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**APPLICATION FOR PLANNING PERMISSION (18/00654/DPP) FOR THE CHANGE OF USE FROM RETAIL (CLASS 1) TO HOT FOOD TAKEAWAY (SUI GENERIS) AND INSTALLATION OF FLUE AT 70 LOTHIAN STREET, BONNYRIGG**

Report by Director of Education, Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1** The application is for the change of use of a retail unit (class 1) to a hot food takeaway (sui generis use) and installation of flue at 70 Lothian Street, Bonnyrigg. There have been three letters of representation and consultation responses from the Council's Policy and Road Safety Manager, the Council's Environmental Health Manager and the Bonnyrigg and Lasswade Community Council.
- 1.2** The relevant development plan policy is DEV2 of the Midlothian Local Development Plan 2017. The emerging Supplementary Guidance on *Food and Drink and Other Non-retail Uses in Town Centres* is also a material consideration in the determination of this planning application.
- 1.3** The recommendation is to grant planning permission subject to conditions.

**2 LOCATION AND SITE DESCRIPTION**

- 2.1** The application site is located on the north western side of Lothian Street, Bonnyrigg, approximately 390 metres to the northeast of the Lothian Street/High Street junction in the centre of Bonnyrigg.
- 2.2** The application premises comprises a single storey retail unit which is attached to, and part of the same building as, a restaurant (Gigi's). The building has a high parapet wall along the front elevation, which gives the impression of a larger structure. The principle part of the building is finished externally in brick and glass. There is a set-back section of the building which has been finished in render, with a brick base course and some glazing.
- 2.3** The application site is located in a predominantly residential area. However, there is a garage (Lothian Motors) to the rear (northwest) of

the application site which is accessed via a lane to the southwest of the application site.

- 2.4 Lothian Street, to the front of the application site, is a public transport corridor and there are bus stops on either side of the road outside the application premises. The bus stop for buses heading from Bonnyrigg town centre is located within the layby to the front of the application premises.

### **3 PROPOSAL**

- 3.1 It is proposed to change the use of the application premises from a retail unit to a hot food takeaway. The hours of operation are proposed to be 11am to 11pm Mondays to Fridays, 11am to 12 midnight on Saturdays and 5pm to 10pm on Sundays. The only external alteration proposed is a flue on the southwest elevation. This flue is proposed to be finished in stainless steel and will project approximately 1 metre from the eaves of the building.
- 3.2 The applicant has submitted a supporting statement with the planning application which states:
- In addition to kitchen and service staff, there are likely to be two delivery drivers employed at the premises;
  - There is unlikely to be a significant impact on the surrounding area with regards to the impact from noise and smell as compared to the existing situation;
  - a bin will be installed outside the unit; and
  - The existing parking provision serves the retail and adjacent restaurant use and it is unlikely that the proposal will result in a materially different situation.

### **4 BACKGROUND**

- 4.1 Planning application 03/00041/FUL for the change of use of the application site to a hot food takeaway was refused in 2003. The site was outwith Bonnyrigg town centre and did not comply with the then emerging 2003 local plan, which required such uses to be located only within town centres, local or neighbourhood shopping centres or predominantly commercial or business areas. It was considered that, despite being adjacent to a public house (prior to Gigi's restaurant) and industrial premises, the surrounding area is predominantly residential in character and the proposal would have resulted in additional disturbance to local residents.
- 4.2 Planning application 03/00669/FUL for the change of use of the application site to a retail shop and hot food takeaway was refused in 2003. The reasons for refusal are the same as those for 03/00041/FUL.
- 4.3 Planning application 17/00771/DPP for the change of use from retail (class 1) to restaurant (class 3); extension to restaurant and formation

of entrance canopy; recladding of building and alterations to restaurant frontage was withdrawn in 2017. The application was for the current application site and the adjoining restaurant, currently operating as Gigi's.

- 4.4 Planning application 17/01000/DPP for the change of use from retail (class 1) to restaurant (class 3); formation of entrance canopy; recladding of building and external alterations to building was approved in February 2018. The application was for the current application site and the adjoining restaurant, currently operating as Gigi's, and proposed the entire building operating as one restaurant. This application was granted planning permission with conditions, requiring details of materials, noise restrictions and also that no hot food takeaway element was approved. A hot food takeaway element had not been proposed in the application and therefore had not been assessed as part of the applicant process.

Adjoining site at 72-74 Lothian Street – currently operating as Gigi's

- 4.5 Planning permission 10/00144/DPP for the change of use from a public house to a restaurant was granted planning permission with conditions in 2010. The conditions related to the provision of ventilation equipment, hours of operation, noise restrictions and that the restaurant shall not change use to or include a hot food takeaway function without the prior written approval of the planning authority. This was because that application was submitted for a restaurant only and no hot food takeaway element had been proposed. The inclusion of such a use would need to be considered on its own merits and was not included in this application.
- 4.6 Planning permission 10/00674/DPP for the amendment to condition 3 of planning permission 10/00144/DPP (change of use from public house (sui generis) to restaurant (class 3) to allow extended opening hours was granted in 2011. This allowed the restaurant to operate from 11am to 1am. The other conditions attached to 10/00144/DPP were attached to the permission.

Elected Member call-in

- 4.7 The current planning application has been called to Committee by Councillor Milligan in order to discuss the detrimental impact of the proposed development on the town centre and on road safety.

## **5 CONSULTATIONS**

- 5.1 The **Policy and Road Safety Manager** considers that the proposed change of use to a hot food takeaway may not be significantly different to how the unit could operate at present. The Policy and Road Safety Manager has no objection to the planning application.

- 5.2 The Council's **Environmental Health Manager** does not object to the application subject to conditions being attached to any consent relating to ventilation and noise.
- 5.3 The **Bonnyrigg and Lasswade Community Council** objects to the planning application as they consider that there is adequate hot food provision in the town centre and surrounding area. They have stated that hot food takeaways should be discouraged on health grounds. In addition, the Community Council is concerned regarding traffic and parking in this busy area. They have stated that there is not sufficient parking provision in the layby to the front of the site. The proposal will exacerbate existing parking and road safety issues.

## 6 REPRESENTATIONS

- 6.1 There have been three objections received, all of which can be viewed in full on the online planning application case file. A summary of the objections are as follows:
- Road safety concerns arising from customer parking and this conflicting with the position of the bus stops;
  - The proposal will exacerbate existing parking issues in the area – there is not sufficient parking for local residents;
  - A takeaway element was refused at the neighbouring restaurant;
  - The proposed hours of operation will have a detrimental impact on the amenity of nearby residents;
  - The proposed use will have a detrimental impact on nearby residents with regards noise and disruption; and
  - The Scottish Planning Policy (SPP) states that development is not to be allowed at any cost but should allow for appropriate developments in appropriate areas without having a negative impact on safety and residential community.

## 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, adopted in November 2017. The following policies are relevant to the proposal:

### Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **DEV2 Protecting Amenity 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 **Draft Supplementary Guidance: Food and Drink and Other Non-Retail Uses in Town Centres** provides guidance regarding the acceptability of a range of uses in town centres and other areas. The

Supplementary Guidance sets out criteria to be taken into account in the assessment of planning applications for hot food takeaways. It states that hot food takeaways within 400m of the curtilage of a secondary school will be not permitted.

## **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 While two planning applications have previously been refused for a hot food takeaway at the premises in 2003, development plan policies have changed, and new Supplementary Guidance is emerging. Therefore, it is necessary to give fresh consideration to the proposal to change the use of the premises to a hot food takeaway based on the current policy position.
- 8.3 The application site is within the built up area of Bonnyrigg, where there is a presumption in support of development which does not adversely affect the character or amenity of the area. Although the application site is located within a predominantly residential area, the application premises is in retail use, there is an adjacent restaurant, a garage business to the rear and a busy main road to the front. The proposal would not result in the creation of a new commercial unit in an inherently residential area.
- 8.4 Planning permission has previously been granted for the change of use of the premises to allow the neighbouring restaurant to extend into this part of the building. Therefore, the Council has already accepted the principle of a business involved in the preparation and provision of food at this premises, albeit a restaurant which falls within class 3 of The Town and Country Planning (Use Classes) (Scotland) Order 1997 as amended, rather than a hot food takeaway which is a sui generis use.
- 8.5 Some objectors have suggested that there is overprovision of hot food takeaways in Bonnyrigg. As the application site is neither in a town centre nor local centre the draft Supplementary Guidance regarding overprovision does not apply in these circumstances. The closest hot food takeaway is over 400metres away. Therefore it is unlikely that it could be considered that there is overprovision of hot food takeaways in this location.
- 8.6 The draft Supplementary Guidance states that food and drink uses will not be permitted in this type of location if they have an adverse impact on the viability of a nearby town centre. While the application has not

been accompanied by a Town Centre Impact Assessment it is considered that the premises is of a scale which would ensure that it would not have an adverse impact on Bonnyrigg town centre.

- 8.7 The draft Supplementary Guidance states that new hot food takeaways will not be approved where they would be within 400 metres of primary or secondary schools. This is in order to address the adverse impacts such uses have on the diets of young people and the health of communities. The application site is located outwith 400 metres of the closest school boundaries and so there is no reason to refuse this application on these grounds.

#### Impact on Amenity

- 8.8 The nearest residential properties are located 10 metres to the southwest of the application premises and separated by the vehicular access to the garage to the rear. The houses to the southeast are 10 metres from the application site, and are on the opposite side of Lothian Street. As the application premises is single storey there are no residential properties above the application premises.
- 8.9 The proposal includes details of a ventilation system which has been designed to address any issues regarding odours from the proposed hot food takeaway. The Environmental Health Manager has considered the submitted proposals and has no objection to the planning application subject to conditions being imposed on the premises ensuring that no odours escape or are exhausted to neighbouring properties. They have also requested that noise levels emanating from the premises are limited.
- 8.10 The application premises has been operating as a retail unit for over 25 years. The retail unit's hours of operation have not been limited. The adjoining restaurant's approved hours of operation are 11am to 1am. Both the retail unit and restaurant appear to have been operating without complaint. It is the applicant's intention to remain open until 11pm on Mondays to Fridays, midnight on Saturdays and 10pm on Sundays. As the neighbouring restaurant unit can operate until 1am it would not be reasonable to restrict the hours of the current application to any less than this.
- 8.11 Given the distances and physical separation of residential properties from the site it is unlikely that the proposal would have a significant adverse impact on the amenity of surrounding residential properties with regards to noise, disturbance or disruption as compared to the existing situation. Provided the Environmental Health conditions are complied with there should be no detrimental impact on the amenity of surrounding residential properties in regards smell or noise from the site.

### Parking and Impact on Road Safety

- 8.12 The issue of road safety and parking are significant considerations in the assessment of this planning application. The application site is located on a public transport corridor. There are bus stops located on either side of the road.
- 8.13 While there is a parking layby immediately to the front of the application site and neighbouring restaurant a large proportion of this layby is to be kept clear for the bus stop. The restaurant has an area available for vehicle parking nearby. However, interested parties have raised concerns that the proposed development will exacerbate an existing parking problem in the area.
- 8.14 The Policy and Road Safety Manager has not objected to the planning application. The Policy and Road Safety Manager considers that the application premises is already operating as a retail unit, attracting customers arriving by car, and that the proposed hot food takeaway would not operate on a significantly different scale. Therefore, the proposed development would not have an adverse impact on road safety, as compared to what could happen at the site at present.

### Other Matters

- 8.15 Representors have raised a number of valid planning matters in relation to this planning application. One such issue not yet addressed in this report is the previous restriction on a hot food takeaway element operating from the neighbouring restaurant. The adjacent restaurant was granted planning permission on the basis that there was to be no hot food takeaway element, unless this was otherwise approved by the planning authority. This restriction was not imposed because a hot food takeaway was unacceptable per se, but because a hot food element did not form part of the original application and would require full assessment. The restriction clarified the extent of the planning permission. The planning authority has subsequently agreed that an ancillary hot food takeaway element can operate from the restaurant, but this is to be carried out by delivery drivers only, with no collections by members of the public (a separate or composite hot food takeaway and restaurant use would need planning permission).

### Summary

- 8.16 The principle of a hot food takeaway operating from the application site is generally acceptable. There will be no significant adverse impact on the amenity of the neighbouring properties as a result of smell or noise. The Council's Policy and Road Safety Manager has not raised any concerns regarding the impact of the proposal on road safety. Therefore, the proposal will not have an adverse impact on the character, appearance or amenity of the area and complies with MLDP policy DEV2.

## 9 RECOMMENDATION

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

*The proposed development would not have an adverse impact on the character, appearance or amenity of the surrounding area and would not result in road safety concerns sufficient to warrant refusal of the application and so accords with policy DEV2 of the Midlothian Local Development Plan 2017.*

Subject to the following conditions:

1. The use hereby approved shall not start trading until the approved extract ventilation scheme is operational in accordance with the details approved in writing by the Planning Authority. The extract ventilation system shall:
  - a) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
  - b) Prevent the emission of cooking odours likely to cause nuisance to neighbouring properties;
  - c) Terminate at sufficient height above roof height and expelled with a suitable upwards velocity to permit the free disposal of exhaust fumes; and
  - d) be designed to achieve 30 air changes per hour.

**Reason:** *To ensure a satisfactory standard of amenity for nearby residential properties.*

2. The use hereby permitted will not open to the public outwith the following hours:

Mondays to Sundays: 11am to 1am

**Reason:** *To safeguard nearby residential amenity; this will be in keeping with the existing adjoining restaurant.*

3. Prior to the use hereby approved being implemented, a litter bin shall be located to the front of the premises and shall not be removed without the prior written approval of the Planning Authority.

**Reason:** *To ensure any issues over litter are adequately addressed; to ensure a satisfactory level of amenity; to safeguard the appearance of the surrounding area.*

4. The design and installation of any plant or equipment shall be such that the combined noise levels does not cause a nuisance and complies with NR30 (daytime 07.00 – 23.00), NR25 (night time 23.00-07.00) or NR20 (if the noise is tonal) when measured within any adjacent living accommodation.



5. No amplified music or sound reproduction equipment used in association with the use hereby approved shall be audible at the boundary of any nearby residential properties.

***Reason for conditions 4 and 5:*** *To safeguard the amenity of the surrounding area.*

**Dr Mary Smith**  
**Director of Education, Communities and Economy**

**Date:** 8 November 2018

**Application No:** 18/00654/DPP (Available online)  
**Applicant:** Scottish Midland Co-Operative Society Limited  
(Scotmid), Hillwood House, 2 Harvest Drive,  
Newbridge, Edinburgh EH28 8QJ  
**Agent:** Derek Scott, Derek Scott Planning, 21  
Landsdowne Crescent, Edinburgh EH12 5EH  
**Validation Date:** 31 August 2018  
**Contact Person:** Mhairi-Anne Cowie  
**Tel No:** 0131 271 3302  
**Background Papers:**



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

Change of use from retail (Class 1) to hot food take away  
(sui generis) and installation of flue at 70 Lothian Street,  
Bonnyrigg

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