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**APPLICATION FOR PLANNING PERMISSION 17/00944/DPP, ERECTION OF TWO STOREY DRIVE THROUGH RESTAURANT; ALTERATIONS TO EXISTING CAR PARK AND ACCESS ROADS AT LAND AT TESCO CAR PARK, HARDENGREEN, DALKEITH**

Report by Head of Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1** The application is for the erection of a two storey drive through restaurant and associated alterations to an existing supermarket car park and access roads. The application site is an area of the existing car park at Tesco, Hardengreen, Dalkeith. There has been 40 representations and consultation responses from the Coal Authority, the Council's Environmental Health Manager, the Council's Policy and Road Safety Manager, the Eskbank and Newbattle Community Council and the Bonnyrigg and Lasswade Community Council. 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 an area of car park that serves the existing Tesco supermarket at Hardengreen. The site is situated approximately 100 metres south west of the supermarket building. The site is currently occupied by 58 car parking spaces, of which 2 are currently being used to house recycling facilities; a small building, housing the store's Click and Collect operations, with 7 associated parking spaces; and an area of concrete hardstanding that was formerly occupied by a recycling machine and now houses recycling skips/bin.
- 2.2** The site area is 2,236 square metres (0.22 hectares). The site is relatively flat.
- 2.3** The site is bounded to the north east by a further area of car parking, to the south east by the internal access road that provides access to the supermarket for buses and delivery vehicles; beyond the access road is a vehicle coachworks business. The site is bounded to the south west by the same access road; beyond the access road is a vacant plot

of land that has been the subject of planning applications for retail development. To the north west the site is bounded by a roundabout that forms part of the internal road network of the supermarket and the main access road to the supermarket car park.

- 2.4 Most of the site is situated within the Eskbank and Newbattle Community Council area. However a small portion of the application site at the south western edge is situated within Bonnyrigg and Lasswade Community Council area.

### **3 PROPOSAL**

- 3.1 The proposal relates to the erection of a two storey drive through restaurant. The applicant is McDonald's Restaurants. The ground floor of the building will house the customer counters, the kitchen and storage space. The upper floor will house the dining space and service facilities for customers and staff; the supporting transport statement states that the restaurant will have 187 seats. Various plant such ventilation equipment and solar panels will be sited on the roof of the building; the plant will be enclosed by a screen to ensure that it is not visible from ground level.
- 3.2 The main car parking and circulation space will be to the south east of the building. The restaurant will have access to 33 parking spaces; of which 19 will be within the curtilage of the restaurant and 14 will be shared with Tesco. The dedicated spaces will include 2 disabled spaces, 2 electric vehicle charging spaces and 1 reserve space for drive through customers. The drive through lane will be accessed through the car park and will pass round the south western and north western edges of the building.
- 3.3 The building will be predominantly two storeys in height with a single storey element attached to the south west elevation of the building and an enclosed open corral area attached to the south west elevation of the single storey element. The building will be oriented with its principal elevation facing south eastwards. The principal elevation will have a total width of 31.1 metres including the single storey element and corral area. The building will be 12.6 metres deep and 8.5 meters tall to the top of the plant enclosure screen that will be situated on the roof of the building.
- 3.4 The building will have a contemporary design with a flat roof, large areas of full height glazing and a modern palette of finish materials. The walls will be clad with a mix of laminate and ceramic cladding panels using predominantly grey stone effect or walnut coloured timber effect. A vertical feature is created at two corners of the building via the use of timber effect aluminium battens. The colours of the building will be a mix of grey and timber effect.

- 3.5 The application is accompanied by:
- a planning statement;
  - a design and access statement;
  - a ground stability report;
  - a noise report;
  - a transport statement; and
  - a travel plan.

## **4 BACKGROUND**

- 4.1 In 1995 outline planning permission was granted for a private housing development of 45 houses and a superstore 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).
- 4.2 Planning permission was granted in 1997 for the erection of a foodstore 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.
- 4.3 In addition to the current planning application the applicant has also submitted four applications for Express Advertisement Consent (application references 17/00947/ADV, 17/00948/ADV, 17/00949/ADV and 17/00950/ADV) which relate to signage required in association with or as a consequence of the current planning application. These applications do not form of this planning application. An extension has been agreed with the applicant's agent to allow time for the planning application to be considered by the Committee before any decisions are issued in relation to the advert applications.
- 4.4 The vacant site to the south west of the application site has been the subject of various applications. Outline planning permission was previously granted at appeal 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.
- 4.5 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, but again was not implemented and this permission has also expired.
- 4.6 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 has since expired.

- 4.7 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.
- 4.8 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.
- 4.9 The current application has been called to committee by Councillor Smaill on matters relating to effects on residential areas and traffic capacity.

## 5 CONSULTATIONS

- 5.1 The **Coal Authority** agrees with the findings of the ground stability report that probable shallow mine workings potentially pose a risk to the stability of the proposed development and that therefore a scheme of investigations is necessary to determine the location of any mine workings. The Coal Authority has no objection to the proposal subject to a condition being used to secure a scheme of investigations and, if necessary, a scheme of remediation prior to further development being carried out.
- 5.2 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; and a scheme of

investigations and, if necessary, a scheme of remediation to deal with any possible ground contamination.

- 5.3 The Council's **Policy and Road Safety Manager** has no objection to the proposal.
- 5.4 **Eskbank and Newbattle Community Council** objects to the proposal on the following grounds:
- additional time should be allowed for consultation with the community for applications of this type and that wider neighbour notification should be carried out;
  - concern about the possible increase in traffic using Eskbank Roundabout and the resulting congestion. The accuracy of the information provided in the applicant's transport statement is queried and it is suggested that the Council should commission independent analysis of such submissions in the future. It is noted that when the initial location for Eskbank station was identified Tesco raised concerns regarding the increase in traffic and the impact on Eskbank Roundabout. It is also noted that it is difficult for pedestrians to cross the access road to Tesco at present and that more traffic will make this harder;
  - the remaining car parking spaces will not be sufficient to accommodate the demand for spaces at Tesco and questions whether the Council has been rigorous enough in assessing the information provided;
  - the design is not of a high enough standard in particular the colour scheme;
  - the Community Council hopes that McDonald's will contribute towards litter picking in the area and that this can be secured either via condition or developer contributions;
  - the Council should have been more rigorous in assessing the information provided by the applicant when calculating developer contributions; and
  - the proposal will have a detrimental impact on businesses within Dalkeith town centre and that the proposal is contrary to retail policies contained in the Midlothian Local Development Plan 2017. Reference is made to the Reporter's decision on application 16/00618/DPP
- 5.5 **Bonnyrigg and Lasswade Community Council** offered neutral comments on the application. The Community Council acknowledges that the proposal will provide employment but is concerned that the restaurant will cause anti-social behaviour and result in an increase in littering. It is recommended that conditions be attached relating to litter and noise. It is suggested that McDonald's should contribute to Community Action Teams.

## **6 REPRESENTATIONS**

- 6.1 There have been 41 representations received, of which 39 are objections and two are in support. All representations can be viewed fully online. The reasons for objecting are as follows:
- the existing Tesco shop generates litter and the proposed development will add to this;
  - the proposed development will cause congestion on Eskbank Roundabout and on the access roads that serve the existing Tesco car park and filling station;
  - the proposed restaurant will attract anti-social behaviour;
  - the proposed development will encourage unhealthy eating contrary to wider Scottish Government targets and initiatives;
  - there are existing McDonald's drive throughs at Straiton and Fort Kinnaird which is adequate provision for the area;
  - the increase in traffic will make it harder for pedestrians to cross roads in the surrounding area;
  - the proposal will undermine existing businesses within Dalkeith town centre;
  - lack of neighbour notification;
  - additional noise;
  - no demonstration of local need;
  - the impact on parking in Hardengreen Lane;
  - loss of community identity due to the fact that the application is a multi-national company;
  - policy DP7 of the Midlothian Local Plan 2008 has not been carried over to the Midlothian Local Development Plan 2017;
  - unattractive signage;
  - 24 hour operation should not be allowed;
  - loss of parking spaces within Tesco car park;
  - impact on the character and appearance of Eskbank;
  - failure to comply with national targets on waste reduction; and
  - queries relating to the accuracy of the supporting information provided by the applicant.
- 6.2 The two representations 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 guidance is currently being prepared by the Council.
- 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.

## **8 PLANNING ISSUES**

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

### Principle of development

- 8.2 The application site is situated within the built-up area of Dalkeith and Eskbank and within the site (car park) 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 Applications in 2015 and 2016 for retail development on the neighbouring site failed to establish that the principle of retail development at that location was acceptable. 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. The fundamental difference between those two applications and the current application is the nature of the development being proposed; the current application relates to a drive through restaurant and 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 is a drive through restaurant which is not a type of development that would be expected to be accommodated within a town centre. Furthermore, the applicant's business model is to provide drive through restaurants in close proximity to other high car use uses such as supermarkets and retail outlets – the operators will not propose a similar use in a town centre.

### Traffic, Parking and Pedestrian Access

- 8.4 The application is supported by a transport statement which includes details of traffic generation at two existing McDonald's restaurants, one in Hamilton and one in Arbroath, both of which the applicant considers to have a similar relationship to an existing supermarket as that proposed at Hardengreen. McDonald's peak trading hours are 16:00 to 19:00 hours on a Friday and 11:00 to 15:00 hours on a Saturday; the figures from the Hamilton and Arbroath stores have been averaged to



provide estimated traffic generation figures suitable for assessing the impact of the proposal on Eskbank Roundabout. In addition to the traffic generation data gathered, the restaurant surveys in Hamilton and Arbroath also include interviews with customers to identify the purpose of their trip. The responses were grouped into three categories: additional (where the sole purpose of the journey was to visit McDonald's); existing (where the visit to McDonald's was en route to another destination, for example visiting on the way home from work); and shared (where the visit to McDonald's was linked with a visit to the neighbouring store). The survey responses were used to establish the percentages of trips that fell within each category.

- 8.5 Using the survey results the transport statement anticipates that the proposed drive through restaurant will generate 106 arrivals and 106 departures during its peak hour (17:00 to 18:00) on a Friday; and 105 arrivals and 114 departures during its peak hour (13:00 to 14:00) on a Saturday. The journey purpose percentages are 14% additional, 56% existing and 30% shared. This provides figures for peak hour arrivals on a Friday of 15 new trips, 59 existing trips diverting to McDonald's and 32 shared trips with customers also visiting Tesco; and peak hour arrivals on a Saturday of 21 new, 34 existing and 50 shared. The transport statement concludes that during the restaurant's busiest trading hours the new trips generated would equivalent to one every 3 to 4 minutes and that Eskbank Roundabout can accommodate this additional traffic. It must be noted that the Saturday peak would be equivalent to one trip every 2 minutes; however, the Council's Policy and Road Safety Manager is satisfied that the proposal will not have a significant impact on Eskbank Roundabout. One representor has queried the trip generation data and suggested that the existing trips should in fact be considered as additional trips since the diversion of their journey to McDonald's will require the roundabout to be navigated on one further occasion when compared to a non-diverted trip. The Council's Policy and Road Safety Manager is satisfied that the transport statement has been prepared using commonly accepted methodologies for the preparation of trip generation data.
- 8.6 The existing Tesco car park has 459 spaces. Parking standards for retail developments of more than 1000 sqm are specified in the Scottish Government's National standards which are contained in Annex B of the Scottish Planning Policy. The National standards seek to encourage parking restraint and specify a maximum parking standard. The store at Hardengreen has a gross external floor area (GFA) of 7020 sqm; at the maximum rate of 1 space per 14 sqm this gives a maximum parking standard of 501 spaces. As the current parking provision is below the maximum allowed it complies with national standards.
- 8.7 The proposed development would result in a reduction in the number of parking spaces due to spaces being lost on the application site and further spaces being lost due to the relocation of the Click and Collect

(which will be the subject of a separate planning application from Tesco) and the recycling facilities (which does not constitute development and therefore does not require planning permission). The proposed layout would have 415 spaces of which 382 would be allocated to Tesco, 19 would be allocated to McDonald's and 14 would be shared. In support of the application the transport statement includes figures of a car parking survey of the existing Tesco car park. The survey was carried out for the same hours as McDonald's peak trading hours; the survey identified that the peak occupancy level was at 12:00 on Saturday when 270 spaces were occupied. From the information provided, it is clear that the proposed 382 spaces that would be allocated to Tesco would amply accommodate typical peak demand.

- 8.8 Midlothian Council's parking standards require restaurants to provide spaces at the rate of 12 per 100 sqm of public floor area. The proposed restaurant has a public floor area of 210 sqm which would require 25 spaces to comply with standards. The proposed allocation of 33 spaces (19 dedicated and 14 shared) complies with standards.
- 8.9 A number of representations have made reference to the difficulties faced by pedestrians in navigating the surrounding road network. Particularly difficult for pedestrians is the route from Eskbank (Bonnyrigg Road) to Bonnyrigg (Eskbank Road) which for pedestrians using the footway on the south of these roads requires pedestrians to cross both the entrance to Tesco and the A7. While there is a pedestrian route over the A7 via a footbridge, which links to the existing cycle path network in the area, accessing the bridge requires a diversion from the main roads and this can discourage pedestrians. As the transport statement concludes that the additional trips generated will not cause significant capacity issues for the road network there is unlikely to be significant changes to pedestrian use of the junctions. In the longer term the urbanisation of the A7 is intended to make the route more accessible for public transport, cycling and pedestrians; the applicant will be required to provide a developer contribution towards this project.
- 8.10 Eskbank and Newbattle Community Council has queried whether the information submitted in the applicant's transport statement has been rigorously assessed by the Council. The information has been assessed by a suitably qualified member of Council staff with years of experience in the assessment of such submissions. It is not the standard practise of the Council to commission independent third party assessments of such submissions.

### Design

- 8.11 The building will have a contemporary design with a flat roof, large areas of full height glazing and a modern palette of finish materials. The design reflects 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 building. While the building will be a corporate design that is utilised throughout the UK, it has the appearance and character of a modern urban building; the design shares many characteristics with modern office and housing developments. The building design and finish materials represent an improvement on the existing supermarket, petrol filling station and vehicle coachworks buildings.

#### Litter

- 8.12 The planning statement submitted in support of the application states that it is McDonald's company policy to conduct a minimum of three daily litter patrols to pick up litter in the vicinity of a restaurant. Many of the representations received have referred to existing litter problems in the surrounding area and are concerned that the current proposal would exacerbate this situation if granted.
- 8.13 At present the only McDonald's restaurant in Midlothian is the restaurant located at Straiton Retail Park. Consent for that restaurant was granted following an appeal to the Scottish Government and the Reporter attached a condition requiring the submission of a litter collection policy and plan. As part of the information submitted to discharge the condition McDonald's agreed to carry out litter picks throughout Straiton Retail Park. A similar condition could be attached at Hardengreen to ensure that a litter collection policy covering the walkways leading to Hardengreen Lane and Eskbank Station is secured via condition.

#### Anti-Social Behaviour

- 8.14 Many of the representations have referred to existing instances of anti-social behaviour which they perceive as being a result of the Tesco store being an encouragement for groups of people, in particular teenagers, to congregate in the area. The representations consider that the siting of a drive through restaurant will worsen this situation. While the threat of anti-social behaviour is a material consideration it is a threat that is extremely difficult to quantify.
- 8.15 In the case of the current application, the two most obvious ways in which the planning authority can control anti-social behaviour are to refuse the application or to restrict the hours of operation. 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. 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.

- 8.16 The supporting information provided with the application indicates that the restaurant will operate 24 hours a day. The existing supermarket and petrol filling station both currently operate 24 hours a day; given the proximity of these uses to the proposed restaurant 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

- 8.17 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.

#### Healthy Eating

- 8.18 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. The proposed restaurant is not close to any schools and there are no similar facilities in the immediate vicinity of the proposed site; given these facts the planning authority does not consider that any negative impact on healthy eating initiatives would be a significant enough material consideration to warrant refusal of the application. It is important to acknowledge that the application must be assessed on the merits of the application and not on any perceived failings of the applicant; while the applicant is McDonald's any consent could in theory be implemented by an alternative operator with a different range of products.

### Neighbour Notification

- 8.19 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

- 8.20 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
- 8.21 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).
- 8.22 This proposed development of which the principal element is the provision of a drive through restaurant 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.
- 8.23 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.
- 8.24 The transport statement submitted in support of the application includes pre-application correspondence between the applicant and the Council's Lead Officer: Planning Obligations. The Council provided an initial figure based on overall trips generated; the contribution level was

subsequently reduced to remove trips shared with trips to Tesco i.e. trips that would occur irrespective of the restaurant. Eskbank and Newbattle Community Council has queried whether the Council should have contested this issue. As is noted above obligations must fairly and reasonably relate in scale and kind to the proposed development and must be reasonable in all other respects. The contribution levels reflect the impact of the proposed 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. The perceived threats 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.

Before any part of the site is occupied the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

**Reason:** *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.*

2. 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.*

3. 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;
  - 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.*

4. 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.*

5. Prior to the restaurant opening to the public details of a litter collection plan for the surrounding area, including the public walkways from the application site to Hardengreen Lane and Eskbank Station, 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 the 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 protect the character and amenity of the surrounding area.*

6. Unless otherwise approved in writing by the Planning Authority the approved Store Travel Plan shall be complied with for the duration of the approved use.

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



7. Unless otherwise approved in writing by the Planning Authority the vehicular access and parking arrangements shown on the approved Proposed Site Layout (Drawing number 7167-SA-8389-P004 D) shall be operational prior to the restaurant being opened to the public.

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

8. 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.
9. 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.
10. 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.*

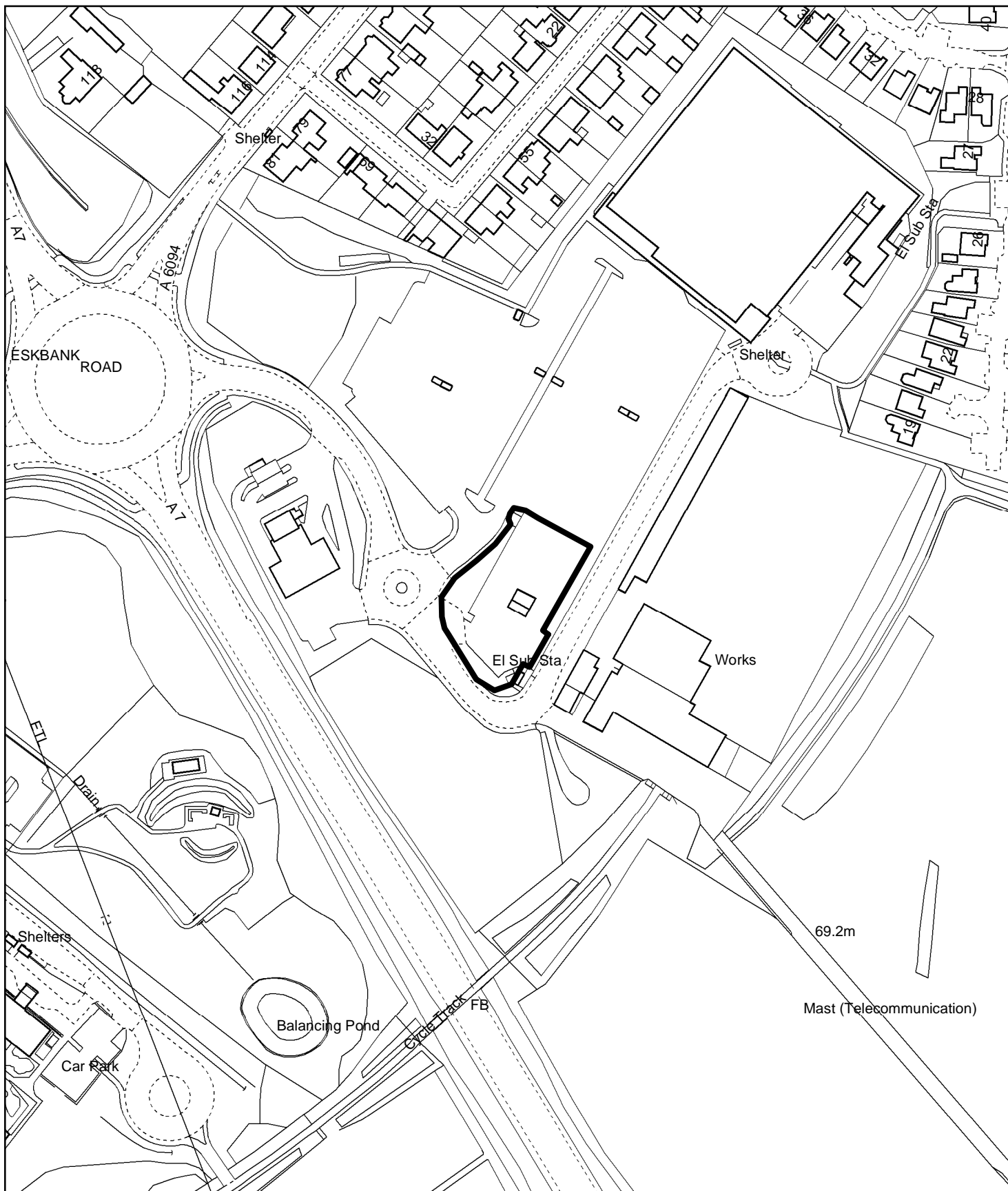
12. Development shall not begin until a scheme of sustainability/biodiversity for the site has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details

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**

|                           |   |
|---------------------------|---|
| <b>Date:</b>              | 8 February 2018   |
| <b>Application No:</b>    | 17/00944/DPP  |
| <b>Applicant:</b>         | McDonald's Restaurants, 11-59 High Road, East Finchley, London                          |
| <b>Agent:</b>             | Matthew Carpenter, Planware Ltd, The Granary, 37 The Granary, Walnut Tree Lane, Sudbury |
| <b>Validation Date:</b>   | 1 December 2017   |
| <b>Contact Person:</b>    | Graeme King   |
| <b>Tel No:</b>            | 0131 271 3332   |
| <b>Background Papers:</b> | None  |



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

Erection of two storey drive through restaurant; alterations to existing car park and access roads at Land At Tesco Car Park Hardengreen Dalkeith

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File No. 17/00944/DPP

Scale: 1:2,000

