

Notice of Review: 70 Lothian Street, Bonnyrigg

Determination Report

Report by Dr Mary Smith Director of Education, 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 retail (Class 1) to hot food take away (sui generis) and installation of flue at 70 Lothian Street, Bonnyrigg.

2 Background

- 2.1 Planning application 18/00654/DPP for the change of use from retail (Class 1) to hot food take away (sui generis) and installation of flue at 70 Lothian Street, Bonnyrigg was refused planning permission on 20 December 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 20 December 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

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 Tuesday 16 April 2019; and
 - Have determined to progress the review by way of written submissions.

- 4.2 The case officer's report identified that three consultation responses and three representations were received. As part of the review process the interested parties were notified of the review. No additional comments have been received. All the comments can be viewed online on the electronic planning application/review case file.
- 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 condition has been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

1. The use hereby permitted shall not open to the public outwith the following hours:

Mondays to Sundays: 11am to 1am

Reason: To protect the character and amenity of the surrounding area and the occupants of nearby residential properties.

2. Prior to the use hereby approved being implemented, a litter management plan shall be submitted to and approved in writing by the planning authority. This shall include; details of all areas of refuse storage; a litter pick up plan; and details of negotiations with the Council regarding the positioning, maintenance and provision of a bin which 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 protect the character, appearance and amenity of the area.*

3. The ventilation system shall be designed so that cooking effluvia are ducted to above roof height and expelled with a suitable upwards velocity to ensure that no cooking odours escape or are exhausted into any neighbouring sensitive premises.
4. The kitchen shall be ventilated by system capable of achieving 30 air changes per hour.
5. The use hereby approved shall not commence until the approved scheme of ventilation is operational.
6. 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.
7. 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 3 - 7: *To ensure a satisfactory level of amenity to the surrounding area; to protect the amenity of neighbouring residents.*

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

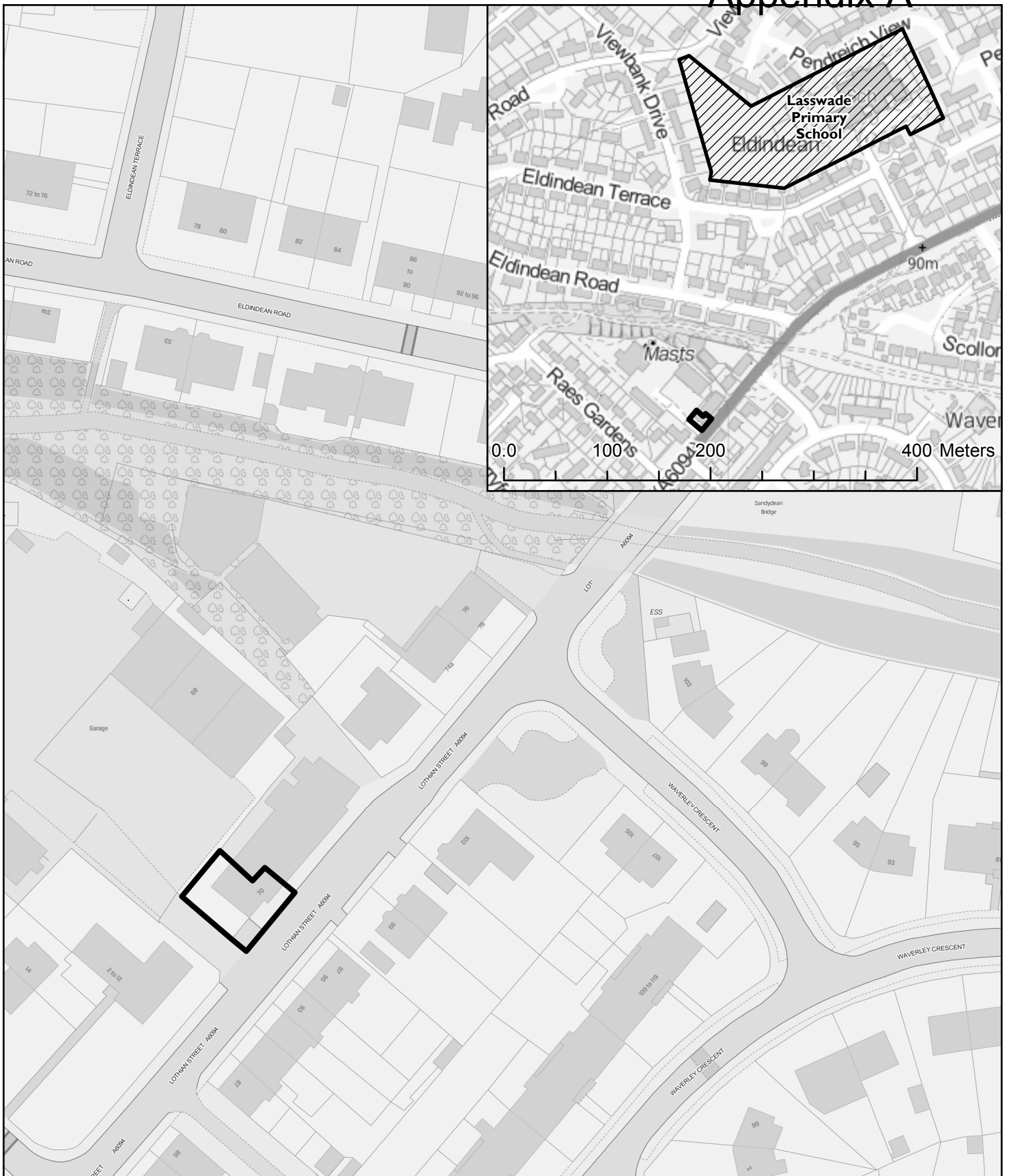
Date: 4 April 2019

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

Tel No: 0131 271 3310

Background Papers:

Appendix A



**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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File No. 18/00654/DPP

Scale: 1:1000



NOTICE OF REVIEW

Under Section 43A(8) Of the Town and County 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	<input type="text"/>	Ref No.	<input type="text" value="ep570 - Bonnyrigg"/>
Forename	<input type="text"/>	Forename	<input type="text" value="Derek"/>
Surname	<input type="text"/>	Surname	<input type="text" value="Scott"/>
Company Name	<input type="text" value="Scottish Midland Co-Operative"/>	Company Name	<input type="text" value="Derek Scott Planning"/>
Building No./Name	<input type="text" value="Society Limited (Scotmid)"/>	Building No./Name	<input type="text"/>
Address Line 1	<input type="text" value="Hillwood House"/>	Address Line 1	<input type="text" value="21 Lansdowne Crescent"/>
Address Line 2	<input type="text" value="2 Harvest Drive, Newbridge"/>	Address Line 2	<input type="text"/>
Town/City	<input type="text" value="Edinburgh"/>	Town/City	<input type="text" value="Edinburgh"/>
Postcode	<input type="text" value="EH28 8QJ"/>	Postcode	<input type="text" value="EH12 5EH"/>
Telephone	<input type="text"/>	Telephone	<input type="text" value="0131 535 1103"/>
Mobile	<input type="text"/>	Mobile	<input type="text" value="07802 431970"/>
Fax	<input type="text"/>	Fax	<input type="text" value="0131 535 1104"/>
Email	<input type="text"/>	Email	<input type="text" value="enquiries@derekscottplanning.com"/>
3. Application Details			
Planning authority		<input type="text" value="Midlothian Council"/>	
Planning authority's application reference number		<input type="text" value="18/00654/DPP"/>	
Site address			
<input style="width: 100%; height: 100%;" type="text" value="70 Lothian Street
Bonnyrigg
EH19 3AQ"/>			
Description of proposed development			
<input style="width: 100%; height: 100%;" type="text" value="Change of Use from Retail (Class 1) to Hot Food Takeaway (Sui-Generis) and
installation of external extraction flue."/>			

Date of application

31st August 2018

Date of decision (if any)

20th December 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.

We reserve the right to respond to any submissions on the appeal received either from the Appointed Officer or third parties.

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:

The site can be viewed from public land. If access is required into the appeal premises arrangements will need to be made.

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.

Please refer to attached letter and documents.

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 you 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.

N/A

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

Please refer to attached letter.

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



Name:

Derek Scott Planing

Date:

08th February 2019

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



Our Ref: ep570rb/let001/DS

08th February 2019

Midlothian Council
Local Review Body
Midlothian House
Buccleuch Street
Dalkeith
EH22 1DN

Dear Sirs

REVIEW REQUEST

**18/00654/DPP - CHANGE OF USE FROM SHOP (CLASS 1) TO HOT FOOD TAKEAWAY (SUI
GENERIS) AND INSTALLATION OF EXTERNAL EXTRACTION FLUE AT 70 LOTHIAN STREET,
BONNYRIGG, MIDLOTHIAN EH19 3AQ**

We write on behalf of clients, the Scottish Midland Co-Operative Society Limited (Scotmid), to respectfully request that your Council's Planning Review Body undertakes a review of the decision made by the Appointed Officer, to refuse the planning application described above for the change of use from a shop (Class 1 – Retail) to a hot food takeaway (Sui Generis) and the installation of an external extraction flue at 70 Lothian Street, Bonnyrigg. A copy of the planning application submitted to the Council is attached as **Document 2**.

Site Location and Description

The application/appeal premises comprise a single storey retail unit (Sprott's News) located on the north western side of Lothian Street (A6094), Bonnyrigg approximately 300 metres to the north west of the edge of the town centre. The unit which has a flat roof with a masonry and glazed frontage sits immediately adjacent to an established restaurant (Gigi's). There is a garage to the rear (Lothian Motors), access to which is provided via a laneway to the south west and beyond which there is a residential property. Residential properties also exist on the opposite side of Lothian Street. There are two on-street car parking spaces immediately adjacent to the unit with a bus stop existing immediately to the north east next to Gigi's Restaurant. That said restaurant, according to the Officer's Report on the application, a copy of which is attached as **Document 3** has opening hours from 11.00 a.m. to 1.00 a.m.

The application premises had previously operated as a retail outlet (Licensed Grocer & Newsagent) but as a result of exceptionally challenging trading conditions closed its doors on 30th September 2018. The property had been marketed as a retail unit prior to closure for the best part of the past two years by Intelligent Business Transfer with no interest received in that period.

Description of Proposed Development

The application submitted to Midlothian Council sought full planning permission to change the use of the vacant unit from retail (Class 1) purposes to a hot food takeaway facility (Sui Generis). With the exception of the proposed flue to the rear there were no other external alterations proposed to the premises. A further application will be submitted for signage arrangements (if required) in the event of the current planning application being granted/appeal upheld.

The proposed hours of operation for the facility were specified in the original application from 11 a.m. until 11 p.m. Monday to Friday; 11 a.m. to 12 p.m. on Saturdays and 5 p.m. to 10 p.m. on Sundays. It is envisaged that there will be two delivery drivers employed in the business.

Response to Reason for Refusal

The application was refused on 20th December 2018 for the following reason:

'The proposed hot food takeaway would be within 400m of the curtilage of Lasswade Primary School and so the proposal does not comply with the draft Supplementary Guidance for Food and Drink and Other Non-retail Uses in Town Centres.'

A copy of the decision notice is attached as **Document 4**.

The Draft Supplementary Guidance referred to was approved by the Council's Planning Committee at a meeting on 20th November 2018 and contains a prohibition on the opening of new hot food takeaway facilities located within 400 metres of a primary or secondary school.

Whilst we can understand the rationale for the Council adopting a policy of this nature in respect of secondary schools we have great difficulty in understanding why such restrictions should apply equally to primary schools given that pupils in the latter are retained within the school grounds for the entire duration of the school day.

As far as the application site is concerned we would further note that whilst the nearest school (Lasswade Primary) is located some 230 metres from the proposed hot food takeaway facility 'as the crow flies' it is some 380 metres by road, only 20 metres inside the cordon specified.

In the circumstances described it is inconceivable to consider that the physical relationship of the application site to Lasswade Primary School in this instance would pose a risk to the health and well-being of any pupils attending it. Should the Review Body disagree with our position on this matter it is suggested, as an alternative to refusing, that a condition be imposed on any consent granted so as to ensure that the hot food facility remains closed during relevant hours or times of concern e.g. during school drop off and collection times.

Other Issues Raised

Whilst the application was refused solely on grounds relating to its proximity to Lasswade Primary School a number of other concerns were expressed by third parties which we would wish to respond below:

- *Road safety concerns arising from customer parking thus conflicting with the position of the bus stops.*

Response – The traffic movements associated with the use of the property as a hot food takeaway facility will be very similar to those associated with its use as a Class 1 Retail Shop and as such this does not provide sound grounds for withholding consent. We note that the Policy and Road Safety Manager has no objection to the planning application.

- *The proposal will exacerbate existing parking issues in the area – there is not sufficient parking for local residents.*

Response – As above.

- *A takeaway element was refused at the neighbouring restaurant.*

Response – As noted in the Officer's Report on the application the Planning Authority has agreed that an ancillary hot food takeaway element can operate from the adjacent restaurant, albeit by delivery vehicles only. The circumstances relating to our client's site are entirely different in that the retail unit is now vacant and is not generating separate traffic movements to the area.

- *The proposed hours of operation will have a detrimental impact on the amenity of nearby residents*

Response – Given that the adjoining restaurant has approved opening hours of operation between 11 a.m. and 1.00 a.m. it would be unreasonable to restrict the hours of operation in the proposed hot food takeaway facility to any less than that particularly in view of the relationship between the application property and the nearest residential properties.

- *The proposed use will have a detrimental impact on nearby residents with regards to noise and disruption.*

Response – As above.

- *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.*

Response – It is considered that the proposed hot food takeaway facility is the most appropriate development for the area in question and can be accommodated without detriment to the area's amenity.

Summary and Conclusions

The application proposals represent an entirely appropriate use for a retail unit vacant since September 2018 and marketed unsuccessfully for the past two years. Whilst the unit lies within 400 metres of a primary school (380 metres by road) we do not consider that its location in relation to that school will result in a detrimental impact on the physical health or well-being of any children attending that primary school. Should the Local Review Body have such concerns it is suggested that a condition could be imposed restricting opening hours so that they do not coincide with the times at which children access and/or leave the school. The advantages of finding a use for this building far outweigh the limited risks associated with it.

In light of the considerations outlined it is respectfully requested that the appeal be upheld and permission granted for the proposed change of use.

We reserve the right to provide additional information in response to any comments made by either the Appointed Officer or Third Parties.

Please acknowledge receipt and registration of this Review Request at your earliest convenience.

Thanking you in anticipation of your assistance.

Yours faithfully



Derek Scott

enc.

- Document 1 - Notice of Review Forms
- Document 2 - Copy of Planning Application Submitted
- Document 3 - Copy of Planning Officers Report
- Document 4 - Copy of Decision Notice

PLANNING APPLICATION

**CHANGE OF USE FROM SHOP (CLASS 1) TO HOT FOOD TAKEAWAY (SUI
GENERIS) AND INSTALLATION OF EXTERNAL EXTRACTION FLUE**

At

**70 LOTHIAN STREET
BONNYRIGG
MIDLOTHIAN
EH19 3AQ**

Prepared by

**Derek Scott Planning
Planning and Development Consultants**



**21 Lansdowne Crescent
Edinburgh
EH12 5EH
Tel No: 0131 535 1103
Fax No: 0131 535 1104
E-Mail: enquiries@derekscottplanning.com**

On behalf of

Scottish Midland Co-operative Society Limited
SCOTMID
co-operative

Executive Summary

Change of use from shop (Class 1) to hot food takeaway (Sui Generis) and installation of external extraction flue at 70 Lothian Street, Bonnyrigg, Midlothian EH19 3AQ

- The application premises comprise a single storey retail unit (Sprott's News) located on the north western side of Lothian Street (A6094), Bonnyrigg approximately 300 metres to the north east of the edge of Bonnyrigg Town Centre.
- The unit which has a flat roof with a masonry and glazed frontage sits immediately adjacent to an established restaurant (Gigi's). There is a garage to the rear (Lothian Motors) access to which is provided via a laneway to the south west and beyond which there is a residential property. Residential properties also exist on the opposite side of Lothian Street. There are two on-street car parking spaces immediately adjacent to the unit with a bus stop existing immediately to the north east next to Gigi's Restaurant.
- Whilst the application premises are currently trading as a retail unit (Licensed Grocer & Newsagent) trading conditions are exceptionally poor with the business on its last legs. The property has been marketed for the past 18 months by Intelligent Business Transfer with no interest received in that period. As a consequence of these considerations the shop is ear marked for closure in the near future as the present tenants are unable to sustain an ongoing unprofitable business.
- The application submitted seeks full planning permission to change the use of the vacant unit from retail (Class 1) purposes to a hot food takeaway facility (Sui Generis). With the exception of the proposed flue to the rear there are no other external alterations proposed to the premises. The proposed hours of operation are from 11 a.m. until 11 p.m. Monday to Friday; 11 a.m. to 12 p.m. on Saturdays and 5 p.m. to 10 p.m. on Sundays.
- The application site falls within an area in the Midlothian Local Plan where Policy DEV2 applies which states that *'Development will be permitted within existing and future built-up areas, and in particular within residential areas, unless it is likely to detract materially from the existing character or amenity of the area.'*
- Given that the application premises do not adjoin any residential properties and in light of the significant buffer existing between them and the nearest residential properties existing we are firmly of the view that the proposed change of use to the hot food takeaway facility will not materially detract from the character of the area in accordance with Policy DEV 2.
- The re-use of the appeal premises as a hot food takeaway facility offers the potential to improve the character and appearance of both the building and the wider area.

- **In light of the considerations outlined above it is respectfully requested that the application be approved allowing the premises to be used as a hot food takeaway facility.**

SUPPORTING STATEMENT

**Change of use from shop (Class 1) to hot food takeaway (Sui Generis)
and installation of external extraction flue at 70 Lothian Street,
Bonnyrigg, Midlothian EH19 3AQ**

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Document 1 **Planning Application Forms and Drawings**

Document 2 **Copy of pre-application enquiry response from Midlothian
Council**

SUPPORTING STATEMENT

**Change of use from shop (Class 1) to hot food takeaway (Sui Generis)
and installation of external extraction flue at 70 Lothian Street,
Bonnyrigg, Midlothian EH19 3AQ**

1. INTRODUCTION

- 1.1 This statement has been prepared by Derek Scott Planning, Chartered Town Planning and Development Consultants and is in support of an application which seeks planning permission for the change of use from a shop (Class 1) to a hot food takeaway (Sui Generis) including the installation of an external extraction flue at 70 Lothian Street, Bonnyrigg, Midlothian. The application has been prepared on behalf of the owners of the property – Scottish Midland Co-Operative Society Limited (Scotmid). The planning application is attached as **Document 1**.



Application Premises

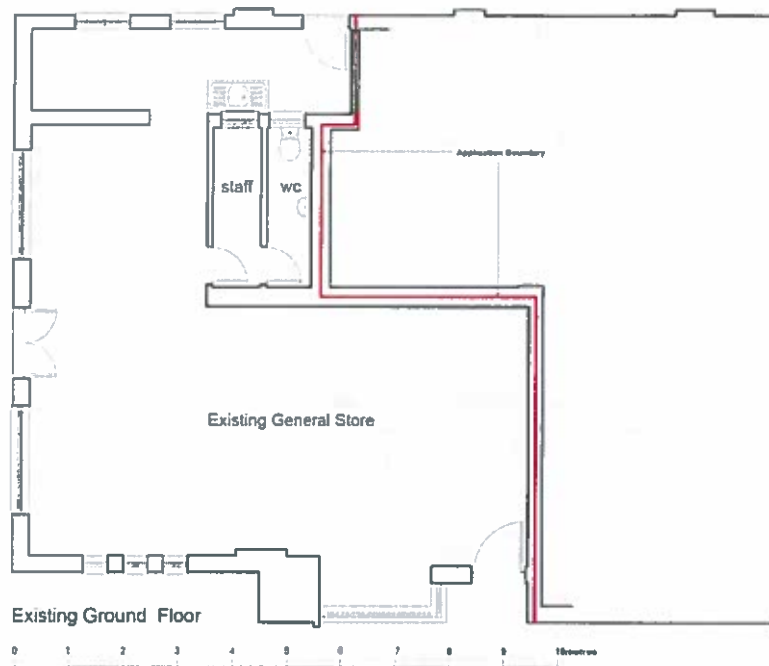
SCOTMID
co-operative

2. LOCATION AND DESCRIPTION OF SITE

- 2.1 The application premises comprise a single storey retail unit (Sprott's News) located on the north western side of Lothian Street (A6094), Bonnyrigg approximately 300 metres to the north west of the edge of the town centre. The unit which has a flat roof with a masonry and glazed frontage sits immediately adjacent to an established restaurant (Gigi's). There is a garage to the rear (Lothian Motors) access to which is provided via a laneway to the south west and beyond which there is a residential property. Residential properties also exist on the opposite side of Lothian Street. There are two on-street car parking spaces immediately adjacent to the unit with a bus stop existing immediately to the north east next to Gigi's Restaurant. That said restaurant has opening hours from 12.00 p.m. to 9.30 p.m. Sunday to Thursday and from 12.00 p.m. to 10.00 p.m. Friday and Saturday.



- 2.2 Whilst the application premises are currently trading as a retail unit (Licensed Grocer & Newsagent) trading conditions are exceptionally poor with the business on its last legs. The property has been marketed for the past 18 months by Intelligent Business Transfer with no interest received in that period. As a consequence of these considerations the shop is earmarked for closure in the near future as the present tenants are unable to sustain an ongoing unprofitable business.



Existing Ground Floor Plan

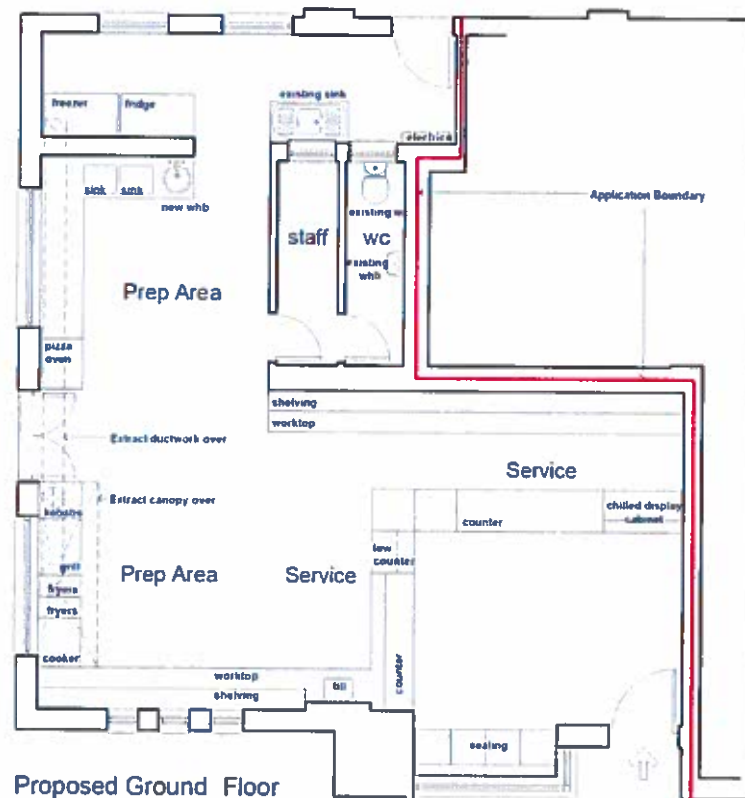


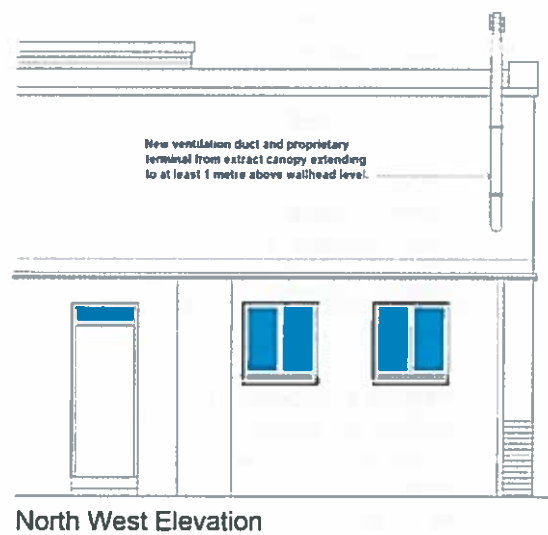
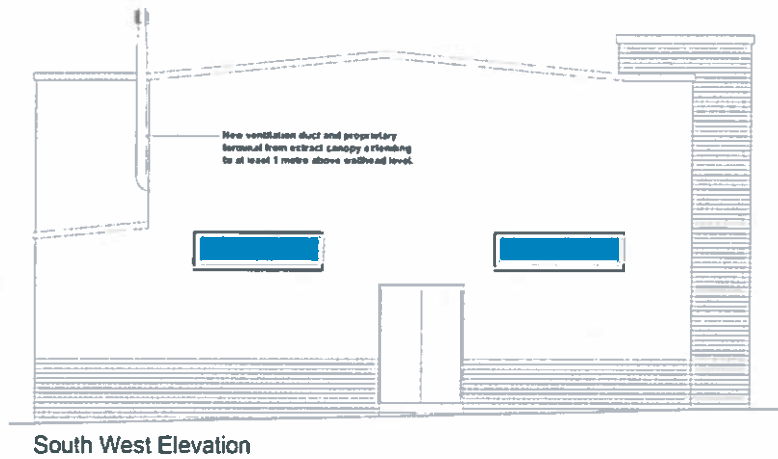
Site Photographs

- 2.3 We submitted a pre-application enquiry to the Council's Planning Department in connection with the proposal. A copy of the Council's response is attached as **Document 2**.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1 The application submitted seeks full planning permission to change the use of the vacant unit from retail (Class 1) purposes to a hot food takeaway facility (Sui Generis). With the exception of the proposed flue to the rear there are no other external alterations proposed to the premises. A further application will be submitted for signage arrangements (if required) in the event of the current planning application being granted.





- 3.2 The proposed hours of operation are from 11 a.m. until 11 p.m. Monday to Friday; 11 a.m. to 12 p.m. on Saturdays and 5 p.m. to 10 p.m. on Sundays. It is envisaged that there will be two delivery drivers employed in the business.

4. PLANNING POLICY

- 4.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) states that:

'where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the development plan unless material considerations indicate otherwise.'

- 4.2 In the context of the above it is worth making reference to the House of Lord's Judgement on the case of the City of Edinburgh Council v the Secretary of State for Scotland 1998 SLT120. It sets out the following approach to deciding an application under the Planning Acts:

- 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; and
- assess whether these considerations warrant a departure from the development plan.

- 4.3 The relevant development plan for the area comprises the Strategic Development Plan for Edinburgh and South East Scotland (SESPlan) 2013 and the Midlothian Local Development Plan 2017. Other material considerations which should also be considered in the determination of the application relates to the recent marketing history as outlined in Section 2 and Scottish Planning Policy.

Strategic Development Plan for Edinburgh and South East Scotland

- 4.4 The Strategic Development Plan for Edinburgh and South East Scotland (SESPlan) was approved by Scottish Ministers on 27th June 2013. This plan provides the strategic framework for the determination of planning applications and the preparation of local plans. However it contains no specific policies or proposals of direct relevance to either the site or the proposed development.

Midlothian Local Plan 2017

- 4.5 Midlothian Council adopted the Midlothian Local Plan on 07th November 2017. The local development plan sets out the development strategy for Midlothian for the next ten years and the detailed policies used to determine planning applications. The application site lies within an area which has no specific zoning in the plan and as such is subject to Policy DEV 2 relating to 'Protecting Amenity within the Built-Up Area.' This policy states the following:

'Development will be permitted within existing and future built-up areas, and in particular within residential areas, unless it is likely to detract materially from the existing character or amenity of the area.'

- 4.6 The text relating to the policy as contained within Paragraph 3.1.5 states the following:

'The majority of the new housing and employment allocations (proposals STRAT3 and STRAT5) are located on greenfield sites on the edge of settlements, as there are limited brownfield opportunities to meet the strategic land requirements. There is, however, a requirement to deliver additional housing on windfall sites (policy STRAT2) and such opportunities will generally be located within existing built-up areas, and can include conversion, intensification, infill or redevelopment.

It is important that any such development respects the character and amenity of the existing and future built-up areas. This is especially important for residential areas, including for non-permanent housing such as residential park homes. Policy DEV2, which applies to all towns and villages, including the committed and allocated housing and employment areas defined as within settlements on the Proposals Map, aims to ensure that new development does not damage or blight land uses which are already established or supported by this Plan. This can include negative impact by way of layout, appearance, unacceptable traffic disturbance and noise.'

- 4.7 Changes of use to hot food take away facilities can, sometimes, raise concerns in terms of their potential impact on the amenity of residential neighbours with particular reference to noise, smell and traffic generation. Any application submitted must therefore be assessed against such considerations:

Noise & Smell

The application site adjoins an established restaurant (Gigi's). Whilst there are residential properties in the wider area these are located on the opposite side of Lothian Street and on the opposite side of the access lane serving Lothian Motors. The said road/access lane provide and act as a significant buffer between the proposed hot food takeaway and the existing residential properties thus protecting them from any such disturbance. Such protection can be further enhanced through the installation of the ventilation system proposed and through the restriction of opening hours to those proposed or any other that the Council would consider to be more appropriate. As far as litter is concerned our client has no difficulty in accepting the imposition of a condition requiring an appropriate bin to be installed.

Traffic

As noted in our description of the application site there is a small layby capable of accommodating two cars and a bus stop fronting the site onto Lothian Street. These facilities have served the existing retail until for many years. It is unlikely that the parking requirements associated with the hot food takeaway will be significantly different to those associated with that retail unit.

In light of the considerations outlined above we are very firmly of the opinion that the proposal does not conflict with the terms of Policy DEV 2. As there are no specific policies in the plan relating to hot food takeaway facilities Policy DEV2 is the only policy considered relevant to the determination of the application. As a consequence of this the proposal is considered to be compliant with the terms of the development plan.

Other material considerations

- 4.8 A material consideration to which significant weight should be given in the determination of the application relates to the recent **marketing history** associated with the site. As noted previously the existing business has been trading at a loss for some time and is on

its last legs. The premises and business have been marketed as a going concern for the past eighteen months but have generated no interest.



Application Premises Marketed

- 4.9 In addition to the marketing history Scottish Planning Policy as published by the Scottish Government in June 2014 lends general support for the proposal. Paragraph 28 of that document states the following:

'Scottish Planning Policy (SPP) promotes the use of the plan-led system to provide a practical framework for decision making on planning applications, thus reinforcing the provisions of Section 25 of the Act. Paragraph 28 specifically notes that "The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.'

- 4.10 As far the application premises are concerned the proposed change of use from an unviable retail unit to a hot food takeaway is the right development in the right place and will ensure a beneficial use for an existing building without adverse impact on the surrounding neighborhood.

5. SUMMARY AND CONCLUSIONS

5.1 Having considered the proposed development against the terms of both the development plan and other material considerations we are firmly of the opinion that the application should be granted planning permission. We would wish summarise our client's case in the following terms:

- The application premises comprise a single storey retail unit (Sprott's News) located on the north western side of Lothian Street (A6094), Bonnyrigg approximately 300 metres to the north east of the edge of Bonnyrigg Town Centre.
- The unit which has a flat roof with a masonry and glazed frontage sits immediately adjacent to an established restaurant (Gigi's). There is a garage to the rear (Lothian Motors) access to which is provided via a laneway to the south west and beyond which there is a residential property. Residential properties also exist on the opposite side of Lothian Street. There are two on-street car parking spaces immediately adjacent to the unit with a bus stop existing immediately to the north east next to Gigi's Restaurant.
- Whilst the application premises are currently trading as a retail unit (Licensed Grocer & Newsagent) trading conditions are exceptionally poor with the business on its last legs. The property has been marketed for the past 18 months by Intelligent Business Transfer with no interest received in that period. As a consequence of these considerations the shop is earmarked for closure in the near future as the present tenants are unable to sustain an ongoing unprofitable business.
- The application submitted seeks full planning permission to change the use of the vacant unit from retail (Class 1) purposes to a hot food takeaway facility (Sui Generis). With the exception of the proposed flue to the rear there are no other external alterations proposed to the premises. The proposed hours of operation are from 11 a.m. until 11 p.m. Monday to Friday; 11 a.m. to 12 p.m. on Saturdays and 5 p.m. to 10 p.m. on Sundays.
- The application site falls within an area in the Midlothian Local Plan where Policy DEV2 applies which states that '*Development will be permitted within existing and future built-up areas, and in particular within residential areas, unless it is likely to detract materially from the existing character or amenity of the area.*'
- Given that the application premises do not adjoin any residential properties and in light of the significant buffer existing between them and the nearest residential properties we are firmly of the view that the proposed change of use to the hot food takeaway facility will not materially detract from the character of the area in accordance with Policy DEV 2.
- The re-use of the appeal premises as a hot food takeaway facility offers the potential to improve the character and appearance of both the building and the wider area.

- 5.2 In light of the considerations outlined above it is respectfully requested that the application be approved. We reserve the right to provide additional information in support of this application or to respond to representations made by third parties prior to its determination.

Signed

A black rectangular box redacting the signature of Derek Scott.

Derek Scott

Date

30th August 2018

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 18/00654/DPP

Site Address: 70 Lothian Street, Bonnyrigg.

Site Description: 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. However, there is a set-back section of the building which has been finished in render, with a brick base course and some glazing.

The application site is located in a predominantly residential area. However, there is a garage (Lothian Motors) to the rear (north west) of the application site which is accessed via a lane to the south west of the application site.

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.

Proposed Development: Change of use from retail (Class 1) to hot food take away (sui generis) and installation of flue.

Proposed Development Details: It is proposed to change the use of the application premises from a retail unit to a hot food takeaway. The hours of operation proposed are 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 south west elevation. This will be finished in stainless steel and project approximately 1 metre from the eaves of the building.

The applicant has submitted a supporting statement which states:

- 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.

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

The application was originally called in, by an elected member, to be determined by Planning Committee on the basis that the recommendation was for approval with conditions. A report was prepared for the consideration of the Planning Committee which recommended approval of this application. The Planning Committee Report contained an inaccuracy in section 8.7 about the distance of the application site to Lasswade Primary School. This section should have read that the site is approximately 230 metres from Lasswade Primary School.

Subsequent to the amendment relating to the distance from a primary school, the recommendation has been amended, to a refusal. Prior to the Planning Committee meeting the Leader of the Council verbally confirmed with the Planning Manager that his notification of call-in of the application was to be withdrawn. The application was removed from the agenda and it did not form part of the Planning Committee meeting.

The application has been circulated amongst the elected members with this revised recommendation, and has not been called in. The elected member who originally called in the application has confirmed that they do not wish to call this in and so is to be determined at delegated level.

Application site

03/00669/FUL Change of use from retail shop to retail shop and hot food takeaway. Refused – contrary to then adopted Local Plan as outwith the town centre and not comply with HFT policy; could cause disturbance to local residence in addition to the adjacent pub.

03/00041/FUL Change of use from retail shop to Hot Food Takeaway. Refused - contrary to then proposed Local Plan as outwith the town centre and not comply with HFT policy; could cause disturbance to local residence in addition to the adjacent pub.

Application site and neighbouring unit 72-72 Lothian Street (Gigi's)

17/01000/DPP Change of use from retail (class 1) to restaurant (class 3); formation of entrance canopy; recladding of building and external alterations to building. Consent with conditions – material samples; noise restrictions; no HFT element – as this was not proposed in the application and so has not been assessed as such.

17/00771/DPP 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. Withdrawn.

Neighbouring unit 72-72 Lothian Street (Gigi's)

17/00295/DPP Extension to restaurant. Withdrawn.

10/00674/DPP 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. Consent with conditions – operating hours 11am to 1am Mondays to Sundays; conditions as per 10/00144/DPP.

10/00144/DPP Change of Use from public house (sui generis) to restaurant (class 3). Consent with conditions – details of ventilation; hours of operation; noise restrictions; no hot food takeaway use as the proposal was only for restaurant, to ensure any HFT element is fully assessed.

Consultations:

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.

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.

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.

Representations: Three letters of objection were received on the following grounds:

- Road safety concerns due to customers and the position of bus stops;
- The proposal will exacerbate existing parking issues in the area;
- 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.

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

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.

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 in to account in the assessment of planning applications for hot food takeaways. It states that hot food takeaways within 400m of the curtilage of a primary or secondary school will be not permitted. This is in order to address the adverse impacts such uses have on the diets of young people and the health of communities.

Planning Issues: 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

While two planning applications have previously been refused for a hot food takeaway at this premises these were in 2003. The development plan policies have changed, and new Supplementary Guidance has been prepared, since the previous applications were refused. 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.

The draft Supplementary Guidance was considered by the Planning Committee in November and is minded to be adopted subject to approval from the Scottish Ministers. It is clear that this is the Council's approach for food and drink and other non-retail uses in town centres and is a relevant and material document to consider in related proposals.

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 use in an inherently residential area.

Planning permission has previously been granted for the change of use of the premises to allow the neighbouring restaurant to extend in to this part of the building. However, this permission was not implemented.

Some objectors have suggested that there is overprovision of hot food takeaways in Bonnyrigg. As the application site is neither 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.

The draft Supplementary Guidance states that food and drink uses will not be permitted in this type of location unless it has been demonstrated that there will be no adverse impact on the viability of nearby town centres. 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.

Despite the above, 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 within 400 metres of Lasswade Primary School and so the proposed change of use is contrary to this draft supplementary guidance.

Impact on amenity

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.

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.

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 Thursdays, midnight on Fridays and 10pm on Sundays. As the neighbouring restaurant can operate until 1am it would not be reasonable to restrict the hours of the current application to any less than this.

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 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

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.

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.

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 a sufficiently significant adverse impact on road safety, as compared to what could happen at the site at present, to warrant refusal.

Other matters

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. The restriction was imposed as 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).

Recommendation: Refuse planning permission.



Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 18/00654/DPP

Derek Scott Planning
21 Lansdowne Crescent
Edinburgh
EH12 5EH

Midlothian Council, as Planning Authority, having considered the application by Scottish Midland Co-Operative Society Limited (Scotmid), Hillwood House, 2 Harvest Drive, Newbridge, Edinburgh, EH28 8QJ, which was registered on 31 August 2018 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Change of use from retail (Class 1) to hot food take away (sui generis) and installation of flue at 70 Lothian Street, Bonnyrigg, EH19 3AQ

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	L(--)001(A) 1:1250	31.08.2018
Floor Plan, Elevations	L(--)002(B) 1:100	31.08.2018
Other Statements		31.08.2018

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

1. The proposed hot food takeaway would be within 400m of the curtilage of Lasswade Primary School and so the proposal does not comply with the draft Supplementary Guidance for Food and Drink and Other Non-retail Uses in Town Centres.

Dated 20 / 12 / 2018

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



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Direct Telephone: 01623 637 119

Email: planningconsultation@coal.gov.uk

Website: www.gov.uk/government/organisations/the-coal-authority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Standards approval (if relevant). Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account of all the relevant safety and environmental risk factors, including gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

<https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries>

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com or a similar service provider.

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority

This Informative Note is valid from 1st January 2017 until 31st December 2018

[illegible]

Project	Proposed Hot Food Take-Away 70 Lothian Street Bonnyrigg EH19 3AQ		Drawing No	L(-)002(B)	Revision	Date	Notes
	Drawing		Job No	G 107			
		Floor Plans & Elevations					
Scales		1:100 @ A3	Date	August 2018			