

**APPLICATION FOR PLANNING PERMISSION 13/00853/DPP FOR THE  
CHANGE OF USE OF A RETAIL UNIT TO HOT FOOD TAKEAWAY AND  
ERECTION OF VENTILATION UNIT AT 24 HIGH STREET, PENICUIK**

Report by Head of Communities and Economy

**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1 The application is for the change of use of a retail unit to a hot food takeaway and the erection of a ventilation unit at 24 High Street, Penicuik. There have been four letters of representation, a petition and consultation responses from the Policy and Road Safety Manager and the Penicuik and District Community Council. The relevant development plan policies are RP20, RP22, SHOP1, SHOP3 and DP7. The recommendation is to grant planning permission subject to conditions.**

**2 LOCATION AND SITE DESCRIPTION**

- 2.1 The application site comprises a ground floor commercial unit of a mid-terraced two storey property. The unit has previously been in a retail use as a butcher's shop, but has been vacant since September 2009. The front elevation is currently boarded up, but under the boarding is a glazed frontage with a recessed door. The remainder of the building comprises natural stone walls and a slate roof.**
- 2.2 The site is within the Penicuik Town Centre as defined in the Midlothian Local Plan, and the Penicuik Conservation Area. It is positioned between a retail unit and a staircase; which leads to a restaurant at first floor level above the application property. The restaurant includes an ancillary hot food takeaway. To the other side of the staircase is a former bank which has been used as an energy trust advice centre (temporarily closed at the time of drafting this report), with a flatted dwelling above. There are a variety of uses in the surrounding area ranging from retail, estate agents, beauty salon, public houses and food establishments.**

**3 PROPOSAL**

- 3.1 It is proposed to change the use of the unit from retail (class 1) to a hot food takeaway (sui generis). A ventilation flue is proposed on the rear elevation of the unit, of a height to correlate with the ridge of the roof. The proposed operating hours are 11am to 11pm Mondays to Fridays, 11am to 12 midnight Saturdays and 5pm to 10pm Sundays.**

- 3.1 The agent has submitted a supporting statement detailing that the site has been vacant since September 2009. The unit has been marketed since it became vacant and there has been no interest in continuing the class 1 (retail) use.
- 3.2 The marketing comprised a sales/lease board on the unit, adverts on a number of websites and targeted mail shots. The supporting statement includes a letter from the advertising company who state there is little or no demand for retail units in the area. There are a number of other vacant units in close proximity to the site in the High Street and John Street.

#### **4 BACKGROUND**

- 4.1 Planning application 10/00646/DPP for the change of use from shop to hot food takeaway and installation of external extraction flue was refused in 2011. The application was refused for the following reasons:

1. *The proposed development is contrary to Midlothian Local Plan policies RP20 and DP7 as it would detract from the existing character and amenity of the area. In addition the proposal, in combination with the high number of hot food takeaways, cafes, restaurants, hotels and public houses in this part of the town centre, would adversely affect the vitality and viability of this part of the High Street.*
2. *The proposed development would result in the loss of a retail unit and a reduction in the range and quality of facilities within Penicuik Town Centre which is contrary to Midlothian Local Plan policies RP20, SHOP1, SHOP3 and DP7.*

- 4.2 The decision was upheld by the Local Review Body (LRB) at its meeting in April 2011.
- 4.3 Applications for hot food takeaways/restaurants have also been refused on grounds of over provision at 28 High Street, Penicuik (09/00256/FUL and 10/00121/DPP) and 9 Kentigern Mall, Penicuik (11/00159/DPP).

- 4.4 Planning application 12/00693/DPP for the change of use from shop (class 1) to cafe/hot food takeaway (sui generis) at 27 The Square, Penicuik was refused planning permission on 17<sup>th</sup> December 2012. However, on review the LRB granted permission on the basis that:

*The proposed hot food takeaway benefits the town centre by bringing a vacant unit back into commercial use. This material consideration outweighs concerns with regard overprovision and the loss of a retail unit.*

- 4.5 The application has been called to Committee for consideration by Councillor Derek Rosie.

## 5 CONSULTATIONS

- 5.1 The **Policy and Road Safety Manager** was consulted on this application and has no objection.
- 5.2 The **Penicuik and District Community Council** has objected to the proposal. While the site has been vacant for a number of years and it would welcome the unit being open rather than closed, the use would not be compatible with the image that is needed for the High Street. A BIDs group has been formed for the town to boost existing and encourage new businesses. Improving the appearance of the High Street is a key objective and a hot food takeaway would not fit with the aims of this group. It is acknowledged that this may result in the premises stays vacant for longer, but it is important to get the right mix of shops and it is hoped it will be in use as a retail outlet again. There is also sufficient provision of eateries in the area.

## 6 REPRESENTATIONS

- 6.1 Three representations have been received in relation to the application all objecting to the proposed change of use. The concerns raised are as follows:
- There are already too many food establishments in the area;
  - This is likely to lead to the closure of existing restaurants and food facilities;
  - Concerns over parking;
  - Litter in the area as a result of the use;
  - There is a concern that Penicuik will become known as a hot food takeaway town; and
  - Concern over the condition of the roof.
- 6.2 In addition, a petition with 22 signatories has been received objecting to the application on the grounds that another hot food takeaway would have a detrimental impact on other local businesses.

## 7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) and the Midlothian Local Plan, adopted in December 2008. The following policies are relevant to the proposal:

### Midlothian Local Plan

- 7.2 Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area;
- 7.3 Policy **RP22: Conservation Areas** seeks to prevent development which would have any adverse effect on the character and appearance of Conservation Areas;

- 7.4 Policy **SHOP3: Change of Use Within Strategic Town Centres** states the change of use of shops to non-retail uses in Penicuik Town Centre will be permitted provided the proposal meets the following criteria: it is demonstrated to the satisfaction of the Council that there is no realistic prospect of a site continuing in retail use; the proposal will lead to an improvement of the image and vitality of the town centre; and the change of use does not create a street frontage where three or more adjoining units are in non-retail use, nor does it result in 50% or more of the town centre units being in non-retail use; and
- 7.5 Policy **DP7: Control of Class 3 (Food and Drink) Uses and Hot Food Takeaway Shops** states that if the 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.

## **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.
- 8.2 The application site is within the Penicuik Town Centre where there is a presumption in favour of appropriate retail, food and drink and other commercial uses commensurate to a town centre location. However, there is concern from the planning authority and local residents, that the number of food and drink establishments within the town centre can have a detrimental impact on the viability and vitality of the town centre, in particular, within the area of the High Street and The Square. There are fourteen food provision outlets within Penicuik Town Centre, four of which are vacant. A number of retail outlets in the town centre are also vacant. This concern resulted in a number of refusals for a sequence of proposed eateries within the Penicuik Town Centre as outlined in section 4 of this report.

- 8.3 Applications for hot food takeaways/restaurants have been refused on grounds of over provision at the application site, as well as at 28 High Street, 9 Kentigern Mall, and 27 The Square, Penicuik. However, the refusal at 27 The Square, Penicuik was reviewed by the LRB and planning permission was granted for the following reason “The proposed hot food takeaway benefits the town centre by bringing a vacant unit back into commercial use. This material consideration outweighs concerns with regard overprovision and the loss of a retail unit”. This decision is a significant material consideration in the assessment of the current application.
- 8.4 Since the LRB decision, planning permission has been granted for a change of use from shop (class 1) to mixed use of ice cream parlour/hot food takeaway, restaurant and flat dwelling at 2 The Square, Penicuik. The unit at 2 The Square had been vacant since 2006 and in assessing the application it was considered the proposed use would benefit the town centre by bringing a vacant unit back into commercial use. This material consideration outweighed any concern with regard overprovision and the loss of a retail unit. It is considered that this position also applies to the proposed application as the site has been vacant since September 2009 without the prospect of being used as a retail unit.
- 8.5 There is a flat dwelling above the neighbouring energy advice centre to the side of the site, separated from the site by access stairs leading to the restaurant above. The residential property is outwith the control of the applicant. The separation distance between the flat and the proposed use and the fact that there is already a restaurant with ancillary hot food takeaway adjoining the residential unit, means there is unlikely to be any significant detrimental increase on the impact on the amenity of the occupiers of the flat dwelling. In the wider context the proposed hot food takeaway would not result in harm to the general environment of the town centre as a result of noise or disturbance as compared to the existing situation.
- 8.6 In terms of the visual impact, the boarding and vacant nature of the site does not enhance the appearance of the streetscape or the surrounding conservation area. The concern that the loss of a retail unit impacts the long term viability and vitality of a town centre is a genuine one, as day time foot fall in shopping centres drops in areas dominated by restaurants/cafes/takeaways. However, this argument loses weight the longer a unit remains vacant. Once a unit is vacant for more than two or three years, as in this case, the balance in favour of bringing the unit back into use outweighs the aspiration of securing a retail use. There is a retail unit to one side and an energy advice centre to the other. The proposed development would not result in three or more adjoining units in non-retail use. At present there are slightly more retail than non-retail units in the town centre. In this respect, the proposal satisfies the requirements set out in Midlothian Local Plan policy SHOP3.

- 8.7 The Main Issues Report for the Midlothian Local Development Plan is also a material consideration. It continues to support the principle of promoting vibrant town centres, but acknowledges that a more flexible approach with regard the change of use of shops to other uses, including food and drink establishments, may be required to ensure centres remain vibrant.
- 8.8 The plans include details of a ventilation system to be installed on the rear elevation of the building. Due to its proposed position, the flue would not be publicly visible and therefore would have a limited impact on the character and appearance of the conservation area. Further details of the proposed ventilation system are required to ensure that the system is sufficient for the proposed use and the hot food takeaway shall not come into use before the system is in place. In order to address any potential littering in the surrounding area, a litterbin shall be required at the front of the store before the hot food takeaway use begins.
- 8.9 The unit fronts onto an area of on-street parking and the Policy and Road Safety Manager has not raised any concerns.
- 8.10 With regard to the representor's comments about the condition of the roof, this is not a material planning consideration and cannot be taken into account in the assessment of the proposal.

## **9 RECOMMENDATION**

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

*The proposed development would result in a vacant property being brought back into commercial use without having any detrimental impact on the character and appearance of the Town Centre, surrounding properties and Conservation Area. As such, the proposal complies with Midlothian Local Plan policies RP20, RP22, SHOP3 and DP7.*

Subject to the following conditions:

1. Prior to the commencement of development, details of the extract ventilation system shown on drawing number L(--006)(B) shall be submitted to and approved in writing by the planning authority. The 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; and
  - c) Terminate at sufficient height above eaves level to permit the free disposal of exhaust fumes.

The use hereby approved shall not begin until the approved ventilation system is installed and operational. The ventilation system shall thereafter remain operational, as approved, whilst the unit is used as a hot food takeaway.

**Reason:** *These details were not submitted with the original application and are required in order to ensure the proposed development does not have an adverse impact on the amenity of occupiers of nearby properties.*

2. A litterbin shall be provided at the front of the premises during the opening hours of the hot food takeaway.

**Reason:** *To ensure a satisfactory standard of amenity and to safeguard the appearance of the Town Centre and the Penicuik Conservation Area.*

3. The use hereby approved will not open to the public outwith the following hours:

Mondays – Saturdays inclusive:	11am to 12midnight,
Sundays:	11am to 10pm.

**Reason:** *To ensure a satisfactory standard of amenity in the Town Centre.*

**Ian Johnson**  
**Head of Communities and Economy**

**Date: 18 February 2014**

<b>Application No:</b>	<b>13/00853/DPP (Available online)</b>
<b>Applicant:</b>	<b>Scotmid</b>
<b>Agent:</b>	<b>Derek Scott Planning</b>
<b>Validation Date:</b>	<b>5 December 2014</b>
<b>Contact Person:</b>	<b>Mhairi-Anne Cowie</b>
<b>Tel No:</b>	<b>0131 271 3308</b>
<b>Background Papers:</b>	<b>10/00646/DPP</b>