



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

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

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

2 LOCATION AND SITE DESCRIPTION

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

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

3 PROPOSAL

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

4 BACKGROUND

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

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

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

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

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

5 CONSULTATIONS

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

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

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

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

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

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

- There are examples of local authorities elsewhere taking positive action across departments, such as limiting the number of fast food outlets, using planning as the mechanism; and
- Other areas such as licensing take into account the effect on health and wider society.

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

6 REPRESENTATIONS

6.1 There have been three representations received, of which two are objections and one is in support. All representations can be viewed fully online. The reasons for objecting are as follows:

- The application, in conjunction with the recently consented drive-through at the neighbouring site, will cause congestion;
- The businesses will result in litter being deposited locally;
- The Transport Assessment uses data from 2015;
- Queuing within Tesco car park will result in queuing traffic on Eskbank roundabout;
- Deliveries will cause congestion;
- The development has poor pedestrian links with the existing Tesco store and car park;
- The jobs created will be of low quality with poor pay and conditions;
- The drive through restaurants will encourage unhealthy eating;
- The restaurants will create noise;
- The restaurants will encourage anti-social behaviour; and
- National chains weaken the local economy and undermine local businesses.

6.2 The representation in support of the proposal did not provide any reasons for supporting the application.

7 PLANNING POLICY

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

Midlothian Local Development Plan 2017 (MLDP)

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

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

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

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

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

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

8 PLANNING ISSUES

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

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

Principle of development

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

Impact on Town Centres

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

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

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

Traffic and Parking

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

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

Design

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

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

Landscaping

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

Signage

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

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

Litter

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

Anti-Social Behaviour

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

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

Noise and ventilation

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

Air Quality

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

Healthy Eating

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

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

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

Neighbour Notification

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

Developer contributions

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

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

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

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

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

9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

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

Subject to:

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

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

2. On completion of the decontamination/remediation works referred to in Condition 1 above and prior to any building on the site being brought into use, a validation report or reports shall be submitted to the Planning Authority confirming that the works have been carried out in accordance with the approved scheme. No building on the site shall be brought into use unless or until the Planning Authority have approved the required validation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. The kitchen of the restaurant shall be ventilated by an extraction ventilation system which shall:
 - a) Be designed to achieve 30 air changes per hour;
 - b) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
 - c) Prevent the emission of cooking odours likely to cause nuisance to neighbouring commercial units and surrounding residential properties; and
 - d) Terminate at sufficient height to permit the free disposal of exhaust fumes.

10. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an

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

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

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

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

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

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

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

Ian Johnson
Head of Communities and Economy

Date: 2 October 2018

Application No: 18/00181/DPP

Applicant: SC Dalkeith Limited, 349 Bath Street, Glasgow

Agent: Iain Hynd, Barton Wilmore, 68-70 George Street, Edinburgh

Validation Date: 20 March 2018

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Background Papers: None



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

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