

Notice of Review: 1-3 Buccleuch Street, Dalkeith

Determination Report

Report by Derek Oliver, Chief Officer Place

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 restaurant (class 3) to public house (sui generis) at 1-3 Buccleuch Street, Dalkeith.

2 Background

- 2.1 Planning application 19/00905/DPP for the change of use from restaurant (class 3) to public house (sui generis) at 1-3 Buccleuch Street, Dalkeith was refused planning permission on 19 December 2019; 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); and
 - A copy of the decision notice, excluding the standard advisory notes, issued on 19 December 2019 (Appendix D).
- 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 determined to consider a visual presentation of the site instead of undertaking a site visit because of the COVID-19 pandemic restrictions; and
 - Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that there was two consultation responses and seven representations received. As part of the review process the interested parties were notified of the review. Two additional comments reaffirming their objections have been received. All comments can be viewed online on the electronic planning application 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 conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. Prior to the commencement of the development, details of the proposed boundary treatment of the external seating area, including the design, dimensions, materials and finish, shall be submitted to and approved in writing by the planning authority.

Reason: *These details were not submitted with the application; in order to ensure any boundary treatment is in keeping with the surrounding conservation area.*

2. Prior to the commencement of the use hereby permitted, details of any proposed extract ventilation system, including a drawing showing its location, external appearance and finish, should be submitted to and approved in writing by the planning authority. The use hereby permitted shall not commence trading until the approved ventilation is operational in accordance with the details approved in writing by the Planning Authority.
3. The extract ventilation system approved in condition 2 shall be designed and installed such that cooking effluvia are ducted to a suitable exhaust point to ensure that no cooking odours escape or are exhausted into any neighbouring premises.

Reason for conditions 2 and 3: *These details were not submitted as part of the application: to protect the visual amenity of the surrounding conservation area; to protect nearby residential amenity.*

4. Prior to the commencement of development, details of measures to upgrade the sound insulation properties of the application site shall be submitted to and agreed in writing by the planning authority. This shall ensure that amplified music and vocals arising from the application site is inaudible within any neighbouring residence.
5. No amplified music or sound reproduction equipment used in association with the use hereby permitted shall be audible within any nearby residential property.
6. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR20 when measured within any nearby living apartment and no structure borne vibration is perceptible within any nearby living apartment.
7. The proposed boundary treatments approved in condition 1 shall be a close boarded fencing which shall not be removed without the prior written approval of the planning authority.
8. The external seating area hereby permitted shall only be open to the public within the following hours:

Mondays to Sundays: 11am to 9pm.

9. There shall be only be deliveries to the application within the following hours:

Mondays to Sundays: 7am to 10pm.

Reason for conditions 4 and 9: *To safeguard nearby residential amenity.*

6 Recommendations

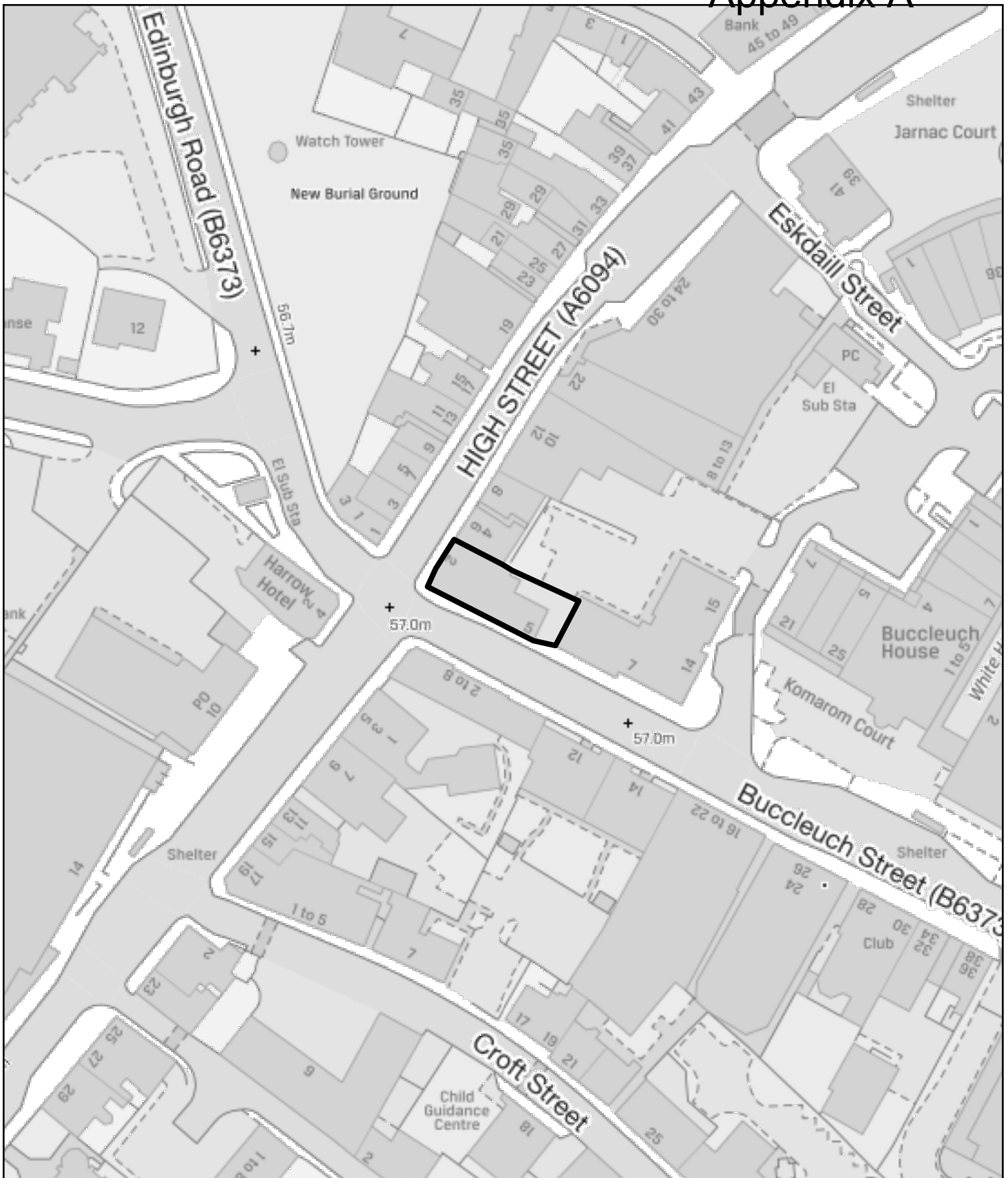
- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Date: 20 November 2020

Report Contact: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk

Background Papers: Planning application 19/00905/DPP available for inspection online.

Appendix A



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

Change of use from restaurant (class 3) to public house
(sui generis) at 1 - 3 Buccleuch Street, Dalkeith

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File No. 19/00905/DPP

Scale: 1:1,000





Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: planning-applications@midlothian.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100230200-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	Format Design		
Ref. Number:		You must enter a Building Name or Number, or both. *	
First Name: *	Shona	Building Name:	
Last Name: *	Mackay	Building Number:	146
Telephone Number: *	01316617666	Address 1 (Street): *	Duddingston Road West
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Scotland
		Postcode: *	EH16 4AP
Email Address: *	formatdesign@aol.com		

Is the applicant an individual or an organisation/corporate entity? *

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	Format Design
First Name: *	Brian	Building Number:	146
Last Name: *	Riding	Address 1 (Street): *	Holyrood Business Park
Company/Organisation		Address 2:	Duddingston Road West
Telephone Number: *		Town/City: *	Edinburgh
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	EH16 4AP
Fax Number:			
Email Address: *	formatdesign@aol.com		

Site Address Details

Planning Authority:	Midlothian Council
Full postal address of the site (including postcode where available):	
Address 1:	1-3 BUCCLEUCH STREET
Address 2:	
Address 3:	
Address 4:	
Address 5:	
Town/City/Settlement:	DALKEITH
Post Code:	EH22 1HB

Please identify/describe the location of the site or sites

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Northings	667187	Easting	333056
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority. *
(Max 500 characters)

Change of use from restaurant (class 3) to public house (sui generis)

Type of Application

What type of application did you submit to the planning authority? *

- ☒ Application for planning permission (including householder application but excluding application to work minerals).
☐ Application for planning permission in principle.
☐ Further application.
☐ Application for approval of matters specified in conditions.

What does your review relate to? *

- ☒ Refusal Notice.
☐ Grant of permission with Conditions imposed.
☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please see attached appeal statement

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Appeal statement

Application Details

Please provide details of the application and decision.

What is the application reference number? *

19/00905/DPP

What date was the application submitted to the planning authority? *

30/10/2019

What date was the decision issued by the planning authority? *

19/12/2019

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.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☐ Yes ☒ No

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

Please select a further procedure *

Holding one or more hearing sessions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

To allow us as agents to put forward the best case for the appellant

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

To allow the Local Review Body members to view the application site and it's environs

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

Can the site be clearly seen from a road or public land? *

☒ Yes ☐ No

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

☒ Yes ☐ No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? *

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? *

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

☒ Yes ☐ No

Note: 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. 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.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

☒ Yes ☐ No

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 (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mrs Shona Mackay

Declaration Date: 31/01/2020

LOCAL REVIEW APPEAL STATEMENT
FOR
CHANGE OF USE FROM RESTAURANT (CLASS 3) TO PUBLIC HOUSE (SUI
GENERIC)
PLANNING APPLICATION REF: 19/00905/DPP
AT
1 - 3 BUCCLEUCH STREET, DALKEITH, EH22 1HB



30 JANUARY 2020

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1. Introduction

The matter for consideration is the refusal of planning permission 19/00905/DPP for "Change of use from restaurant (class 3) to public house (sui generis)" at 1 - 3 Buccleuch Street, Dalkeith. No external alterations have been proposed. The appellant is seeking a review of the case under section 43A of the Town and Country Planning (Scotland) Act 1997.

2. The Decision

The application was refused for the following reason:-

"The proposed use and related external seating area would have an unacceptable detrimental impact on the amenity of adjacent residential properties and therefore does not comply with policies DEV2 and ENV18 of the adopted Midlothian Local Development Plan 2018 or adopted Supplementary Guidance on Food and Drink and Other Non-Retail Uses in Town Centres."

The principal reasons for the refusal relate to the location of the property in relation to neighbouring residential property at 5 Buccleuch Street and 6 High Street, concluding that "The proposed use as a public house would have a significant detrimental impact on the amenity of these adjacent residential occupants, to the detriment of their amenity". This also applied to the external seating area. The Council's Environmental Health Manager advised that the proposal would result in a serious loss of amenity to neighbouring residential properties due to late night noise, disturbance from music, patrons leaving the premises during the early hours of the morning and increased taxis movements directly outside.

3. The Appellant's Response

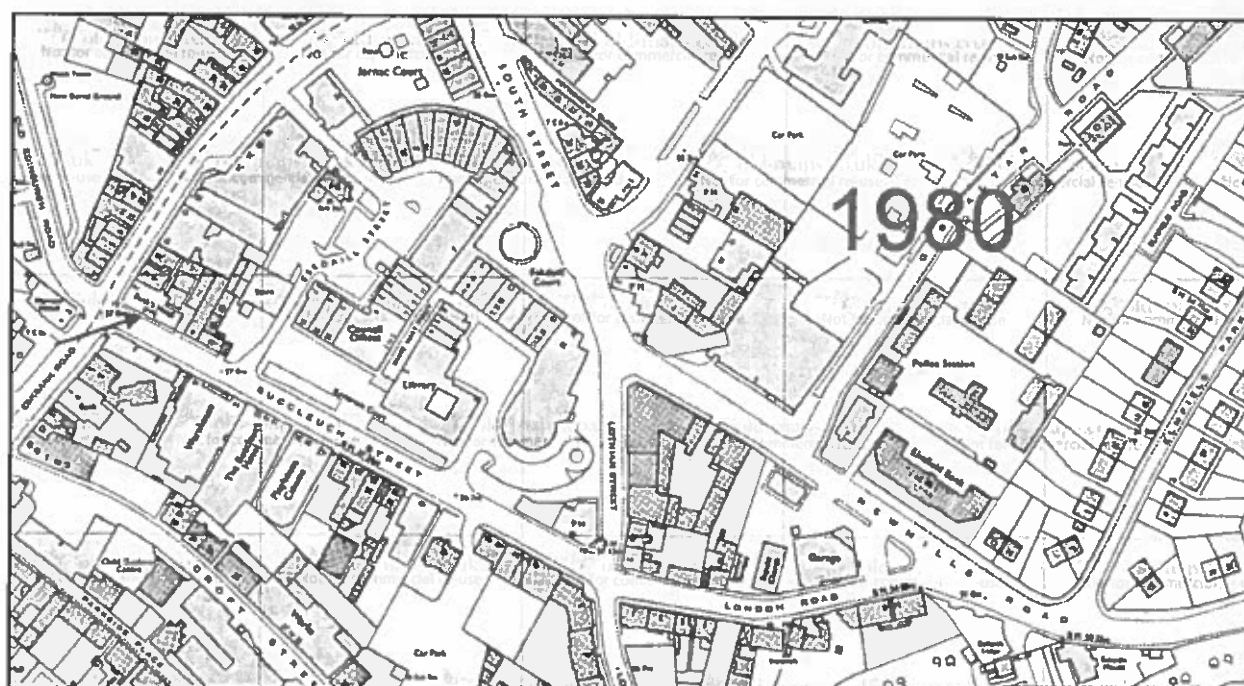
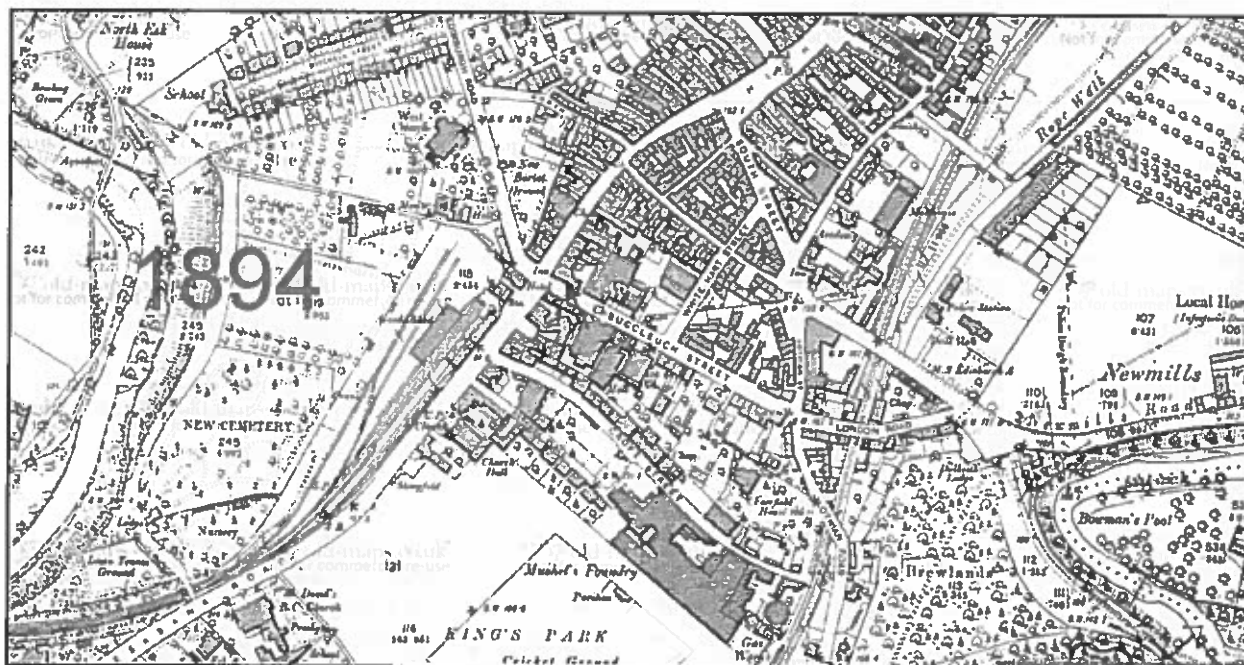
(A) The principle and history of the use

The property is a traditional building which was purpose built as public house in 1817, known as the Buck's Head Inn. In the Dalkeith Parish list of proprietors of 1852 it was described as *"At the junction of Buccleuch and High Streets. An old established Inn with Stabling and Gigs and horses for hire, the occupier Mr Collison has license to sell all Kinds of drink"*.



The premises last existed as a public house in 1997, when it traded as The Stonehouse/ Club Tropicana, and prior to that it was known as Scandals (information from the Lothian Assessor's office). The Blossom Garden Chinese restaurant took over the premises in 1997 and when that business failed around 2013. For a short while it operated as Shebeens Steak House, and then it was taken over by "Anema e Core" an Italian restaurant. Despite positive reviews the restaurant closed in 2019.

The following two maps show the inn clearly on the north east corner of the junction (highlighted).



UK Pub Industry Background - The last few decades have seen radical changes in the pub industry, with the trade facing a wide range of social, economic and regulatory pressures. The main challenges arise from increased competition from cafes and restaurants and a linked change in the way in which the population looks to purchase and consume alcohol (i.e. increased home consumption). The decline has been significant over the last 30 years, from almost 70,000 pubs in 1982 to about 48,000 in 2013. The rate of decline over the period 2005 to 2015 varied across pub types, with tenanted pub numbers in Scotland falling 15%, and independent Free Trade pub

numbers falling by 29% compared to a fall in England & Wales of 10%. Contrary to this, the number of breweries in Scotland has risen by 229% since 2010, according to the Scottish Parliament Information Centre (SPICE), and supports more than 8,000 jobs.

As well as supporting local breweries, public houses are an important social resource and their decline is perhaps associated with the decline in the social awareness of today's society and it is important to create better opportunities for social interaction in our town and city centres, particularly as their retail functions also diminish. The opportunity to reintroduce this historic public house into its original use should therefore be strongly supported and this is an exceptional case which should give good reason to allow the proposal to proceed in the face of one or two policies which have been used to refuse this proposal.

There is no reference at all in the report of handling referring to the premise's historic use, which lasted from 1817 up until 1997.

The site is a traditional location at a major road junction in the town centre. Public houses can have an important role to play in town centres and can positively contribute to the range of uses, including community space and generally contribute to a more vibrant evening economy. The retention of traditional public houses in the towns should be high on the list of priorities for maintaining a strong and healthy town centre. The SPG on "Food and drink and other non-retail uses in Town Centres" goes as far as to advise that *"applications which would lead to the loss of a public house from a town centre must demonstrate that the premises are no longer viable as a public house and that the replacement use will either protect or enhance the vitality and viability of the town centre by providing a facility with similar opportunities for social interaction"*.

This unit has only moved slightly away from public house use, having been a licensed restaurant for the past 20 years. The restoration to its original intended use should be supported. Nothing has changed around it since it was a public house and the level of activity between the two uses will not be significantly different. Nowadays there can be little to distinguish many pubs/bars from licensed restaurants. The likes of Wetherspoons for example are very food orientated and yet operate as a public house. Many licensed restaurants become more akin to bars towards the evening. A restaurant would have a far more extensive kitchen with more intensive cooking with its associated ventilation and refrigeration units.

In many ways a public house is better suited to this location. In general, restaurants benefit more from sites with parking areas and space for children, whereas a public house relies more on customers using public transport or foot. Therefore, being on a busy traffic light controlled junction with no adjacent parking, the use as a restaurant is compromised considerably. Use as a public house would not be so effected.

(B) Loss of Amenity to neighbours

As the surrounding area has not altered noticeably since 1997, it is unclear as to why there would be any significant concerns regarding the proposed use in this location. It had been a pub since 1817 and subsequently a licensed restaurant.

The site is at a busy crossroads in the town centre and it is a location where such uses would be expected, particularly given the historic use of the premises.

Ambient noise levels here are naturally high due to traffic, high street activity and due to the proximity of many other commercial uses. It is unlikely that the change from a licensed restaurant to a public house will change this significantly. There is clearly a perception that a bar/public house will be worse than a restaurant, and yet this is very dependent upon the nature of both uses and their operators. These issues should be controllable by the licensing body.

The neighbour in the flat above the premises has no objection to the proposal and is in fact supportive of it. Given these facts, along with that of it having been previously a public house then there should be no cause for concern regarding noise. Any future occupiers of the flat above (number 5) would be knowingly purchasing a property over an existing, historic pub. The adjoining

building on the High Street (2 to 6) has commercial uses at street level, and there is limited physical connectivity above this to the public floor. The walls are very thick and noise transfer is unlikely.

With regards to delivery issues, both regards traffic and noise, as agreed by the Road Safety Manager the proposed change of use would not be significantly different from the existing use.

4. Conclusion

The proposed change of use would be a very positive addition to the character of the town centre and would reintroduce a historic inn to the conservation area, a building that was built for this purpose in 1817.

There is no reason why the premises should create any greater nuisance than would a licensed restaurant.

Since 1997 three restaurant business have tried to survive on this location and both have now failed despite having good reviews. It is time for the premises to revert to what would ultimately be a use far better suited to this busy town centre location, and a use that will be more economically viable. A use that would be far less dependent upon the availability of external space and parking.

Ultimately any noise issues can be controlled through licensing and Environmental Health.

Given the policies that the Council supports regarding the retention of existing public houses then surely the reinstatement of a historic pub, not that long ago lost to an alternative use, should be equally strongly supported.

It is hoped that the Council Members will see it fit to support this proposal.



V344-12

DALKEITH, HIGH STREET

RAPID PHOTO E C

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 19/00905/DPP

Site Address: 1-3 Buccleuch Street, Dalkeith.

Site Description: The application site comprises the ground floor unit of a two storey building on the corner of Buccleuch Street and High Street, with rendered walls painted cream and natural stone walls and a slate roof. The site comprises a vacant restaurant and hardstanding. There is a flatted dwelling above which does not form part of the application premises. The site is within the Dalkeith House and Park Conservation Area and the Dalkeith Town Centre. There are a variety of uses in the surrounding area, including retail, pubs, class two uses and residential properties.

Proposed Development: Change of use from restaurant (class 3) to public house (sui generis).

Proposed Development Details: It is proposed to change the use of the site from a restaurant to a public house. This would provide bar lunches and music and entertainment. The proposed hours of operation are 11am to 1am Mondays to Saturdays and 10am to 12midnight Sundays. The existing bin area would be used. The floor plan indicates an external seating area.

No external alterations are included in the application.

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

Application site

14/00254/DPP Rendering of external walls. Permitted.

14/00020/ADV Display of externally illuminated signage. Consent with conditions.

14/00013/DPP Re-rendering of external walls; alterations to chimney heights; re-slating of roof; and associated alterations to fabric and fittings of building exterior. Consent with conditions.

Consultations:

The Council's **Policy and Road Safety Manager** has no objection as it is not considered that the proposed change of use will result in any significant change in the access or servicing requirements of these premises.

The Council's **Environmental Health Manager** recommends refusal of the application. The proposed use would result in a serious loss of amenity to occupiers of the neighbouring residential properties due to late night noise and disturbance from music, patrons leaving the premises during the early hours of the morning and increased taxis movements directly outside. The proposed external seating area is

shielded from traffic on Buccleuch Street and the High Street and is relatively quieter. This area would be overlooked by the flats at 5 Buccleuch Street and 6 High Street and voices of patrons using the outside area will further detract from the amenity of these residents.

Representations: Seven letters of representation have been received, five objections and two support.

The objections are on the following grounds:

- The proposal would detrimentally affect the amenity of nearby residents through noise and disruption and the late operating hours;
- The proposal would exacerbate noise from existing pubs and social establishments in the area;
- It is proposed to have amplified music which would not only increase noise concerns but also result in lots of customers;
- Due to the position of the bin store, there would be additional noise from glass collection either after closing time or early in the morning;
- Increased noise if a beer garden is proposed;
- There would be a loss of privacy to nearby residential properties;
- Lack of parking for deliveries and customers, which could impact on other businesses;
- There is already a pub at this crossroads;
- The proposal would reduce the value of nearby properties;
- The proposal would reduce the perception of safety in the area; and
- Dalkeith does not need another pub.

Some objectors have stated that if planning permission is granted, there should be: a limit on opening hours to 11pm; a restriction on the hours amplified music would be played; a limit on when bin collections take place; and a requirement for door people to control anti-social behaviour. One objector makes reference to the Midlothian Council Licencing policy, mainly in regards to overprovision and public health.

The two letters of support states that the previous restaurant operations here have failed and a public house would have more longevity. This would not be overprovision of pubs given the amount of new residential developments in Dalkeith and be more benefit to local residents. One supporter also states that one of the objections about impact on guests of the Harrow Hotel is not relevant as this does not operate as a hotel. Another states the hours of operation should be limited to closing at midnight during the week.

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;

TCR1 Town Centres states proposals for retail, commercial leisure development or other uses which will attract significant numbers of people, will be supported in Midlothian's town centres, provided their scale and function is consistent with the town centre's role, as set out in the network of centres and subject to the amenity of neighbouring uses being preserved;

ENV18 Noise states the Council will seek to prevent noisy developments from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or required to be modified so that no unacceptable impact at sensitive receptors is generated. Applicants may be required to carry out a noise impact assessment either as part of an Environmental Impact Assessment or separately; and

ENV19 Conservation Areas states within or adjacent to conservation areas, development will not be permitted which would have any adverse effect on its character and appearance. In the selection of site, scale, choice of materials and details of design, it will be ensured that new buildings preserve or enhance the character and appearance of the conservation area. Traditional natural materials appropriate to the locality or building affected will be used in new buildings.

Supplementary Guidance on 'Food and Drink and Other Non-Retail Uses in Town Centres' has been adopted by the Council. This states that public houses can have an important role to play in town centres and can positively contribute to the range of uses in a town centre and generally contribute to a more vibrant evening economy. Proposals for new public houses will be supported where it is demonstrated that this will not have a detrimental impact on the character or amenity of the surrounding area and residents. Particular care must be taken where there are residential properties in the surrounding area.

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

The application site is within the built up area where there is a presumption in support of development where this does not detract from the character and amenity of the surrounding area. The site is also within the Dalkeith Town Centre where there is a presumption in support of high footfall level uses which positively contribute to the range of uses in the area and the evening economy provided this does not detract from the amenity of the surrounding area, particularly residential properties.

The proposed pub would be directly below a residential flat and immediately adjacent to other flatted dwellings. These are outwith the control of the applicant. The proposed use as a public house would have a significant detrimental impact on the amenity of these adjacent residential occupants, to the detriment of their amenity. Whilst the Planning Authority seek to support uses which increase the range of facilities in town centres, this is not at the expense of existing residential occupants. The layout of the site and the adjacent residential units are such that it would not be possible to modify the use to ensure that no unacceptable impact at sensitive receptors is generated. The proposed use would have a significant detrimental impact on the amenity of adjacent residential properties. This would still be the case if the amplified music noted in the application were removed.

These concerns over noise and disturbance also apply to the external seating area as shown on the submitted plans. This area is currently shielded from traffic on

Buccleuch Street and the High Street and is relatively quieter. The proposed external seating would be overlooked by the flats at 5 Buccleuch Street and 6 High Street and noise generated by patrons using the outside area will further detract from the amenity of these residents. This external seating area would also have a significant detrimental impact on the amenity of adjacent residential properties.

As detailed above, the Policy and Road Safety Manager does not consider the proposed change of use would be significantly different from the existing use in regards parking and deliveries.

The following addresses objectors' comments not addressed above.

Given that the site is within a busy town centre and has most recently operated in restaurant use, it is not clear how the proposed use as a public house would result in the loss of privacy to nearby residential properties compared to the existing situation or other suitable uses in this town centre.

The loss of value of properties is not a material planning consideration. The comments about overprovision of public houses appears to relate more to the Midlothian Council Licencing policy where it is a matter to be taken into consideration. This is not a material planning consideration. It is not clear how a public house would reduce the perception of safety in this town centre location.

Recommendation: Refuse planning permission.



Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 19/00905/DPP

Mr Brian Riding
17 Buxley Road
Elphinstone
Tranent
EH33 2LW

Midlothian Council, as Planning Authority, having considered the application by Mr Brian Riding, 17 Buxley Road, Elphinstone, Tranent, EH33 2LW, which was registered on 30 October 2019 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Change of use from restaurant (class 3) to public house (sui generis) at 1 - 3 Buccleuch Street, Dalkeith, EH22 1HB

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	1:1250	30.11.2019
Proposed Floor Plan	0992 101 A 1:100	30.11.2019

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

- The proposed use and related external seating area would have an unacceptable detrimental impact on the amenity of adjacent residential properties and therefore does not comply with policies DEV2 and ENV18 of the adopted Midlothian Local Development Plan 2018 or adopted Supplementary Guidance on Food and Drink and Other Non-Retail Uses in Town Centres.*

Dated 19 / 12 / 2019

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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 2019 until 31st December 2020