

Notice of Review: The Abbey Granary, 12 Newbattle Road, Newtongrange

Determination Report

Report by Ian Johnson, Head of Communities and Economy

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the change of use of public house to a mixed use of public house, restaurant and take away at The Abbey Granary, 12 Newbattle Road, Newtongrange.

2 Background

- 2.1 Planning application 17/00371/DPP for the change of use of public house to a mixed use of public house, restaurant and take away at The Abbey Granary, 12 Newbattle Road, Newtongrange was granted planning permission on 7 July 2017; a copy of the decision is attached to this report. The applicant has requested a review to seek the removal of Condition 5 from the grant of permission. Condition 5 on planning permission 17/00371/DPP is as follows:

5. No hot food takeaway use or activity, either as a primary or ancillary use, shall take place from the premises subject to the application to which this condition is attached.

Reason: To minimise disturbance to nearby residential properties, both existing and proposed, from noise and other environmental disturbance and so as to comply with the aims of policy DP7 of the adopted Midlothian Local Plan.

- 2.2 Although the applicant has requested the removal of condition 5 it is within the scope of the LRB to review the decision to grant planning permission in its entirety, including the other conditions attached to the grant of planning permission.
- 2.3 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;

- A copy of the case officer's report (Appendix C); and
 - A copy of the decision notice, issued on 7 July 2017 (Appendix D).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

4 Procedures

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:
- Have scheduled an unaccompanied site visit for Monday 28 August 2017; and
 - Have determined to progress the review by way of written submissions.
- 4.2 The case officer's report identified that two consultation responses and one representation have been received. As part of the review process the consultees and representor were notified of the review. No additional comments have been received. All the comments can be viewed online on the electronic planning application case file via www.midlothian.gov.uk.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported to the next LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of

the LRB if it is minded to uphold the review and grant planning permission.

1. Unless otherwise approved in writing by the Planning Authority, the use hereby permitted shall not open to the public outwith the hours of 11am to 11pm.

Reason: *In order to allow the Planning Authority to assess any impact that extended opening hours could have on the amenity of the surrounding area.*

2. Notwithstanding the plans hereby approved, details of the proposed ventilation system shall be submitted to the Planning Authority for prior written approval. 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.
3. The design and installation of any ventilation system, plant or equipment and associated noise shall comply with noise rating curves (NR30) when measured within any nearby living apartment between 7am and 10pm and noise rating curves (NR25) between 10pm and 7am elsewhere.
4. 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 2 - 4: *To safeguard the amenity of the surrounding area.*

6 Recommendations

- 6.1 It is recommended that the LRB:
 - a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

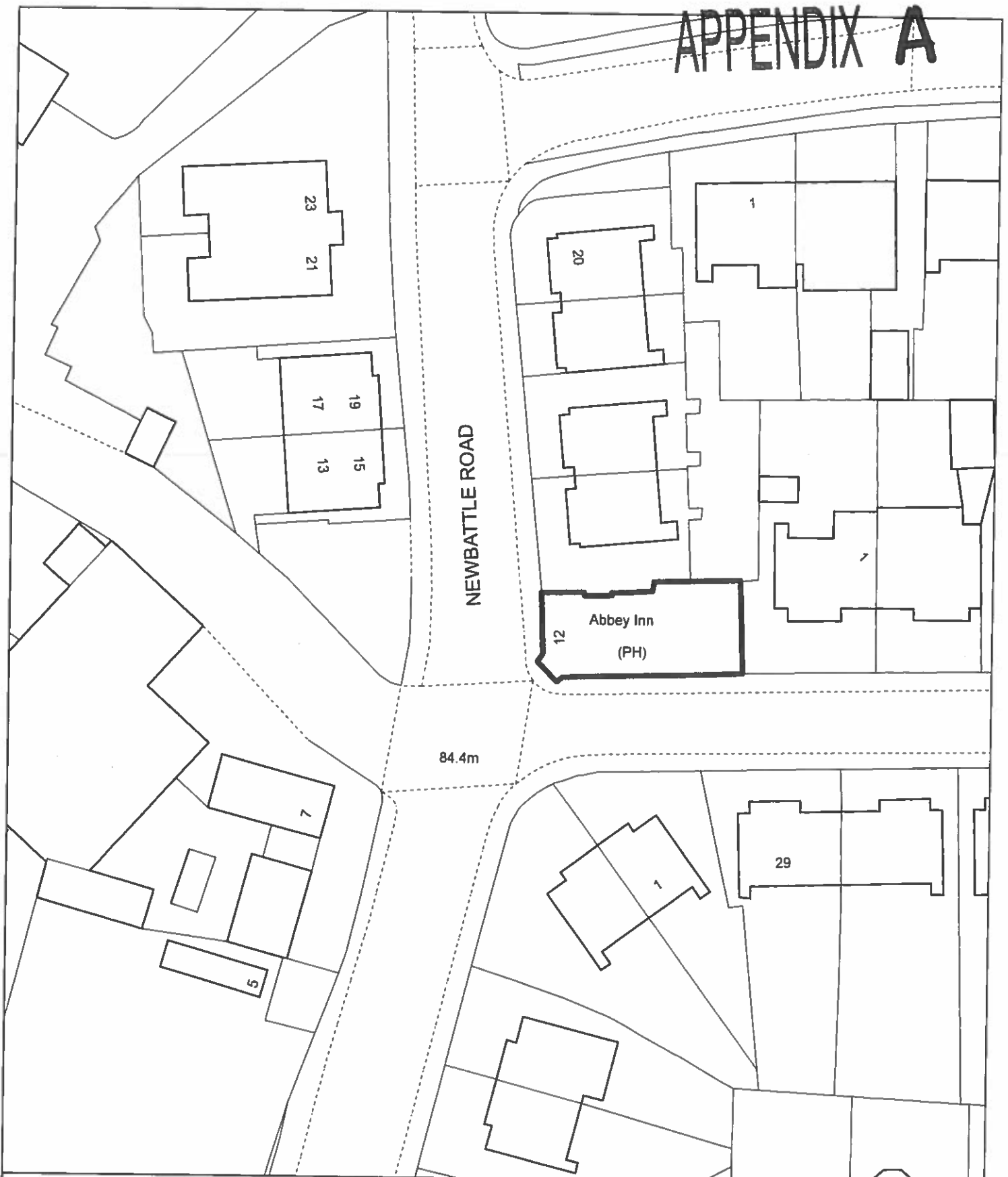
Date: 15 August 2017

Report Contact: Peter Arnsdorf, Planning Manager (LRB Advisor)
peter.arnsdorf@midlothian.gov.uk

Tel No: 0131 271 3310

Background Papers: Planning application 17/00371/DPP available for inspection online.

APPENDIX A



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

The Abbey Granary, 12 Newbattle Road, Newtongrange

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File No. 17/00371/DPP

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Scale: 1:500



Midlothian



Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: planning-applications@midlothian.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100051372-002

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation: David Paton Building Consultancy

Ref. Number:

You must enter a Building Name or Number, or both: *

First Name: *

Building Name:

Last Name: *

Building Number:

Telephone Number: *

Address 1 (Street): *

Extension Number:

Address 2:

Mobile Number:

Town/City: *

Fax Number:

Country: *

Postcode: *

Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

☐ Individual ☒ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	
First Name: *	Akram	Building Number:	79a
Last Name: *	Mohammed	Address 1 (Street): *	Broughton Street
Company/Organisation	KAINAM Ltd	Address 2:	
Telephone Number: *		Town/City: *	Edinburgh
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	EH1 3RJ
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:	Midlothian Council
Full postal address of the site (including postcode where available):	
Address 1:	12 NEWBATTLE ROAD
Address 2:	NEWTONGRANGE
Address 3:	
Address 4:	
Address 5:	
Town/City/Settlement:	DALKEITH
Post Code:	EH22 4RL

Please identify/describe the location of the site or sites

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Northing	664669	Easting	333266
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Change of use from Public house (sui generis) to mixed use of public house, restaurant and take away

Type of Application

What type of application did you submit to the planning authority? *

- ☒ Application for planning permission (including householder application but excluding application to work minerals).
- ☐ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? *

- ☐ Refusal Notice.
- ☒ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

We would like the Removal of Condition 5 to this permission - see document attached to this application

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Supporting Statement stating case of why Condition should be removed Site and Location Plan

Application Details

Please provide details of the application and decision.

What is the application reference number? *

17/00371/DPP

What date was the application submitted to the planning authority? *

09/05/2017

What date was the decision issued by the planning authority? *

07/07/2017

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☒ Yes ☐ No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

☒ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? *

☒ Yes ☐ No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? *

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? *

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Kevin McLellan

Declaration Date: 11/07/2017

THE ABBEY GRANARY, 12 NEWBATTLE ROAD, NEWTONGRANGE, EH22 4RL
CHANGE OF USE FROM SOLELY PUBLIC HOUSE TO INCLUDE
CLASS 3 FOOD AND DRINK INCLUDING TAKE AWAY
APPLICATION NO. 17/00371/DPP
GRANTED 7 JULY 2017

On behalf of our client KAINAM Ltd, we would like to appeal against Condition 5 attached to the above Planning Permission which states that no hot food takeaway whatsoever will be allowed on these premises to minimise disturbance to nearby residential properties from noise and other environmental disturbance.

At present The Abbey Granary has permission to open as a Public House with Off Sales which can open until 23.00 Monday – Thursday, 01.00 Friday and Saturday and Midnight on a Sunday. A comment on the application was made from a neighbour of the premises, who does not object to the application as applied for, but in fact objects to it re-opening as a Pub because of the nuisance and disturbance this previously caused the neighbours with excessive noise from patrons of the Pub leaving the premises, discarding cans into neighbouring gardens and vandalising properties well into the early hours of the morning. The above permission limits the opening hours of the Restaurant to 23.00 every day, to minimise the disturbance to residential properties nearby.

Without an element of Take Away, the viability of a Restaurant in this location would be questionable and it has to be raised that neither Midlothian Councils own Environmental Dept. or Roads / Public Safety team raised any objections about this application. It would appear that the only issue is the fact that the premise has residential properties on 3 sides of it. It has mostly commercial properties existing on the opposite side of the road from this property.

Precedence was set by Midlothian Council at 202 High Street, Dalkeith (Application No. 09/00509/DPP) which was to change the use of a former public house to a restaurant with Take Away, this site like the Abbey Granary is not within the neighbourhood centre of the town and has a denser population of houses to the application site than exists at the Abbey Granary and yet it was deemed acceptable in that location.

Also even though in a town centre, permission was granted at 93 Clerk Street, Loanhead (09/00369/DPP) for the change of use of a former Public House to Restaurant with Take Away, this premise has residential above it and yet was given permission.

No objections were raised from any of the neighbours to the site which suggests that they would appear to be more comfortable if the premises served this residential area as a Restaurant with Take Away rather than its present use of a Public House with Off Sales.

As stated above, without the Take Away element to the restaurant you limit its chances of being viable, and with it the chances of this redundant building being brought back to use or worse still reinstated as a Public House. We ask that Condition 5 is removed from this permission to allow this to happen.

David Paton Building Consultancy
13 High Street
Loanhead
EH20 9RH

Tel 0131 440 1213

10 July 2017

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 17/00371/DPP

Site Address: The Abbey Granary, 12 Newbattle Road.

Site Description:

The application site comprises a single storey building which is currently vacant and was previously used as a public house. The public house known as the Abbey Granary has been closed since April 2016.

The application site is located on a corner plot on a residential street. The locale is a combination of residential dwellinghouses with commercial units located nearby. The application building is located in close proximity to Newtongrange neighbourhood shopping centre.

Proposed Development: Change of use from public house (sui generis) to mixed use of public house, restaurant and take away.

Proposed Development Details:

Planning permission is sought for the change of use from a public house to a mixed use; public house, restaurant and hot food take away. The restaurant would have 30 to 40 seat covers. It is also proposed that there would be a small waiting area to be used for the take away element.

The proposed opening hours look to remain the same as the as the opening hours that the public house known as the 'Abbey Granary' was licensed for;

Monday – Thursday 11.00 – 23.00

Friday – Saturday 11.00 – 01.00

Sunday 11.00 – 00.00

There is an existing kitchen and ventilation system at present which is to be upgraded. It is noted within the supporting information that any new ventilation ducts would be secured to the rear gable of the pitched roof section to be able to take the terminals to high level to avoid any nuisance to the adjacent dwellinghouses.

No external alterations are proposed to the application building, it was noted within the supporting statement that any external alterations would be handled under a separate application.

Background (Previous Applications, Supporting Documents, Development Briefs): Planning history sheet checked.

No relevant planning history.

Consultations:

The **Environmental Health Manager** informally offered no objection to the principal of the proposed restaurant use but raised initial concerns relating to the hours of operation and sought further details with regards to the proposed ventilation. No formal consultation response has been received.

The **Road Safety Manager** offered no objection to the proposed change of use. The road safety manager noted that *'the provision of off-street parking would normally be recommended for a development of this nature however in this instance alterations are restricted to a change of use of the building and with no adjacent land available, the provision of additional parking is not feasible.'*

Representations:

One representation has been received of which objects to the above planning application. The representation raised concerns which can be summarised as follows:

- Concerns with regards to the opening of the premises causing noise disruptions, anti-social behaviour, general disruptions and littering.

Relevant Planning Policies:

The relevant policies of the **2008 Midlothian Local Plan** are;

RP20 – Development within the Built-Up Area - seeks to protect the character and amenity area.

DP7 Control of Class 3 (Food and Drink) Uses and Hot Food Takeaway Shops states that applications for restaurants solely for the consumption of food and drink on the premises will be considered on their individual merits, taking account of such factors as the size of the proposed establishment; its relationship to adjoining uses and in relationship to other relevant planning policies; and its likely traffic generations and parking provision. Planning permissions for restaurants will include conditions, as appropriate, to mitigate any impact on the amenity of the surrounding area from noise and cooking smells.

DP7 goes on to state that if a proposed restaurant includes a hot food takeaway element, it will be considered in terms of the section of this policy relating to hot food takeaways and restaurants with ancillary hot food takeaway elements. The policy states that appropriate locations for hot food takeaways would be within a town centre, local or neighbourhood shopping centre or a predominantly commercial or business area. In addition, it states that they will not be permitted where there are residential properties on the floor or floors above or immediately on either side and the floors above such properties unless these are owned and occupied by the applicant or his immediate family or by an employee working in the establishment. The cumulative effect of additional hot food takeaway establishments will be assessed to ensure that the vitality and viability of the shopping centre is not considered to be seriously harmful. In addition, permission will not be granted where it would cause significant harm to residential amenity or the general environment of the area as a result of noise, disturbance, smell or litter. Also, permission would not be granted in a location where it would present a threat to road safety.

Planning Issues:

The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

The proposed change of use seeks to reuse an existing building which has been vacant for over a year. The proposed change of use does not see any physical alterations or extensions to the appearance of the building and therefore will not result in any visual impact upon the streetscape or locale.

The food and drink use class 3 groups together a range of uses where food or drink is sold for consumption on the premises - for example restaurants, cafes and snack bars. The building is currently a public house which is a *sui generis* use which allows for the premises to operate primarily as a public house where the primary purpose is for the sale of liquor for consumption on the premises. However, it is noted that the current use would also allow for the sale of food for the consumption on the premises at an ancillary level to the public house. Currently, the premises could re-open as a public house and offer food for consumption on the premises at an ancillary level. Therefore, the use of the building as a restaurant and public house is already partly established.

It is noted that there is no provision for off-street parking and nor is it possible to provide any off-street parking due to the lack of availability of land. The application site is located within close walking distance of Newtongrange neighbourhood centre and public transport links which are connected to the wider locale.

The proposed change of use looks to bring a vacant building back into use and it is considered that the proposed use is of a similar character to the existing use. There are no material planning considerations that would otherwise warrant the refusal of the premises being used as a restaurant and public house. However, a condition will be used to limit the hours of operations so as to mitigate any impact on the amenity of the neighbouring properties.

Hot food takeaways are classed as a *sui generis* use and raise different environmental issues, such as litter, noise, longer opening hours and extra traffic and pedestrian activity, from those raised by other Class 3 uses. With regards to the application proposal to partly operate as a takeaway, this raises concerns with regards to the impact upon neighbour amenity and road safety.

Hot food takeaway shops will not be permitted in premises that are located within residential areas where there are residential properties above or immediately on either side. Although, the application is located within close proximity to Newtongrange neighbourhood centre, the premises are located on the corner of a residential area with neighbouring dwellings located in close proximity adjacent to the application site. A hot food takeaway in this location would result in a harmful loss of residential amenity. The use of the application site partly or even wholly as a hot food takeaway is not an acceptable use for the premises due to the close proximity to residential dwellings. Therefore, a condition will be used to ensure that the premise does not operate as a hot food takeaway in any capacity.

Minimal information has been submitted with regards to the kitchen ventilation; a condition will be used to ensure details of the proposed ventilation are submitted to the Planning Authority for prior written approval. A condition will also be used limiting the noise of any plant, machinery or equipment will also be attached to the permission to mitigate any impact on the amenity of the surrounding area from noise or cooking smells.

An objection representation was received which raised concerns. All material planning considerations raised within the representations have been addressed above within this section of the report. It is noted that the premises known as the Abbey Granary is already an established public house and no planning permission would be required for the premises to re-open, the proposed change of use of the building from a public house to a restaurant and public house are of a similar nature to the existing use and there are no material considerations that would warrant the refusal of the current application.

Overall, all relevant matters have been taken into consideration in determining this application. It is considered that the proposal accords with the principles and policies of Midlothian Local Plan and is acceptable in terms of all other applicable material considerations. Therefore, it is recommended that the application is approved subject to conditions.

Recommendation: Grant planning permission.

Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 17/00371/DPP

David Paton Building Consultancy
13 High Street
Loanhead
EH20 9RH

Midlothian Council, as Planning Authority, having considered the application by Mr Akram Mohammed, 79A Broughton Street, Edinburgh, EH1 3RJ, which was registered on 10 May 2017, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

Change of use from public house (sui generis) to mixed use of public house, restaurant and take away at The Abbey Granary, 12 Newbattle Road, Newtongrange, EH22 4RL

In accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Site Plan	17-20-001 1:1250 1:500	10.05.2017
Other Statements		10.05.2017
Other Statements		02.06.2017

This permission is granted for the following reason:

The development will not have a significant adverse impact on the character of the locale or on the amenity of neighbouring land and buildings and therefore complies with policies RP20 and DP7 of the adopted Midlothian Local Plan.

Subject to the following conditions:

1. Unless otherwise approved in writing by the Planning Authority, the use hereby permitted shall not open to the public outwith the hours of 11am to 11pm Mondays to Sundays.

Reason: *In order to allow the Planning Authority to assess any impact that extended opening hours could have on the amenity of the surrounding area.*

2. Notwithstanding the plans hereby approved, details of the proposed ventilation system shall be submitted to the Planning Authority for prior written approval. 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.
3. The design and installation of any ventilation system, plant or equipment and associated noise shall comply with noise rating curves (NR30) when measured within any nearby living apartment between 7am and 10pm and noise rating curves (NR25) between 10pm and 7am elsewhere.

4. 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 2 - 4: To safeguard the amenity of the surrounding area.

5. No hot food takeaway use or activity, either as a primary or ancillary use, shall take place from the premises subject to the application to which this condition is attached.

Reason: To minimise disturbance to nearby residential properties, both existing and proposed, from noise and other environmental disturbance and so as to comply with the aims of policy DP7 of the adopted Midlothian Local Plan.

Dated 7 / 7 / 2017



.....
Duncan Robertson
Lead Officer – Local Developments,
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN