

## **Notice of Review: Units 7 and 8, 40 Hardengreen Business Park, Dalhousie Road, Dalkeith**

### **Determination Report**

Report by Ian Johnson, Head of Communities and Economy

#### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the change of use from office (class 4) to a mixed use of fitness studio (class 11) and beauty salon (class 2) at Units 7 and 8, 40 Hardengreen Business Park, Dalhousie Road, Dalkeith.

#### **2 Background**

- 2.1 Planning application 18/00402/DPP for the change of use from office (class 4) to a mixed use of fitness studio (class 11) and beauty salon (class 2) at Units 7 and 8, 40 Hardengreen Business Park, Dalhousie Road, Dalkeith was refused planning permission on 25 July 2018; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
  - 2 The Registration and Acknowledgement of the Notice of Review.
  - 3 Carrying out Notification and Consultation.

#### **3 Supporting Documents**

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
  - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
  - A copy of the case officer's report (Appendix C);
  - A copy of the decision notice, issued on 25 July 2018 (Appendix D); and
  - A copy of the relevant drawings/plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk).

#### **4 Procedures**

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:

- Have scheduled an unaccompanied site visit for Monday 15 October 2018; and
  - Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that there were no consultations required and no representations received.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
  - Consider whether or not the proposal accords with the development plan;
  - Identify and consider relevant material considerations for and against the proposal;
  - Assess whether these considerations warrant a departure from the development plan; and
  - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported to the next LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

## 5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission:

1. No amplified music or sound reproduction equipment used in association with the unit hereby permitted shall be audible at the boundary of any noise sensitive property (residential dwellinghouse) during the hours of 9.00pm to 7.00am.

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

2. The use of the site shall be as a fitness studio and beauty salon only and for no other purpose unless otherwise agreed in writing by the Planning Authority. This grant of planning permission does not permit any other use within Class 11: Assembly and Leisure or Class 2: Financial, Professional or Other Services respectively of

The Town and Country Planning (Use Classes) (Scotland) Order 1997 or any subsequent amending or replacement order.

**Reason:** *To enable the Planning Authority to retain effective control over the future use of the site and to ensure that it is able to assess any such proposals in terms of their traffic generation, parking requirements and overall impact on the amenity of the area; the application has been assessed for this specific use only and no other uses within Classes 11 or 2 of the above mentioned legislation.*

## **6 Recommendations**

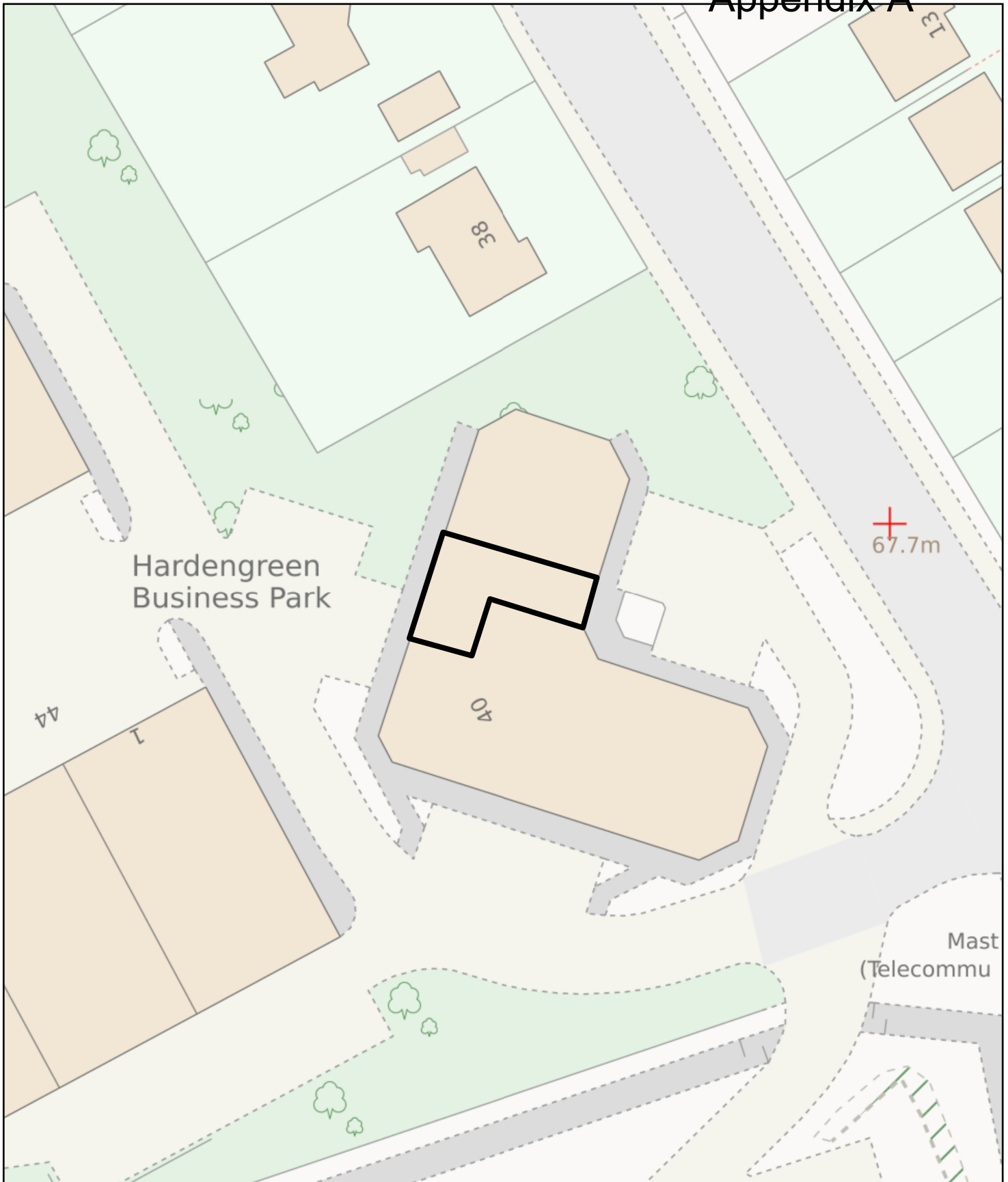
- 6.1 It is recommended that the LRB:
- a) determine the review; and
  - b) the planning advisor draft and issue the decision of the LRB through the Chair

**Date:** 9 October 2018

**Report Contact:** Peter Arnsdorf, Planning Manager (LRB Advisor)  
[peter.arnsdorf@midlothian.gov.uk](mailto:peter.arnsdorf@midlothian.gov.uk)

**Tel No:** 0131 271 3310

**Background Papers:** Planning application 18/00402/DPP available for inspection online.



**Midlothian**

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

Change of use from office (class 4) to mixed use of fitness studio and beauty salon at Unit 7 and Unit 8, 40 Hardengreen Business Park, Dalhousie Road, Dalkeith

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File No. 18/00402/DPP

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## NOTICE OF REVIEW

Under Section 43A(8) Of the Town and Country Planning (SCOTLAND) ACT 1997 (As amended) In Respect  
of Decisions on Local Developments

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND)  
Regulations 2013

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

**IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.**

**PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS  
ELECTRONICALLY VIA <https://www.eplanning.scot>**

1. Applicant's Details		2. Agent's Details (if any)	
Title	Mrs	Ref No.	
Forename	JANICE <del>EA</del>	Forename	
Surname	PATERSON	Surname	
Company Name	Mind Body & Beauty	Company Name	
Building No./Name	LTO .	Building No./Name	
Address Line 1	40/7 HARDENGREEN	Address Line 1	
Address Line 2	INDUSTRIAL ESTATE .	Address Line 2	
Town/City	DALHOUSE ROAD ESKBANK .	Town/City	
Postcode	EH22 3NU .	Postcode	
Telephone		Telephone	
Mobile	07585- 337806.	Mobile	
Fax		Fax	
Email	mindbody-beauty@myself.co.uk	Email	

CORPORATE RESOURCES  
 FILE:  
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3. Application Details	
Planning authority	Midlothian Council
Planning authority's application reference number	18 / 00402 / PPP .
Site address	
40/7 Harden Green Ind. Estate Dalhousie Road . Eskbank Dalkeith EH22 3NU .	
Description of proposed development	
Change of use - class 4 - to mixed . use pilates, yoga & beauty	

Date of application

7 June 2018

Date of decision (if any)

29 July 2018

**Note.** This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.

#### 4. Nature of Application

Application for planning permission (including householder application)

☐

Application for planning permission in principle

☐

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)

☐

Application for approval of matters specified in conditions

☒

#### 5. Reasons for seeking review

Refusal of application by appointed officer

☒

Failure by appointed officer to determine the application within the period allowed for determination of the application

☐

Conditions imposed on consent by appointed officer

☐

#### 6. Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

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

Further written submissions

One or more hearing sessions

Site inspection

Assessment of review documents only, with no further procedure

☒  
☒  
☒  
☐

If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.

See attached sheet.

#### 7. Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

Can the site be viewed entirely from public land?

Is it possible for the site to be accessed safely, and without barriers to entry?

☒  
☒

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

#### 8. Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

See attached Sheet.

Have you raised any matters which were not before the appointed officer at the time your application was determined?

Yes ☐ No ☒

If yes, please explain below a) why your are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

### 9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

See attached Sheet.

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

### 10. Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

Full completion of all parts of this form



Statement of your reasons for requesting a review



All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.



Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

### DECLARATION

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature:

[Redacted Signature]

Name:

JUSTICE PATERSON

Date:

7 Aug 2018

Any personal data that you have been asked to provide on this form will be held and processed in accordance with Data Protection Legislation.





40/7 Hardengreen Industrial Estate Dalhousie Road Eskbank Dalkeith EH22 3NU

Mobile Number 07585 337806

**Application Ref No. 18/00402/DPP**

Mind Body & Beauty Limited

To Whom It may concern

I am making this appeal to the review board based on the information set out below.

My Husband and I started the business in May 2012, we originally had premises in Jarnac court above Farmfoods, we were granted change of use for this location.

Due to the success of the business we required larger premises, we applied and were granted change of use after an appeal to the review board in September 2013 for 30/3 Hardengreen Industrial Estate Eskbank Dalkeith.

We moved into the premises in October 2013, after major investment in the premises, we also added a second business to the Pilates business which is the beauty Yoga and Pilates.

Both Business operated for almost 5 years at 30/3 Hardengreen. However, from almost day one we discovered we have a very unscrupulous landlord. Robert and I tried over the years to appease his unreasonable behaviour, unfortunately in August 2016 we had to engage a solicitor to help us with his unreasonable behaviour. The solicitors were engaged for almost 2 years at great expense and time, which ended in only beneficiary being the Solicitors.

In March 2018 Robert and I had to make a decision to move the business to another part of Hardengreen when the unit 40/1 became available. This was not an easy decision as more expense was incurred making the unit ready for a fitness studio. We currently have 5 people working at the studio. I also moved my Business to 40/7 In Aug 2018 after this unit became available as the unit at 40/1 was too small from both business and we were turning away business and new clients. I have 4 people working in my business so between both businesses we have 9 people

We are also aware of other units on the estate which are not used for industrial purposes, also other industrial Estate in the vicinity have been granted change of use for fitness.

I am sure you will all agree that we all want to keep the people of Midlothian fit and healthy, this is one of my key initiatives and hopefully one of yours. I would ask the board to review our application favourably.

Janice Paterson

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## **MIDLOTHIAN COUNCIL**

### **DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:**

**Planning Application Reference:** 18/00402/DPP

**Site Address:** Unit 7 and Unit 8, 40 Hardengreen Business Park, Dalhousie Road, Dalkeith.

**Site Description:** The application site comprises two units within a building located within Hardengreen Industrial Estate. There are a variety of uses within this building, including offices and a physio. The building has buff brick walls and a roof finished with concrete tiles. The site is located adjacent to one of two entrances to the industrial estate, with the industrial estate to the west. The Jewel and Esk Valley College is to the south and there are houses to the north and east.

**Proposed Development:** Change of use from office (class 4) to mixed use of fitness studio and beauty salon.

**Proposed Development Details:** It is proposed to change the use of these vacant offices to a mixed use fitness studio and beauty salon. No details of how these uses are to be operated have been submitted. The application form states there are 6 parking spaces at the site.

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

18/00369/DPP Change of use from office/light industry (class 4) to fitness studio (class 11) (retrospective). Pending consideration.

#### **Consultations:**

The **Policy and Road Safety Manager** states that while the proposal may result in some additional vehicular and pedestrian activity within the industrial estate, the site is well located in relation to public transport links. It is not considered that the new activity will have any negative impact on the road safety of the local area.

The **Economic Development Manager** states there is a shortage of commercial/industrial land within Midlothian and the preference would be for the site to continue in commercial/industrial use. However they also state it could be argued there is a shortage of class 11 sites which means that refusal may result in the loss of a business in Midlothian. Should permission be granted, a condition should be attached to ensure the site reverts to a class 4 use should the business cease operating.

**Representations:** One representation was received from the owners of a neighbouring residential property neither objecting to nor supporting the proposal. They raise concerns over the impact of parking on Dalhousie Road. The existing parking situation makes accessing their property difficult and the majority of these

cars appear to be for the classes at the applicant's previous site within the estate which indicates there is not sufficient parking for the current businesses.

**Relevant Planning Policies:** The relevant policies of the **2017 Midlothian Local Development Plan** are;

**STRAT1 Committed Development** seeks the early implementation of all committed development sites;

**DEV2 Protecting Amenity within the Built-Up Area** advises that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area;

**ECON1 Existing Employment Locations** states that business and industrial locations will be safeguarded against loss. Development will be supported where it:

- A. Will contribute to an employment density commensurate with the type of development proposed;
- B. Will be compatible with neighbouring uses;
- C. Will not have a detrimental impact on the amenity of the area; and
- D. Can mitigate any infrastructure deficiency or requirement; and

**ECON3 Ancillary Development on Business Parks** states the Council supports the principle of limited ancillary uses (such as child day care services, banking, convenience, healthcare services, etc) within Shawfair Park and Salter's Park only.

**Planning Issues:** The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

The site is within the Hardengreen Business Park which is allocated and established as business/general industry land. The units are small and there is a shortage of these types of units for business or industrial use. No details of how, or if, the site was marketed have been submitted and so it has not been demonstrated that a more appropriate business or industrial occupant could be found rather than a leisure use. It has not been demonstrated that there is no appetite for the units to be used for business or industrial purposes.

The Planning Authority has a strong preference that such units be retained for industrial type uses as these are activities which cannot be readily accommodated out with these designated areas. There appears to be a low number of vacant industrial sites within the wider business park, indicating a high level of interest in these units. The Planning Authority would be concerned if these units were to be lost from economic development land supply to a leisure use.

It has not been demonstrated to the satisfaction of the Planning Authority that there is no prospect of the units being taken over by a business or industrial use as allocated for this industrial area. It appears that the applicant may be the same applicant as the other application pending consideration for a leisure use in this wider building and are looking for units near their previous site.

Planning permission was previously granted for the change of use of a larger unit within this business park to a fitness studio at Local Review Body in 2014. This was on the basis that the use would be complementary to and not undermine the primary economic land use of the business park. The unit had been vacant for a period and

the LRB were keen on bringing this back into use, as well as to support a local business.

Since this decision was made, there have been a number applications for leisure or non-business or industrial uses within land allocated for business or industrial uses. These applications have been determined in a way which protects the allocated business and industrial areas from inappropriate uses. An application for a petrol filling station, shop, restaurant and drive thru and café and drive thru at Sheriffhall South (17/00537/DPP) was refused by Planning Committee in May 2018. The site was allocated for class 4 business use and the proposal was not for these uses. It was considered that the proposal was not in accordance with the site's allocation for class 4 use and as such was contrary to the adopted MLDP and Strategic Development Plan.

An application for residential development and employment uses at Salters Park, Dalkeith (16/00893/PPP) was refused by Planning Committee in June 2018. The site was allocated for classes 4 (business), 5 (general industry) and 6 (storage and distribution) uses in the MLDP. The proposal was not for these uses, with two thirds of the site for indicated for housing. Again, it was considered that the proposal was not in accordance with the site's allocation for class 4 use and as such was contrary to the adopted MLDP and Strategic Development Plan.

As previously detailed, there is a similar application for the change of use of one unit within the larger building to a fitness studio. Should these applications be approved, there would be four units within this established and successful business park in leisure use. This would significantly undermine the primary economic land use of this business park and have a serious detrimental impact on other business or industrial uses if these are not able to find suitable accommodation within Midlothian.

The recent Planning Committee decisions clearly demonstrate the Council is seeking to actively protect economic development and employment sites. The current application would be contrary to this aim and adopted policy. Midlothian is an area with an increasing number of households. In order to ensure the sustainability of the Council area it is essential that there are employment opportunities within close proximity to the new households. This requires the retention of economic land allocations in employment generating and business related uses.

As evident in the current applications at Hardengreen as well as Salters Road and Sheriffhall South, economic and employment sites in Midlothian are under significant pressure. Although there are a number of businesses which do not fall within business or industry uses in Hardengreen Business Park, it is clear that the existing units should be protected and retained for these uses.

It is envisaged that there will be fitness classes and treatments through the day, as well as in the evening at this site. The numbers of customer vehicles arriving at the site is likely to exceed the available parking and inconsiderate parking could impact on the freeflow of vehicles (particularly larger service vehicles) at one of the two entrances to the business estate to the detriment of local businesses. This is already causing problems in the surrounding area and this use would exacerbate

this. However there is no objection from the Policy and Road Safety Manager who has considered all the submitted information and comments.

The proposed use of the unit as a fitness studio and beauty salon would result in an uncomfortable mix of uses within an established business estate. The Planning Authority has significant concerns regarding the compatibility of pedestrians within an active and busy business estate. It raises safety concerns for both the pedestrians and vehicles accessing the unit as well as the operators of the existing businesses at the site and their vehicles.

Having increased numbers of pedestrians accessing the site may impact on the desirability of the industrial estate to businesses.

**Recommendation:** Refuse planning permission.

## Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997



**Reg. No. 18/00402/DPP**

Mind Body & Beauty Limited  
Hardengreen Business Park  
7 Dalhousie Road  
Eskbank  
EH22 3NU

Midlothian Council, as Planning Authority, having considered the application by Mrs Janice Paterson, Hardengreen Business Park, 7 Dalhousie Road, Eskbank, EH22 3NU, which was registered on 11 June 2018 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Change of use from office (class 4) to mixed use of fitness studio and beauty salon at Unit 7 and Unit 8, 40 Hardengreen Business Park, Dalhousie Road, Dalkeith**

In accordance with the application and the following documents/drawings:

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan, Site Plan		11.06.2018

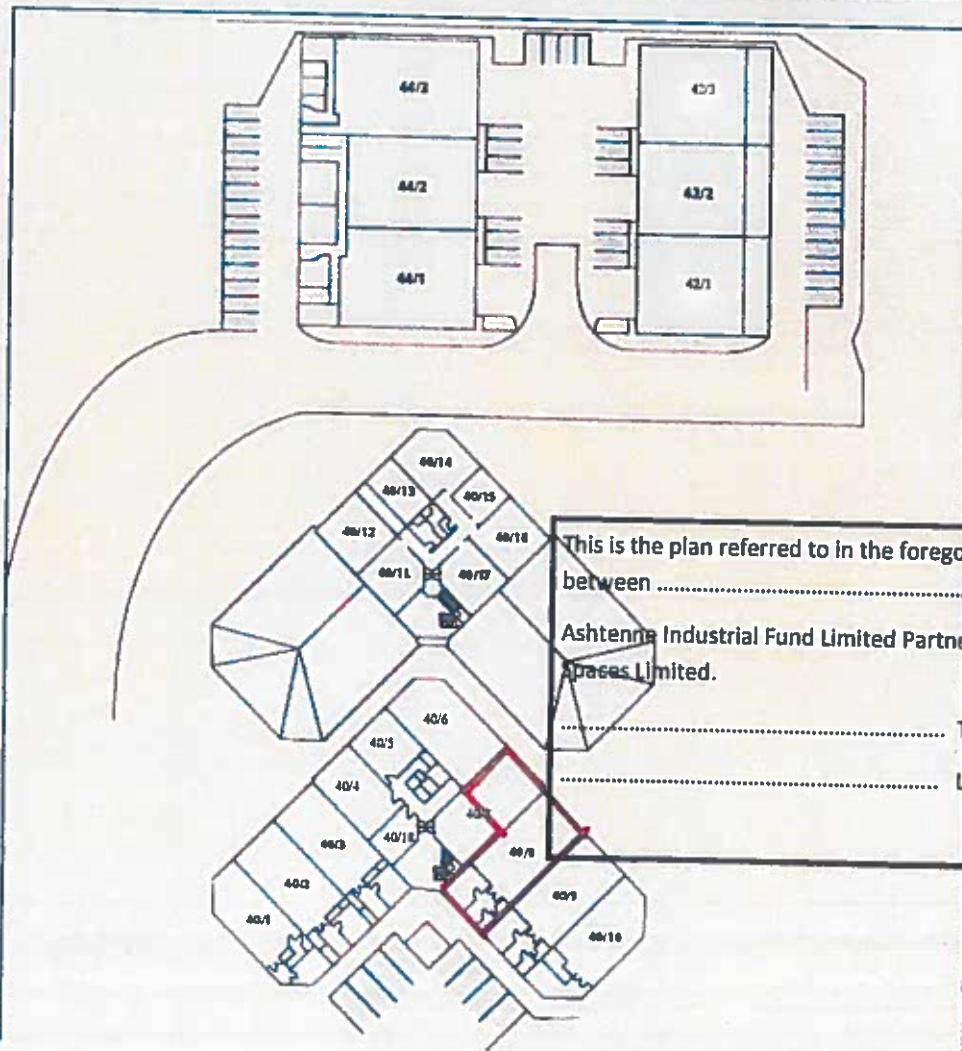
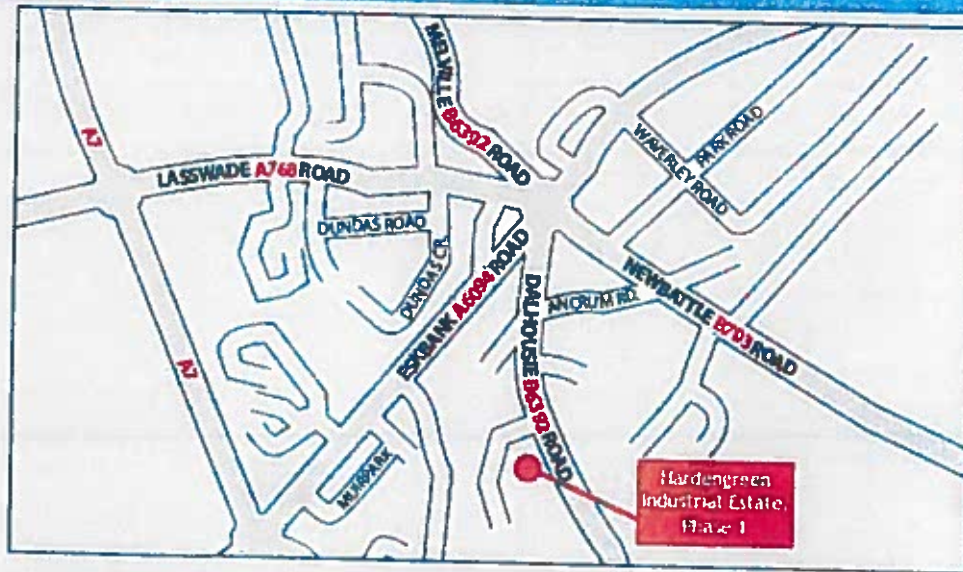
The reason for the Council's decision are set out below:

*The proposed land uses are not in accordance with the site's allocation for Class 4 (business) and Class 5 (general industry) use in the development plan and as such the development is contrary to policies STRAT1 and ECON1 of the adopted Midlothian Local Development Plan 2017.*

Dated 25 / 7 / 2018

.....  
Duncan Robertson  
Lead Officer – Local Developments  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

## HARDENGREEN INDUSTRIAL ESTATE, PHASE 1



This is the plan referred to in the foregoing agreement between ..... And Ashtenne Industrial Fund Limited Partnership/Imex Apaces Limited.

1. Tenant

Landlord