

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Donald Harris, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2023
- Site address: 24 High Street, Penicuik EH26 8HW
- Appeal by Scotmid against the decision by Midlothian Council
- Application for planning permission dated 4 December 2014 refused by notice dated 26 February 2014
- The development proposed: change of use from vacant shop (Class 1) to hot food takeaway (sui generis) and installation of external flue
- Application drawings: drawing no L(--)006(B) location plan and typical cross section: drawing no. L(--)005(A) plan
- Date of site visit by Reporter: 28 April 2014

Date of appeal decision: 27 May 2014

Decision

I allow the appeal and grant planning permission subject to the three conditions listed at the end of the decision notice. Attention is drawn to the four advisory notes at the end of the notice.

I deal with the appellant's claim for expenses in a separate decision.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. As the appeal site is in the Penicuik Conservation Area, I bear in mind the provisions of section 64 of the Act. This requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Development Plan

2. The development plan comprises the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESPLAN) and the Midlothian Local Plan (December 2008). The most relevant policies are in the local plan.



3. Policy RP20 of the local plan states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area.
4. Policy RP22 seeks to prevent development which would have an adverse effect on the character and appearance of Conservation Areas.
5. Policy SHOP3 states that the change of use of shops to non-retail uses in Penicuik Town Centre will be permitted provided it is demonstrated that there is no realistic prospect of a shop continuing in retail use; the proposal will lead to an improvement of the image and vitality of the town centre; and the change of use does not create a street frontage where three or more adjoining units are in non-retail use, nor does it result in 50% or more of the town centre units being in non-retail use.
6. Policy DP7 states that appropriate locations for hot food takeaways would be within a town centre, local or neighbourhood shopping centre or a predominantly commercial or business area. The cumulative effect of additional hot food takeaway establishments will be assessed to ensure that the vitality and viability of the shopping centre is not considered to be seriously harmed. In addition, permission will not be granted where it would cause significant harm to residential amenity or the general environment of the area as a result of noise, disturbance, smell or litter. Also, permission would not be granted in a location where it would present a threat to road safety.

Issues

7. Having regard to the provisions of the development plan, the main issues in this appeal are (a) the effect on the vitality and viability of the town centre and (b) the effect on the character and appearance of the Penicuik Conservation Area.
8. On the first issue, I note that the planning authority's reasons for refusal refer to the effect on the vitality and viability of "this part of the High Street". However, I interpret policy DP7 as applying to the town centre as a whole. This includes the area to the north, on and around John Street. Although there is a concentration of non-retail uses on both sides of the High Street, including restaurants and hot food shops, no evidence is submitted that the proposal would result in more than 50% of the town centre units being in non-retail use. Indeed, the planning authority indicates that the proportion would be slightly less. Moreover, the proposed development would not result in three or more adjoining units in non-retail use, as the appeal premises are adjoined by a shop.
9. A crucial point is that the premises have remained vacant since 2009, although marketed. I accept that the prospect of their being occupied by a retail business is remote. Given the choice of a vacant shop or an active takeaway, it is in my view better for the image and vitality of the town centre for the premises to be occupied. This consideration outweighs any disadvantage following from the accumulation of hot food takeaways and other non-retail uses in the town centre.

10. On the second issue, the Penicuik Conservation Area has the character of a small 19th Century town. The High Street broadens out to form a central space surrounded by buildings which are mainly old and of two storeys. The appeal premises are therefore in a part of the town which makes an important contribution to the character of the conservation area.

11. Again, the point arises whether it is better for the premises to remain unoccupied (as is only too likely if the appeal is unsuccessful) or to be used. In my opinion, the character and appearance of the conservation area would be better served by the building being fully used. I appreciate the importance attached by the Penicuik and District Community Council to the improvement of the appearance of the High Street. However, I consider it unrealistic to wait any longer for a more appropriate development to be proposed.

12. My conclusion on these two issues is that neither the vitality and viability of the town centre, nor the character and appearance of the Penicuik Conservation Area would be compromised.

Material Considerations

13. Concerns were expressed about the lack of parking provision and the consequent problems of congestion. However, I note that the planning authority's Policy and Road Safety Manager was consulted and had no objection on these grounds. Given the accessible location of the appeal premises and the availability of on-street parking, I do not consider this a problem sufficiently serious to count against the proposal.

Overall Conclusions

14. As the vitality and viability of the town centre would not be compromised, I conclude that policies SHOP 3 and DP7 of the local plan would not be breached. The latter policy and policy RP 20 also refer to the amenity of the area, including residential amenity. However, I am not persuaded that the proposal would create problems which cannot be successfully addressed by the imposition of conditions.

15. Neither would the character and appearance of the Penicuik Conservation Area be compromised. It follows that policies RP20 and RP22 are not breached.

16. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would nevertheless justify refusing to grant planning permission.

17. I have considered all the other matters raised, including concerns about the impact on other local businesses, but there is none that would lead me to alter my decision that the appeal should succeed.

Donald Harris

Reporter

Conditions

1. Prior to the commencement of development, details of the extract ventilation system shown on drawing number L(--006)(B) shall be submitted to and approved in writing by the planning authority. The ventilation system shall:-

- a) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
- b) Prevent the emission of cooking odours likely to cause nuisance to neighbouring properties; and
- c) Terminate at sufficient height above eaves level to permit the free disposal of exhaust fumes.

The use hereby approved shall not begin until the approved ventilation system is installed and operational. The ventilation system shall thereafter remain operational, as approved, whilst the unit is used as a hot food takeaway.

Reason: These details were not submitted with the original application and are required in order to ensure that the proposed development does not have an adverse impact on the amenity of occupiers of nearby properties.

2. A litterbin shall be provided at the front of the premises during the opening hours of the hot food takeaway.

Reason: To ensure a satisfactory standard of amenity and to safeguard the appearance of the Town Centre and the Penicuik Conservation Area.

3. The use hereby approved shall not be open to the public outwith the following hours:

Mondays – Saturdays inclusive: 11:00 hours to 24:00 hours,
Sundays: 11:00 hours to 22:00 hours.

Reason: To ensure a satisfactory standard of amenity in the Town Centre.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)

4. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.)

