacent to the site access.**
- 2.3 Application 18/00592/DPP covers the access road and a pocket of land in the centre of the wider site to the west of Airybank House. Application 18/00593/DPP covers the access road and pockets of land to the north and southwest of Airybank House (either side of the central**

pocket covered by application 18/00592/DPP). Airybank House is to the east of the access road and is a large two storey property with accommodation in the roof space, it has natural slate roof tiles and wet dash render walling with natural stone detailing.

3 PROPOSAL

- 3.1 The applications (two applications forming a single development proposal) are for the erection of four dwellinghouses. Application 18/00592/DPP is for one dwellinghouse and application 18/00593/DPP is for three houses. The applicant has split the site into two application areas for procedural reasons. However, given the proposed layout and the history of the site the applications are considered together as one development.
- 3.2 The four detached houses are proposed in a cul-de-sac arrangement along an access road, that is partially constructed, which wraps around the existing Airybank House. Plot one of 18/00593/DPP is located in close proximity to the vehicular entrance off Quarrybank/Cousland Kilns Road. The other three housing plots are set back into the site, separated from plot one by an area of open ground, which is retained to maintain views into the countryside for Airybank House.
- 3.3 Two house types are proposed. Plots 1 (the dwelling closest to the access) and plot 3 (the dwelling furthest into the site, closest to those properties in Hadfast Road and quarrybank) of 18/00593/DPP and the house in the centre of the site the subject of application 18/00592/DPP are house type Y. This house type has two storeys of accommodation incorporating two lounge areas, kitchen/dining/family room, dining hall, four bedrooms and an integral garage.
- 3.4 Plot 2 of application 18/00593/DPP is house type X, which has two storeys of accommodation with the upper floor contained within the roof space, it contains a lounge, dining/kitchen area and four bedrooms. This house type has a detached double garage with a pitched roof.
- 3.5 The proposed materials are grey concrete roof tiles, white render, cedar timber boarding and smooth ashlar stone walls and dark grey UPVC windows.
- 3.6 1.2 or 1.8 metre high fencing is proposed within and around the plots. A landscape buffer is to be retained/enhanced along the site boundary.
- 3.7 The applicant has submitted the following documents in support of the application:
 - A Planning Statement;
 - Ground Survey;
 - Bat Survey; and
 - Arboricultural Surveys/Landscaping Plan.

4 BACKGROUND

- 4.1 Planning application 01/00589/FUL for the infill of the former quarry was granted permission in 2005.
- 4.2 Planning application 03/00650/FUL for the demolition of existing building and erection of dwellinghouse (Airybank House) and detached garage was granted permission in 2004.
- 4.3 Planning application 05/00588/FUL for the change of use from domestic outbuilding to form 'granny flat' was granted permission in 2008. This application relates to the garage approved in permission 03/00650/FUL and included a condition that the flat only be occupied by a family member or occasional visitor of the host dwellinghouse.
- 4.4 Planning application 05/00663/FUL for the erection of four dwellinghouses was withdrawn in 2008.
- 4.5 Planning application 08/00694/FUL for the erection of four dwellinghouses was withdrawn in 2015.
- 4.6 Planning application 15/00952/DPP for the erection of eight dwellinghouses was refused in 2016. Three housetypes were proposed, two of which are the same as those proposed in the current applications. The reasons for refusal were; 1) the scale, massing, form and design of the houses were considered out of character with the edge of village setting and would have a detrimental impact on the area contrary to development plan policies; 2) the proposed development will have a detrimental impact on existing trees and does not propose sufficient compensatory planting; 3) the scale and layout of the houses are of low quality and is an unimaginative urban design solution at odds with the area; and 4) the development would result in overlooking and the loss of amenity to neighbouring properties. The application was reviewed by the Local Review Body who dismissed the review and reinforced the reasons for refusal.
- 4.7 Planning application 17/00649/DPP for the erection of four dwellinghouses was refused in 2017. The house types were those refused in application 15/00592/DPP and as proposed in the current applications. The reasons for refusal were similar to the previous application in terms of the design and scale of the dwellings and their impact on neighbouring properties. This application was also reviewed by the Local Review Body who dismissed the review and reinforced the reasons for refusal. In its deliberation of the review the Local Review Body expressed support for the principle of a development of four houses across the site and expressed an opinion that the smaller of the two house types (house type X) may be acceptable.

- 4.8 The application has been called to Committee for consideration by Councillor Smail to discuss the scale of the houses and the impact on protected species.

5 CONSULTATIONS

- 5.1 The **Coal Authority** does not object to the application.
- 5.2 **The Wildlife Information Centre (TWIC)**, the Council's ecology advisor, does not object to the application, but advises that there are data interpretation errors with the submitted bat survey and as such if planning permission is to be granted the applicant would need to ensure their bat survey and interpretation thereof is up to date and that any identified mitigation is implemented.
- 5.3 The Council's **Head Education** has stated that the development (the proposed three dwellings subject to application 18/00593/DPP) will result in additional pressure on primary and secondary school provision and as such a developer contribution would be required.
- 5.4 The Council's **Policy and Road Safety Manager** does not object to the application subject to conditions being attached to any grant of planning permission ensuring; visitor parking is provided, the provision of a pedestrian crossing point on Quarrybank (also known as Cousland Kilns Road), details of a surface water drainage system are agreed with the local planning authority and the details of street lighting are agreed with the local planning authority. It is also confirmed that the access road would not be adopted by the Council and as such an area to uplift bin and recycling collections should be provided.
- 5.5 The Council's **Environmental Health Manager** does not object to the application subject to conditions being attached to any grant of planning permission ensuring; ground contamination remediation works are undertaken and the hours of construction are limited to reasonable working times.

6 REPRESENTATIONS

- 6.1 There have been 12 objections received (six objections to both applications and six to application 18/00593/DPP, which is for the erection of three dwellings) and two support representation, all of which can be viewed in full on the online planning application case file. A summary of the objections are as follows:
- The scale, form, layout and design of the proposed dwellings does not reflect the character of the area and are out of keeping with the village;
 - The proposed dwellings are close to existing houses and will have a detrimental impact on privacy and overlooking;

- The development will have a detrimental impact on vehicular and pedestrian safety;
 - There are no infrastructure improvements proposed;
 - The proposal would impact on already stretched amenities;
 - Detrimental impact on trees;
 - Detrimental impact on wildlife (including protected species) and flora;
 - Risk of damage to surrounding properties;
 - Impact of development on ground stability, including land surrounding the site, given the known legacy of underground mining operations;
 - The proposal is similar to those previously refused and has not addressed the previous reasons for refusal, therefore remains contrary to development plan policies;
 - There was limited contact between the applicant and local residents;
 - A survey has been carried out in Cousland which found that two storey houses at the site were not welcomed or in keeping with the village;
 - Noise and disruption from construction activities will adversely impact on neighbouring properties.
 - Loss of views;
 - The arboricultural surveys were carried out over three years ago;
 - Increased risk of flooding; and
 - The layout appears to be the 'first stage' of a larger development.
- 6.2 A number of representations advise that they are not opposed to the development of the site in general terms, but consider any redevelopment should be in keeping with the village
- 6.3 Two representations support both proposals stating the proposals will enhance the area and contribute to the local community.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **STRAT2: Windfall Housing Sites** permits housing on non-allocated sites within the built-up area provided: it does not lead to loss or damage of valuable open space; does not conflict with the established land use of the area; has regard to the character of the area in terms of scale, form, design and materials and accords with relevant policies and proposals.

- 7.3 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.4 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.5 Policy **DEV6 Layout and Design of New Development** requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet listed criteria.
- 7.6 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.7 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.8 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.9 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.10 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.11 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.12 Policy **IMP1: New Development** This policy ensures that appropriate provision is made for a need which arises from new development. Of

relevance in this case are; education provision, transport infrastructure' contributions towards making good facility deficiencies, landscaping, parking in accordance with approved standards, pedestrian access, access for people with mobility issues, traffic and environmental management issues; and protection/management/compensation for natural and conservation interests affected.

- 7.13 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.

National Policy

- 7.14 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. The individual and cumulative effects of infill must be sustainable in relation to the social and economic infrastructure of a place, and must not lead to over-development.
- 7.15 The SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of the SPP are developed within the local plan and local development plan policies.
- 7.16 The SPP states that *design is a material consideration in determining planning applications* and that *planning permission may be refused and the refusal defended at appeal or local review solely on design grounds*.
- 7.17 The SPP supports the Scottish Government's aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.
- 7.18 The SPP notes that "high quality electronic communications infrastructure is an essential component of economic growth across Scotland". It goes on to state that

“Planning Authorities should support the expansion of the electronic communications network, including telecommunications, broadband and digital infrastructure, through the development plan and development management decisions, taking into account the economic and social implications of not having full coverage or capacity in an area”.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining these applications is whether the proposals comply with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development

- 8.2 The application site is located within the built-up area of Cousland where there is a presumption in favour of appropriate development. The application site is situated within a predominantly residential area where the proposed residential development would be compatible to the neighbouring land uses subject to the details of the proposed development complementing the character of the area and protecting the amenity of existing neighbouring properties.

Layout and Form of Development

- 8.3 The previously adopted 2008 Local Plan, while bringing the site within the village envelope of Cousland, contained a statement which indicated that the site at Airybank could accommodate a development of a maximum of four houses without having a negative impact on the setting of the village. The site at Airybank was envisaged as the total area to the north and west of the existing house. The inference from this is that a development of over four dwellinghouses would likely have a negative impact on the character and appearance of the area. Given the requirements of MLDP policies, which seek development in keeping with the character of the area, it is considered that an acceptable development would comprise four dwellings, generally of a scale and character commensurate with those in the surrounding area. This position was supported in the refusal and subsequent dismissal of a review of application 15/00952/DPP for eight houses at the site, as well as application 17/00649/DPP for four houses, which was refused and dismissed at review due to concerns regarding the site area and the scale of the houses proposed.
- 8.4 Cousland is a small village where the overwhelming majority of dwellings have either one storey of accommodation or a second storey of accommodation within the roof space. This is the case with the long established housing stock and the more recent additions. The character of Cousland is, therefore, one of smaller dwellings,

bungalows and cottages. As a result of the existing buildings having relatively low ridge heights, the topography of the land and the strong landscaped boundaries around the village, the settlement is not readily visible from outwith the immediate vicinity.

- 8.5 The applicant proposes four very large dwellings, comprising three of the larger, 2 storey housetypes Y and one housetype X, which is single storey with accommodation in the roof space. These housetypes are the same as those submitted in previous applications. All proposed houses are large in terms of their height, bulk and massing, at odds with the character of the surrounding area and scale of other buildings in Cousland. The applicant states that the proposed dwellings are viewed in the context alongside Airybank House, a very large house on the adjoining site and the largest house in Cousland. However, Airybank House is a clear exception to the overriding character of the area and cannot be used as a reference point to define the character of Cousland.
- 8.6 In considering the review for application 17/00649/DPP, the Local Review Body (LRB) had no objection in principal to a development of four houses covering the current application sites – this reflects the development plan position. However there were concerns over the scale of the proposed houses, particularly the two storey house type Y and as such the LRB dismissed the review. However, in its deliberation of the review the LRB expressed an opinion that the smaller of the two house types (house type X) may be acceptable if an appropriate layout with appropriate landscaping was proposed. There was a concern over the provision of the large housetypes Y which would be larger than the majority of houses within Cousland.
- 8.7 Proposed house type Y is contrary to the deliberations of the LRB, which is a material planning consideration. The current applications include three dwellings of house type Y which are large in terms of their height, bulk and massing, at odds with the character of the surrounding area and scale of other buildings in Cousland.
- 8.8 It is acknowledged that the current applications have a similar layout to the 2008 application which was minded to be approved (the application was withdrawn as the applicant's did not wish to sign a planning obligation securing developer contribution). However this position has been superseded by a more up to date planning assessment, recent representations from local residents and the comments and position of the LRB, which clearly shows no support for the larger house type.
- 8.9 Adequate garden ground is provided for the proposed houses.

Landscaping

- 8.10 The proposed developed area is larger than the previous scheme (17/00649/DPP), as it includes an area of open ground which was

previously excluded from the development proposals. This allows more opportunities for landscaping between plots and along the boundaries of the sites. The landscape strategy details additional tree and beech hedge planting within the sites, as well as reinforcing landscaping around the boundaries. Although the required 30m tree buffer between the sites and the countryside is not provided, the proposed landscaping will go some way to enhance the existing tree planting around the sites' boundaries.

- 8.11 The existing woodland belt along the western, northern and eastern boundaries of the sites provide a good and robust landscape separation between Cousland and the wider countryside. It is paramount that this woodland edge is retained, protected and augmented. Without this the application sites and this side of Cousland, will be exposed, visually and to the prevailing winds.
- 8.12 Whilst the proposed landscaping will help integrate the proposals into the surrounding area, the proposed houses will be highly visible and due to their scale and design they will be detrimental to the character of this semi-rural edge-of-village area. Landscaping should not be used as a screen to hide bad design, but as a tool to integrate good quality development into the landscape. Should a development of smaller houses be proposed, it is likely that the proposed planting would be adequate. Should permission be granted, further landscape details shall be required, including an up to date tree survey, details of tree root protection areas and tree protection measures.

Impact on Neighbouring Properties

- 8.13 The house at Plot 3 of 18/00853/DPP is positioned to be 17 metres from the shared boundary to 3 Quarrybank and 15 metres from the shared boundary to 1 Hadfast Road. The distance between the proposed and existing properties are such that the degree of separation meets the desired distances between properties and is unlikely to result in significant overlooking to warrant refusal. In addition, the landscape plan proposes additional landscaping along the boundary to 1 Hadfast Road which would limit overlooking to the existing garden ground.

Access and Transportation Issues

- 8.14 The Policy and Road Safety Manager has not objected to the application on the basis that the proposed development will not have a significant adverse impact on highway safety. However, there is insufficient visitor parking spaces proposed within the layout and if permission is granted additional spaces should be provided. In addition; a pedestrian crossing point over Quarrybank (also known as Cousland Kilns Road) to the existing footway network in Beech Grove, a sustainable urban drainage scheme and street lighting shall be provided in accordance with details to be submitted for approval. The

sustainable urban drainage scheme shall be designed as not to have a detrimental impact on the established and proposed trees on the site.

- 8.15 The proposed development includes a gated access and as a consequence the internal road would not be adopted by the Council. All bin and recycling uplifts would therefore be required to be from the kerbside on Quarrybank/Cousland Kilns Road. This would require an area of hardstanding to accommodate bins and recycling boxes, which could result in the loss of some of the important landscaping along the roadside boundary of the site, to the detriment of the visual amenity of the area.

European Protected Species

- 8.16 A bat roost has been identified within application site 18/00593/DPP. Bats are a European Protected Species and it is an offence to cause them, or their roosts, harm. The Council's ecology advisor, does not object to the application, but advises that there are data interpretation errors with the submitted bat survey and as such if planning permission is to be granted the applicant would need to ensure their bat survey and interpretation thereof is up to date and any identified mitigation is implemented. Any proposed mitigation shall include the installation of a tree protection fence during construction to provide a 30 metre standoff zone from the bat roost.

Ground Conditions

- 8.17 The Coal Authority has provided comment for each application. For application 18/00592/DPP the built development proposed falls outwith the defined Development High Risk Area and as such a Coal Mining Risk Assessment is not required, provided the standard advisory informative note is attached to any grant of permission.
- 8.18 For application 18/00593/DPP, the Coal Authority "considers that the content and conclusions of the Phase I/II Geo-Environmental and Geotechnical Interpretive Report are broadly sufficient for the purposes of the planning system in demonstrating that the application site is safe and stable for the proposed development". Given that the Coal Authority are satisfied regarding the ground stability issues it is considered unlikely that the development could have a detrimental impact on the ground conditions of neighbouring properties.

Other Matters

- 8.19 The lack of infrastructure and facilities within Cousland would not be addressed through developer contributions if permission is granted. Developer contributions can only be used to mitigate the direct impact of the development. The limited contact between the applicant and local residents or the loss of views as a result of the proposed development are not material planning considerations. Noise and

disruption from the construction process would not be significant considering the scale of the proposal.

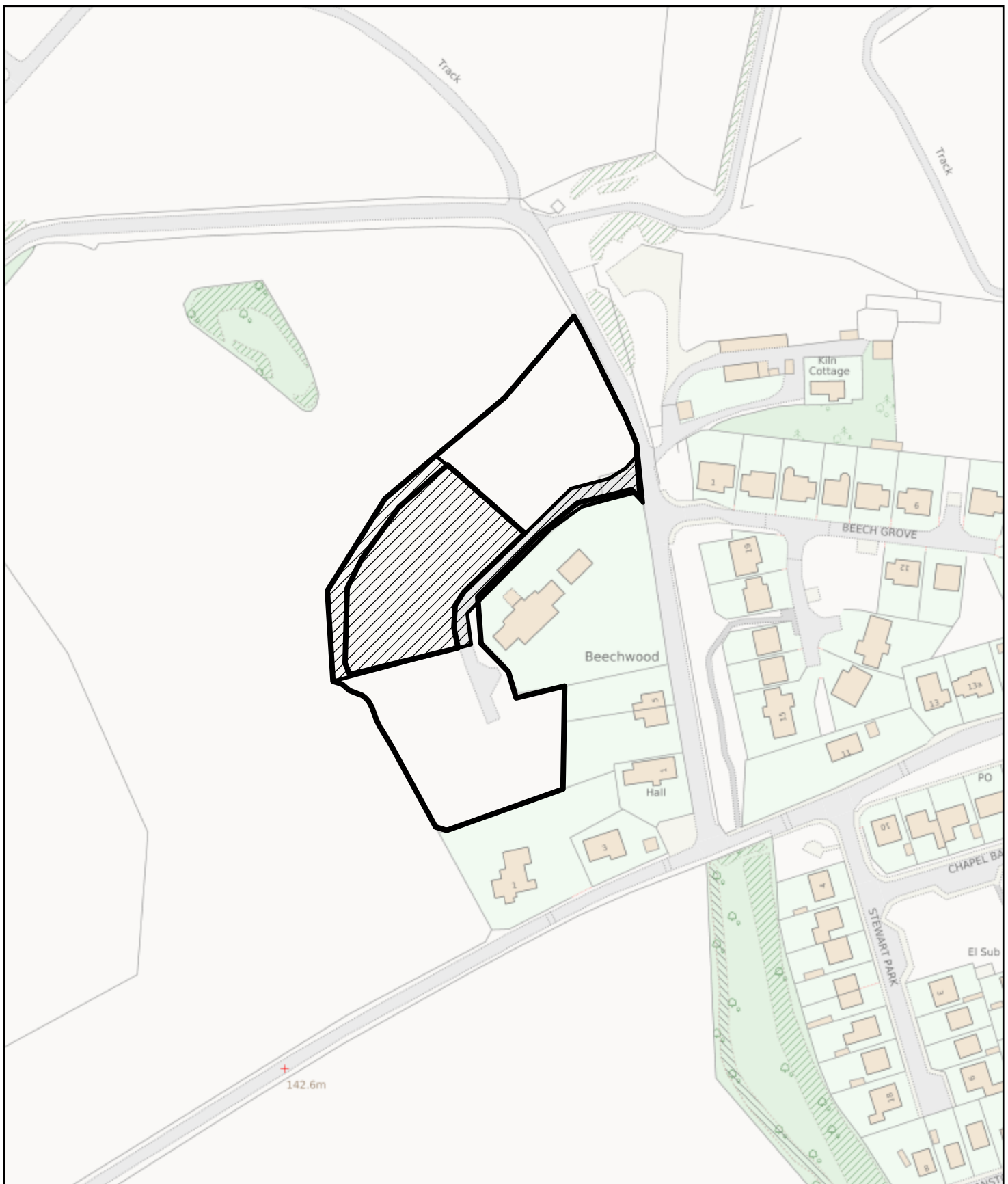
9 RECOMMENDATION

9.1 That planning permission be refused for the following reasons:

1. *The proposed dwellinghouses by means of their scale, massing, form and design are incompatible with their edge-of village setting and the wider settlement of Cousland and will therefore have a detrimental impact on the character and appearance of the area contrary to policies DEV2 and STRAT2 of the Midlothian Local Development Plan 2017 and Scottish Planning Policy.*
2. *It has not been demonstrated to the satisfaction of the Planning Authority that the proposed development would not have a detrimental impact on European Protected Species and is therefore contrary to policy ENV15 of the adopted Midlothian Local Development Plan 2017.*


Dr Mary Smith
Director of Education, Communities and Economy


Date:	8 November 2018
Application No:	18/00592/DPP and 18/00593/DPP (Available online)
Applicant:	Midlothian Developments, 26 Forth Street, Edinburgh, EH1 3LH
Agent:	Andrew Bennie, Andrew Bennie Planning Ltd, 3 Abbots Court, Dullatur, G68 0AP
Validation Date:	14 August 2018
Contact Person:	Mhairi-Anne Cowie
Tel No:	0131 271 3308
Background Papers:	Planning applications 17/00649/DPP and 15/00592/DPP



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
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EH22 3AA

Airybank Sites (overlaid)

 18/00592/DPP

 18/00593/DPP

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File No. 18/00592/DPP and 18/00593/DPP

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APPLICATION FOR PLANNING PERMISSION (18/00654/DPP) FOR THE CHANGE OF USE FROM RETAIL (CLASS 1) TO HOT FOOD TAKEAWAY (SUI GENERIS) AND INSTALLATION OF FLUE AT 70 LOTHIAN STREET, BONNYRIGG

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the change of use of a retail unit (class 1) to a hot food takeaway (sui generis use) and installation of flue at 70 Lothian Street, Bonnyrigg. There have been three letters of representation and consultation responses from the Council's Policy and Road Safety Manager, the Council's Environmental Health Manager and the Bonnyrigg and Lasswade Community Council.
- 1.2** The relevant development plan policy is DEV2 of the Midlothian Local Development Plan 2017. The emerging Supplementary Guidance on *Food and Drink and Other Non-retail Uses in Town Centres* is also a material consideration in the determination of this planning application.
- 1.3** The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site is located on the north western side of Lothian Street, Bonnyrigg, approximately 390 metres to the northeast of the Lothian Street/High Street junction in the centre of Bonnyrigg.
- 2.2** The application premises comprises a single storey retail unit which is attached to, and part of the same building as, a restaurant (Gigi's). The building has a high parapet wall along the front elevation, which gives the impression of a larger structure. The principle part of the building is finished externally in brick and glass. There is a set-back section of the building which has been finished in render, with a brick base course and some glazing.
- 2.3** The application site is located in a predominantly residential area. However, there is a garage (Lothian Motors) to the rear (northwest) of

the application site which is accessed via a lane to the southwest of the application site.

- 2.4 Lothian Street, to the front of the application site, is a public transport corridor and there are bus stops on either side of the road outside the application premises. The bus stop for buses heading from Bonnyrigg town centre is located within the layby to the front of the application premises.

3 PROPOSAL

- 3.1 It is proposed to change the use of the application premises from a retail unit to a hot food takeaway. The hours of operation are proposed to be 11am to 11pm Mondays to Fridays, 11am to 12 midnight on Saturdays and 5pm to 10pm on Sundays. The only external alteration proposed is a flue on the southwest elevation. This flue is proposed to be finished in stainless steel and will project approximately 1 metre from the eaves of the building.
- 3.2 The applicant has submitted a supporting statement with the planning application which states:
- In addition to kitchen and service staff, there are likely to be two delivery drivers employed at the premises;
 - There is unlikely to be a significant impact on the surrounding area with regards to the impact from noise and smell as compared to the existing situation;
 - a bin will be installed outside the unit; and
 - The existing parking provision serves the retail and adjacent restaurant use and it is unlikely that the proposal will result in a materially different situation.

4 BACKGROUND

- 4.1 Planning application 03/00041/FUL for the change of use of the application site to a hot food takeaway was refused in 2003. The site was outwith Bonnyrigg town centre and did not comply with the then emerging 2003 local plan, which required such uses to be located only within town centres, local or neighbourhood shopping centres or predominantly commercial or business areas. It was considered that, despite being adjacent to a public house (prior to Gigi's restaurant) and industrial premises, the surrounding area is predominantly residential in character and the proposal would have resulted in additional disturbance to local residents.
- 4.2 Planning application 03/00669/FUL for the change of use of the application site to a retail shop and hot food takeaway was refused in 2003. The reasons for refusal are the same as those for 03/00041/FUL.
- 4.3 Planning application 17/00771/DPP for the change of use from retail (class 1) to restaurant (class 3); extension to restaurant and formation

of entrance canopy; recladding of building and alterations to restaurant frontage was withdrawn in 2017. The application was for the current application site and the adjoining restaurant, currently operating as Gigi's.

- 4.4 Planning application 17/01000/DPP for the change of use from retail (class 1) to restaurant (class 3); formation of entrance canopy; recladding of building and external alterations to building was approved in February 2018. The application was for the current application site and the adjoining restaurant, currently operating as Gigi's, and proposed the entire building operating as one restaurant. This application was granted planning permission with conditions, requiring details of materials, noise restrictions and also that no hot food takeaway element was approved. A hot food takeaway element had not been proposed in the application and therefore had not been assessed as part of the applicant process.

Adjoining site at 72-74 Lothian Street – currently operating as Gigi's

- 4.5 Planning permission 10/00144/DPP for the change of use from a public house to a restaurant was granted planning permission with conditions in 2010. The conditions related to the provision of ventilation equipment, hours of operation, noise restrictions and that the restaurant shall not change use to or include a hot food takeaway function without the prior written approval of the planning authority. This was because that application was submitted for a restaurant only and no hot food takeaway element had been proposed. The inclusion of such a use would need to be considered on its own merits and was not included in this application.
- 4.6 Planning permission 10/00674/DPP for the amendment to condition 3 of planning permission 10/00144/DPP (change of use from public house (sui generis) to restaurant (class 3) to allow extended opening hours was granted in 2011. This allowed the restaurant to operate from 11am to 1am. The other conditions attached to 10/00144/DPP were attached to the permission.

Elected Member call-in

- 4.7 The current planning application has been called to Committee by Councillor Milligan in order to discuss the detrimental impact of the proposed development on the town centre and on road safety.

5 CONSULTATIONS

- 5.1 The **Policy and Road Safety Manager** considers that the proposed change of use to a hot food takeaway may not be significantly different to how the unit could operate at present. The Policy and Road Safety Manager has no objection to the planning application.

- 5.2 The Council's **Environmental Health Manager** does not object to the application subject to conditions being attached to any consent relating to ventilation and noise.
- 5.3 The **Bonnyrigg and Lasswade Community Council** objects to the planning application as they consider that there is adequate hot food provision in the town centre and surrounding area. They have stated that hot food takeaways should be discouraged on health grounds. In addition, the Community Council is concerned regarding traffic and parking in this busy area. They have stated that there is not sufficient parking provision in the layby to the front of the site. The proposal will exacerbate existing parking and road safety issues.

6 REPRESENTATIONS

- 6.1 There have been three objections received, all of which can be viewed in full on the online planning application case file. A summary of the objections are as follows:
- Road safety concerns arising from customer parking and this conflicting with the position of the bus stops;
 - The proposal will exacerbate existing parking issues in the area – there is not sufficient parking for local residents;
 - A takeaway element was refused at the neighbouring restaurant;
 - The proposed hours of operation will have a detrimental impact on the amenity of nearby residents;
 - The proposed use will have a detrimental impact on nearby residents with regards noise and disruption; and
 - The Scottish Planning Policy (SPP) states that development is not to be allowed at any cost but should allow for appropriate developments in appropriate areas without having a negative impact on safety and residential community.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **DEV2 Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.3 **Draft Supplementary Guidance: Food and Drink and Other Non-Retail Uses in Town Centres** provides guidance regarding the acceptability of a range of uses in town centres and other areas. The

Supplementary Guidance sets out criteria to be taken into account in the assessment of planning applications for hot food takeaways. It states that hot food takeaways within 400m of the curtilage of a secondary school will be not permitted.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development

- 8.2 While two planning applications have previously been refused for a hot food takeaway at the premises in 2003, development plan policies have changed, and new Supplementary Guidance is emerging. Therefore, it is necessary to give fresh consideration to the proposal to change the use of the premises to a hot food takeaway based on the current policy position.
- 8.3 The application site is within the built up area of Bonnyrigg, where there is a presumption in support of development which does not adversely affect the character or amenity of the area. Although the application site is located within a predominantly residential area, the application premises is in retail use, there is an adjacent restaurant, a garage business to the rear and a busy main road to the front. The proposal would not result in the creation of a new commercial unit in an inherently residential area.
- 8.4 Planning permission has previously been granted for the change of use of the premises to allow the neighbouring restaurant to extend into this part of the building. Therefore, the Council has already accepted the principle of a business involved in the preparation and provision of food at this premises, albeit a restaurant which falls within class 3 of The Town and Country Planning (Use Classes) (Scotland) Order 1997 as amended, rather than a hot food takeaway which is a sui generis use.
- 8.5 Some objectors have suggested that there is overprovision of hot food takeaways in Bonnyrigg. As the application site is neither in a town centre nor local centre the draft Supplementary Guidance regarding overprovision does not apply in these circumstances. The closest hot food takeaway is over 400metres away. Therefore it is unlikely that it could be considered that there is overprovision of hot food takeaways in this location.
- 8.6 The draft Supplementary Guidance states that food and drink uses will not be permitted in this type of location if they have an adverse impact on the viability of a nearby town centre. While the application has not

been accompanied by a Town Centre Impact Assessment it is considered that the premises is of a scale which would ensure that it would not have an adverse impact on Bonnyrigg town centre.

- 8.7 The draft Supplementary Guidance states that new hot food takeaways will not be approved where they would be within 400 metres of primary or secondary schools. This is in order to address the adverse impacts such uses have on the diets of young people and the health of communities. The application site is located outwith 400 metres of the closest school boundaries and so there is no reason to refuse this application on these grounds.

Impact on Amenity

- 8.8 The nearest residential properties are located 10 metres to the southwest of the application premises and separated by the vehicular access to the garage to the rear. The houses to the southeast are 10 metres from the application site, and are on the opposite side of Lothian Street. As the application premises is single storey there are no residential properties above the application premises.
- 8.9 The proposal includes details of a ventilation system which has been designed to address any issues regarding odours from the proposed hot food takeaway. The Environmental Health Manager has considered the submitted proposals and has no objection to the planning application subject to conditions being imposed on the premises ensuring that no odours escape or are exhausted to neighbouring properties. They have also requested that noise levels emanating from the premises are limited.
- 8.10 The application premises has been operating as a retail unit for over 25 years. The retail unit's hours of operation have not been limited. The adjoining restaurant's approved hours of operation are 11am to 1am. Both the retail unit and restaurant appear to have been operating without complaint. It is the applicant's intention to remain open until 11pm on Mondays to Fridays, midnight on Saturdays and 10pm on Sundays. As the neighbouring restaurant unit can operate until 1am it would not be reasonable to restrict the hours of the current application to any less than this.
- 8.11 Given the distances and physical separation of residential properties from the site it is unlikely that the proposal would have a significant adverse impact on the amenity of surrounding residential properties with regards to noise, disturbance or disruption as compared to the existing situation. Provided the Environmental Health conditions are complied with there should be no detrimental impact on the amenity of surrounding residential properties in regards smell or noise from the site.

Parking and Impact on Road Safety

- 8.12 The issue of road safety and parking are significant considerations in the assessment of this planning application. The application site is located on a public transport corridor. There are bus stops located on either side of the road.
- 8.13 While there is a parking layby immediately to the front of the application site and neighbouring restaurant a large proportion of this layby is to be kept clear for the bus stop. The restaurant has an area available for vehicle parking nearby. However, interested parties have raised concerns that the proposed development will exacerbate an existing parking problem in the area.
- 8.14 The Policy and Road Safety Manager has not objected to the planning application. The Policy and Road Safety Manager considers that the application premises is already operating as a retail unit, attracting customers arriving by car, and that the proposed hot food takeaway would not operate on a significantly different scale. Therefore, the proposed development would not have an adverse impact on road safety, as compared to what could happen at the site at present.

Other Matters

- 8.15 Representors have raised a number of valid planning matters in relation to this planning application. One such issue not yet addressed in this report is the previous restriction on a hot food takeaway element operating from the neighbouring restaurant. The adjacent restaurant was granted planning permission on the basis that there was to be no hot food takeaway element, unless this was otherwise approved by the planning authority. This restriction was not imposed because a hot food takeaway was unacceptable per se, but because a hot food element did not form part of the original application and would require full assessment. The restriction clarified the extent of the planning permission. The planning authority has subsequently agreed that an ancillary hot food takeaway element can operate from the restaurant, but this is to be carried out by delivery drivers only, with no collections by members of the public (a separate or composite hot food takeaway and restaurant use would need planning permission).

Summary

- 8.16 The principle of a hot food takeaway operating from the application site is generally acceptable. There will be no significant adverse impact on the amenity of the neighbouring properties as a result of smell or noise. The Council's Policy and Road Safety Manager has not raised any concerns regarding the impact of the proposal on road safety. Therefore, the proposal will not have an adverse impact on the character, appearance or amenity of the area and complies with MLDP policy DEV2.

9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

The proposed development would not have an adverse impact on the character, appearance or amenity of the surrounding area and would not result in road safety concerns sufficient to warrant refusal of the application and so accords with policy DEV2 of the Midlothian Local Development Plan 2017.

Subject to the following conditions:

1. The use hereby approved shall not start trading until the approved extract ventilation scheme is operational in accordance with the details approved in writing by the Planning Authority. The extract ventilation system shall:
 - a) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
 - b) Prevent the emission of cooking odours likely to cause nuisance to neighbouring properties;
 - c) Terminate at sufficient height above roof height and expelled with a suitable upwards velocity to permit the free disposal of exhaust fumes; and
 - d) be designed to achieve 30 air changes per hour.

Reason: *To ensure a satisfactory standard of amenity for nearby residential properties.*

2. The use hereby permitted will not open to the public outwith the following hours:

Mondays to Sundays: 11am to 1am

Reason: *To safeguard nearby residential amenity; this will be in keeping with the existing adjoining restaurant.*

3. Prior to the use hereby approved being implemented, a litter bin shall be located to the front of the premises and shall not be removed without the prior written approval of the Planning Authority.

Reason: *To ensure any issues over litter are adequately addressed; to ensure a satisfactory level of amenity; to safeguard the appearance of the surrounding area.*

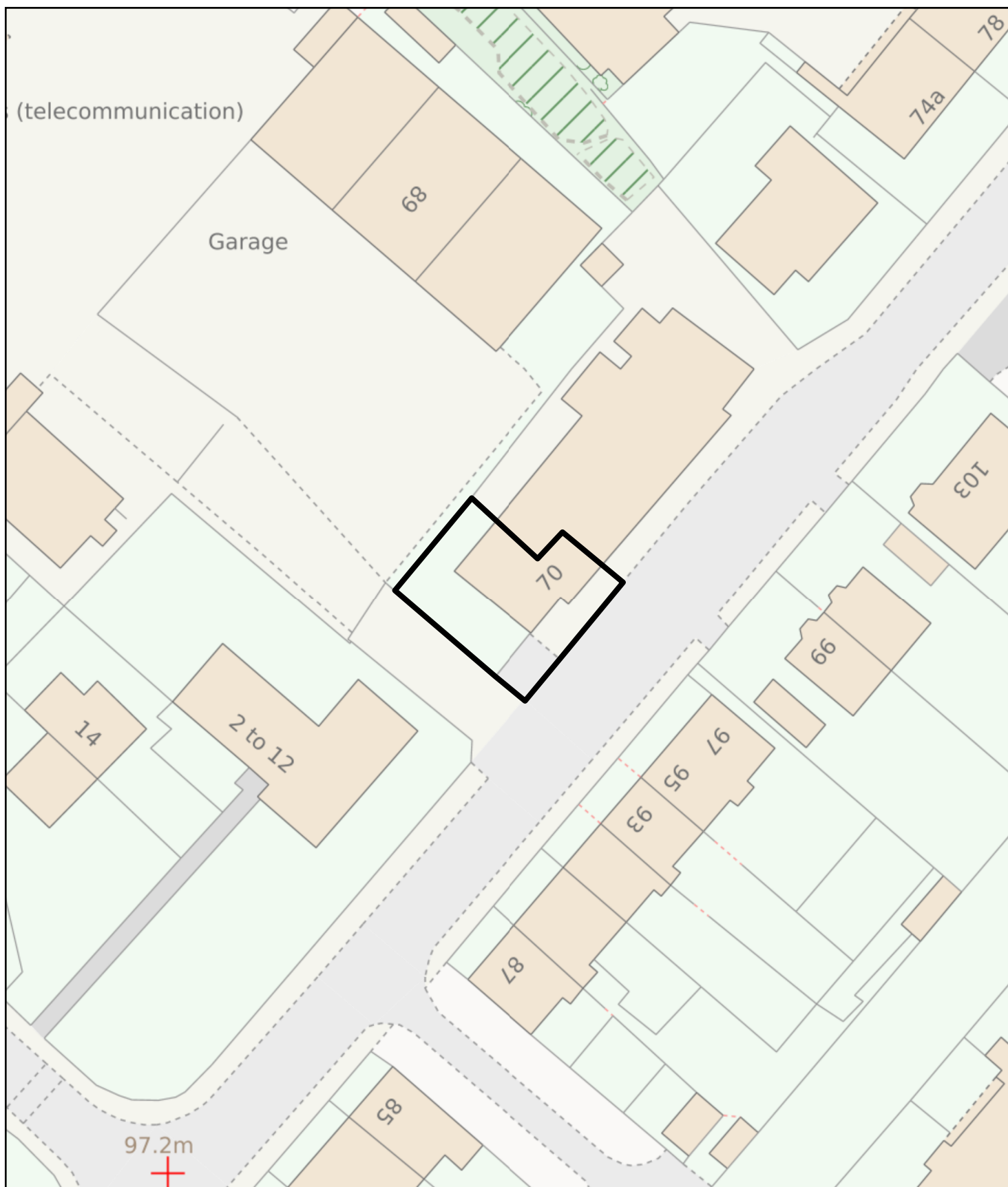
4. The design and installation of any plant or equipment shall be such that the combined noise levels does not cause a nuisance and complies with NR30 (daytime 07.00 – 23.00), NR25 (night time 23.00-07.00) or NR20 (if the noise is tonal) when measured within any adjacent living accommodation.

5. No amplified music or sound reproduction equipment used in association with the use hereby approved shall be audible at the boundary of any nearby residential properties.

Reason for conditions 4 and 5: *To safeguard the amenity of the surrounding area.*

Dr Mary Smith
Director of Education, Communities and Economy

Date:	8 November 2018
Application No:	18/00654/DPP (Available online)
Applicant:	Scottish Midland Co-Operative Society Limited (Scotmid), Hillwood House, 2 Harvest Drive, Newbridge, Edinburgh EH28 8QJ
Agent:	Derek Scott, Derek Scott Planning, 21 Landsdowne Crescent, Edinburgh EH12 5EH
Validation Date:	31 August 2018
Contact Person:	Mhairi-Anne Cowie
Tel No:	0131 271 3302
Background Papers:	



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
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Change of use from retail (Class 1) to hot food take away
(sui generis) and installation of flue at 70 Lothian Street,
Bonnyrigg

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