



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

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

2 BACKGROUND

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

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

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

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

4 APPEAL DECISIONS

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

5 RECOMMENDATION

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

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



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

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

Date of appeal decision: 17 October 2018

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

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

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

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



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

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

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

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

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

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

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

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

The effects of the proposals on town centres in Midlothian

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

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

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

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

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

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

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

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

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

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

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

Other matters

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

Sue Bell
Reporter