



**APPLICATION FOR PLANNING PERMISSION 15/00692/DPP FOR THE
DEMOLITION OF EXISTING BUILDINGS; ERECTION OF NEW RETAIL UNIT;
FORMATION OF ACCESS AND CAR PARKING AND ASSOCIATED WORKS AT
LAND AT MAYSHADE GARDEN CENTRE, ESKBANK ROAD, BONNYRIGG**

Report by Head of Communities and Economy

1.0 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the demolition of existing buildings; erection of new retail unit; formation of access and car parking and associated works at land at Mayshade Garden Centre, Eskbank Road, Bonnyrigg. There have been three representations and consultation responses from the Scottish Environment Protection Agency (SEPA), the Coal Authority, the Council's Policy and Road Safety Manager and Environmental Health Manager. The relevant development plan policies are policies 3 and 12 of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) and policies RP1, RP2, RP4, RP5, RP7, RP21, ECON8, SHOP1, SHOP5, IMP1 and DP1 of the adopted Midlothian Local Plan 2008 (MLP). The recommendation is to grant planning permission subject to conditions and securing developer contributions towards the A7 Environmental Improvements Scheme.**

2.0 LOCATION AND SITE DESCRIPTION

- 2.1** The application site is located between the settlements of Bonnyrigg and Eskbank, immediately adjacent to the roundabout on the A7 which serves Eskbank and Bonnyrigg (including the Community Hospital and Tesco superstore). The site extends to approximately 1.35 hectares and comprises a former garden centre (recently closed), builder's merchant's yard and some traditional cottages which had previously been converted into offices. The onsite uses have ceased.
- 2.2** The garden centre building was located along the Eskbank Road boundary and is a single storey with a low profile pitched roof. An area of car parking is located to the front, north east, of the garden centre building, with an external sales area to the south west. A builder's merchant yard and storage building is sited on the part of the site adjacent to the north west boundary. The storage building has the appearance of a large shed and the yard comprises walled storage areas. In addition to the above, there is a cottage, which has been converted into an office building at the western end of the site. This

building has the appearance of a traditional cottage and is finished in stone, slate and pan tiles.

- 2.3 The application site has a small road frontage along the A7; however the road frontage along Eskbank Road is larger and provides the existing access into the site at its south west end.
- 2.4 The site is enclosed along the Eskbank Road boundary by a mature hedge. The hedge continues along the A7 boundary, with a stone wall behind the hedge. Along part of the A7 boundary the hedge is supplemented by some mature trees. An area of trees continues along the other two boundaries of this rectangular site. Beyond the trees to the north west of the site is part of the Broomieknowe Golf Club and to the west is the practice ground for the golf club, which is currently subject to a planning application for a residential scheme (the site is referred to as allocated housing site Hs9 in the proposed Midlothian Local Development Plan).

3.0 PROPOSAL

- 3.1 The proposed development is for the demolition of the buildings within the site and the erection of a retail unit, to be operated by Aldi, and associated other works.
- 3.2 It is proposed to demolish the buildings on the site, including the builder's merchant storage building and walls and the existing cottage/office.
- 3.3 It is proposed to replace the buildings on site with a single storey flat roof retail unit. The retail unit will be positioned in the western corner of the application site and will measure approximately 65m by 34m and 5.5m high. The building will have a generally rectangular footprint. The north east and south east elevations of the proposed building will be largely finished with horizontal timber cladding and powder coated aluminium framed glazing. Other elevations will be finished with a white smooth render. A canopy area will identify the entrance to the retail unit. The flat roof is to be partially covered by a solar panel array.
- 3.4 The gross floorspace of the retail unit is to measure 1,804sqm, with 1,254sqm being retail sales floorspace. Alongside the sales floor and the storage area there will be office, staff and toilet areas.
- 3.5 A delivery area and yard is to be located to the front of the south east elevation. This area provides a loading bay and some plant equipment and will be enclosed by a fence and landscape planting.
- 3.6 Vehicular access is to be taken from Eskbank Road and the vehicle parking area will be located to the north and east of the store. The 120 car parking spaces will comprise 105 standard bays, six accessible bays and nine parent and child bays. The car park includes pedestrian crossing points so that there is a continuous footway from the A7 boundary to the store entrance. A new

stone wall, to match the existing stone boundary wall, will be erected alongside part of the pedestrian route close to the A7 boundary.

- 3.7 The existing site access is proposed to be widened with new road markings provided. The access will be enlarged to the north east. The road of the enlarged access will be 9m wide at its narrowest point and there will be a footpath on either side.
- 3.8 It is proposed to erect a retaining cribblock wall along the north west boundary. This wall will range from 1.5m to 0.75m in height and will be constructed in timber with stone ballast. A 1.2m high brickwork retaining wall is to be erected in a position adjacent to the loading bay.
- 3.9 While the majority of the application site is proposed to accommodate some form of development there is an area, to the north east end of the site which is proposed to be a 'Grassed Area'. The road through the proposed car park appears to terminate at an access to this 'Grassed Area'. The applicant states that there are no plans for development in this area and that it is to be given over to soft landscaping.
- 3.10 A landscape plan and SUDs proposals have been submitted in connection with the planning application.
- 3.11 It is proposed that the store will be open between the hours of 8am and 10pm, Monday to Saturday, and 9am to 7pm on Sundays. The store will provide over 30 employment opportunities.
- 3.12 The applicant has submitted the following statements to support the planning application:
 - Planning and retail statement;
 - Design and access statement;
 - Transport assessment and addendum;
 - Drainage statement;
 - Geo-environmental report;
 - Ecological appraisal
 - Bat survey
 - Tree survey and arboricultural constraints; and,
 - Air quality assessment.

4.0 BACKGROUND

- 4.1 Prior to 1974, the site was used as a market garden. After this date the use gradually changed to a landscape contractors and garden centre. The Council entered in to discussions to regularise the unauthorised use and planning permission was granted in April 1986 (ref. no. 0121/86) for the change of use of the site from a market garden to a landscape contractors' yard and garden centre. However, the conditions attached to the consent restricted the change of use to a two year period only and also required the restoration of the site to

a market garden. The intention was to allow opportunity for the business to be relocated.

- 4.2 In May 1987 a planning application was made to remove the abovementioned conditions. The applicants explained that there was no suitable alternative site and that considerable unemployment would result from the closure of the business. The lifting of the agreement was agreed by the Council subject to a legal agreement being used to regulate the use of the site, specifically what areas of the site might be built or used commercially and what landscaping was to be carried out. The applicant agreed to enter in to a legal agreement on this basis. In July 1990 the applicants advised that they were no longer willing to enter in to the agreement. Subsequently, discussions took place relating to the possibility of erecting a new building, rationalising the site and improving its appearance.
- 4.3 In 1996 a planning application (ref. no. 0501/96) was submitted for the erection of a garden centre building at Mayshade. The proposed development was considered by the Council's Regulatory Services Committee in March 1997. The Committee was minded to grant consent subject to conditions, provided the applicants first entered in to a legal agreement with the Council to limit the use of the site to partially a landscape contractors yard and partially the sale of plants and garden centre goods only and to limit the use of the new building to sale of plants and garden centre goods only.
- 4.4 A draft minute of agreement was prepared by the Council and forwarded to the applicants' solicitors. After considering the draft and consulting with their clients they advised the Council that their clients were not willing to enter in to the proposed agreement.
- 4.5 The Regulatory Services Committee reconsidered the proposal at a meeting in December 1997 and decided that it was minded to approve the application for planning permission, subject to conditions and without the need for a legal agreement. The Committee also decided that the Secretary of State should be notified of the intention to grant planning permission. The Secretary of State decided not to call in the application.
- 4.6 In December 2000 a planning application (ref. no. 00/00735/FUL) was received for the erection of a new garden centre building at the site. This proposed development was to supersede the previous application and was the development, when approved, which was implemented. The Committee's decision on the previous garden centre application was a material consideration in the assessment of the 2000 application, therefore no restriction was sought with regards the range of goods to be sold from the unit or on who could operate the business. This in effect granted an unrestricted retail use on the site.
- 4.7 In August 2007 a planning application (ref. no. 07/00579/FUL) was received for the erection and alterations to garden centre. This application was approved.

- 4.8 In July 2013 a planning application (ref. no. 13/00493/DPP) was submitted for an extension to garden centre. The application sought to enclose an area of external sales space and was granted planning permission.
- 4.9 In January 2015 a Certificate of Lawfulness application (ref. no. 15/00020/CL) was submitted to the Planning Authority. The owners of the site were seeking clarification on the formal planning status of the site and contended that the site could be operated as an unrestricted Class 1 retail use, and not just as a garden centre. On account of the decision taken on the 2000 planning application, which used the previous 1996 application as a material consideration, it was established that there was an unrestricted Class 1 retail use in place for the garden centre building. The Planning Authority issued a certificate confirming an unrestricted Class 1 retail use for the following reason:
- With the exception of the land taken up by the car parking area, which forms part of this application, implementation of the proposed use on the land subject of this application would neither have constituted 'development' or have represented a breach of planning control if instituted or begun at the time of application. As such – and with the exception of the extent of the application land taken up car parking – the same use would have been lawful if it had been implemented at the same date (9 January 2015).*
- 4.10 The emerging Midlothian Local Development Plan identifies the site to the south west as a potential housing site, Hs9: Broomieknowe. This site is part of the Council's current preferred strategy for development in Midlothian but is not yet considered committed development. A planning application (ref. no. 14/00405/DPP) has been submitted by Cala Homes for 56 dwellinghouses on the site. This application has not yet been determined.
- 4.11 This application has been called to Planning Committee by Councillor Young in order that matters of coalescence, traffic levels and impact on town centres can be more fully discussed.

5.0 CONSULTATIONS

- 5.1 The **Coal Authority** has advised that the site is located within an area at high risk from previous coal mining activities. The applicant has obtained appropriate up-to-date coal mining information for the site and has used this to inform their Coal Mining Risk Assessment, which accompanies the application. The Coal Authority state that the applicant's Phase II Geo-Environmental Assessment establishes that there is sufficient rock cover above the coal seam that void migration to the surface would be prevented. On this basis the Coal Authority has no objection to the planning application for this proposed development.
- 5.2 The **Scottish Environment Protection Agency (SEPA)** initially objected to the application on the grounds of lack of information in respect of surface water drainage. They subsequently removed their objection following the

submission of additional information on drainage submitted by the applicant's agent.

- 5.3 The **Council's Environmental Health Manager** has not objected to the planning application.
- 5.6 The **Council's Policy and Road Safety Manager** has not objected to the application but has requested further details of access, street lighting and SUDS. These details can be covered by condition. The Policy and Road Safety Manager has stated that the applicant should enter in to a Section 75 legal agreement (or similar) in order that a financial contribution to the Council's A7 Environmental Scheme can be secured. This scheme is designed to improve walking, cycling and public transport access on this section of the A7 and its implementation will improve access by non-car users to the proposed unit.
- 5.7 The Policy and Road Safety Manager has also stated that that the proposed improvements to the existing site access have been designed to safely accommodate the additional traffic the new retail unit may generate. In addition, it is also stated that while the improved access will operate satisfactorily within the existing road network there is no guarantee that this would remain the case if the new vehicle access proposed by the applicants for the adjacent housing site (Hs9) were to be introduced. The Policy and Road Safety Manager has formally objected to the proposed signalised junction proposed by the applicant for the neighbouring housing site.
- 5.8 The **Health and Safety Executive's** online system was consulted in respect to the nearby high pressure gas pipeline. The HSE system did not advise against approving the application.
- 5.9 **Scottish Water** has made no comment on the application.
- 5.10 **Bonnyrigg and Lasswade Community Council** has made no comment on the application.

6.0 REPRESENTATIONS

- 6.1 Three representations objecting to the application have been received. The main points of objection relate to:
- The potential severe adverse impact that traffic activity at the proposed store will have on Eskbank Road and the nearby A7 roundabout;
 - The potential cumulative impact of a number of proposed developments on the free-flow of traffic in the area;
 - Concern over the deliverability of the proposed realigned access given land ownership issues and potential lack of control over visibility splays;
 - Concern over the adequacy of the proposed visibility splays at the realigned access;
 - The submitted Transport Assessment does not take into account nearby potential development;

- Concerns regarding pedestrian safety, particularly at the access to the application site;
- The developer should contribute to pedestrian improvements to the A7 (linked to the A7 Environmental Improvements);
- Lack of compliance with SESplan and the Midlothian Local Development Plan's policies to support and protect town centres;
- The applicant has not adequately investigated alternative sites which are within or close to town centres;
- Concerns over the accuracy of the applicant's submitted documents to support the application; and
- Potential adverse impact, from deliveries to the site, on the amenity of future residents of the adjacent site to the west.

7.0 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) and the Midlothian Local Plan (MLP), adopted in December 2008. The following policies are relevant to the proposal:

South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 Policy **3 : Town centres and retail** requires Local Development Plans to:
- a) identify town centres and commercial centres clearly defining their roles;
 - b) support and promote the network of centres and identify measures necessary to protect these centres; and,
 - c) promote a sequential approach to the selection of locations for retail and commercial leisure proposals.
- 7.3 Policy **12 : Green Belts** requires Local Development Plans to define and maintain Green Belts around Edinburgh and to:
- a) maintain the identity and character of towns and prevent coalescence;
 - b) direct planned growth to the most appropriate locations and support regeneration;
 - c) maintain the landscape setting of settlements; and,
 - d) provide opportunities for access to open space and countryside.

Midlothian Local Plan 2008

- 7.4 Policy **RP1: Protection of the Countryside** states that development in the countryside will only be permitted where it is required in connection with the furtherance of an appropriate and established countryside business or activity; is within a designated non-conforming use in the Green Belt; or, it accords with policy DP1. Policy RP1 also states that all development will need to demonstrate a requirement for a countryside location; be of a scale and character appropriate to the rural area; be well integrated into the rural landscape; avoid a significant permanent loss of prime agricultural land; and, take account of accessibility to public transport and services.

- 7.5 Policy **RP2: Protection of the Green Belt** states that development will not be permitted in the Green Belt except where proposals are necessary to agriculture, horticulture or forestry; provide for opportunities for access to the open countryside; are related to other uses appropriate to the rural character of the area; or, accord with policy RP3, proposal ECON1, policy ECON7 or are permitted through policy DP1. In addition, development must not conflict with the overall Green belt objectives to: maintain the identity of the city and Midlothian towns by clearly establishing their physical boundaries and preventing coalescence; provide countryside for recreation and institutional uses of various kinds; and maintain the landscape setting of the city and Midlothian towns.
- 7.6 Policy **RP4: Prime Agricultural Land** states that development will not be permitted where it will lead to the permanent loss of prime agricultural land.
- 7.7 Policy **RP5: Woodland Trees and Hedges** does not permit development that would lead to the direct or indirect loss of woodland or trees which have a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter.
- 7.8 Policy **RP7: Landscape Character** states that development will not be permitted where it may adversely affect the quality of the local landscape. Where development is acceptable, it will respect the local landscape and contribute towards its maintenance and enhancement. New developments will incorporate proposals to:
- Maintain the local diversity and distinctiveness of landscape character including natural and built heritage features of landscape value such as woodland, hedges, ponds, stone walls and historical sites; and,
 - Enhance landscape characteristics where they have been weakened and need improvement and create new landscapes where there are few existing features.
- 7.9 Policy **RP21: Community identity and coalescence** states that development will not be permitted which would result in the physical or visual coalescence of neighbouring communities unless mitigation measures are proposed which would maintain visual separation and protect community identity. Such measures, which may include landscape buffer zones and other community woodland, shall be tailored to the particular circumstances of the location.
- 7.10 Policy **ECON8: Rural development** states that development proposals that will enhance rural economic development opportunities will be supported provided they accord with other policies and are located adjacent to a settlement; is well located in terms of strategic road network; is of an appropriate character and scale; will not introduce unacceptable levels of noise and light into an undisturbed location; can be served by an appropriate access; is capable of being served by water and drainage at reasonable cost; and, is not primarily of a retail nature.

- 7.11 Policy **SHOP1: Town centres** states that proposals that bring about an improvement to the range and quality of retail facilities in town centres will be considered favourably.
- 7.12 Policy **SHOP5: Major retail and commercial leisure development outwith strategic town centres and Straiton** states that major retail development will only be supported outwith town centres if all of the following criteria are met:
- A. There are no suitable alternative sites available within, on the edge of, or sufficiently close to form an effective extension to a strategic town centre, referred to in policy SHOP2, or Straiton Retail Park to accommodate the proposed development or meet the identified needs;
 - B. They are within, on the edge of, or sufficiently close to form an effective extension to other Midlothian town centres;
 - C. The proposals will satisfy a qualitative or quantitative deficiency which cannot be met within or on the edge of a strategic town centre;
 - D. The proposals will not, either individually or cumulatively with other developments, undermine the vitality and viability of existing town centres or major shopping centres of strategic importance, within the expected catchment area of the proposed development;
 - E. The development has, or will be provided with, satisfactory pedestrian, cycling and public transport links;
 - F. Transport impacts are offset by mitigation measures; and,
 - G. The development accords with all relevant Local Plan policies and proposals.
- 7.13 Policy **SHOP7: New neighbourhood shopping facilities** states that new neighbourhood shopping facilities will be permitted where they are within the built-up area and they do not undermine the vitality and viability of any of Midlothian's town centres.
- 7.14 Policy **IMP1: New Development**, this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are transport infrastructure, landscaping, public transport connections, parking in accordance with approved standards, cycling access and facilities, pedestrian access, access for people with mobility issues, traffic and environmental management issues and 'percent for art' provision.
- 7.15 Policy **DP1: Development in the countryside** states that all new buildings in the countryside will respect the character of existing buildings in terms of design, scale and materials used, blend with the landscape, conform with the countryside policies and incorporate sustainable building design.

Midlothian Local Development Plan (MLDP)

- 7.16 While the MLDP has not yet been adopted it does represent Midlothian Council's preferred strategy for the future development of the local authority area. As such, the MLDP is a material consideration in the assessment of this application. Of particular relevance are the policies which cover Community

Identity and Coalescence (DEV1), Landscaping in new development (DEV7), Existing Employment Locations (ECON1), Transport Network Interventions (TRAN2), Location of New Retail and Commercial Leisure Facilities (TCR2), Development in the Countryside (RD1), the Green Belt (ENV1), Midlothian's Green Network (ENV2), New Development (IMP1) and Essential Infrastructure Required to Enable New Development to Take Place (IMP2).

- 7.17 The policies mentioned in the preceding paragraph are generally reflective of the policies already set out in the section on Midlothian Local Plan. However, the MLDP sets out requirements for the environmental improvement work for the A7. Also of relevance is the proposed allocation of the neighbouring land to the west as a site for housing (site Hs9).

National Policy

- 7.18 The **Scottish Planning Policy** sets out the Scottish Government's policies in respect to a number of planning related matters. The policy sets out the government's position with regards retail developments and development in the Green Belt. In general the SPP seeks to protect town centres from developments which may adversely impact on their vitality and viability.
- 7.19 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.20 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

8.0 PLANNING ISSUES

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

The Principle of Development

- 8.2 The site is located within the countryside and Green Belt, as identified in the adopted Midlothian Local Plan.
- 8.3 The proposal for a new retail unit in this location does not comply with the terms of policy RP1 of the local plan as it is not one of the acceptable countryside activities or businesses identified in that policy. Should the principle of development in this location be established it is essential that the proposed development respects the policy requirements in terms of scale, character and integration with the landscape.

- 8.4 The proposal for a new retail unit in this location does not comply with the terms of policy RP2 of the local plan as it does not accord with the criteria set out in this policy. However, should the principle of development be acceptable it will be necessary for the development to comply with the criteria relating to Green Belt objectives. Despite the site already being developed it does not negate the need to comply with the Green Belt objectives. At some sites allocated by the Council in the 2008 local plan the Scottish Government Reporters required Green Belt status to be retained in order that the form of development respects Green Belt objectives.
- 8.5 The site is important, forming part of a buffer against coalescence between Bonnyrigg and Eskbank, and being highly visible from the A7. The nature of the previous garden centre in terms of use and appearance, with areas of outdoor plant sales, appeared less incongruent with the Green Belt designation than a proposed supermarket.
- 8.6 Given that the site has already been extensively developed the current proposal will not lead to the permanent loss of prime agricultural land and, therefore, does not conflict with policy RP4 of the local plan.
- 8.7 The site is not within a town centre, nor can it reasonably be described as being on the edge of a town centre. It is a requirement of Government and Council policy to follow a sequential approach to the assessment of this type of proposal. Policy SHOP5 of the local plan requires proposals to be within, on the edge of, or sufficiently close to form an effective extension to a town centre. This proposal does not meet this criterion, and therefore does not comply with policy SHOP5. Once the sequential options are exhausted, there is no allowance in policy to insert a further tier in the sequence.
- 8.8 Policy SHOP7 of the local plan allows for new neighbourhood shopping facilities, provided the vitality and viability of other centres are not compromised or undermined. This site, on the very edge of settlements and adjacent to a major road does not constitute a neighbourhood shopping centre. In addition, the proposed floorspace of the retail unit is larger than would be expected of one shop in a neighbourhood facility.
- 8.9 The applicant has submitted a Retail Impact Assessment (RIA) to accompany the planning application. An RIA can be a useful method to gauge the change resulting from new development and the potential impacts on town centres from that development. As part of the RIA the applicant has also submitted a sequential assessment of alternative sites. The sequential assessment is heavily influenced by Aldi's specific operational requirements. The sequential assessment submitted concludes that there are no sequentially preferable opportunities.
- 8.10 The conclusions set out in the RIA are highly dependant on assumptions and the applicant's assertions, which can be subjective. However, the RIA concludes that the main loss of trade will fall upon the Tesco store at Hardengreen and, to a lesser extent, at town centre locations. While competition between businesses is not a material consideration in the

assessment of planning applications consideration is given to the potential impacts on the vitality and viability of town centres, and there are numerous planning policies in place which relate to this issue.

- 8.11 The applicant has presented 'town centre health checks' for Bonnyrigg, Dalkeith and Newtongrange, and concludes that the town centres have low vacancy rates and appear to be performing well. The Council's own health checks appear to concur with this assertion.
- 8.12 Midlothian Council commissioned a study of retail patterns in 2012, from RDPC Ltd, which can be used to assist in the determination of planning applications. The study anticipated a continuing surplus in convenience expenditure in the A7 corridor by 2021 of £36m (after allowing for committed development such as at the former Dalkeith Bus Station) with scope for around 3,600sqm floorspace in the corridor. Since the study was completed convenience expenditure has grown more slowly than anticipated (based on available data on national trends and reflecting the changed retail conditions), but it is still anticipated that there is potential for around 2,700sqm gross floorspace in the corridor by the end of the RDPC study period (2021).
- 8.13 The RDPC study also found that in the case of the smaller town centres there was less trade than is required for these centres to continue to invest and prosper longer term. Concern regarding this has resulted in the proposed MLDP seeking to achieve a balance between growing the retail floorspace and protecting town centres, by supporting continuing development in town centres, new neighbourhood stores, a new town centre at Shawfair and a new retail location at Gorebridge or Redheugh.
- 8.14 The current planning proposal is for a retail store of 1,804sqm gross floorspace. There is sufficient potential trade in the corridor to support the new store, but this would leave little potential surplus convenience trade to support further growth in town centres as sites become available (e.g. former Dalkeith High School site or Bonnyrigg depot) or for neighbourhood centres (e.g. Hopefield) or the new retail facility in the southern part of the corridor, all of which would be preferable and comply with planning policy better than the proposal. The proposed development is likely to impact on the deliverability of retail facilities at Redheugh and other less well served settlements along the corridor.
- 8.15 It is likely that the proposed development will draw a small amount of trade away from town centres. While the development should not harm the town centres it is unlikely to support and protect those places. In terms of sustainable development principles and supporting Midlothian's town centres this proposal is not considered to be the right development in the right place.
- 8.16 Despite the assessment above it is necessary to take in to account the current planning status of part of the application site, as clarified by the recently issued Certificate of Lawfulness. The certificate establishes that the existing garden centre benefits from an unrestricted Class 1 retail use. In effect, this means that Aldi (or another retailer) could have operated from the former

garden centre building without the requirement for applying for planning permission. The applicant has advised that they investigated this option, but that it was not something that they wished to progress. The applicant states that they consider that an exception to local plan policies can be justified on account of the established unrestricted Class 1 retail use at the application site.

- 8.17 The siting of garden centres, and horticultural businesses, is appropriate in the countryside and Green Belt but there is an issue where garden centres can legitimately change to other retail uses by virtue of them being within the same use class order. This can result in a position where a business which has a legitimate requirement to be in the countryside and Green Belt can be replaced by an operation which has fewer requirements for such a location. It is for this reason that the Planning Authority generally seeks to restrict garden centres to the sale of goods which would be expected at such a store. As discussed in the Background section above, in 1997 the Regulatory Services Committee of the Council considered that it was appropriate to grant planning permission for the garden centre without applying any restrictions through a legal agreement. The absence of any restriction on the garden centre allows the building to be used as a Class 1 retail use.
- 8.18 The former garden centre building, along with consented extensions, provides for 1,335sqm of covered sales space. In addition to the covered retail space there is an external sales area which also contributes to the retail space at the site, giving a total sales area of 3,235sqm. The gross area of the proposed retail unit is smaller than the total area which could be used for retail on the site of the former garden centre, albeit the proposed building is larger than the existing garden centre building.
- 8.19 The applicant proposes the demolition of all buildings on site and the repositioning of the retail store from the front of the site, which is covered by the Certificate of Lawfulness, to the rear of the site, which is not covered by the certificate. While the new store is to be positioned on a part of the site which does not benefit from the unrestricted Class 1 retail use it would be unreasonable not to take it in to account as a material consideration.
- 8.20 The Certificate of Lawfulness is a significant material consideration in the assessment of this planning application. The decision not to restrict the garden centre to that specific use or to restrict the range of goods sold from the unit, at the time of the original approval has opened up the potential for this site to be used as a Class 1 retail unit. As such, despite the non-compliance with the aims and terms of the various planning policies, it is highly unlikely that the Council would be unsuccessful in seeking to resist the principle of the planning proposal being pursued through this application. In addition, it would not be appropriate to restrict the range of goods sold from the proposed unit as there exists an unrestricted Class 1 retail use on the site at present, albeit temporarily closed but not abandoned.

Layout and Form of the Development

- 8.21 The applicant proposes to demolish all buildings on the application site and then erect a new retail store at the westernmost section of the site. The applicant claims that the siting of the store was partly influenced by the position of the overhead power lines which traverse the application site.
- 8.22 While it is good urban design practice to ensure that buildings address the street there is sound rationale for siting the new building to the rear of the site. The positioning of the retail unit will allow for strong landscaping to be implemented. A good quality landscaping scheme will mitigate the otherwise poor standard of urban design, which has the building set back in the site and the area in front of the store dominated by a large area of car parking and minimal softening through on-site landscaping.
- 8.23 A strong landscaping scheme will also help in defining the edge of the adjacent towns and will assist in protecting against the coalescence of the neighbouring settlements, which is a particularly acute issue at this section of the A7.
- 8.24 The application site includes a parcel of land referred to as a 'Grassed Area' on the submitted drawings. Despite this area being within the application site boundary the applicant states that it will be retained by the current owners of the site. It is not clear what the owners' aspirations for this part of the site are but it is essential that part of this area is retained as a landscape buffer between the retail unit and the A7. Any buildings on this 'Grassed Area' may struggle to comply with the Green Belt objectives as they will increase the density of development and could adversely impact on the landscape character of the area. While the development will not result in the loss of a green field site from within the Green Belt it is still necessary for the development to comply with the Green Belt objectives.
- 8.25 The applicant proposes to lay this 'Grassed Area' to soft landscaping. However, it needs to be part of the strategic plan for the whole site, by softening the impact of the development, improving settlement containment and protecting against coalescence. Despite the site being brown field previously it is essential to improve the landscaping in order to soften the impact of the larger building and parking area. The current application, if supported, should provide an opportunity to enhance the landscape and not degrade it.

Design and Materials

- 8.26 The application is for a single storey flat roof retail unit with rectangular footprint. The proposed building is a standard product which utilises a non-standard palate of finishing materials. Given the sensitive location of the site, within the countryside and Green Belt, the applicant has proposed the use of timber cladding which successfully responds to its setting. Timber cladding is an appropriate finishing material for the development of sites which are remote from the built-up area.

- 8.27 Architectural interest is created in the regular form of the building through the treatment of the entrance canopy and fenestration, with large areas of glazing and high level windows.
- 8.28 While the quality of architecture employed for this proposal is better than the standardised product seen in other locations, the sensitive nature of the site required an improved standard of design. It would not have been appropriate to have proposed a building which took no account of its setting.
- 8.29 Improvements have been made to the appearance of the delivery area during the course of the proposal. The delivery area is to the front of the building, being the first feature seen when arriving at the site by car. There are logistical reasons for the delivery area requiring to be sited in this location but some effort has been made to effectively screen this functioning service yard area without compromising usability and safety.
- 8.30 The overall design of the proposal is appropriate for this site, and paired with a quality landscape plan will result in the proposed development not having a significant adverse impact on the character and appearance of the area.

SUDS

- 8.31 Appropriate measures have been proposed in order to adequately deal with surface water drainage. SEPA removed an earlier objection subsequent to an appropriate scheme being proposed. There are still some detailed matters regarding the SUDs system that is yet to be resolved, e.g. the combined landscape feature and filter trench adjacent to the delivery area.

Landscaping

- 8.32 The application site is located on land designated as being in the Green Belt. It is essential that a strong landscape buffer is achieved along the A7 corridor in order to provide visual separation between the settlements of Eskbank and Bonnyrigg.
- 8.33 The existing planting along the A7 corridor provides a good and robust landscape separation and this will need to be replicated on the application site. When the garden centre was originally allowed it was a requirement that there was continuous planting along the A7.
- 8.34 The existing mixed hedging along the boundary of the site was originally proposed to be removed and replaced with Portuguese Laurel. The proposed hedge was inappropriate as it is too suburban in character for this countryside location. The applicant has now agreed that the existing hedge should be retained. The hedge should be extended along the full roadside edge of the site, with the proposed ornamental shrubs and trees (indigenous tree species) planted on the inside of the hedge. The planting requires to be increased along the boundary adjacent to the area identified by the applicant as the 'Grassed Area'. In addition, the proposed density of the tree planting requires

to be increased in order to achieve a good and robust visual containment of the site, without completely screening it. Incorporating these amendments will ensure consistency of landscaping with the adjacent community hospital site.

- 8.35 The proposed planting along the western boundary consist solely of low growing shrubs. In order to ensure strong visual separation between the application site and neighbouring site this area should be planted up with larger growing species.
- 8.36 As mentioned in the SUDs section above it will be necessary for the applicant to provide more clarity regarding the landscaped strip which is located above the SUDs filter strip. It is necessary to establish whether it is technically possible to achieve the level of landscaping alongside such a SUDs feature.
- 8.37 The proposed landscape scheme requires to be amended in order to achieve the necessary separation between settlements and to ensure that the plant species selected are appropriate to their position in the countryside and Green Belt and not a suburban setting.

Transportation Issues

- 8.38 The owner of the neighbouring proposed residential site at Broomieknowe has stated that the applicant does not have control over the visibility at the access. The applicant has subsequently submitted additional information to demonstrate that there will be no significant impingement on the acceptable visibility splay at the access to the application site.
- 8.39 In terms of the transportation section of this report it is necessary to give some consideration to the proposed residential development of the adjacent site (by Cala), to the west, which is identified as site Hs9 in the proposed MLDP. An application is currently being assessed by the Planning Authority for this site. While the housing site forms part of the Council's preferred development strategy for Midlothian it is not yet a committed site and has attracted objections which are due for consideration by a Reporter at the forthcoming Examination into the MLDP (Proposed Plan).
- 8.40 The access proposed by the applicants to the neighbouring residential site is in close proximity to the existing access to the Mayshade application site. The Council's Policy and Road Safety Manager has formally objected to the signalised junction being proposed by the applicant for the residential scheme on account of the introduction of traffic signals on this section of road being unnecessary and resulting in unacceptable delays and potentially reducing road safety.
- 8.41 The Policy and Road Safety Manager is, however, satisfied that the proposed alterations to the access to the Mayshade site have been designed to safely accommodate the additional traffic the new retail unit may generate. There is, however, no guarantee that the access to the site will be successful should the proposed access to the neighbouring residential development be implemented. The introduction of a signalised junction in this area would likely

result in additional delays to traffic currently using Eskbank Road, and given the close proximity to the Mayshade access may have a negative impact on traffic using that access.

- 8.42 The applicant was asked to submit an addition to their Transport Assessment in order to provide information on whether the development of the Mayshade site will compromise the Council's preferred development strategy, in particular the Hs9 site.
- 8.43 The current unrestricted Class 1 retail use at the garden centre building permits the site to be used for food (or other) retail for up to 1,335sqm. The current proposal comprises the construction of 1,804sqm, representing an uplift of 469sqm over the consented building. The current proposal only represents a small scale increase in the retail floorspace, beyond the existing floorspace, which is a material consideration in the assessment of the application.
- 8.44 The detailed information submitted demonstrates that, based on traffic generation levels, it is possible for the retail development at Mayshade and the residential development at Broomieknowe to co-exist without having a detrimental impact on one another or on highway safety in the area. However, it would be necessary for the applicant for the residential development to reconsider the proposed access, which the applicant is already being asked to do by the Council as Roads Authority. The Council's Policy and Road Safety Manager has identified an alternative access to the neighbouring residential site which would have less impact on traffic using Eskbank Road than the proposed signalised junction.
- 8.45 The MLDP highlights that the Council is seeking to carry out some environmental improvements to the A7 corridor. These improvements include measures to make the A7, at the point near the application site, a public transport corridor with improved cycle and pedestrian links. The application will rely on these improved cycle and pedestrian links in order to ensure that the proposed development provides access to non-car users and to ensure it is as sustainable as possible. It will be necessary for the developer to provide a financial contribution to the A7 Environmental Improvements Scheme.
- 8.46 The proposed development should not have a significant impact on traffic movements in the area as compared to what would be experienced if the business were to operate from the existing garden centre building.

Ground Conditions

- 8.47 The Coal Authority is satisfied that the legacy coal mining issues are not significant and that there is no risk posed to the proposed development.

Ecology

- 8.48 The proposed development does not give rise to any significant concerns regarding unacceptable impacts on local biodiversity.

Developer Contributions

- 8.49 As mentioned in the Transportation section above, it will be necessary for the developer to provide a financial contribution towards the A7 Environmental Improvements. This developer contribution can be secured through a planning legal agreement.

Other Matters

- 8.50 Given that the neighbouring site to the west is currently part of the Council's preferred strategy for development as a potential residential site it is necessary to assess whether the proposed development will have an adverse impact on the amenity of any potential neighbouring properties. Given the presence of a high pressure gas pipeline between the proposed retail store and the residential site there is a reasonable space between the proposed retail unit and the nearest proposed houses. Given this, the proposed operating hours of the retail unit and the proposed arrangements for servicing the store there is unlikely to be any significant adverse impact on the amenity of the proposed residential units. Deliveries to the retail unit will not be so regular so as to have an adverse impact on amenity. In any event, the established use of the site could result in more vehicles than have been proposed.
- 8.51 Policy IMP1 of the local plan required new development to provide a percent for art. The applicant has not made any proposal to cover this matter but it can be secured through a planning condition.
- 8.52 The applicant has submitted an air quality assessment. The assessment indicates that air quality objectives will not be exceeded and is, therefore, considered to be acceptable.
- 8.53 Unfortunately the applicant's first planning statement made some references to a proposed development in Dundee. One objector has made reference to this error in their representation, also making the point that there may be other inaccuracies in the submission. The planning statement was amended by the applicant to remove references to the Dundee proposal.

9.0 RECOMMENDATION

- 9.1 It is recommended that planning permission be granted for the following reason:

The development's non-compliance with policies RP1, RP2, SHOP1, SHOP5 and SHOP7 of the adopted Midlothian Local Plan is justified on account of the site benefiting from an unrestricted retail use which was established by the former garden centre business. The siting of the proposed retail unit, layout of the site and scheme of landscaping will protect against the coalescence of settlements. The design of the proposed retail unit will positively contribute to the appearance of the site, which is in a sensitive countryside location.

Subject to:

- (i) The prior signing of a legal agreement to secure developer contributions towards the A7 Environmental Improvements scheme.

(ii) and the following conditions:

1. Development shall not begin until details of a 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 trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - ii. proposed new planting, including trees, shrubs, hedging, wildflowers and grassed areas;
 - iii. schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - iv. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the car park and open spaces shall be completed prior to the retail unit being open for business. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
 - v. location and design of any proposed walls, fences and gates, including those surrounding ancillary structures; and,
 - vi. drainage details and sustainable urban drainage systems to manage water runoff.

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 (iv). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following 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 RP1 and RP2 of the Midlothian Local Plan and national planning guidance and advice.*

2. Development shall not begin until 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 development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP1*

and RP2 of the Midlothian Local Plan and national planning guidance and advice.

3. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii. proposed vehicular, cycle and pedestrian access;
 - iii. proposed visibility splays, traffic calming measures, lighting and signage;
 - iv. proposed construction traffic access and haulage routes;
 - v. a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
 - vi. proposed car parking arrangements; and,
 - vii. a programme for completion for the construction of access, roads, footpaths and cycle paths.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

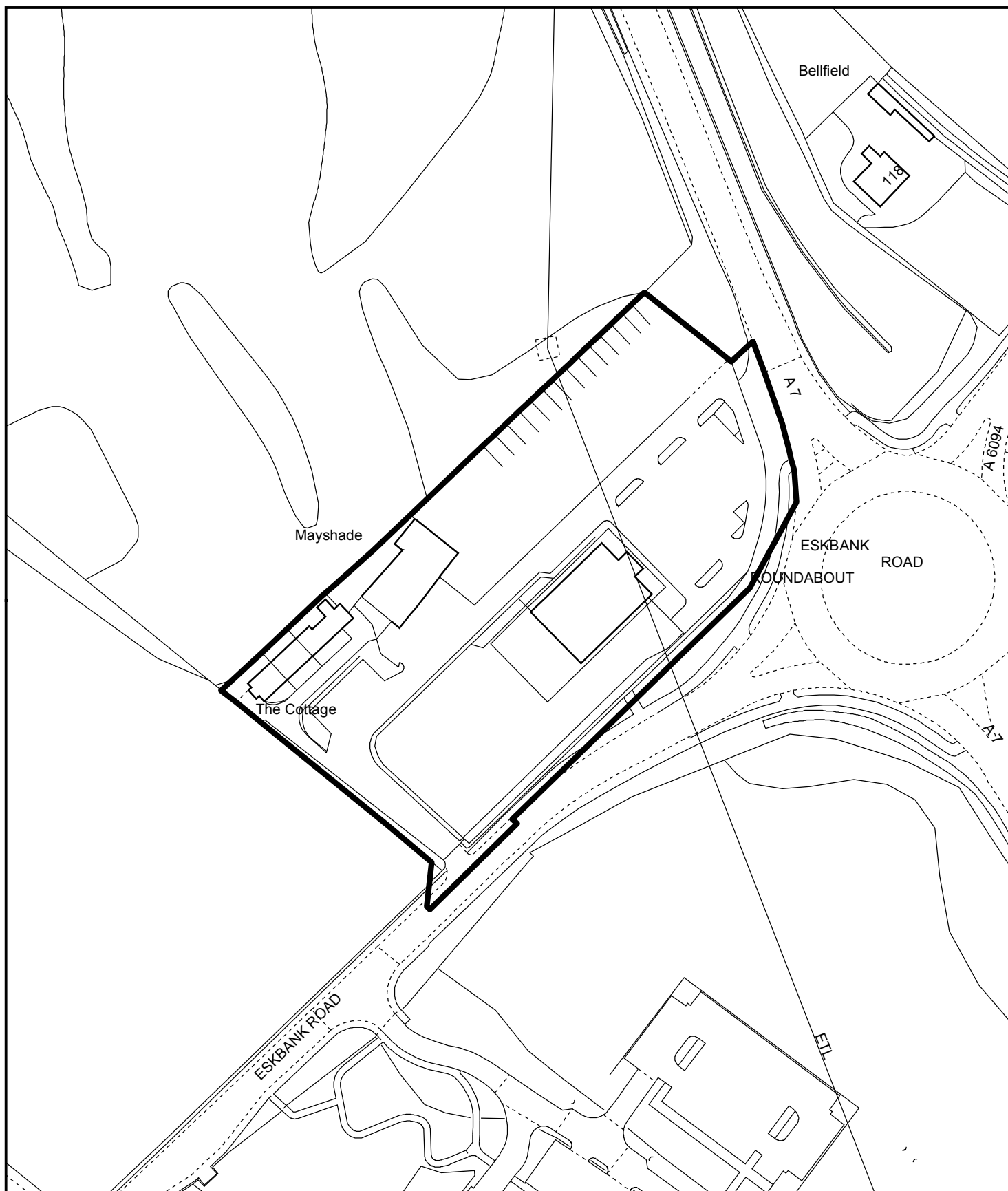
4. Development shall not begin until details, including a timetable of implementation, of 'Percent for Art' have been submitted to and approved in writing by the planning authority. The 'Percent for Art' shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policy IMP1 of the Midlothian Local Plan and national planning guidance and advice.*

Ian Johnson
Head of Communities and Economy

Date:	05 January 2015
Application No:	15/00692/DPP
Applicant:	Aldi Stores Ltd, c/o agent
Agent:	GVA Grimley Ltd, Quayside House, 127 Fountainbridge, Edinburgh, EH3 9QG
Validation Date:	24 August 2015

Contact Person: Duncan Robertson, Senior Planning Officer
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Background Papers: 0121/86; 0501/96; 00/00735/FUL; 07/00579/FUL;
13/00493/DPP; 15/00020/CL



**Education, Economy
& Communities**
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Land at Mayshade Garden Centre, Eskbank Road,
Bonnyrigg

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