

Corporate Resources
 Midlothian Council
 Fairfield House
 8 Lothian Road
 Dalkeith EH22 3ZQ

Change of use from shop (class 1) to cafe/hot food
 takeaway (sui generis) (retrospective) at 27 The Square,
 Penicuik

APPENDIX A

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File No. 12/00693/DPP

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Midlothian



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Fax: 0131 271 3537

Email: planning-applications@midlothian.gov.uk

Planning Department

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

Thank you for completing this application form:

ONLINE REFERENCE 000057244-001

The online ref number 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:

Format Design

Ref. Number:

First Name: *

Last Name: *

Telephone Number: *

Extension Number:

Mobile Number:

Fax Number:

Email Address: *

Bob

Tait

01316617666

01316596033

formatdesign@aol.com

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

Building Name:

Building Number:

Address 1 (Street): *

Address 2:

Town/City: *

Country: *

Postcode: *

Format Design

146

Duddingston Road West

Edinburgh

UK

EH16 4AP

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

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title: *	Ms
Other Title:	
First Name: *	Salsa
Last Name: *	Porteous
Company/Organisation:	
Telephone Number:	
Extension Number:	
Mobile Number:	
Fax Number:	
Email Address:	

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

Building Name:	Format Design
Building Number:	146
Address 1 (Street): *	Duddingston Road West
Address 2:	
Town/City: *	Edinburgh
Country: *	Scotland
Postcode: *	EH16 4AP

Site Address Details

Full postal address of the site (including postcode where available):

Address 1:	27 THE SQUARE	Address 5:	
Address 2:		Town/City/Settlement:	PENICUIK
Address 3:		Post Code:	EH26 8LH
Address 4:			

Please identify/describe the location of the site or sites.

Northing

Easting

Description of the Proposal

Please provide a description of the 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 shop (Class 1) to cafe/hot food takeaway (sui generis) (retrospective) at 27 The Square, Penicuik, EH26 8LH

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) – 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 of 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.

Please see attached grounds of appeal

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

Yes No

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)

Grounds of appeal

Application Details

Please provide details of the application and decision.

What is the application reference number? *

12/00693/DPP

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

22/10/12

Has a decision been made by the planning authority? *

Yes No

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

17/12/12

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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be conducted by a combination of procedures.

Please select a further procedure *

Holding one or more hearing sessions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? * (Max 500 characters)

We would like a hearing for this application and as Agents would like the opportunity to verbally state our case

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: Bob Tait

Declaration Date: 18/02/2013

Submission Date: 18/02/2013

**Grounds of Review to Local Review Body - 27 The Square, Penicuik, EH26 8LH
Change of use from shop (class 1) to café/hot food takeaway (sui generis) (retrospective).**

The application was refused by delegated powers for the following reasons:

“The proposal would result in the creation of a further non-retail premises in the town centre. Therefore, the proposal, in combination with the high number of food takeaways, cafes, restaurants, hotels and public houses in this part of the town centre, will adversely affect the vitality and viability of this part of Penicuik town centre. The proposal is considered to constitute an overprovision of hot food takeaway businesses and is contrary to Midlothian Local Plan policies RP20, SHOP1, SHOP3 and DP7.”

In the Development Management Planning Application Delegated Worksheet, the planning policies are explained and we do not disagree with the general statement. However, it is our position that the proposal does meet with the spirit of the Local Plan Policies.

Policy RP20 states “a development will not be permitted where it is likely to detract materially from the existing character or amenity of the area.”

Policy SHOP1 states “development proposals bringing about an improvement to the range and quality of retail and commercial leisure facilities in town centres will be considered favourably.”

Policy SHOP 3 states “A change of use of shops to non-retail uses in Penicuik town centre will not be permitted provided the proposal meets the following criteria” (note the report is incorrect as it states NOT be permitted) This should have read will be permitted. The criteria being that 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.”

Policy DP7 states “appropriate locations for hot food takeaways would be within a town centre, local or neighbourhood shopping centre or a predominantly commercial or business area.” The Policy further states that they will not be permitted “where there is residential properties on the floors above 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 general environment of the area as a result of noise, disturbance, smell or litter.”

To summarise:

The main issues of concern highlighted by the policies are as follows;-

1. Will it materially detract from the character or amenity (RP20)

Comment - Prior to the applicant opening the premises they had been vacant for over 5 years with no one interested in occupying it as a shop. The premises has planning permission to be used as an office (class 2 or 4) and in theory a change from retail to non-retail has taken place.

2. ***Will the proposal bring about an improvement to the range and quality of facilities. (SHOP1)***

Comment - The proposal will be an improvement on a vacant and run down unit.

3. ***Is there any realistic prospect of the site continuing in retail use (SHOP3)***

Comment - The unit has been vacant for over 5 years and has been marketed as a shop and an office with no interest. The officer's report states that the previous agent had demonstrated the length of time the premises had been vacant.

4. ***Will the proposal lead to an improvement of the image and vitality of the Town Centre (SHOP3)***

Comment – The planning officer's report acknowledges that in the last application for change of use from retail to non-retail (office) it was unfortunate to lose the retail unit but at least the premises would be occupied by a business that still attracted town centre visitors. The case would be very much the same with this proposal.

5. ***Does it create a frontage where three or more adjoining units are in non-retail use (SHOP3)***

Comment - The proposal does not create three or more adjoining non-retail units.

6. ***Does it result in 50% or more of the Town Centre units being in non-retail use. (SHOP3)***

Comment - The previous application addressed this issue and change of use was granted from vacant retail to non-retail. The situation has not changed other than that there are now more vacant units in the Town Centre.

7. ***Café/hot food takeaway are appropriate in Town Centres (DP7)***

Comment – The planning officer's report refers only to the part of Policy DP7 that refers to hot food takeaways, however this application is for a mixed use of café/hot food takeaway. The premises, as can be seen from the plans and the photographs are laid out as a café with predominately tables and chairs shown in the front shop with takeaway facilities. Policy DP7 also specifically refers to Cafes, Tea Rooms, Coffee Shops where it states ***'that these uses where it is proposed to open only during normal shopping hours (for example 9.00am to 6.00pm) and where the type of cooking facilities will be limited to a domestic scale (for example, domestic cooker, microwave oven etc.) will generally be permitted, proposals in this category may include an element of takeaway trade provided it remains ancillary to the principal use'***. This café opens at 7.00am, (to allow for breakfast trade) and closes at 6.00pm. During the winter months of January, February, March the opening hours are 8.00a.m. to 3.00p.m. It is not a late night operation like many hot food takeaways and restaurants.

8. ***Café/hot food premises should not be under residential premises UNLESS these are owned and occupied by the applicant or his immediate family or by an employee working in the establishment (DP7)***

Comment -The owner of the premises also owns the flat above and the applicant's daughter lives in the flat and also works in the café.

9. *Is it considered to be seriously harmful to the vitality and viability of the shopping centre (DP7)*

Comment - A vacant unit whether it is a vacant shop or a vacant office does not bring vitality to the area and is a liability to both the owner and Town Centre. An occupied unit particularly one that is operating and has proved that it is viable, brings vitality back to that particular part of the Town Centre.

10. *Does it cause significant harm to the residential amenity (DP7)*

Comment - Environmental Health was consulted during the planning process and had no objections subject to the normal conditions. There were 7 letters in support of the application and since the application was refused there has been an online petition i.e. www.gopetition.com/petitions/grant-salsa-s-diner-in-penicuik-a-licence, which to date has obtained 374 signatures in support of the business.

11. *Does it cause significant harm to the general environment as a result of noise, disturbance, smell or litter (DP7)*

Comment - The premises are situated on a very busy main road with lots of traffic noise and this is a small café business which closes early and therefore there will be no noise or disturbance that could be harmful to the environment. There is adequate ventilation for the cooking that takes place in the café and litter bins will be positioned at the front entrance. The proposal will have no detrimental affect or harm on the general environment

Our position is that the premises subject to the appeal (prior to the current proposal) have been vacant for many years with the last use being a shop. However, there was no interest in the premises as a shop and in 2011 an application was made for a change of use to an office. Again, there was no interest from anyone to take over the premises for this use. However this approval demonstrated that change of use had taken place from retail to non-retail. This use has not been taken up but if it had then the proposal would have been for a change of use from one type of non-retail to another type of non-retail, therefore a loss of a retail unit has been accepted.

This is an application in retrospect, due to the fact that the applicant wrongly and naively did not realise that a café required planning permission for a change of use. Nevertheless rightly or wrongly this is a well-run café, the applicant employs 2 full time and 3 part time staff. While acknowledging that this is not a planning matter she is under great stress as she has invested her life savings into this venture and her daughter also lives in a flat over, all of which are part of this investment. There is a lot of support for her locally and the opening finally of a unit that has been vacant for many years can surely only be a positive outcome for Penicuik, The Town Centre and the amenity of the immediate area.

For the above reasons we respectfully request that the appeal is upheld and Planning Permission is granted.

**Format Design
February 2013**

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference:

12/00693/DPP

Site Address:

27 The Square, Penicuik.

Site Description:

The application site is a former retail unit on the ground floor of a two storey building within Penicuik Town Centre. There is a residential property above the site, a hairdresser to one side and a restaurant/takeaway to the other. The ground floor is black painted stone, however the majority of the facade of the shop is covered by advertising signage. The site is within Penicuik Conservation Area.

Proposed Development:

Change of use from shop (class 1) to cafe/hot food takeaway (sui generis) (retrospective).

Proposed Development Details:

The change of use is from a vacant retail unit to a cafe and hot food takeaway. This change of use began operating in July 2012. There are no details of ventilation, external alterations or how the use is to be operated, i.e. hours of operation, number of employees, likely amount sit in/takeaway. The agent for the application has stated that the owner of the site also owns the flat above the application site. It was also confirmed that this flat is occupied by the tenant's daughter who works within the application site.

Background (Previous Applications, Supporting Documents, Development Briefs):

Application site

11/00245/DPP Change of use from shop (class 1) to office (class 4) alterations to shop front and installation of replacement windows. Consent with conditions.

28 The Square

09/00176/FUL Alterations to shop front (retrospective). Permitted.

07/00572/FUL Part change of use of cafe/restaurant to include delicatessen with ancillary hot food takeaway including alterations. Refused. Appealed – appeal dismissed.

05/01007/FUL Alterations and extension to existing car/restaurant including formation of additional storey, new pitched roof and installation of rooflights with part change of use to ground floor to form hot food takeaway. Withdrawn.

2 The Square

10/00045/ADV Display of illuminated signage. Consent with conditions.

08/00400/FUL Change of use from retail/storage to hot food takeaway. Consent with conditions.

06/00773/FUL Alterations to and part change of use form retail/storage to residential (3 flats). Consent with conditions

06/00390/FUL Change of use from retail/storage to residential (5 flats). Refused.

Consultations:

The Council's **Policy and Road Safety Manager** has no objection.

The Council's **Environmental Health** section has no objection provided that conditions are attached to any permission relating to noise and ventilation.

Representations:

One letter of representation has been received in relation to the proposal. They object on the following grounds:

- There are too many food provision units in Penicuik;
- Previous similar applications have been refused in Penicuik; and
- The applicant has flouted regulations by operating the business for 2/3 months.

Seven letters of support have been received. These all state that the premises will operate with no problems as it is so small. They also state that the reuse of the site which was previously vacant for many years will be good and it will tidy the appearance of this part of the street.

Relevant Planning Policies:

Midlothian Local Plan

RP20 Development within the built up area

RP22 Conservation Areas

SHOP1 Town Centres

SHOP3 Change of use within strategic town centres

DP7 Control of Class 3 (Food and Drink) uses and hot food takeaway shops

Planning Issues:

Policy RP20 states that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area. Policy RP22 states that development will not be permitted which would have any adverse effect on the character and appearance of the conservation area. SHOP1 states that development proposals bringing about an improvement to the range and quality of

retail and commercial leisure facilities in town centres will be considered favourably. SHOP3 states that the change of use of shops to non-retail uses in Penicuik town centre will not 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 (or street frontage or floor space) being in non-retail use.

Policy DP7 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.

The planning history shows that planning permission was granted for the change of use of the application premises to an office in 2011. The agent for that application submitted supporting information which demonstrated the length of time that the premises had been vacant, with additional information on the level of interest shown in the unit during that time. In addition, the agent stated there would be a relatively high level of footfall from customers visiting the unit, as it would have a customer counter. At that time it was acknowledged that it would be unfortunate to lose the retail unit but at least the premises would be occupied by a business that still attracted town centre visitors.

In general, the loss of any retail unit within Penicuik Town Centre is a concern to the planning authority. The applicant has not submitted any justification for the change of use from retail to non-retail use. There is no indication as to how long the property has been vacant and if there was any interest in opening the unit as a shop. Although the proposal would result in the loss of a retail unit within the town centre, taking into regard the previous approval at the site for an office, the change of use from retail to non-retail use could be considered acceptable provided that the future use would have a good level of public footfall.

Hot food takeaway uses would generally result in traffic generation, late hours of operation and possible smells. For these reasons policy DP7 of the local plan states that hot food takeaways should only be located within a town centre, local or neighbourhood shopping centre, or a predominantly commercial or business area. The policy also requires that residential properties above and to the side of these uses should be in the same ownership as the hot food takeaway, or occupied by somebody working there. This limits the adverse impact to those who have some link to the benefits of the business.

There is residential property above the application premises. The agent for the application has stated that the owner of the site also owns the flat above the application site. It was also confirmed that this flat is occupied by the tenant's daughter who works within the application site.

As stated by the representor, and reflected in the planning history of the area, there are a high number of hot food takeaways and food-related businesses operating in the area around The Square and High Street.

Of particular note, there is a restaurant/cafe to one side of the application premises and a further restaurant/cafe to the other side of that. There is also a hot food takeaway on the opposite side of the road from the application site. Within Penicuik Town Centre itself there are 15 food-related outlets, excluding the application site and a vacant food provision unit. Over the last three years planning permission has been refused for four proposed food provision units within Penicuik Town Centre. All of these applications were refused due to the planning authority's concerns of overprovision. One of these refusals was appealed to the Local Review Body. The LRB upheld the decision to refuse the application. The planning authority consider that this area of the town centre has reached capacity in terms of the numbers of non-retail uses and the number of cafes/restaurants/hot food takeaways and public houses.

The main concern regarding the loss of retail units is that means that the town centre will have no chance of being a vibrant shopping centre, attracting shoppers, and will instead be an area dominated by restaurants/cafes/takeaways. As such, this proposal does not comply with policies SHOP3 or DP7.

In summary, there is already over-provision of food provision units in this area of the town centre. The high proportion of evening uses will be harmful to the town centre's character and identity, thus the character and amenity of the town centre is considered to be adversely affected and the proposal would not bring about an improvement to the range and quality of retail and commercial facilities in the town centre.

Recommendation:

It is recommended that planning permission be refused.

MIDLOTHIAN

APPENDIX D Midlothian Local Plan



Midlothian



Midlothian Local Plan

ADOPTED BY RESOLUTION OF
MIDLOTHIAN COUNCIL
ON 23 DECEMBER 2008

This Plan has been produced by the
Planning Unit Strategic Services

Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
Midlothian
EH22 3ZN

2.2 The Built Heritage

Policy Title

RP20 DEVELOPMENT WITHIN THE BUILT-UP AREA

2.2.1 National Planning Policy National policy as set out in SPP 1 *The Planning System* states that one of the three general objectives of development plans and development control is “to maintain and enhance the quality of the natural heritage and built environment”. In addition, the importance of good design is highlighted as a priority for the planning system, given that “mistakes cannot be easily or cheaply rectified”.

2.2.2 SPP 3 Planning for Housing (now replaced by SPP 3 *Planning for Homes* – see para. 3.2.6) encourages the full and effective use of land within existing built areas, giving priority to reusing derelict and vacant land. However, it also requires that “infill development respects the scale, form and density of its surroundings and enhances rather than detracts from the character and amenity of existing residential areas”. It indicates that this should be an important consideration for planning authorities when preparing development plans and in determining applications, and for developers when preparing proposals.

2.2.3 Structure Plan Policy The ELSP 2015 recognises the importance of protecting and

enhancing the amenity of all urban areas to safeguard and improve the quality of life of residents of the Lothians. Policy ENV1G requires local plans, in encouraging the development of infill sites, the redevelopment of brownfield land and the conversion of existing buildings, to promote a high quality of design in all new development.

2.2.4 Local Plan Policy Midlothian is not characterised by large areas of brownfield land ripe for redevelopment. It follows therefore that the main areas of new development will be on greenfield sites on the edge of the built-up areas. There will, however, be opportunities for new development within the existing urban areas, including conversion, intensification, infill or redevelopment.

2.2.5 Policy RP20 applies to the existing built-up area of all towns and villages, and the areas of new housing allocations. The Local Plan Proposals Map defines the urban boundaries of the main settlements and also identifies village envelopes. The purpose of the policy is to ensure that new development does not damage or blight land uses which are already established in the neighbourhood, particularly where residential amenity will be affected. Sections 3.7 and 4 contain guidance with regards to wind turbines (policies NRG1 and NRG2), energy for buildings (policy NRG3), the form and layout of development on greenfield sites (policy DP2), extensions to existing housing (policy DP6) and control over advertising (policy DP8), which may be relevant to proposals for development within the built-up area.

RP20 DEVELOPMENT WITHIN THE BUILT-UP AREA

Development will not be permitted within existing and future built-up areas, and in particular within residential areas, where it is likely to detract materially from the existing character or amenity of the area.

Policy and Proposal Titles

RP22	CONSERVATION AREAS
RP23	CONSERVATION AREAS – AMENDMENTS (PROPOSAL)
RP24	LISTED BUILDINGS

2.2.9 National Planning Policy Special controls in respect of buildings and areas of special architectural or historic interest are brought into force under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Under this Act, the Scottish Ministers are required to compile a list of buildings of special architectural or historical interest (listed buildings). Local authorities are required to determine if there are areas of special architectural or historic interest (conservation areas) and if so, to designate these. Both are afforded additional protection through development plan policies seeking to preserve and enhance their character and appearance whilst taking into account that such areas must function successfully as places for social and economic activity. Guidance is set out in NPPG 18 *Planning and the Historic Environment* and in Historic Scotland's *Memorandum of Guidance on Listed Buildings and Conservation Areas*.

2.2.10 Structure Plan Policy Strategic policy takes on board conservation objectives in conservation areas, and in urban areas generally, and supports the conservation of all listed buildings. ELSP policies ENV1 and ENV10 require that policies for maintaining and enhancing conservation areas, and protecting all listed buildings and their settings, are contained in local plans.

2.2.11 Local Plan Policy Midlothian's towns and villages have many historically and architecturally interesting areas and individual buildings of special architectural or historic interest. These contribute to the distinctive character of the urban and rural environment and to the quality of life in Midlothian generally. As part of our heritage, they are valuable for education, recreation and tourism.

2.2.12 Conservation area and listed building status does not mean that development, including new building and alterations to existing buildings, is necessarily opposed. Development proposals must be of an appropriate character, scale and appearance. Consideration requires to be given to opportunities for the preservation and enhancement of these important areas. Policies RP22 and RP24 set out the requirements where new development is proposed in conservation areas, or affecting listed buildings,

and identify where there is scope for enhancing any special qualities.

2.2.13 Minor changes to properties, which normally would not require planning consent, could erode the character and appearance of a conservation area. In Midlothian's Conservation Areas, the Council has put in place Article 4 Direction Orders to remove permitted development rights in order to ensure control over all changes. Requirements specific to individual Conservation Areas (Newtongrange, Broomieknowe and Lasswade & Kevock) are contained in detailed policy DP5. Supplementary planning guidance specific to other Conservation Areas may be approved during the lifetime of the Plan. Work is currently in progress to prepare Conservation Area appraisals for all of Midlothian's Conservation Areas and, when approved as supplementary planning guidance, these will assist with planning decisions relating to development proposals and also help to guide any future enhancement schemes. Conservation Area appraisals and any subsequent enhancement schemes will be the subject of consultation with appropriate organisations including community groups.

2.2.14 There are twenty designated Conservation Areas in Midlothian, three of which are classified as outstanding for grant purposes. Defined on the Local Plan Proposals Map, their locations are: Borthwick & Crichton (outstanding), Broomieknowe, Carrington, Dalkeith (outstanding), Dewartown, Edgehead, Eskbank & Ironmills, Fala, Fala Dam, Gorebridge, Howgate, Lasswade & Kevock, Mavisbank (outstanding), Newbattle, Newlandrig, Newtongrange, Pathhead & Ford, Penicuik, Roslin, and Temple & Arniston. The Local Plan makes provision for the designation of a new Dalhousie Conservation Area, the boundary for which is shown on the Local Plan Proposals Map. In addition, amendments are to be made to the boundaries of the Lasswade & Kevock, Mavisbank and Penicuik Conservation Areas (policy RP23) to ensure that they better reflect the architectural and historic significance of these areas. Statutory procedures are required to implement these proposals, and to update the Article 4 Direction Orders applicable within the Conservation Areas.

2.2.15 In conjunction with the Dalkeith town centre regeneration project, the Council is proposing a Townscape Heritage Initiative within the Dalkeith Conservation Area. This is a Heritage Lottery-funded grant initiative which supports schemes led by partnerships of local, regional and national interests that aim to regenerate the historic parts of their towns and cities. The proposed project focuses on:

- ❖ protecting the historic/architectural fabric of Dalkeith;
- ❖ enhancing the Conservation Area and improving the quality of the public realm;
- ❖ encouraging additional investment in the social and economic infrastructure of Dalkeith, including the reuse of historic buildings; and
- ❖ promoting greater awareness of conservation and the historic environment.

The initiative seeks to involve all sections of the local community in the project and has attracted initial support from the local business community. The Council will seek developer contributions from the proposal HOUS1 sites in Dalkeith as part of the project partnership (refer to policy IMP3).

RP22 CONSERVATION AREAS

Within or adjacent to a Conservation Area, development will not be permitted which would have any adverse effect on its character and appearance.

New Buildings, Extensions and Alterations

In the selection of site, scale, choice of materials and details of design, it will be ensured that new buildings, and extensions and alterations to existing buildings, preserve or enhance the character and appearance of the Conservation Area. Traditional natural materials appropriate to the locality or building affected will be used in new buildings, extensions or alterations. Particular care in the design of replacement windows and doors will be required on the public frontage of buildings.

Demolition

- A.** Demolition to facilitate new development of part or all of a building or other structure that makes a positive contribution to a Conservation Area will only be permitted where it can be shown that:
- ❖ the structural condition of the building is such that it cannot be adapted without material loss to its character to accommodate the proposal; and
 - ❖ the Conservation Area will be enhanced as a result of the redevelopment of the site; and
 - ❖ there is no alternative location physically capable of accommodating the proposed development.
- B.** Where demolition of any building or other structure within a Conservation Area is proposed, it must be demonstrated that there are acceptable proposals for the immediate future use of the site which enhance the character or appearance of the Conservation Area.

Detailed plans for an acceptable replacement building must be in receipt of planning permission before conservation area consent will be granted for demolition and redevelopment. Conditions will be applied to the planning permission to ensure that demolition does not take place in advance of the letting of a contract for the carrying out of a replacement building or alternative means of treating the cleared site having been agreed.

These requirements may not apply in circumstances where the building is of no architectural or historic value, makes no material contribution to the Conservation Area, and where its early removal would not detract from the character and appearance of the Conservation Area.

3.5 Town Centres and Retailing

Policy Titles

- SHOP1 TOWN CENTRES
- SHOP2 MAJOR RETAIL AND COMMERCIAL LEISURE DEVELOPMENT WITHIN OR ON THE EDGE OF STRATEGIC TOWN CENTRES
- SHOP3 CHANGE OF USE WITHIN STRATEGIC TOWN CENTRES
- SHOP4 STRAITON RETAIL PARK
- SHOP5 MAJOR RETAIL AND COMMERCIAL LEISURE DEVELOPMENT OUTWITH STRATEGIC TOWN CENTRES AND STRAITON
- SHOP6 MINOR RETAIL FACILITIES
- SHOP7 NEW NEIGHBOURHOOD SHOPPING FACILITIES
- SHOP8 OPEN AIR MARKETS
- SHOP9 FACTORY SHOPS

3.5.1 National Planning Policy SPP 8 *Town Centres and Retailing* re-emphasises the Government's commitment to town centres, acknowledges the broad range of land uses present in town centres, and sets out policies on retailing and commercial leisure developments. It attaches great importance to the adoption of a sequential approach to selecting sites for retail development, favouring firstly town centre sites, secondly, edge of town centre sites, thirdly, other commercial centres identified within the development plan, and fourthly and finally, out-of-centre sites in locations that are, or can be made, easily accessible by a choice of modes of transport, and where the impact on the vitality and viability of existing centres can be shown to be acceptable. The SPP requires the principles underlying the sequential approach to apply to proposals to expand, or to change the use of, existing developments where the proposals are of a scale or form sufficient to change their role and function. There is support for shops in small towns, for village shops, and for neighbourhood centres and local shops. The emphasis is on town centres accessible by public and private transport, and on improving the town centre environment.

3.5.2 Structure Plan Policy The Structure

Plan was prepared in accordance with NPPG 8, the predecessor guidance to SPP 8. It identifies the region's strategic shopping centres, categorising these as town centres and 'Other Major Shopping Centres of Strategic Importance.' Dalkeith, Bonnyrigg and Penicuik are identified as town centres and Straiton is the only Midlothian 'Other Major Centre of Strategic Importance'. Where development cannot be accommodated within, or on the edge of, a town centre, the next preference is to channel development to these 'Other' centres. The Structure Plan recognises that there are many smaller local centres which provide a vital service to surrounding neighbourhoods. There is a presumption that these local centres will be nurtured and protected, however it is for local plans to determine the future role of individual centres according to local circumstances. The principles of NPPG 8 are not significantly different to those of SPP 8. However, a local plan must conform with the current approved structure plan and therefore the Local Plan must be compliant with the ELSP 2015.

3.5.3 Local Plan Policy Access to a choice of convenient shopping facilities for all of Midlothian's population is an important objective of the Council. Existing town centres serve local communities well. A number of such centres have been the subject of environmental improvements to enhance their town centre environment, for example, the Bonnyrigg town centre environmental enhancement scheme. The Council is also promoting an initiative, with its partners, aimed at revitalising Dalkeith town centre. A draft master plan has been prepared which will create around 3,700m² of new retail floorspace, in the first phase, as part of a mixed-use development. The Council, through policy SHOP1, will continue to support developments that will bring about an improvement to the range and quality of retailing and the environment of all of Midlothian's town centres.

3.5.4 Studies carried out by Midlothian Council and the other ELSP authorities point to continuing future demand for additional food and non-food retail floorspace. In Midlothian this growth will be partly the result of population increases provided for in this and previous development plans. Currently there is significant retail expenditure leakage from Midlothian, and this loss will increase without investment in further retail floorspace in Midlothian. Policy SHOP6 will support minor retail facilities across all Midlothian's town and neighbourhood centres.

3.5.5 For major retail developments, the Local Plan reflects national guidance and the ELSP, by applying a sequential approach through policies

SHOP2, SHOP4, and SHOP5. These policies act to encourage, in the first instance, the development of major retailing proposals within or on the edge of Midlothian's strategic town centres, that is Dalkeith, Penicuik and Bonnyrigg, as defined on the Local Plan Proposals Map. Where no alternative sites are available in these strategic town centres, major retail development is supported in Straiton Retail Park, subject to criteria having been met. Major retailing proposals will only be considered outwith the strategic retail centres where it can be shown that there are no suitable sites available in these centres, and that they can meet a range of criteria, to prevent adverse impacts and encourage accessibility by means other than private car.

3.5.6 Midlothian Council recognises the importance of the strategic town centres, and the need to ensure they retain their vitality. It considers that there can come a point at which the density of shops in a centre is weakened, through increasing losses to non-retail uses, such that the centre no longer functions as an attractive destination, threatening the viability of remaining retailers. Policy SHOP3 seeks to overcome this problem by protecting the role of the three strategic town centres as retail destinations. The policy aims to limit the number of retail units being lost to non-retail functions. However, the policy contains sufficient flexibility to allow, in specified circumstances, for other uses that will improve the image and vitality of the centre. This reflects the view of SPP 8, that a town centre is more than a retail centre. Supplementary guidance on the control of Class 3 (food and drink) uses and hot food takeaway shops is set out in detailed policy DP7 as a means to control this specific non-retail use.

3.5.7 Given the significant number of new houses planned in Midlothian over the next 10 years, policy SHOP7 reflects support for new retail facilities in centres which are well located in relation to residential development. In general, it is not envisaged that there would be a need for retail developments in excess of 1000m² gross floorspace in neighbourhood centres. However, it is acknowledged that there may be occasions where a larger development could be justified in a neighbourhood centre because of the particular circumstances in the area, for example, in areas of significant residential development at some distance from existing centres.

3.5.8 Policies SHOP8 and SHOP9 respectively set out the circumstances whereby open air markets within existing centres and factory shops on industrial sites may be acceptable.

3.5.9 Straiton is the only 'Other Major Shopping Centre of Strategic Importance' in Midlothian, as identified in Schedule 6.2 of the Structure Plan. Apart from the earlier developments of Costco and IKEA, expansion at Straiton has been limited to the development of the Lower Straiton Retail Park and approval of a small extension close to the A701, on the west side of the Park. Both areas lie within the approved retail park boundary. Some rationalisation of parking has been implemented to improve the park environment and operation. Given the results of the recent retail assessments that expenditure is being lost from Midlothian, the Council considers it desirable to support the continued success of Straiton. Accordingly, a small southward extension of the Park is provided for in this Plan, so that limited further expansion can take place if required (subject to the criteria of policy SHOP4). Therefore, provided development meets an identified need which cannot be accommodated in Midlothian's strategic town centres, and subject to its impact not affecting the viability and vitality of other town centres, retail proposals will be supported at Straiton.

3.5.10 Attention in the coming Plan period will focus on the need to overcome deficiencies in the retail park, in particular with regard to accessibility by means other than private car. The A701 Multi-Modal Study concluded that development should concentrate at the northern end of the A701, that is in the Straiton area, to take advantage of current and future public transport provision. The Council is undertaking a series of junction modifications to improve bus movement in this corridor. These, in association with the Straiton park and ride, will modify traffic movement, and offer transport alternatives, in the Straiton A720 junction area. The Structure Plan requires the role of Schedule 6.2 centres to be defined in local plans, and this is set out for Straiton overleaf:

Definition of Role of Schedule 6.2 Centre: Straiton

Straiton is the only 'Other Major Shopping Centre of Strategic Importance' in Midlothian. The role of Straiton is to absorb retail and commercial leisure development that cannot be accommodated in, or on the edge of, Schedule 6.1 centres (which for Midlothian comprise Dalkeith, Penicuik and Bonnyrigg). There is potential to diversify the centre's role, with commercial leisure and food and drink uses, and for redevelopment of units with higher quality design, and environmental improvements. Current limitations for the centre are its linear layout, which encourages short internal car journeys, and poor east-west public transport links within Midlothian. Future development should address these shortcomings.

3.5.11 Major new freestanding retail warehouses and factory outlet centres are unlikely to be supported, in line with SPP 8 and the ELSP. The proactive town centre initiatives, the limited expansion of Straiton Retail Park boundary and the effect of policies SHOP1, 2, 4 and 5, which together combine to provide a comprehensive sequential approach, make it unlikely that a new freestanding retail park or shopping centre would be supported.

3.5.12 The advice provided by SPP 8 relates not

only to retail facilities but also to commercial leisure developments. As such new commercial leisure facilities will be subject to the same sequential test applied to retail developments. Therefore commercial leisure proposals will be supported in the strategic town centres, and if accommodation is not available there, the Straiton area will be considered, subject to the criteria of policy SHOP4 being met.

3.5.13 As a means to assess quantitative, qualitative, vitality and viability issues relating to new retail proposals, there could be a requirement for a Retail Impact Assessment. These assessments will generally be required for larger retail or commercial leisure developments (over 2,500 m² gross floorspace), but may also be sought for smaller proposals where the Council is of the view that these may pose a threat to existing centres.



SHOP1 TOWN CENTRES

Development proposals bringing about an improvement to the range and quality of retail and commercial leisure facilities provided in all Midlothian town centres will be considered favourably. Measures for improving the environment and accessibility of town centres will be supported. In particular, support is given to the implementation of the Dalkeith town centre regeneration initiative.

With respect to the new Shawfair town centre (policy COMD1 – committed development), reference should be made to Appendix 2 for the detail of the policy.

SHOP2 MAJOR RETAIL AND COMMERCIAL LEISURE DEVELOPMENT WITHIN OR ON THE EDGE OF STRATEGIC TOWN CENTRES

Proposals for major retail and commercial leisure development, or extensions to existing facilities, will be permitted within, on the edge of, or sufficiently close to form an effective extension to the strategic town centres of Bonnyrigg, Dalkeith and Penicuik, provided they do not (either individually or cumulatively with other developments) undermine the vitality and viability of other strategic town centres.

SHOP3 CHANGE OF USE WITHIN STRATEGIC TOWN CENTRES

The change of use of shops to non-retail uses in Bonnyrigg, Dalkeith and Penicuik town centres will be permitted provided the proposal meets all the following criteria:

- A. it is demonstrated to the satisfaction of the Council that there is no realistic prospect of a site continuing in retail use;
- B. the proposal will lead to an improvement of the image and vitality of the town centre; and
- C. 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 (or street frontage or floor space) being in non-retail use.

SHOP4 STRAITON RETAIL PARK

Within Straiton Retail Park, as identified on the Local Plan Proposals Map, proposals will be permitted for new retail and commercial leisure development or extensions to existing facilities provided that:

- A. there are no alternative sites available within, on the edge of, or sufficiently close to form an effective extension to, Bonnyrigg, Dalkeith and Penicuik town centres;
- B. they address a quantitative or qualitative deficiency within the local area;
- C. they do not, either individually or cumulatively with other developments, undermine the vitality and viability of other town centres, or other major shopping centres of strategic importance, within the expected catchment area of the proposed development; and
- D. they are accompanied by measures to improve the environmental quality of the retail park and its accessibility by public transport, walking and cycling.



4.7 Control of Food and Drink Uses

DP7 CONTROL OF CLASS 3 (FOOD AND DRINK) USES AND HOT FOOD TAKEAWAY SHOPS

1 Hot Food Takeaway Shops

Hot food takeaway shops will only be permitted if they are located within a town centre, local or neighbourhood shopping centre, or a predominantly commercial or business area. Even in these locations, hot food takeaway shops 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 properties, unless the affected properties are owned and occupied by the applicant or his immediate family, or by an employee working in the proposed hot food establishment. Within existing shopping centres, consideration will be given to the cumulative effect of additional hot food takeaway establishments on the vitality and viability of the centre, and permission will not be granted if this is assessed to be seriously harmful.

Planning permission will not be granted for a hot food takeaway shop in any circumstance where it would cause significant harm to residential amenity or to the general environment of the area as a result of noise, disturbance, smell or litter. Planning permission will not be granted in a location where it would present a threat to road safety, for example, by encouraging on-street parking at a dangerous location.

Any external alterations to premises resulting from their conversion to a hot food takeaway shop, including any external flues or other ventilation equipment, must not be detrimental to the character and appearance of the building and the area in which the premises are located.

Where planning permission is granted for a hot food takeaway shop, conditions may be imposed to require the following:

- a) installation, operation and adequate maintenance of an effective system for the extraction and dispersal of cooking fumes to minimise the likelihood of nuisance being caused by cooking smells. 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;
- b) no noise from the premises being audible in any nearby residential or other noise-sensitive building. This relates to impact noise, airborne noise, and noise from any sound reproduction

system such as a television or music player. Sound insulation must be provided if needed to meet this requirement;

- c) an adequate area within the premises for the storage of refuse, and a litter bin immediately outside the front door of the premises;
- d) hours of opening no later than 10 p.m. on Sundays and midnight on other days.

2 Restaurants

A proposed restaurant that includes a hot food takeaway element, will be considered on the basis of all the criteria outlined above.

Applications for restaurants solely for the consumption of food and drink on the premises will be considered on their individual merits, taking into account such factors as the size of the proposed establishment; its relationship to adjoining uses and, in particular, residential properties; its relationship to other relevant planning policies; and its likely traffic generation and parking provision.

Where planning permission is granted for a restaurant solely for the consumption of food and drink on the premises, a condition will 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. Planning permissions for restaurants will include conditions, as appropriate, to mitigate any impact on the amenity of the surrounding area from noise or cooking smells.

3 Cafes, Tea Rooms, Coffee Shops

Applications for the above-mentioned types of uses, where it is proposed to open only during normal shopping hours (for example, 9.00 a.m. to 6.00 p.m.) and where the type of cooking facilities will be limited to a domestic scale (for example, domestic cooker, microwave oven etc.) will generally be permitted in existing shopping centres, and other areas of predominantly commercial or business use. In other locations, they will be considered on their individual merits and in relation to other planning policies.

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.

Proposals within this category may include an element of takeaway trade, provided that it remains ancillary to the principal use of the premises for the consumption of food and drink on the premises.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

APPENDIX E

Reg. No. 12/00693/DPP

Format Design
146 Duddingston Road West
Edinburgh
EH16 4AP

Midlothian Council, as Planning Authority, having considered the application by Ms Salsa Porteous, 27 The Square, Penicuik, EH26 8LH, which was registered on 22 October 2012 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Change of use from shop (class 1) to cafe/hot food takeaway (sui generis) (retrospective) at 27 The Square, Penicuik, EH26 8LH

In accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	9748 1:1250 1:500	22.10.2012
Floor plan	974801 1:100	22.10.2012

The reasons for the Council's decision are set out below:

The proposal would result in the creation of a further non-retail premises in the town centre. Therefore, 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, will adversely affect the vitality and viability of this part of Penicuik town centre. The proposal is considered to constitute an overprovision of hot food takeaway businesses and is contrary to Midlothian Local Plan policies RP20, SHOP1, SHOP3 and DP7.

Dated 17 / 12 / 2012



.....
Duncan Robertson
Senior Planning Officer; Local Developments
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

PLEASE NOTE

If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Development Manager, Development Management Section, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith EH22 3ZN. A notice of review form is available from the same address and will also be made available online at www.midlothian.gov.uk

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Prior to Commencement (Notice of Initiation of Development)

Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing. Failure to do so would be a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006). A copy of the Notice of Initiation of Development is available on the Council's web site www.midlothian.gov.uk

IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION

Making an application

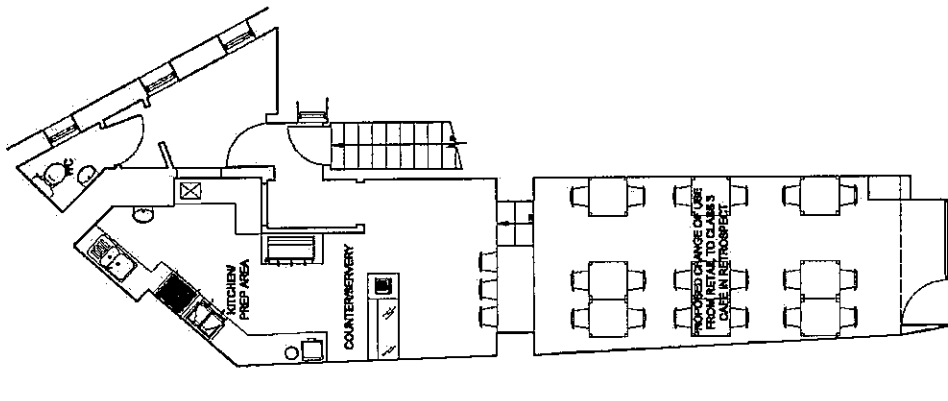
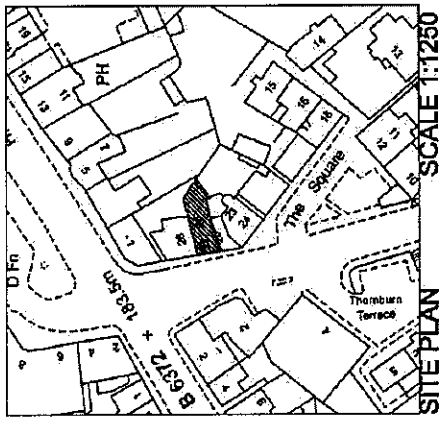
Please note that when you submit a planning application, the information will appear on the Planning Register and the completed forms and any associated documentation will also be published on the Council's website.

Making comment on an application

Please note that any information, consultation response, objection or supporting letters submit in relation to a planning application, will be published on the Council's website.

The planning authority will redact personal information in accordance with its redaction policy and use its discretion to redact any comments or information it considers to be derogatory or offensive. However, it is important to note that the publishing of comments and views expressed in letters and reports submitted by applicants, consultees and representors on the Council's website, does not mean that the planning authority agrees or endorses these views, or confirms any statements of fact to be correct.

APPENDIX F

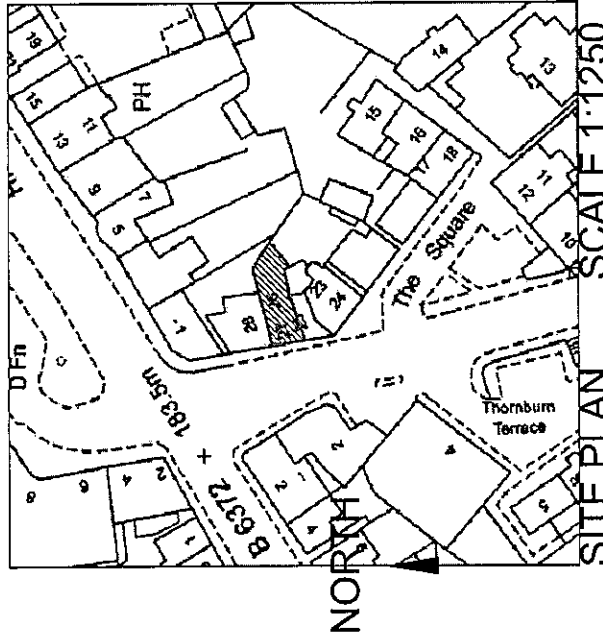
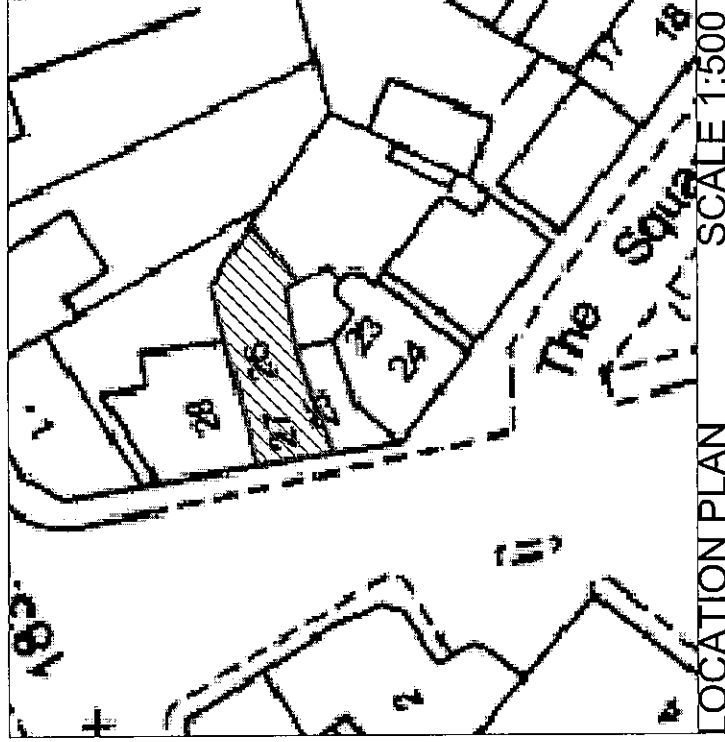


Red dashed lines indicate downtakings

REV	DATE	DESCRIPTION	BY	DATE	DETAIL

<p>GENERAL NOTES:</p> <p>THIS DRAWING WAS PREPARED TO OBTAIN BUILDING CONTROL APPROX PLANNING PERMISSION AND CAN ONLY BE USED AS A WORKING DRAWING WITH PERMISSION FROM BUILDING CONTROL.</p> <p>THE OFFICE'S LIABILITY ENDS UPON THE RECEIPT OF A DECISION FROM BUILDING CONTROL APPROX THE PLANNING DEPARTMENT.</p> <p>THIS DRAWING IS NOT TO BE REPRODUCED WITHOUT PERMISSION.</p> <p>CONTRACTOR NOT TO DEPART FROM THE APPROVED DRAWINGS WITHOUT INFORMING FORMAT DESIGN.</p> <p>ALL SIZES AND DIMENSIONS TO BE VERIFIED ON SITE BY CONTRACTOR AND MANUFACTURER.</p>	<p>SERVICE USES (REFERENCE):</p> <p>MEASURED SURVEYS PLANNING APPLICATIONS FEASIBILITY STUDIES NEW BUILD PLANNING APPLICATIONS BUILDING WARMUP APPLICATIONS LIQUOR LICENSING DRAWINGS DEED PLAN</p>	<p>drawing no: 8748 01</p> <p>DATE: PLANNING</p>	<p>drawing title: Ground floor plan.</p> <p>job title: 27 The Square, Perth.</p> <p>client: Mc & Forbes.</p>	<p>scale: 1:100 @ A3</p> <p>drawn: CB</p>
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				<p>format design</p> <p>FADADS Limited</p> <p>Hollywood Business Park 145 Duddingston Road West Edinburgh EH16 4AP</p> <p>Tel: 0131 661 7666 Fax: 0131 659 6033 Email: formatdesign@fcd.com Web: www.formatbuildingdesign.com</p>				