

## **Notice of Review: 18-20 Edinburgh Road, Penicuik**

### **Determination Report**

Report by 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 erection of retail (class 1) and food and drink (class 3) units, formation of car park, creation of external seating area and erection of fence and gates at 18-20 Edinburgh Road, Penicuik.

#### **2 Background**

- 2.1 Planning application 20/00562/DPP for the erection of retail (class 1) and food and drink (class 3) units, formation of car park, creation of external seating area and erection of fence and gates at 18-20 Edinburgh Road, Penicuik was refused planning permission on 18 June 2021; 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, excluding the standard advisory notes, issued on 18 June 2021 (Appendix D); and
  - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

#### **4 Procedures**

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

- Have determined to consider a visual presentation of the site and undertaking a site visit (elected members not attending the site visit can still participate in the determination of the review); and
  - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there have been three consultation response and two representations received. As part of the review process the interested parties were notified of the review. No additional comments 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 development, the following details shall be submitted and approved in writing by the planning authority and only those approved details shall be used in the implementation of this grant of planning permission:
    - a) Details and a sample of all external materials;
    - b) Details of the materials of all areas of hardstanding;

- c) Details of the location and design of any proposed walls, fences and gates, including those surrounding bin stores, recycling areas or any other ancillary structures;
- d) Proposals for the treatment and disposal of foul and surface water drainage from the proposed building. Unless otherwise approved in writing by the Planning Authority, the surface water drainage shall comply with the standards detailed in the SUDS Manual;
- e) Details of the proposed vehicular access from the A701;
- f) Details of the proposed staff and customer cycle parking facilities;
- g) Details of a scheme of hard and soft landscaping for the site. Details shall include the position, number, size and species of all trees and shrubs that are proposed to be planted, as well as identifying all trees on site which are proposed to be removed and retained; and
- h) Details of a sustainability/biodiversity scheme for the site, including the provision of boxes for bats and birds and sustainability areas.

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

***Reason:*** *These details were not submitted with the application; in order to ensure that the development hereby approved does not detract from the character and appearance of the surrounding area; in the interest of road and pedestrian safety.*

2. The details of the vehicular access approved in condition 1e) above shall be formed with a 'drop kerb' entrance and maintain the existing public footpath across this entrance.

***Reason:*** *In the interest of road users and pedestrian safety.*

3. The building shall not be occupied and neither unit brought into use until vehicular, cycle and pedestrian access details have been constructed in accordance with plans to be submitted and approved in writing, unless an alternative phasing is agreed in writing by the planning authority.

***Reason:*** *To ensure that the development is served by appropriate and safe accesses in, the interests or public safety, timeously.*

4. Within six months of the new building being completed or either unit brought into use, whichever is the earlier date, the landscape scheme approved under the terms of condition 1g) above shall be carried out; thereafter, any trees or shrubs removed, dying, becoming seriously diseased or being severely damaged within five years of planting shall be replaced during the next available planting season with others of a similar size and species.

***Reason:*** *To enhance the landscaping of the area by ensuring that planting on the site is carried out as early as possible, and has an adequate opportunity to become established.*

5. Before the new building is occupied or either unit brought into use the installation of the means of drainage treatment and disposal approved in terms of condition 1d) above shall be completed to the satisfaction of the planning authority.

***Reason:*** *To ensure that the building is provided with adequate drainage facilities prior to occupation.*

6. The design and installation of any plant, machinery or equipment shall be such that the combined associated noise level shall comply with NR25 when measured within any nearby living apartment (window open standard) and NR20 if the noise is tonal.
7. All music shall be controlled so as to be inaudible within any nearby residential premises.
8. Prior to the building hereby approved being occupied or either unit being brought in to use, whichever is the earlier, details of proposed ventilation measures to be taken to prevent any smell or odours being emitted from any food preparation areas, kitchen and the class 3 use shall be submitted to and agreed in writing by the planning authority.

***Reason for conditions 6 to 8:*** *In order to protect the amenity of existing residential properties in terms of policy DEV2 of the Midlothian Local Development Plan.*

9. Unless otherwise approved in writing by the planning authority, the units hereby approved shall only be open to customers between the following hours:

Monday to Saturday: 0800 until 2200; and  
Sunday: 0900 until 1900.

***Reason:*** *Operation of the units hereby approved out with the approved hours may have a significant adverse impact on the amenity of the area, contrary to the aims of policy DEV2 of the Midlothian Local Development Plan.*

10. Any takeaway element ancillary to the class 3 unit hereby approved shall only operate in the following hours:

Mondays - Fridays inclusive: 1600 to 2200.  
Saturdays and Sundays: anytime.

***Reason:*** *The application premises is located within 400 metres of the curtilage of Strathesk Primary School and, as such, any ancillary takeaway element of the proposal does not comply with adopted policy; to ensure that there is no takeaway during school hours, in order to comply with the Supplementary Guidance for Food and Drink and Other Non-retail Uses in Town Centres in relation to public health, whilst also supporting the local economy.*



11. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
  - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
  - iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
  - iv. the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for commercial purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

12. On completion of the decontamination/remediation works required in condition 11 and prior to the units being occupied on site, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied until this report has been approved by the planning authority.

***Reason for conditions 11 and 12:*** To ensure that any contamination on the site/ground conditions is adequately identified and that appropriate decontamination measures/ground mitigation measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment; to ensure the remediation works are undertaken.

13. Development shall not begin until details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse. The delivery of high speed fibre broadband shall be implemented as per the approved details.

***Reason:*** To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the adopted Midlothian Local Development Plan 2017.

14. Development shall not begin until details of the provision and use of electric vehicle charging stations throughout the development have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in

accordance with the approved details or such alternatives as may be approved in writing by the planning authority.

***Reason:*** *To ensure the development accords with the requirements of policy TRAN5 of the adopted Midlothian Local Development Plan 2017.*

- 5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards transport infrastructure (A701 realignment). The legal agreement shall be concluded prior to the issuing of the LRB decision. The legal agreement shall be concluded within 6 months of the resolution to grant planning permission, if the agreement is not concluded the review will be reported back to the LRB for reconsideration.

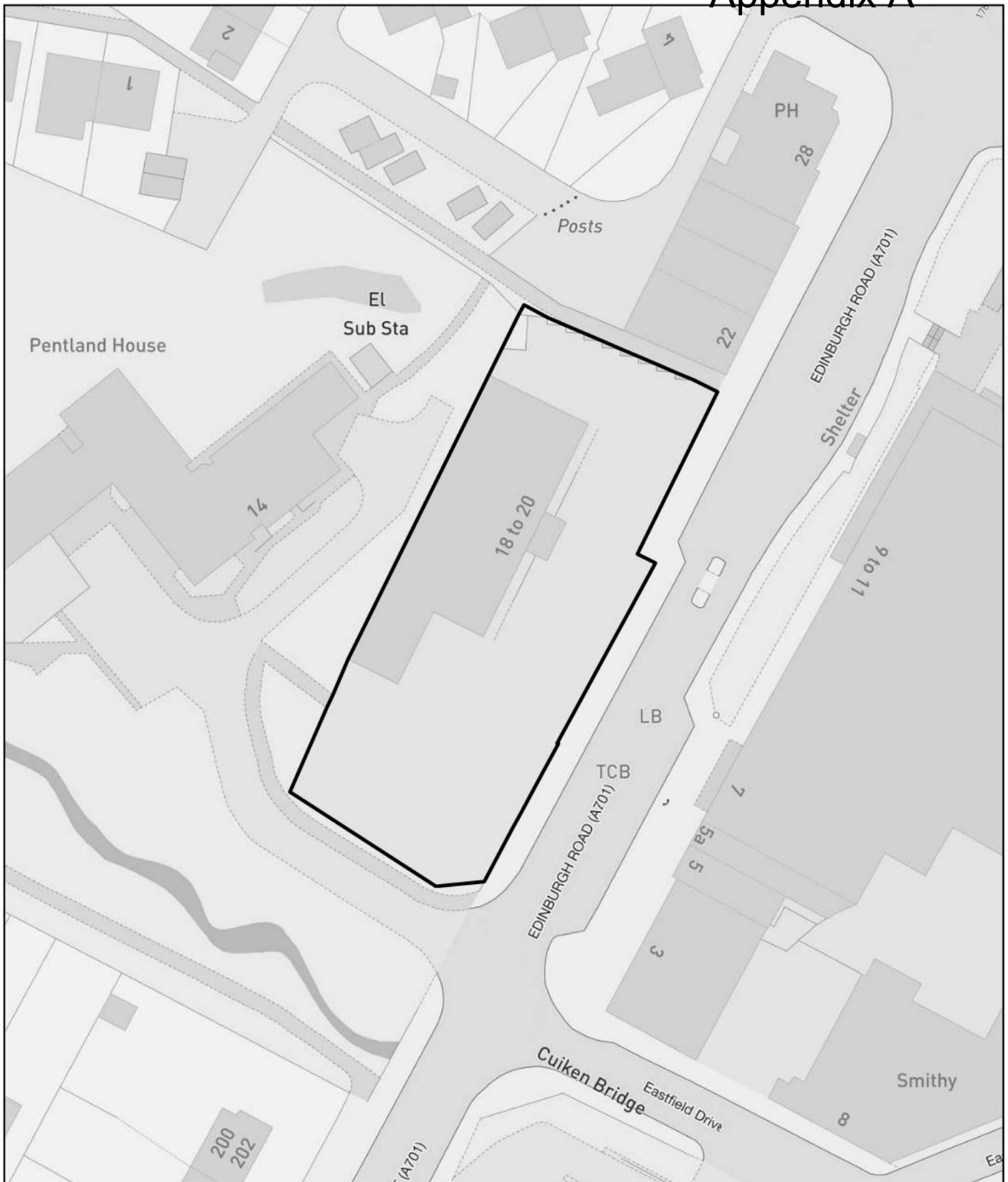
## **6 Recommendations**

- 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

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 2 September 2021  
**Report Contact:** Mhairi-Anne Cowie, Planning Officer  
[Mhairi-Anne.Cowie@midlothian.gov.uk](mailto:Mhairi-Anne.Cowie@midlothian.gov.uk)

**Background Papers:** Planning application 20/00562/DPP available for inspection online.



**Planning Service  
Place Directorate**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

Erection of retail (class 1) and food and drink (class 3) units, formation of car park, creation of external seating area and erection of fence and gates at 18 - 20 Edinburgh Road, Penicuik, EH26 8NW

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File No: 20/00562/DPP

Scale:1:700





Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: [planning-applications@midlothian.gov.uk](mailto: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 100447479-001

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:	<input type="text" value="Zander Planning Ltd"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Alex"/>	Building Name:	<input type="text" value="Clyde Office 2nd Floor"/>
Last Name: *	<input type="text" value="Mitchell"/>	Building Number:	<input type="text" value="48"/>
Telephone Number: *	<input type="text" value="07775 706252"/>	Address 1 (Street): *	<input type="text" value="West George Street"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Glasgow"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="UK"/>
		Postcode: *	<input type="text" value="G2 1BP"/>
Email Address: *	<input type="text" value="alex@zanderplanning.co.uk"/>		

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

☐ Individual ☒ Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text" value="2A"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="Eastfield Farm Road"/>
Company/Organisation	<input type="text" value="A F Noble and Sons"/>	Address 2:	<input type="text" value="Eastfield Farm Industrial Estate"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Penicuik"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="UK"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH26 8EZ"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="alex@zanderplanning.co.uk"/>		

## Site Address Details

Planning Authority:	<input type="text" value="Midlothian Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="18-20 EDINBURGH ROAD"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="PENICUIK"/>
Post Code:	<input type="text" value="EH26 8NW"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="660918"/>	Easting	<input type="text" value="323603"/>
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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)

Erection of retail (Class 1) and cafe/sandwich shop (Class 3/1 - with associated takeaway/external seating) units, formation of car park and access, erection of fence/gate and associated engineering works

## 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.

See attached Planning Appeal Statement and related Documents

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)

1 Refusal Notice 2 Officers Delegated Report 3 Application Plans a) Location plan b) Proposed Location Plan c) Proposed Site Plan d) Proposed Floor Plan e) Proposed Elevations 4 Planning and Retail Statement and Appendices 5 Email from case officer dated 28/8/20 6 Midlothian Area Profile – Population Planning Appeal Statement

## Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

20/00562/DPP

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

02/09/2020

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

18/06/2021

## 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

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: Mr Alex Mitchell

Declaration Date: 25/07/2021





## **18-20 Edinburgh Road, Penicuik**

### **Planning Appeal Statement**

This appeal relates to a refusal of planning permission for the erection of a retail (Class 1) and food and drink (Class 3) units, formation of car park, creation of external seating area and erection of fence and gates (ref 20/00562/DPP).

#### **Documents**

- 1 Refusal Notice
- 2 Officers Delegated Report
- 3 Application Plans
  - a) Location plan
  - b) Proposed Location Plan
  - c) Proposed Site Plan
  - d) Proposed Floor Plan
  - e) Proposed Elevations
- 4 Planning and Retail Statement and Appendices
- 5 Email from case officer dated 28/8/20
- 6 Midlothian Area Profile – Population

The application was refused for 3 reasons, being

*1 It has not been demonstrated that the proposed retail and class 3 units would not have a significant detrimental impact on the vitality and viability of Penicuik town centre and so the proposal does not comply with policy TCR2 of the Midlothian Local Development Plan and the Scottish Planning Policy, both of which aim to prioritise and protect town centres through the town centre first principle.*



*2 The proposed access and turning space within the site raises road safety concerns which would be to the detriment of the safety of road users and customers of the proposed units.*

*3 The service/delivery area, being located to the front of the building, will have an adverse impact on the appearance of the area, thereby not complying with policy DEV2 of the adopted Midlothian Local Development Plan 2017.*

### **Context of Proposal**

The site has been operated by AF Noble and Sons since 1997. AF Noble has been a consistent contributor to the local economy for a number of years.

The premises were originally operated as a foodstore known as MacKays before being converted to a car showroom by AF Noble in 1997. The garage remained open until 2019, after which the premises were closed and the showroom was relocated to the company's other premises at Eastfield.





The development is proposed to form two units. One larger Class 1 unit of 621sq.m Gross to accommodate a convenience retailer and a smaller unit of 145sq.m gross to be operated by a bakers with ancillary takeaway facility, falling within Class 3.

The existing structure will be used to form the majority of the new building, together with some new floorspace. This would represent an increase of 240sq.m.

## **Grounds of Appeal**

### Reason for Refusal No.1

Dealing with Reason for Refusal no.1, the officer's assessment of policy is conflicted due to a conflict between the Midlothian LDP and SPP.

The committee report confirms that 'the application site is within the Local Centre of Penicuik/Edinburgh Road, as detailed in the MLDP .....'.

The committee report also quotes from Scottish Planning Policy (SPP) that the Scottish Government adopts a town centres first policy and a sequential approach must be applied in the following order or preference being:

"Town centres (including city centres and local centres)"

It is therefore the case that SPP places local centres and town centres within the same priority preference.

As a result, the reason for refusal is flawed as it claims this proposal in a local centre is unacceptable as SPP seeks to prioritise town centres over local centres but that is not correct. SPP seeks to prioritise town centres which includes local centres. So, the priority given to local centres in SPP is exactly the same as



town centres, there is no difference. It is therefore erroneous to claim that SPP gives a preference to Penicuik town centre over the local centre as it does not, it gives them the same priority.

This conflict is compounded in the Midlothian LDP as the LDP has chosen to adopt a different approach to SPP and has separated local centres from town centres, contrary to the preference identified in SPP. As a result, the LDP is not in line with SPP.

The LDP supports new shopping facilities within local centres up to 1000sq.m gross, providing they do not undermine the vitality and viability of any Midlothian Town Centre.

This policy at face value supports the appeal proposal as it involves new shopping facilities in the local centre and is considerably below the 1000sq.m threshold, at 621sq.m of floorspace i.e. some 40% below.

The LDP however introduces a further qualification to this support (albeit against the spirit of SPP) which is that it any new retail development does not undermine the vitality and viability of Penicuik Town Centre (in this instance). This further qualification to the initial support introduces another conflict in the policy as in order to consider this, a retail impact assessment would be required.

In this regard, the Councils policy states that Retail Impact Assessments will be required for all proposals of more than 2500sq.m but also for smaller proposals where the Council is of the view these may pose a threat to existing centres.

So, this proposal at 621sq.m is well below the local centre threshold of 1000sq.m and significantly below the Retail Impact Assessment threshold of 2500sq.m but it is still considered to potentially harm or pose a threat to the town centre.

This is the policy conflict. If there is a policy of support for new retail facilities at this local centre, and the proposal is below all the relevant thresholds but still cannot be considered acceptable, what actually can be considered acceptable.



The qualification of support in this policy effectively nullifies the benefit of the policy in the first place. So what is the purpose of the policy? If it is to support new shopping facilities at Local Centres such as Edinburgh Road, Penicuik then under what circumstance can that be achieved?

In this regard it is my opinion that the Councils interpretation of this policy has been incorrect. The purpose of the LDP policy is first and foremost to 'support new shopping facilities at Local Centres'. That is also the stance of SPP. The qualification of undermining town centres in the LDP policy is already qualified by the 1000sq.m threshold. Any reasonable reading of this policy would be that anything proposed under 1000sq.m would be consistent with the policy and should not undermine any centre. If not, what is the purpose of the 1000sq.m threshold?

In simple terms, this involves a proposed development that fits with the policy in that it supports new shopping development at a local centre consistent with the land use allocation of the LDP and under the appropriate scale threshold of 1000sq.m, but some way. In that context it is difficult to understand why this proposal cannot simply be accepted. If it cannot be accepted then the local centre policy is not fit for purpose as what would be normally be accepted at a local centre, can never be justified.

#### Impact on Penicuik Town Centre

Given the position above and my reservations over the requirement and appropriateness of retail impact assessment in this instance, Zander Planning provided what was considered a proportionate assessment given the scale of the proposal.

In this regard it is disappointing that officer have chosen to question this assessment in their report but not with Zander Planning during the assessment of the application despite clear offers from myself to provide them with any additional information they sought. Some requests for additional information were made by officers and those were duly answered. At no time during the 9 months this application was with officers was it suggested that the assessment was not appropriate.



Zander Planning are of the opinion that the assessment provided to the Council is appropriate and relevant to the scale of development proposed. It is also disappointed to note that the Council do not hold any up-to-date retail information or any Town Centre Health Checks (required by SPP) in order to assist an appropriate assessment of impact on vitality and viability.

Dealing specifically with the officer's criticisms of the Retail Impact Assessment (Document 4) I would comment as follows :

Officers consider the 2012 Midlothian Retail Study to be outdated although during their report appear to seek to use it where it supports their position. The fact is that the 2012 Study was undertaken to inform the current LDP and as such it is linked to the current adopted LDP as it is a quoted background paper. It is acknowledged that this study is now nearly 10 years old but for the purposes of this assessment for Penicuik, the survey data of shopping patterns will still be relevant as it relates to the Penicuik catchment as no new retail floorspace has been developed since that time that would fundamentally alter the findings of the 2012 survey. As a result, it is an adequate base for this assessment.

The officers state that it has been their experience that new retail floorspace has reduced leakage. No evidence of this has been provided or is available from the Council. It is not clear if this statement relates to the whole of Midlothian or Penicuik. The officers report provides no evidence-based reason to discount the 2012 shopping survey.

Officers have also queried the findings of the 2012 Study in terms of the overall potential surplus expenditure to accommodate new floorspace which appears to be based on the 'slower growth rate per capita spending on convenience goods' and that this may have invalidated these original findings. No attempt has been made by officers to quantify or support this statement.

In this context what the officers report fails to recognise is that the retail data from the 2012 Retail Study was actually during the last recession and the data had picked up the lower convenience growths.



However, these reductions are largely irrelevant as convenience expenditure growth is small in any event, usually around 0.5% to 1%. So the slower growth would have no significant impact on the predictions of the Councils 2012 Retail Study.

To illustrate this, estimating the difference in growth using the up-to-date Experian Retail Briefing Note, it is estimated that the impact on growth in relation to Mid Lothian was £83 per person if calculated year on year to give a more accurate figure. In the context of the Retail Assessment for Penicuik relevant to this appeal, this changes the expenditure per head from £2290 in 2012 to £2207 (Document 4). So the 2021 figure used in the Zander Planning assessment rebased to 2018 prices would have changed from £2519 to £2427, a reduction of 3.6%.

It is noted that officers agree with the catchment used but query the population figures used. In particular it is suggested that the population estimates for 2021 may be lower than projected in the 2012 Study. Again, no attempt to quantify this statement is provided by officers.

The most up to date figures from the National Records of Scotland (Document 6) indicates that the population estimate for Midlothian is 95,166 in 2021. This is slightly lower than the 96,441 estimated in 2012 for the same year. The relevance of this to the Penicuik Catchment is that the population utilised in the retail assessment would be reduced by 248 persons, so the estimate for the catchment would be 17882 people not 18130 that was used in the assessment. This is a small difference of 1.4% and makes no significant difference to the assessment as currently submitted.

The officers report also highlights reference to housing completions and that these have already been taken into account in the population estimates. For clarity the assessment does not add housing completion expenditure to the assessment, it is only included as an illustration of the likely to potential additional expenditure from new housing and therefore increased demand. For clarity, the Retail Assessment is only based on the population estimates with no additions.



The criticisms of data used does not alter the retail assessment in any significant way. The small differences to the expenditure and population estimates noted above by officers only make small adjustments to the available expenditure in the catchment. The retail assessment estimates the available expenditure to be £45.6M. Recalculating this with the above minor adjustments reduces this to £43.4M, just less than 5%. That is insignificant in terms of the overall assessment, as the available expenditure reduces from £18.9M to £18M, some 42% of the total available expenditure.

Unfortunately, the officers report has focused too much on minor differences in the base data that does not result in the effects indicated in their report. Officers made no attempt to quantify these differences so were not able to cross check their assumptions. As a result, they have overplayed the effect these differences would have on the assessment of impact. The differences make no significant difference and these comments could have been easily resolved prior to determination if the applicant had been asked to clarify or consider these points.

Having now established that the officer's comments in relation to population and expenditure do not significantly alter the retail assessment, consideration is given to their comments on turnover.

It is noted that there is no end user and they make the point that the sales density is about a third of what has been recently quoted for an Aldi in Dalkeith. It is not sure what the relevance of this is as the proposal is not for an Aldi or any other discount retailer as the size of the unit proposal is too small to accommodate those type of end users.

The proposed turnover is appropriate given the scale of the development and its location. Comparison to retailers such as Aldi or Tesco are of little assistance as these retailers have much larger turnovers compared to what is proposed here, which is a modest retail unit in a local centre. The retail assessment has included a sensitivity analysis which increases the turnover by 50%. The turnover estimated is actually higher than that adopted for the town centre, when it would be normal for the town centre to have a higher turnover. There is no evidence to indicate the turnover is underestimated in the retail assessment.





In terms of assessing the impact on the town centre the officers approach is not clear. Reference is made in their report to adjusting the Penicuik turnover to 2018 figures based on the 2012 Retail Study and a figure of £5.43m is quoted. No explanation of how that figure is derived or why it is relevant. If that is an attempt to estimate the turnover of the town centre then it is flawed. The Lidl in the town centre alone, based on their average turnover would be £5.3M. So this cannot be a reasonable position to adopt.

The officers report then goes on to indicate that there is a 20% impact on the convenience turnover of the town centre. Again, no explanation is given to how that figure has been derived. The Zander Planning estimate is 12% convenience impact.

The officer's report concludes that it is possible that serious harm could be caused to the vitality and viability of the town centre as a result of siting a foodstore with a large floorspace on the application site.

This is a fairly general statement of the situation and does not attempt to consider the policy correctly in that 'would it undermine the vitality and viability of the centre'. In response to this we would comment as follows:

Firstly, what is proposed is not a large foodstore. It is very modest in scale and in particular is below the 1000sq.m threshold considered appropriate for local centres. It would be smaller than both the Tesco and Lidl in Penicuik.

Secondly, what is not acknowledged in the officers report is that it would be Lidl that would absorb the majority of the trade diversion and impact on the town centre. Lidl is an international retailer with a high turnover and strong retail presence. Despite the trade diversion and impact predicated on the Lidl, they are well placed to absorb this trade diversion. This would not threaten the closure of the store. As a result, it would not impact on the town centre to such a degree that would undermine the town centres vitality and viability. A much greater scale of development would be required to do that.



Lastly, I consider the officers assessment of the health of the town centre is overly negative. Our assessment indicates the town centre is average which I consider is fair when considered against other town centres.

Indeed, during the course of this application, new investment occurred in the form of B&M moving into the town centre. In retail terms this is an indicator that Penicuik is still viable and able to attract investment, during a time when many retailers and centres have been struggling.

This is a position that appears to be shared by the Community Council who in their letter of objection refers to 'the busy High Street' of the town centre.

Overall, this proposal is for a small food retail unit on a site that used to be a foodstore historically and is now in a designated local centre where support is given for new retail facilities under 1000sq.m. The officer's concerns over the impact on the town centre are acknowledged and understood but are exaggerated in our opinion. Whilst there will be impact on the town centre, a development of this scale would not be able to undermine the vitality and viability of the town centre due to its critical mass and much wider range of shops and services.

Reference is made to COVID 19 as a negative to the proposal but could also be considered as a positive. Shopping patterns did change as a result of the pandemic and one thing that did happen was that people shopped more locally for food. In this regard the Edinburgh Road Local Centre is ideally located in terms of the walk-in residential population at the north end of the town and the expanding housing.

In the context of the above, it is our opinion that the Councils reason for refusal 1 is not justified as it has not been demonstrated that the proposed development would undermine the vitality and viability of the town centre. The officers report has not considered the true impact on the town centre and the fact that this would ultimately be absorbed by an international retailer (Lidl) who is used to competition and will not fold as a result of the modest trade diversions predicted. The remaining part of the town centre would not be significantly impacted and would continue to provide comparison retail and services as it currently does.



Also, officers have not considered the impact on the town centre as a whole. Consideration has only been given to the convenience impact of the proposal and it is not acknowledged that the impacts on the town centre as a whole would be less as there would be no impact on non-food retail or service units. Estimated convenience impacts by their very nature are higher and do not provide the full picture. The policy assessment in this instance relates to the 'town centre', not the convenience function of the town centre in isolation. No assessment has been made against the town centre as a whole and this is an omission in the assessment of this application.

Of concern, the officers report then states that they would like to see vacant units in the town centre being occupied before any new units are approved at out of centre locations. This statement is fundamentally flawed.

To clarify the application site is not an out of centre site, it is located in a Local Centre. SPP confirms that Local Centres have the same priority as town centres, as noted elsewhere in this statement. The officer has seriously misdirected themselves in this regard the appeal site is not an out of centre location in policy terms. It is a local centre.

In introducing this statement and referring to other available units in the town centre the officers report has introduced sequential site matters to the assessment of this application that are not relevant. In this regard I would bring your attention to the email dated 28 August 2020 (Document 5) where the case officer confirmed during pre-application discussions that:

***"In regards your question about a sequential assessment at this site, I have discussed this with colleagues. In this instance there is no requirement to consider the retail proposal in terms of the sequential test."***

In this context it is completely unreasonable to then assess the application against the sequential requirements and use this as a justification to refuse the application.



It is our opinion that it has been demonstrated that the proposed retail and class 3 units would not have a significant detrimental impact that would undermine the vitality and viability of Penicuik town centre. As such the proposal does not conflict with policy TCR2 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance.

#### **Reason for Refusal No.2**

The proposed access and turning space have been modified to address the road safety concerns previously raised by officers and in particular tracking diagrams (Document 3c) are now included showing how the largest vehicle ever likely to use the site can manoeuvre within the car park, leaving and entering the public road in forward gear.

It is noted that the Policy and Road Safety Manager has not raised any concerns over the widening of the existing access and the manoeuvrability of delivery vehicles to the front of the units and the relationship with the customer parking spaces.

In that context, the reason for refusal is not justified.

#### **Reason for Refusal No. 3**

The service/delivery area is located at the front of the unit. This is not an unusual situation and do not consider the limited time servicing is in operations would alter the character or amenity of the local centre in any significant way tha would justify refusal of planning permission.

The yard to the front of the unit previously used as a car showroom was serviced by car transporters that would load/unload in front of the unit. This is not a valid reason for refusal.



### **Other Matters for consideration**

It is noted in the report that the proposed Class 3 takeaway use is considered unacceptable as it is within 400m of a school. We have provided evidence that the distances have been measured on site by means of a Trumeter Road Wheel. This provided the following measurements:

Strathesk Primary School going from the site via the pavements 532 metres taking the most direct route via Tesco's car park past Kwikfit 452 metres.

The officers response to this is that the SG is map based. However on review of the SG, there is no mention of this being map based. The SG simply states:

"Hot food takeaways will not be permitted where they fall within 400metres of the curtilage of a primary or secondary school."

This proposal is not for a hot food takeaway but is a Class 3 restaurant with ancillary takeaway use. It is not within 400m of a school. There should be no restriction on it use.

### **Assessment of Proposal**

The focus of the Planning and Retail Statement (Document 4) was to consider any planning and retail issues raised by the proposals for development at Edinburgh Road, Penicuik and to demonstrate that the principles of the development proposals are acceptable in planning terms.

The report identifies a number of benefits which the application scheme will deliver, including

- Economic development in Penicuik, directed to a Local Centre;
- Improved consumer choice by the introduction of new retail format;
- Encouragement of more sustainable patterns of shopping,



- Redevelopment of a prominent vacant brownfield site, bringing the site into full active economic use; and
- The creation of new employment opportunities.

### **Retail Impact**

In terms of impact, we conclude that there is no evidence to indicate the proposal would result in any significant adverse impacts that would undermine the vitality and the viability of the town centre. It should be noted that 'undermine' is a high bar to meet and is not the same as saying there will be impact. The test is that the impact has to be so significant that it undermines the vitality and viability of the town centre.

Whilst our analysis has indicated that Penicuik town centre displays average indicators of vitality and viability, the centre still has positive attributes with a diverse retail mix. As a consequence the town centres role and position in the hierarchy of retail centres and destinations will not change. The town centre also does not have a large proportion of units selling convenience goods that will be directly affected by the proposal.

The test in Policy TCR2 is a strict test which seeks proposals not to undermine the vitality and viability of the town centre. As noted in our assessment (Document 4), whilst there will be trade diversion and impact, there is no evidence to indicate that these would undermine the vitality and viability of the town centre.

This is particularly relevant when considered against the planning permission granted for an Aldi foodstore at Eastfield.

Planning permission was granted for a new food unit adjacent to the Tesco at Edinburgh Road Local Centre in 2008. This store would have extended to some 1378sq.m gross with a sales area of 975sq.m, so almost twice the size of the current proposal. This consent is relevant for a number of reasons.



Firstly, the site of the former Aldi consent is owned by the current applicant, AF Noble. Given there has been a long standing intention to provide a new food retail outlet at the Local Centre, the applicants considered this current site offered betterment in terms of location and scale.

Secondly, granting the Aldi consent acknowledged the deficiency within the catchment and sought to address this. Indeed the 2012 Retailing and Town Centres Technical Report 2012 (which is a background technical report for the current LDP) still has the proposed Aldi as a committed development. As a consequence it was assumed as part of this LDP that this new store would have been developed, as a result no further policies were developed to address the deficiency. However given that it has not been developed, there remains a deficiency (even taking into account the small reductions in growth identified by officers in their delegated report) and the current proposal seeks to address this with a smaller store and slightly different location but still within the same local centre.

Lastly, in granting the Aldi at the Edinburgh Road Local Centre, the Council accepted the levels of impact on the town centre did not undermine the vitality and viability of the town centre. This current proposal is likely to result in lower levels of impact given its scale. Its therefore logical to conclude that this current smaller proposal would not undermine the vitality and viability of the town centre, as a larger more significant proposal by Aldi was deemed not to.

The proposals are therefore compliant with the requirements of the Development Plan as it relates to the consideration of impact on the town centre. A significant material consideration exists in the form of the planning permission for Aldi at Eastfield. This sets a context in which to assess the current application but given it is smaller, it must be accepted that the impacts will be less.

### **Sequential Site Assessment**

It is our position that the site is specifically allocated for retail development in the adopted LDP.



Paragraph 68 of SPP sets out the sequential approach and confirms that town centres (including Local Centres) is the first choice for retail development having regard to the town centres first principles.

As this site is located in the Edinburgh Road Local Centre, it therefore complies with the sequential approach and there is no requirement to assess potential sites in the town centre as this is on the same status as town centres. Under such circumstances case law is clear that there is no requirement to assess sites below or on the same standing for sequential purposes.

The proposal therefore complies with the sequential approach as set out in the adopted LDP and SPP.

This is directly relevant to our comments above relating to the reasons for refusal and the unreasonable introduction of sequential matters in the officers report.

### **Policy Considerations**

The site is identified in the adopted Mid Lothian Local Development Plan as lying within the Edinburgh Road Local Centre where retail/Class 1 development is considered acceptable.

It has been demonstrated in the Planning and Retail Statement (Document 4) and the further explanations in this statement that, contrary to the reasons for refusal the proposed retail and class 3 units, would not have a significant detrimental impact on the vitality and viability of Penicuik town centre.

Having regard to the proposed Class 3 use, it is proposed that this would have an ancillary takeaway. In the report it is stated that the site is within 400m of a school and therefore would have any takeaway restricted in line with the Supplementary Guidance. As noted above this is not the case.

It also an important material consideration that Penicuik is an expanding town with new housing being developed. Table 1b in Appendix 2 (Document 4) sets out the new housing proposals in the Primary





catchment area. The officers comments in relation to the slower rate of growth is acknowledged but this does not alter the fact that there is still a growing population seeking additional demand on retail services.

For Penicuik this new housing will create additional retail demand, estimated at £7.8M for convenience goods. The existing retail provision in Penicuik Town Centre is not able to absorb all this new expenditure. As a result, it will most likely be spent outwith the catchment. However this proposal will improve the retail offer in the catchment and will provide these new residents improved choice given its location, close to these housing sites to the north of the town. This choice would reduce the need to travel to other locations outwith the catchment and would encourage the use of travel other than the car as the site is well located (on the north edge of the town close to the new housing) to act as a 'local centre' for these new communities as they are located in close proximity to the application site.

In addition, positive benefits will be delivered in terms of the redevelopment of what is currently a long-term vacant site that will be brought into full active economic use, which will directly benefit the local community in terms of increased choice, availability and accessibility to retail provision as well as creating opportunities for employment.

## **Conclusion**

Taking all these considerations into account, it is evident that there are positive benefits associated with the proposals, which outweigh any minor impacts identified.

It is our opinion that the proposal:

- Is consistent with the Adopted LDP which allocates the site as a Local Centre where retail/Class 1 and Class 3 is supported
- Meets the policy criteria tests in the adopted LDP having regard to sequential and impact matters



- Will assist in meeting the requirements for retail floorspace set out in the Mid Lothian Retail Study
- A new retail convenience store has already been approved at the Local Centre, this proposal essentially replaces that development
- Will improve customer choice and accessibility
- Will provide additional employment opportunities
- Will see a prominent vacant site be brought into economic use
- The Food and Drink unit would not increase the level of such uses in the Local Centre to over 50%
- The takeaway element associated with the smaller unit is not within 400m of a school

In this regard we consider the reasons for refusal have been adequately addressed and respectfully request that this appeal should be upheld, thereby granting planning permission.



Z A N D E R  
P L A N N I N G

## **Planning and Retail Statement**

Edinburgh Road, Penicuik

AF Noble

**August 2020**

Date : August 2020

Version : Final

Authorised by : 

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## 1. Introduction

- 1.1 **Zander Planning** has been appointed by **AF Noble and Son** to prepare a Planning & Retail Statement in support of the application for a Class 1 retail and Class 3 development at 18-20 Edinburgh Road, Penicuik. The proposal will contribute towards improving consumer choice for residents in Penicuik, direct investment to a Local Centre, and bring a prominent vacant brownfield site into full active economic use, in accordance with the Government's agenda for delivering sustainable economic development.
- 1.2 This Planning & Retail Statement has been prepared to assess the application proposals against the relevant provisions of the statutory development plan and other material planning guidance, particularly SPP.
- 1.3 In addition the site is identified in the adopted LDP as a Local Centre. Retail development in policy terms is therefore an acceptable use in principle at this location.

### Context of Proposal

- 1.4 The site has been operated by AF Noble and Sons since 1997. AF Noble has been a consistent contributor to the local economy for a number of years.
- 1.5 The premises were originally operated as a foodstore known as MacKays before being converted to a car showroom by AF Noble in 1997. The garage remained open until 2019, after which the premises were closed and the showroom was relocated to the company's other premises at Eastfield.



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- 1.6 The premises have been actively marketed and given its location in a Local Centre, the commercial interest that has been shown for the unit is retail and restaurant uses. These uses are considered consistent with the surrounding commercial centre.

### **The Proposal**

- 1.7 The proposal seeks to deliver a development of 765sq.m GIFA.
- 1.8 The development is proposed to form two units. One larger Class 1 unit of 621sq.m Gross to accommodate a convenience retailer and a smaller unit of 145sq.m gross to be operated by a bakers with ancillary takeaway facility, falling within Class 3.
- 1.9 The existing structure will be used to form the majority of the new building, together with some new floorspace. This would represent an increase of 240sq.m.
- 1.10 The units would be expected to employ approximately 20 people, with a mix of part time and full time jobs.
- 1.11 This report addresses the above requirements, and also considers any relative impact of the proposals on Penicuik town centre. Our report is structured as follows:
- Section 2 describes the site location and physical characteristics, and provides a description of the proposed development;
  - Section 3 reviews the policy framework, identifying policies and other material considerations relevant to determination of the application;
  - Section 4 examines the impact of the proposed retail development against the criteria listed in SPP and the Development Plan;
  - Section 5 sets out the assessment of the proposal in accordance with SPP and the Development Plan; and draws together our summary and conclusions.

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## 2. Site and Surrounding Area

### The Location and Site

- 2.1 The site compromises a partially vacant plot that previously formed a car showroom and parking area. The steel structure of the existing building remains and it is proposed to re-use this to establish a new building on the site.
- 2.2 The site was previously a foodstore before it was converted to a car showroom in 1997.
- 2.3 The site is located in the Edinburgh Road Local Centre and immediately adjacent to Tesco and some small shops that form a small parade onto Edinburgh Road. There is housing to the south and west.
- 2.4 The site benefits from access onto Edinburgh Road with a pedestrian facility over the A701 immediately in front of the site and a bus stop.

### Planning History

- 2.5 Planning permission was recently refused on the site for a Class 1/Class 3 development, reference 19/0105/DPP, the reasons noted below:
  - 1. It has not been demonstrated that the proposed retail and class 3 units would not have a significant detrimental impact on the vitality and viability of Penicuik town centre and so the proposal does not comply with policy TCR2 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance.
  - 2. The proposed access and turning space within the site raises road safety concerns which would be to the detriment of the safety of road users and customers of the proposed units.
  - 3. The service/delivery area, being located to the front of the building, will have an adverse impact on the appearance of the area, thereby not complying with policy DEV2 of the adopted Midlothian Local Development Plan 2017.



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### 3. Planning Policy Context

#### Scottish Planning Policy

- 3.1 Scottish Planning Policy (SPP) sets out the Scottish Governments policy on the land use planning system. SPP sets out a number of policy principles.
- 3.2 SPP introduces a presumption in favour of development that contributes to sustainable development. 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.
- 3.3 This means that policies and decisions should be guided by the following principles (those relevant to this proposal):
- giving due weight to net economic benefit;
  - responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
  - supporting good design and the six qualities of successful places;
  - making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
  - supporting delivery of accessible housing, business, retailing and leisure development;
  - having regard to the principles for sustainable land use set out in the Land Use Strategy;
  - avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality
- 3.4 In terms of town centre, SPP states that these should be flexible and proactive, enabling a wide range of uses which bring people into town centres. In particular it states that the planning system should:
- apply a town centre first policy when planning for uses which attract significant numbers of people, including retail and commercial leisure, offices, community and cultural facilities;
  - encourage a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening;
  - ensure development plans, decision-making and monitoring support successful town centres; and

- consider opportunities for promoting residential use within town centres where this fits with local need and demand

3.5 In this context para 68 of SPP states that Development Plans should adopt a sequential town centre first approach when planning for uses which generate significant footfall, including retail and commercial leisure uses, offices, community and cultural facilities and, where appropriate, other public buildings such as libraries, and education and healthcare facilities. This requires that locations are considered in the following order of preference:

- town centres (including city centres and local centres);
- edge of town centre;
- other commercial centres identified in the development plan; and
- out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

3.6 Paragraph 71 states that where development proposals in edge of town centre, commercial centre or out-of-town locations are contrary to the development plan, it is for applicants to demonstrate that more central options have been thoroughly assessed and that the impact on existing town centres is acceptable. In addition, where a retail and leisure development with a gross floorspace over 2,500m<sup>2</sup> is proposed outwith a town centre, contrary to the development plan, a retail impact analysis should be undertaken.

### **Local Development Plan**

3.7 The Mid Lothian LDP was adopted in November 2017.

3.9 The LDP has a number of policies that relate to retail development, the most relevant being TCR2

3.10 In this regard the LDP specifically allocates the application site as:

### **Policy TCR2 – Location of New Retail and Commercial Leisure Facilities**

The Council will apply the sequential approach set out in this policy with reference to the network of centre, as described in Table 4.1, insofar as it relates to locations with Midlothian and having regard to the expected catchment of the development.

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In this regard Table 4.1 has the Network of Centres as Regional Town Centre, Strategic Town Centre, other town centre, Commercial Centre, Out of centre locations and Local Centres.

In relation to Local Centres, Policy TCR2 confirms that new shopping facilities (up to a scale of 1000sq.m gross floor area) will be permitted within local centres, provided they do not undermine the vitality and viability of any of Midlothian's town centres.

3.11 The Council also has approved Supplementary Guidance on **Food & Drink and other Non-Retail Uses in Town Centres**

3.12 In relation to Food and Drink Provision outwith Town Centres, the SG comments as follows:

Despite there being general support for food and drink uses in local centres the Council is concerned that the overprovision of some uses will adversely affect the range of services in these areas and, in turn, also impact on their vitality. Therefore, development proposals will not be permitted for food and drink uses (including hot food takeaways) in local centres where they will result in 50% or more of the units in the local centre being in a food or drink use (including hot food takeaway). These uses will be permitted in local centres where the applicant provides details to show the change of use will not result in 50% or more of ground floor commercial units within 100 metres of the site being in food and drink use.

As with the section on hot food takeaways in town centres the Council is concerned that the proximity of hot food takeaways to secondary schools encourages pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale of unhealthy foods to school pupils from shops. However, it is reasonable for the Council to prevent the change of use of premises to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400metres of the curtilage of a primary or secondary school.

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## 4. Retail Considerations

- 4.1 This section considers the potential impacts of the proposal on Penicuik town centre.
- 4.2 Consideration of impact on town centre is linked to the vitality and viability of the centre and the analysis of existing shopping patterns and assumptions of trade draw from existing centres/stores. The assessment considers trading performance of existing centres and stores in the catchment area of the proposal at the 'design year', which is taken to be a full calendar year after trading commences (2021). The impact tables are set out in Appendix 2.
- 4.3 The proposed development involves convenience retail floorspace in a retail warehouse format. This includes large floorplate retail unit with dedicated level car parking and servicing for HGV's.

### Mid Lothian Retail Study

- 4.4 The Council commissioned a Retail Study in 2012 to include the Local Development Plan process and the Study forms part of the Technical Notes to the Main Issues Report in 2012. The key findings from the study in relation to Penicuik were : -
- estimated 59% of locally derived expenditure retained in the catchment;
  - estimated 41% of locals travelling outwith the catchment to other locations for food/convenience provision ;
  - provision in Penicuik would have increased through the development of Aldi at Eastfield.

### Basis of Assessment

- 4.5 Before we assess the impact of the application proposal, it is necessary to first consider:
- the likely catchment area of the application scheme (Step 1);
  - the likely turnover of the proposed development (Step 2);
  - the turnover of existing floorspace (Step 3);
  - the current vitality and viability of Penicuik town centre (Step 4); and
  - the likely patterns of trade diversion to the proposal (Step 5)

### Step 1: Definition of catchment area

- 4.6 The Primary that is adopted is taken from the Mid Lothian Retail Study. Zone 3 is Penicuik.
- 4.5 For the purposes of this assessment the population estimates contained in the Retail and Town Centres Technical Report have been adopted. This indicates a population of 18130 in 2021.

### Step 2: Turnover of Proposal

- 4.6 Table 2 in appendix 2 sets out the estimated convenience turnover of the proposal, adopting Retail Rankings data on derive turnover ratios. We have assumed that 80% of the turnover of the floorspace proposed will be derived from residents within the catchment area defined above. The broad estimated trade draw is set out in Table 5.

**Table 4.1: Turnover of proposed convenience floorspace**

Gross Area (sqm)	Net convenience sales area (sqm net)	Sales Density (£/sqm)	Total Turnover 2021 (£m)
621	558	4000	£2.23

Source: Table 5, Appendix 2

- 4.7 As shown, the proposed convenience floorspace is estimated to turnover around £2.23m in 2021.

### Step 3: Turnover of existing floorspace

- 4.8 This retail assessment calculates the total potential turnover of centres and stores, which derive a proportion of their trade from residents in the catchment area using 'benchmark' or average turnovers taken from the Mid Lothian Retail Study 2012.
- 4.9 The data for the local Penicuik catchment indicates that there is potential residual expenditure capacity for convenience floorspace. In convenience terms, Table 6 indicates an indicative capacity of £32.9M. This information points to a quantitative and/or qualitative deficiency in the catchment, as this money will be spent in existing shops in the catchment (resulting in overtrading) or spent outwith the local catchment (resulting in leakage). There is evidence that both occurs in the catchment.

**Table 5.3: Potential Convenience Capacity from local expenditure only**

<b>Convenience expenditure in catchment area (£m, 2021)</b>	45.6
<b>Less benchmark turnover of existing floorspace (£m, 2021)</b>	27.2
<b>Residual in local catchment area (£m, 2021)</b>	18.4

Source: Table 5 of Appendix 2

- 4.10 Another sources of expenditure also exist within the catchment. In terms of overtrading, the retail data indicates that the Tesco at Eastfield is overtrading some 33% or £6M per annum. This is a significant amount and even if all the turnover of the proposed development was diverted from the Tesco, it would still be trading above company averages.
- 4.11 It is also relevant that the LDP has identified new housing in a number of locations, but specifically to the north of Penicuik. Housing sites H25, H26, H58 and Hs20 account for some 1294 additional houses. This would expect to support a population of 3106, resulting in increased expenditure in the location of £7.8M. Whilst these new houses will be completed over a number of years, these new residents will result in increasing demand for services.

#### **Step 4 : Penicuik Town Centre Vitality and Viability**

- 4.12 Penicuik Town Centre is a relatively small and compact centre focused on High Street and John Street. The main anchor retail use is Penicuik Shopping Centre , which has a car park to the rear and is focused on John Street. This car park also serves the rest of the centre together with limited on-street parking. The main anchors for the centre are Bargain Buys and Job Centre Plus.
- 4.13 Primary food provision in the town centre is provided by Lidl, who occupy a site on the north edge of the town centre. There is also a small freezer centre in the shopping centre. Primary food provision for the catchment however is undertaken at Edinburgh Road Local Centre Tesco.
- 4.14 The centres main retail provision is comparison goods and service retailers such as opticians and hairdressers. On High Street there is a cluster of Class 3 restaurant and hot food uses providing evening activity. The centre also has cultural and administrative uses including church and Town Hall.
- 4.15 Overall the centre is considered to have a reasonable balance of retail and non-retail uses.

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- 4.16 In terms of Retailer Representation, there are a small number of independent and national occupiers providing goods and services in Penicuik.
- 4.17 National occupiers contribute services such as pharmacy, service and retail to complement the other goods and services offered in the centre. The national multiple representation included Bargain Buys, Lidl, Farmfoods, Semi-Chem and Optical Express.
- 4.18 This represents a low to average level of multiple representation although in floorspace terms Bargain Buys and Lidl clearly has the most significant units in the centre.
- 4.19 The centre has a relative low vacancy rate in floorspace terms. It is estimated that vacant floorspace amounts to some 700sq.m (9%) compared to 1147sq.m (14.5%) in the 2012 Retail Study. This represents a reasonable reduction in vacant floorspace. However in unit terms the vacancy rate is estimated at 11.5%, which is around the UK national average. Penicuik Shopping Centre has 3 vacant units at present, extending to 221sq.m (see Appendix 5).
- 4.20 There is some evidence of investment and retailer demand for premises within the designated centre.
- 4.21 The centre has relatively good pedestrian flows, throughout the whole centre and across car parks and from bus stops. This is likely due to the surrounding residential and community uses that will draw the public to the centre,
- 4.22 Public transport to the centre is good. Reasonable levels of car park are also available within and adjacent to the centre.
- 4.23 The function of the centre promotes goods and services to meet largely local residents needs. There is a limited amount of convenience retailing within the centre, the main provision being provided at Tesco at Edinburgh Road. However the centre has a number of service, cultural and health services that will attract people to the centre.
- 4.24 The overall environmental quality of the centre is considered to be good. The perception of the centre is clean and there is a blend of historic buildings and modern. The Penicuik Shopping Centre being well maintained.
- 4.25 It is concluded that Penicuik is a small town centre providing general goods and services to local residents. This centre has a relatively limited range of retail and other non-retail goods reflective of its small catchment and competition from higher order centres such as Straiton and Newcraighall. The town centre does not rely on convenience retailing to provide its vitality and
-

viability but instead on a mix of uses. The indicators show a centre with average levels of vitality and viability.

4.26 An assessment of Penicuik town centre has been undertaken and it is our opinion that the town centre benefits from an average level of vitality and viability, with a reasonable diverse retail mix for a centre of this scale.

4.27 From our assessment of the centre we observed that:

- There is evidence that the centre has suffered like many other centres during the 2008 recession but the town centre clearly remains a vital and viable shopping destination.
- There has been a reduction in vacant floorspace in the town centre since the recession. Vacancy rates in unit terms is consistent with the national average.
- The centre continues to benefit from relatively good levels of footfall throughout much of the centre, and primary shopping areas appeared busy and well supported.

4.28 It is therefore clear that Penicuik town centre is continuing to perform reasonably well. The vitality and viability of the town centre is considered to be average. On that basis the town centre is likely to be susceptible to medium to high levels of impact ie 10% or greater.

4.29 The Council undertook Town Centre perception surveys as part of their Health Checks in 2012 and 2016 (these are contained in Appendices 3 and 4 for reference). The 2012 provided the town centre a score of 64 whereas the 2016 had reduced this to 57. Whilst this is a subjective assessment and will be subject to variation when assessed, it is difficult to extract any meaningful conclusions from this data in isolation. In particular, Penicuik scored the highest rating of all town centres in Mid Lothian in the 2012 Survey, which is surprising in itself given the small nature of the centre compared to others. It is also interesting that the original scores were given in 2012 during the recession which had a significant impact on town centres. All centres have improved since then to some effect so a reduced score in 2016 does not seem appropriate. Given these potential conflicts the findings are noted and whilst they do show a lower score for Penicuik, the data itself does not indicate the centre is struggling or has declined to unacceptable levels.

#### **Step 5: trade diversion to the proposal scheme**

4.30 Judgements on the likely diversion of trade following the opening of the proposed development are based on existing shopping patterns, location, accessibility and the extent of comparable retail provision in the area.



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- 4.31 In convenience terms we have assumed that 80% of the turnover of the proposed development will be derived from within the local catchment area. This is based on the fact that some £18M of convenience expenditure is currently spent outwith the catchment in order locations. It is acknowledged it is inevitable that higher order centres such as Straiton will always provide an attraction to shoppers from this location and there it would be unreasonable to assume a significant proportion of this expenditure could be clawbacked. However given the location of the site, we consider it is well placed to offer an alternative to some of those shoppers who are choosing to shop elsewhere.
- 4.32 Table 7 seeks to set out the broad trade diversions. This assumes the bulk of the expenditure being drawn from the existing foodstore located at the Local Centre location close to the site.
- 4.33 In convenience terms an estimate of trade diversion is set out at Table 7 of Appendix 2. This shows that we expect:
- £0.62m of the developments convenience turnover will be diverted from the Penicuik town centre. Given the relatively close proximity of the town centre to the application site, it is appropriate to assume a proportion of trade diversion will take place from this location;
  - £1.1m will be diverted from the Tesco which lies in close proximity to the site;
  - £0.5m of the £18m leakage will be clawbacked.
- 4.34 Current main convenience goods provision in Penicuik is centred around the Tesco at the Local Centre and to a lesser extent the Lidl in the town centre. There is no significant convenience floorspace located with the core of the town centre, where there are some smaller convenience offers. Whilst there will inevitably be trade diversion from existing convenience goods operators (including those in the town centre), the proposal will offer a complementary addition to existing facilities, helping to improve local choice and competition.

#### **Impact on town centre vitality & viability**

- 4.35 Table 8 in Appendix 2 shows the impact of the proposed development on the turnover of Penicuik town centre at the 'design year' of 2021. Based on the patterns of trade diversion summarised above, Table 8 shows that the key impacts arising from the proposal scheme are limited, as follows:
- An impact of -8% arises against the convenience floorspace in the town centre; and
  - An impact of -4% on the Town Centre
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- 4.36 It is our opinion that this predicted impact does not represent a significant adverse impact on the town centre that would undermine its function or role in the catchment.
- 4.37 Table 9 also includes a sensitivity analysis for the proposal. The sensitivity scenario assumes a higher turnover being achieved on the convenience floorspace. This is done at 20%, 30% and 50% increases.
- 4.38 On the assumption of increased convenience turnover of 50%, the sensitivity scenario shows an increased predicted impact to -6% on the town centre.
- 4.39 The sensitivity analysis shows that even with higher predicted turnovers, the level of predicted impact is not significant.
- 4.40 In terms of the significance of this impact, the vitality and viability of Penicuik is considered to be average indicating that the town centre could be susceptible to high or medium levels of impact. The levels of impacts predicted in this assessment are considered to be low, generally between -4% to -6%. Such levels should be within acceptable limits having specific regard to the vitality and viability of Penicuik Town Centre.
- 4.41 In this context it should be acknowledged that the main bulk of food retail floorspace is actually located in the Local Centre at Edinburgh Road and that is where the main impacts will be felt. This floorspace is operated by a national multiple with high turnovers. The retail floorspace at Edinburgh Road can absorb the estimated impact.
- 4.42 In this context, the above impacts do not represent 'significant adverse' impacts when assessed against the criteria in the Development Plan. Penicuik Town Centre is in a reasonable state of health and will be able to withstand the modest amount of trade diversion to the application scheme that will take place. Whilst the town centres vitality and viability is average, its overall retail offer is good with a reasonable quality of comparison shops, a broad retail mix taking in a high number of independent shops. The town centre will continue to trade successfully and will continue to be the main focus of retail activity in the catchment.
- 4.43 On the basis of the above the application scheme will not result in a 'significant adverse' impact on the vitality and viability of Penicuik town centre. Moreover, we consider that the proposal will result in a number of significant positive benefits, including bringing a prominent vacant site back into economic use, creating a number of employment opportunities, and providing additional retail choice and co
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## 5. Assessment of Proposal

- 5.1 The focus of this report has been to consider any planning and retail issues raised by the proposals for development at Edinburgh Road, Penicuik and to demonstrate that the principles of the development proposals are acceptable in planning terms.
- 5.2 The report identifies a number of benefits which the application scheme will deliver, including:
- Economic development in Penicuik, directed to a Local Centre;
  - Improved consumer choice by the introduction of new retail format;
  - Encouragement of more sustainable patterns of shopping,
  - Redevelopment of a prominent vacant brownfield site, bringing the site into full active economic use; and
  - The creation of new employment opportunities.

### Retail Impact

- 5.3 In terms of impact, we conclude that the proposal will have minimal impact on the town centre. There is no evidence to indicate the proposal would result in any significant adverse impacts.
- 5.4 Whilst our analysis has indicated that Penicuik town centre displays average indicators of vitality and viability, the centre still has positive attributes with a diverse retail mix. As a consequence the town centres role and position in the hierarchy of retail centres and destinations will not change. The town centre also does not have a large proportion of units selling convenience goods that will be directly affected by the proposal.
- 5.5 The test in Policy TCR2 is a strict test which seeks proposals not to undermine the vitality and viability of the town centre. As noted in this assessment, whilst there will be trade diversion and impact, there is no evidence to indicate that these would undermine the vitality and viability of the town centre. This is particularly relevant when considered against the planning permission granted for an Aldi foodstore at Eastfield.
- 5.6 Planning permission was granted for a new food unit adjacent to the Tesco at Edinburgh Road Local Centre in 2008. This store would have extended to some 1378sq.m gross with a sales area of 975sq.m, so almost twice the size of the current proposal. This consent is relevant for a number of reasons.

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- 5.7 Firstly, the site of the former Aldi consent is owned by the current applicant, AF Noble. Given there has been a long standing intention to provide a new food retail outlet at the Local Centre, the applicants considered this current site offered betterment in terms of location and scale.
- 5.8 Secondly, granting the Aldi consent acknowledged the deficiency within the catchment and sought to address this. Indeed the 2012 Retailing and Town Centres Technical Report 2012 (which is a background technical report for the current LDP) still has the proposed Aldi as a committed development. As a consequence it was assumed as part of this LDP that this new store would have been developed, as a result no further policies were developed to address the deficiency. However given that it has not been developed, there remains a deficiency and the current proposal seeks to address this with a smaller store and slightly different location.
- 5.9 Lastly, in granting the Aldi at the Edinburgh Road Local Centre, the Council accepted the levels of impact on the town centre did not undermine the vitality and viability of the town centre. This current proposal is likely to result in lower levels of impact given its scale. Its therefore logical to conclude that this current smaller proposal would not undermine the vitality and viability of the town centre.
- 5.10 The proposals are therefore compliant with the requirements of the Development Plan as it relates to the consideration of impact on the town centre. A significant material consideration exists in the form of the planning permission for Aldi at Eastfield. This sets a context in which to assess the current application but given it is smaller, it must be accepted that the impacts will be less.

### **Sequential Site Assessment**

- 5.11 It is our position that the site is specifically allocated for retail development in the adopted LDP.
- 5.12 Paragraph 68 of SPP sets out the sequential approach and confirms that town centres (including Local Centres) is the first choice for retail development having regard to the town centres first principles.
- 5.13 As this site is located in the Edinburgh Road Local Centre, it therefore complies with the sequential approach and there is no requirement to assess potential sites in the town centre as this is on the same status as town centres. Under such circumstances case law is clear that there is no requirement to assess sites below or on the same standing for sequential purposes.

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- 5.14 The proposal therefore complies with the sequential approach as set out in the adopted LDP and SPP.

### **Policy Considerations**

- 5.15 The site is identified in the adopted Mid Lothian Local Development Plan as lying within the Edinburgh Road Local Centre where retail/Class 1 development is considered acceptable.
- 5.16 It has been demonstrated that contrary to the reasons for refusal of the previous application that the proposed retail and class 3 units would not have a significant detrimental impact on the vitality and viability of Penicuik town centre.
- 5.17 Having regard to the proposed Class 3 use, it is proposed that this would have an ancillary takeaway. In the report relating to application 19/0105/DPP it is stated that the site is within 400m of a school and therefore would have any takeaway restricted in line with the Supplementary Guidance.
- 5.18 The distances have been measured on site by means of a Trumeter Road Wheel. This provided the following measurements :
- Strathesk Primary School going from the site via the pavements 532 metres taking the most direct route via Tesco's car park past Kwikfit 452 metres
  - Cuiken Primary School via pavement 620 metres via a path to the rear of the site 645 metres
  - Beesslack High School 690 metres
- 5.19 On the basis of the above, there is no conflict with the distance of the proposed class 3 use and takeaway with schools.
- 5.20 The Supplementary Guidance also requires the consideration of concentration of Class 3 uses in the Local Centre. At present there is 40% Food and Drink units in the Local Centre. If approved, this would increase to 42%. As a result, the 50% threshold in the SG would not be breached in approving this application.
- 5.21 It also an important material consideration that Penicuik is an expanding town with new housing being developed. Table 1b in Appendix 2 sets out the new housing proposals in the Primary catchment area. For Penicuik this new housing will create additional retail demand, estimated at
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£7.8M for convenience goods. This is in addition to the estimates provided above. The new housing alone could justify around 1950sq.m net of convenience floorspace. The existing retail provision in Penicuik Town Centre is not able to absorb all this new expenditure. As a result, it will most likely be spent outwith the catchment. However this proposal will improve the retail offer in the catchment and will provide these new residents improved choice given its location, close to these housing sites to the north of the town. This choice would reduce the need to travel to other locations outwith the catchment and would encourage the use of travel other than the car as the site is well located (on the north edge of the town close to the new housing) to act as a 'local centre' for these new communities as they are located in close proximity to the application site.

- 5.22 We therefore consider that there is sufficient information and material considerations to support the proposed development.
- 5.23 In addition, positive benefits will be delivered in terms of the redevelopment of what is currently a long-term vacant site that will be brought into full active economic use, which will directly benefit the local community in terms of increased choice, availability and accessibility to retail provision as well as creating opportunities for employment.

### Conclusion

- 5.24 Taking all these considerations into account, it is evident that there are positive benefits associated with the proposals, which outweigh any minor impacts identified.
- 5.25 It is our opinion that the proposal:
- Is consistent with the Adopted LDP which allocates the site as a Local Centre where retail/Class 1 and Class 3 is supported
  - Meets the policy criteria tests in the adopted LDP having regard to sequential and impact matters
  - Will assist in meeting the requirements for retail floorspace set out in the Mid Lothian Retail Study
  - A new retail convenience store has already been approved at the Local Centre, this proposal essentially replaces that development
  - Will improve customer choice and accessibility

- Will provide additional employment opportunities
- Will see a prominent vacant site be brought into economic use
- The Food and Drink unit would not increase the level of such uses in the Local Centre to over 50%
- The takeaway element associated with the smaller unit is not within 400m of a school

5.26 On this basis, the application should therefore be viewed favourably and granted planning permission.

#### **Previous Refusal of Planning Permission**

5.27 Dealing specifically with the reasons for refusal in relation to the previous application, reference 19/0105/DPP, we would comment as follows :

1. It has been demonstrated that the proposed retail and class 3 units would not have a significant detrimental impact on the vitality and viability of Penicuik town centre. As such the proposal does not conflict with policy TCR2 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance.
2. The proposed access and turning space have been modified to address the road safety concerns and in particular tracking diagrams are now included showing how the largest vehicle ever likely to use the site can manoeuvre within the car park, leaving and entering the public road in forward gear. IN addition we have added a demarcated walking link from Unit 1 to Edinburgh Road footway, Unit 2 can also be accessed directly from existing footway, we have made provision for cycle parking and allowed for 2 no. EV charging spaces within the site
3. The service/delivery area is still located at the front of the unit. This is not an unusual situation and do not consider the limited time servicing is in operations would alter the character or amenity of the local centre in any significant way tha would justify refusal of planning permisison

5.28 Overall, we consider this revised proposal adequately addresses the reasons for refusal of the previous application on the site.

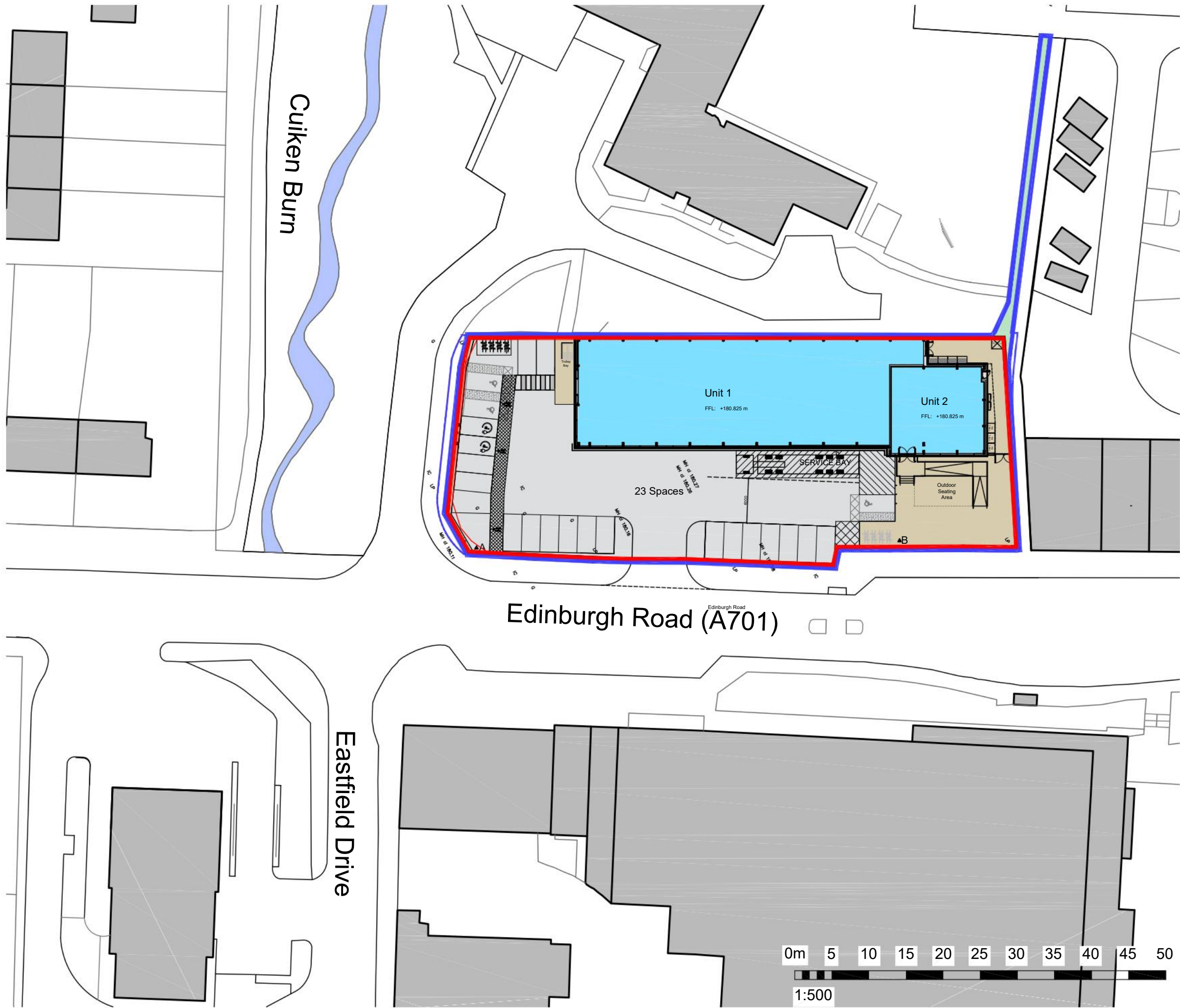


Z A N D E R  
P L A N N I N G

## Appendices



# Appendix 1



2. All sizes to be checked on site prior to construction.  
3. This drawing is the copyright of the author.



Key

- Site ownership boundary
- Application boundary (0.222 Ha / 0.549 Acres)
- Proposed Units (via extension & sub-division)

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4	24/08/2020 Updated in-line with AL(0)003 Proposed Site Plan	AGE
3	27/03/2020 Refuse bins relocated	AGE
2	2002/2020 Unit 2 repositioned to increase service yard.	AGE
1	08/11/2019 PLANNING ISSUE	SMC

**smith design associates**  
www.smithdesign.co.uk

Chartered Architects  
16 Lynedoch Crescent, Glasgow G3 6EQ  
client A F NOBLE & SON (PENICUIK) LIMITED

project Retail Unit  
Edinburgh Road, Penicuik

drawing Location Plan original size A3

scale 1:500 drawn SMC

date 10.09.19 checked AD

status PLANNING passed

job no.	drawing no.	revision
G2789	AL(0)001	4

## **Appendix 2**

Table 1a - Population and Expenditure (Primary Catchment) in 2018 Prices					
2021					
	Population	2021 Expenditure per head (2012 Prices)	Expenditure per head 2021 (2018 Prices)	2021 Total Expenditure	
convenience	18130	£2,290	£2,519	£45,660,748	

Population and Expenditure provided by Pitney Bowes via Retailing and Town Centres Technical Report - Mid Lothian Council 2012

2021 Expenditure per head rebased from 2012 using Experian Retail Briefing Note 16

Table 1b Potential Additional Population			
Additional Housing Allocations H25, H26, H58, Hs20	Number of Units 1294	Potential Population 3106	Additional Convenience Expenditure £7,821,512

Table 2 - Existing Floorspace and Turnover 2020 (2018 Price)							
	convenience			comparison			
Primary Catchment	net sq.m	turnover £ sq.m	benchmark turnover	net sq.m	turnover £ sq.m	benchmark turnover	total benchmark turnover
<b>Penicuik Town Centre</b>							
convenience shops	742	3500	£2,597,000				£2,597,000
Lidl	562	9500	£5,339,000				
comparison shops				2170	4000	£8,680,000	£8,680,000
Tesco	1620	11500	£18,630,000	540	6000	£3,240,000	£21,870,000
local shops	224	3000	£672,000	479	3000	£1,437,000	£2,109,000
<b>Totals</b>	<b>3148</b>		<b>£27,238,000</b>	<b>3189</b>		<b>£13,357,000</b>	<b>£35,256,000</b>

Table 3 - Shopping Patterns (Convenience)							
	expenditure retained	Expenditure spent outwith	Expenditure Spent in Penicuik TC	Expenditure spent in Tesco Eastfield	Expenditure spent in Penicuik TC	Expenditure spent in Tesco Eastfield	Totals
Primary Catchment							
Penicuik Catchment - Zone 3	59%	6%					
Main Food Shopping	£31,962,523						
Zone 3			8%	53%	£2,397,189	£17,036,025	£19,433,214
Zone 6			3%	1%	£894,951	£447,475	£1,342,426
Zone 9			4%	4%	£1,278,501	£1,278,501	£2,557,002
Supplementary Shopping	£9,132,150						
Zone 3			14%	24%	£1,269,369	£2,200,848	£3,470,217
Zone 6			2%	4%	£173,511	£347,022	£520,533
Zone 7			1%		£127,850	£0	£127,850
Zone 9			5%	10%	£438,343	£867,554	£1,305,897
Top Up Shopping	£4,566,075						
Zone 3			31%	52%	£1,415,483	£2,378,925	£3,794,408
Zone 4			2%		£73,057	£0	£73,057
Zone 6				2%	£0	£86,755	£86,755
Zone 12				2%	£0	£68,491	£68,491
					£8,068,254	£24,711,597	£32,779,851

\* Shopping Patterns established by Retailing and Town Centres Technical Note 2012

Table 4 - existing and extimated turnover				
	convenience	Convenience		
Primary Catchment	benchmark turnover	Estimated Turnover	Difference £	Difference %
<b>Penicuik Town Centre</b>				
convenience shops	£2,597,000	£2,597,000	£0	0%
Lidl	£5,339,000	£5,471,254	£132,254	2%
Tesco Eastfield	£18,630,000	£24,711,597	£6,081,597	33%
local shops	£672,000	£672,000	£0	0%
<b>Totals</b>	<b>£27,238,000</b>	<b>£33,451,851</b>	<b>£6,213,851</b>	

Table 5 - Proposed Floorspace and Turnover				
Proposed retail development	gross floorspace (GIFA)	net convenience floorspace	turnover £ per sq.m	total convenience turnover
Unit 1	621	558	4000	£2,232,000
Unit 2	144			
<b>totals</b>	<b>765</b>	<b>558</b>		<b>£2,232,000</b>

\* net floorspace refers to retail or trading floorspace excluding areas behind checkouts, back of house, lobbys, storage and staff accommodation, customer café and toilets



**Table 6 - Available Convenience Expenditure in Primary Catchment**

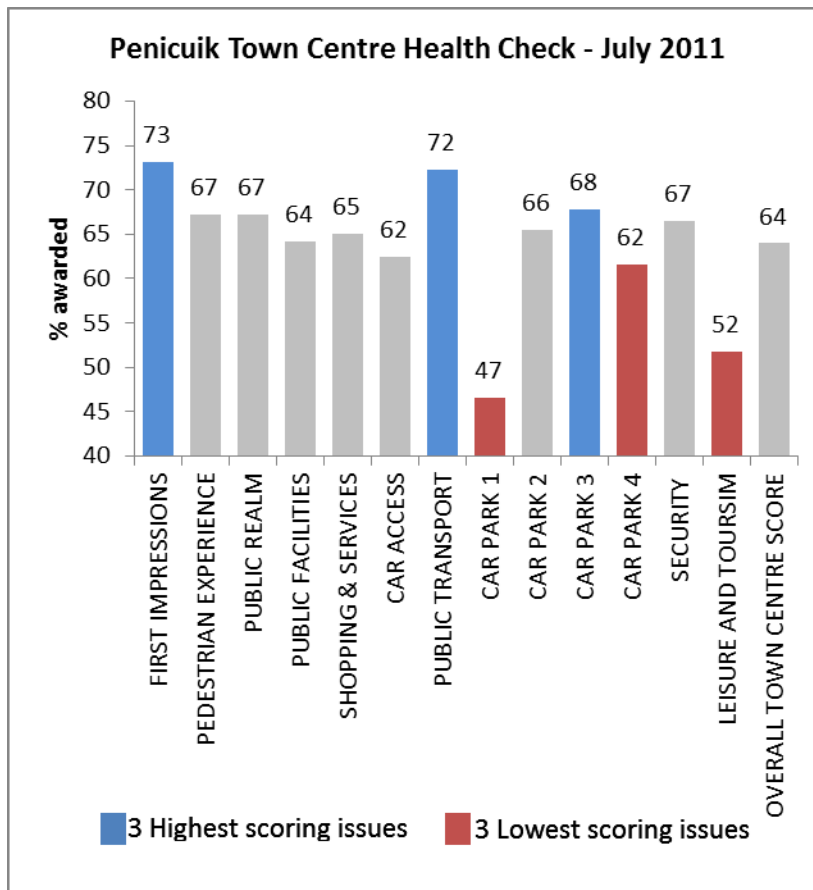
Penicuik (Primary Catchment)	<b>2021</b>
Total Locally Derived Convenience Expenditure	£45,660,748
Convenience Expenditure retained in Catchment	£26,697,839
Convenience Expenditure Imported	£6,082,012
Total Convenience Expenditure	£51,742,759
Estimated turnover v benchmark turnover	£6,213,851
Convenience Expenditure spent outwith Catchment	£18,962,909
Plus future expenditure growth from housing	£7,821,512
<b>Total Potentially Available Convenience Expenditure</b>	<b>£32,998,272</b>

Table 7- Convenience Trade Diversions 2021						
Primary Catchment	benchmark turnover	Estimated turnover	trade diversion	Trade Diversion	Residual Estimated turnover	Residual compared to benchmark turnover
<b>Penicuik Town Centre</b>						
convenience shops	£2,597,000	£2,597,000	10%	£178,560	£2,418,440	-£178,560
Lidl	£5,339,000	£5,471,254	25%	£446,400	£5,024,854	-£314,146
Town Centre Total	£7,936,000	£8,068,254			£7,443,294	-£492,706
Tesco	£18,630,000	£24,711,597	65%	£1,160,640	£23,550,957	£4,920,957
local shops	£672,000	£672,000	0%	£0	£672,000	£0
From catchment 80%				£1,785,600		
Clawback			20%	£446,400		
Totals	£27,238,000	£33,451,851		£2,232,000	£31,666,251	£4,428,251

Table 8 - Predicted Convenience Impacts				
Primary Catchment	Estimated turnover 2021	Trade Diversion	Convenience Impact	Impact on Town Centre
<b>Penicuik Town Centre</b>				
convenience shops	£2,597,000	£178,560	-7%	-1%
Lidl	£5,471,254	£446,400	-8%	-3%
Comparison Shops	£8,680,000	£0	0%	0%
	£16,748,254	£624,960	-8%	-4%
Tesco	£24,711,597	£1,160,640	-5%	
local shops	£672,000	£0	0%	
<b>Totals</b>	<b>£42,131,851</b>	<b>£1,785,600</b>		

Table 9 - Summary of Retail Impacts					
			Sensitivity Test = + ?% of turnover on Table 5		
	Impact on Convenience Turnover	Impact on Town Centre Turnover	20%	30%%	50%
Penicuik Town Centre	-8%	-4%	-4%	-5%	-6%

## **Appendix 3**



Penicuik car park 1 is Bank Street, adjacent to public toilets; car park 2 is at Lidl; car park 3 is at Kentigern Mall; car park 4 is at High Street.

The health checks identified common themes across Midlothian's strategic town centres. All three towns scored highly for public transport and the panel felt that this was an asset to each of the towns. Car parking was an issue noted by the panel in all three town centres.

In all three towns Leisure and Tourism scored low. It was noted by the panel that there were few activities for teenagers in the town centres.

In Dalkeith the 'Public Realm and Public Facilities' criterion score was low. When the assessments were undertaken in 2011, Dalkeith was in the midst of environmental improvement works. It is hoped that the work undertaken will have helped address this matter and created a more pleasant town centre environment. This improvement is expected to be reflected in the public realm scores in 2012.

Since the 2011 survey several retail units have closed in Penicuik, and this centre, which had the highest overall score of the three in 2011, may not have been assessed so positively in the 2012 assessment. However, environmental improvements have been implemented in Penicuik town centre also.

There do not appear to have been significant changes in Bonnyrigg between 2011 and 2012. Environmental improvements to the public realm were implemented in 2004/5.

## **Appendix 4**

## RESULTS 2016

### Penicuik Town Centre Health Check

Date	tbc
Time	tbc
Weather	tbc

<u>Penicuik</u>	<u>%</u>
FIRST IMPRESSIONS	64.79
PEDESTRIAN EXPERIENCE	60.26
PUBLIC REALM	58.14
PUBLIC FACILITIES	53.74
SHOPPING & SERVICES	51.98
CAR ACCESS	55.94
PUBLIC TRANSPORT	58.42
CAR PARK 1	39.81
CAR PARK 2	68.52
CAR PARK 3	58.33
CAR PARK 4	58.08
SECURITY	62.05
LEISURE AND TOURISM	51.43
<b>OVERALL TOWN CENTRE SCORE</b>	<b>57.04</b>

### CAR PARKING AVERAGE SCORE

CAR PARK 1	39.81
CAR PARK 2	68.52
CAR PARK 3	58.33
CAR PARK 4	58.08
<b>CAR PARK AVERAGE</b>	<b>56.19</b>

### Penicuik Town Centre Health Check 2016

#### RANKED FROM LOWEST TO HIGHEST

LEISURE AND TOURISM	51.43
SHOPPING AND SERVICES	51.98
PUBLIC FACILITIES	53.74
CAR ACCESS	55.94
CAR PARK	56.19
PUBLIC REALM	58.14
PUBLIC TRANSPORT	58.42
PEDESTRIAN EXPERIENCE	60.26
SECURITY	62.05
FIRST IMPRESSIONS	64.79
<b>OVERALL TOWN CENTRE SCORE</b>	<b>57.29</b>



<b><u>3 Highest Scoring Issues in Penicuik TC</u></b>	<b>%</b>
FIRST IMPRESSIONS	64.79
SECURITY	62.05
PEDESTRIAN EXPERIENCE	60.26

<b><u>3 Lowest Scoring Issues in Penicuik TC</u></b>	<b>%</b>
LEISURE AND TOURISM	51.43
SHOPPING AND SERVICES	51.98
PUBLIC FACILITIES	53.74

## **Appendix 5**

# PENICUIK SHOPPING CENTRE

Penicuik's Prime  
Retail Offer

**bargain buys**

big brands, big discounts

**OPENED AUTUMN 2019**



- Scheme anchored by
- 96 car parking spaces
- Excellent public transport links
- Other key tenants include:

**bargain buys**  
big brands, big discounts

and

**jobcentreplus**

**Vaporized**  
INHALE THE FREEDOM

**T S B**



**GREGGS**

**farmfoods**

# PENICUIK SHOPPING CENTRE

## EH26 8AB



UNIT	GROUND FLOOR	FIRST FLOOR	RATEABLE VALUE	SERVICE CHARGE (PER ANNUM)	QUOTING RENT (PER ANNUM)
3	798 sq ft (74.14 sq m)	662 sq ft (61.50 sq m)	£12,200	£1,605	£15,000
5B	752 sq ft (69.83 sq m)	659 sq ft (61.19 sq m)	£12,500	£1,733	£15,500
8	842 sq ft (78.23 sq m)	N/A	£14,900	£1,031	£14,000

For further information please contact the lettings agents:



**Richard Ford**  
richard@reithlambert.co.uk  
0141 225 5710



**Isla Monteith**  
isla.monteith@savills.com  
0131 247 3746

**Charlie Hall**  
charlie.hall@savills.com  
0131 247 3705

Reith Lambert LLP for themselves and for the vendor of the property give notice that: i) these particulars of sale are a general outline for the guidance of intending purchasers and do not constitute all or any part of any offer or contract. ii) intending purchasers should satisfy themselves as to the accuracy of descriptions, dimensions, references to condition, permitted use and other details all of which are given without any warranty whatsoever. iii) unless otherwise stated all rents and prices are quoted exclusive of VAT. iv) they have not conducted and are not aware of any investigations into any potential or actual pollution or contamination of the building, land, air, or water and give no warranties whatsoever in respect thereof, of which prospective purchasers should satisfy themselves. v) in accordance with the terms of the Requirements of Writing (Scotland) Act 1995 these particulars are not intended to create any contractual relationship or commitment which can only be entered into by exchange of missives between respective solicitors. Date of Publication: October 2019

# Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

**Reg. No. 20/00562/DPP**

Zander Planning Ltd  
Clyde Offices  
2nd Floor  
48 West George Street  
Glasgow  
G2 1BP

Midlothian Council, as Planning Authority, having considered the application by A F Noble and Sons, 2A Eastfield Farm Road, Eastfield Farm Industrial Estate, Penicuik, EH26 8EZ, which was registered on 2 September 2020 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Erection of retail (class 1) and food and drink (class 3) units, formation of car park, creation of external seating area and erection of fence and gates at 18 - 20 Edinburgh Road, Penicuik, EH26 8NW**

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

<u>Document/Drawing</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	AL(0)001 5 1:1250	02.09.2020
Site Plan	AL(0)001 4 1:500	02.09.2020
Site Plan	AL(0)003 6 1:200	02.09.2020
Proposed Floor Plan	AL(0)005 6 1:125	02.09.2020
Proposed Elevations	AL(0)009 5 1:100	02.09.2020

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

- 1. It has not been demonstrated that the proposed retail and class 3 units would not have a significant detrimental impact on the vitality and viability of Penicuik town centre and so the proposal does not comply with policy TCR2 of the Midlothian Local Development Plan and the Scottish Planning Policy, both of which aim to prioritise and protect town centres through the town centre first principle.*
- 2. The proposed access and turning space within the site raises road safety concerns which would be to the detriment of the safety of road users and customers of the proposed units.*
- 3. The service/delivery area, being located to the front of the building, will have an adverse impact on the appearance of the area, thereby not complying with policy DEV2 of the adopted Midlothian Local Development Plan 2017.*

4. *The proposed ancillary takeaway for the class 3 unit is within 400m of the curtilage of Strathesk Primary School and so the proposal does not comply with the adopted Supplementary Guidance for Food and Drink and Other Non-retail Uses in Town Centres.*

Dated 18 / 6 / 2021

A handwritten signature in dark ink, appearing to be 'DR' with a stylized flourish.

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

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 20/00562/DPP

**Site Address:** 18-20 Edinburgh Road, Penicuik.

**Site Description:** The application site comprises a vacant plot that previously housed a car showroom and associated parking area. The building on site has been removed, with only the metal frame and hardstanding remaining. There is a dropped kerb access to the site which has been blocked off by a low barrier. There is housing to the south and west, housing and public footpath and a terrace of commercial units to the north and a superstore and commercial units to the east. The houses in the area are generally two storey semi-detached or terraced, with a three storey flatted block to the west. The site is within a local commercial centre.

**Proposed Development:** Erection of retail (class 1) and food and drink (class 3) units, formation of car park, creation of external seating area and erection of fence and gates.

**Proposed Development Details:** A single storey commercial building is proposed. The building is to be split into two units, one for class 1 use, the other class 3 with ancillary takeaway. The building will be adjacent to the western boundary and will measure 56 metres long by a total of 16 metres deep with a flat roof 5.8 metres high. There are areas of signage that are 6.2 metres high. The smaller of the two units, for class 3 use, will project 1 metre forward of the larger unit. The plans state the building is to be large areas of glazing and black and silver composite panels with grey capping. The plans refer to facing brick to match existing but it is not clear where this will be on the building. This may be the hardstanding on site.

The service area will be to the front of the class 1 unit with bin storage to the rear of the units. An external seating area is proposed to the front of the class 3 unit. The car park will be between Edinburgh Road and the proposed building, with the existing vehicular access widened from 7.1 metres to 7.3 metres. Twenty-three parking spaces provided, three of which are wider access and two include electric vehicle charging points. The cycle parking areas are proposed and there is a new pedestrian access formed from Edinburgh Road. The building will connect to the public water supply. Fencing and gates are proposed. No details of their appearance or dimensions are submitted, however it appears from the elevation plans the fencing around the bin store area is 3 metres high and the fencing to the rear of the site is 2 metres high. The gate appears to be by the class 3 unit and the bin store and is set within the 3 metre high fencing.

A Planning and Retail Statement provides justification for the proposal. The previous car showroom on site was operated since 1997 and before this the site was a food retail unit. Since the car sales use ceased in 2019, the site has been actively marketed with interest for retail and restaurant uses. The use would generate 20 jobs. The applicant states that the proposal would not have a significant adverse

impact on, or undermine the vitality or viability of, Penicuik town centre but will bring benefits, including bringing a vacant site back into economic use, create employment and provide additional retail choice. The statement also makes reference to a previous approval for a foodstore to the rear of the Tesco unit in 2008 which has not been developed but shows that the Council accepted that this did not detrimentally affect Penicuik town centre and so it follows that the current proposal would not either. Given the site is within a local centre, this complies with the sequential approach for sites in the MLDP. As measured on foot, the site is outwith 400 metres of the nearest school and so any take away element of the class 3 unit would not be contrary to the adopted SG. This would also not result in 50% of the local centre being in food and drink use.

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

19/01053/DPP Erection of retail (class 1) and food and drink (class 3) units, formation of car park, creation of external seating area and erection of fence and gates. Refused – it was not demonstrated that the proposal would not have a significant detrimental impact on the vitality and viability of Penicuik town centre; road safety concerns over the access and turning space; the service/delivery area to the front of the units would have an adverse impact on the appearance of the area; does not comply policies TCR2 and DEV2 or the SG.

06/00872/FUL Change of use of amenity open space to hardstanding for car sales showroom. Consent with conditions.

**Consultations:**

The Council's **Policy and Road Safety Manager** has no objection but requires details of the vehicle access, the electric vehicle charging units and the cycle parking should permission be approved.

**Scottish Water** has no objection but states they will not accept any surface water connections to the combined sewer.

The **Penicuik and District Community Council** has objected. There is no evidence that there has been any material change since the previous refusal of a similar development at the site. They highlight discrepancies between shop operators in Penicuik town centre and the planning statement. They also highlight the ongoing conservation area regeneration works taking place in the town centre, relating to improvements and repairs to buildings, and that it is important that the area is vibrant and viable to help make the regeneration project a success.

The applicant's agent has responded to the comments made by the Community Council.

**Representations:** Two objections have been received on the following grounds:

- The supporting statement is incorrect in referencing two units in Penicuik town centre that are no longer trading;
- The proposed foodstore will directly compete with a store in Penicuik town centre which will result in closures in the town centre and more vacant units;



- The submitted information does not demonstrate that there would be no adverse impact on Penicuik Town Centre;
- The existing vacant units in Penicuik Town Centre are being actively marketed with little success to secure and maintain occupants in class 1 and 3 uses;
- The vacancy levels and time taken to let out units in Penicuik Town Centre indicate the area is in a poor state of health and the proposal could lead to relocation of occupiers of existing units and further reduce footfall;
- The proposed development could be located in Penicuik Town Centre - no sequential assessment has been carried out to show why such sites are not suitable; and
- It is vital that new retail uses are directed to the Town Centre to promote it and protect the vibrancy and vitality.

### **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;

**DEV5 Sustainability in New Development** sets out the requirements for development with regards to sustainability principles;

**DEV6 Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, passive energy gain, positioning of buildings, open and private amenity space provision and parking;

**DEV7 Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment;

**TRAN5 Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals;

**IT1 Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals; and

**TCR2 Location of New Retail and Commercial Leisure Facilities** states that the Council will apply a sequential town centre first approach to the assessment of such applications. This directs retail developments to the following areas in order:  
Town Centre - Bonnyrigg, Dalkeith, Gorebridge, Loanhead, Mayfield, Newtongrange, Penicuik, Shawfair

Commercial centre – Straiton Commercial Centre

Potential out of centre location - Main corridor from Gorebridge/Redheugh to Newtongrange

Local Centres - Danderhall, Bonnyrigg/Hopefield, Bonnyrigg/Poltonhall, Dalkeith/Thornbank, Dalkeith/Wester Cowden, Dalkeith/Woodburn, Eskbank Toll, Gorebridge/Hunterfield Road, Bilston, Penicuik/Edinburgh Road, Roslin and Pathhead

The adopted **Supplementary Guidance on Food & Drink and Other Non-Retail Uses in Town Centres** reflects and elaborates on this policy, stating that the creation of retail and commercial leisure facilities outwith town centres must comply with policy TCR2. As a town centre first sequential test applies, applications for such development outwith town centres must demonstrate this will not undermine the vitality and viability of town centres within the expected catchment of the proposed development. Retail Impact Assessments will be required for all proposals of more than 2,500 square metres gross floor area, and also smaller proposals where the Council is of the view these may pose a threat to existing centres.

Where new development gives rise to a need, the local development plan gives scope for the Planning Authority to secure measures which will mitigate specific adverse impacts in terms of local infrastructure. Opportunities to improve town centres are set out in the settlement statements within the MLDP, however other measures may be brought forward during the lifetime of the plan and this Supplementary Guidance.

The SG also provides guidance on food and drink units outwith town centres. This states that whilst local centres can accommodate such uses, this must not result in overprovision and there shall be no take away facilities within 400 metres of a primary or secondary school. Details of the hours and days of operation, ventilation, types of foods and bin storage are required if there is a takeaway element.

The **Scottish Planning Policy** (SPP) sets out the Scottish Government's expectations with regards to development in Scotland. With regards to retail developments the SPP states that the planning system should apply a town centre first policy. This position is further clarified in paragraph 68 of the SPP where it is stated that a sequential town centre first approach must be applied, requiring the following locations for high footfall generating uses to be considered in the following order of preference:

- Town centres (including city centres and local centres);
- Edge of town centre;
- Other commercial centres identified in the development plan; and
- Out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

The SPP goes on to state that out-of-centre locations should only be considered for uses which generate significant footfall where:

- All town centre, edge of town centre and other commercial centre options have been assessed and discounted as unsuitable or unviable;
- The scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location;
- The proposal will help to meet qualitative or quantitative deficiencies; and
- There will be no significant adverse effect on the vitality and viability of existing town centres.

The relevant policies of the **Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan)** are:

Policy 3, the support for the SPP by requiring local development plans to:

- Identify town centres and commercial centres and clearly define their roles
- Support and promote the network of centres identified by SESplan and to identify measures necessary to protect these centres; and
- Promote a sequential approach to the selection of locations for retail proposals. Any exceptions identified through local development plans should be fully justified.

**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.

#### Principle of development

The application site is located within the identified built-up area of Penicuik and as such there is a presumption in favour of some form of development provided it is compatible with surrounding uses.

#### Consideration of the site for retail and food and drink use

The MLDP, through policy TCR2, reflects and applies Policy 3 of the Strategic Development Plan which seeks to: identify town centres and define their roles; set out a network of centres including criteria to be addressed in assessing proposals; and, promote a sequential approach to the selection of locations for retail development. Policy TCR2 sets out policy support for development in (depending on circumstances) town centres, at Straiton commercial hub, and for new convenience shopping in the Gorebridge/Newtongrange area. The application site does not fit any of these supported locations.

Policy TCR2 also supports the development of new local centres/neighbourhood centres up to a scale of 1,000 square metres gross floor area (either in identified local centres or elsewhere within the built-up area where new housing is not adequately served by existing shopping facilities), provided this does not undermine the vitality and viability of any of Midlothian's town centres. The application site is within the local centre of Penicuik/Edinburgh Road, as detailed in the MLDP, where there are a variety of commercial units.

It is necessary to determine conformity with the MLDP by considering the key questions of; whether the scale of the proposal is excessive in the context of policy TCR2 support for local centres; and, whether the proposal, if approved, will adversely impact on vitality and viability of local town centres.

The footprint of the proposed development is under 1000 square metres and so is in line with the new shopping facilities section of policy TCR2.

There could be some support for a retail and class 3 development here provided it is demonstrated this would not undermine the vitality and viability of town centres within the expected catchment of the proposed development - in this case Penicuik town centre.

### Impact on Penicuik town centre

In considering the application an assessment of the development's potential impact on the town centre is fundamental, with a view of protecting town centres in line with national and local policies and priorities. The planning authority must be satisfied that the trade diversion figures for affected town centres, and the process by which they have been arrived at, are reasonable and then assess to what extent the scale of diversion is significant.

The 2012 Midlothian Retail Study by RDPC Ltd can be considered outdated, but has been utilised by the applicant and the planning authority when assessing the impact of the proposal.

This 2012 study looked at leakage in and out of Midlothian and flows from other parts of Midlothian. While it has been Midlothian's experience that new retail floorspace has reduced leakage, Midlothian is strongly linked to neighbouring local authorities through commuter flows, and this lack of self-containment will be reflected in expenditure patterns with leakage appearing to reach a ceiling at the time of the 2012 study.

In terms of turnover of the existing stores in the catchment proposal, in the context of flows from other parts of Midlothian there seems to be potential overall surplus expenditure to accommodate an additional store within the A701 corridor of the proposals projected turnover, as per the projection in table 52 of the 2012 study. This is referred to in the information submitted by the applicant's agent and rebased at current prices. However changes since 2012, particularly the slower growth rate in per capita spending on convenience goods, may have invalidated these assumption and there is now an increasing degree of uncertainty. This is due to the age of the study and changes in the convenience market, such as the growth of discount retailers. The rise of discount supermarkets and slower than expected growth in the convenience sector are factors which have emerged in the nearly 10 years since the 2012 study was commissioned, and will serve to further dampen the available quantity of surplus expenditure. Table 46 of the 2012 study considered retail locations in the context of how much notional turnover was required for them to trade at a healthy rate: the Tesco at Eastfield Road was found to be overtrading and the town centre undertrading. The undertrading does point to potential vulnerability of Penicuik to further abstraction, although it is acknowledged the 2012 study is increasingly dated and the additional housing growth reflected in the future projections in that study may be acting to rectify this.

It is reasonable for a development of the size proposed to have a localised catchment and so the Penicuik Zone in the 2012 retail study is used. It should be noted that the 2012 study projected population used expected housebuilding rates from the approved housing land audit at the time. The housing sites in the Penicuik area were slow to commence due to infrastructure constraints and so the population in the target opening year of 2021 may be lower than anticipated in 2012. Other than one site, the other Penicuik housing sites were known quantities in 2011 and an allowance was made for new housing to meet the requirements of the then emerging SDP for the SESplan area. Therefore the additional housing referred to in the report by the applicant's agent is already accounted for.

In terms of trade diversion, the information submitted assumes that 80% of trade will be drawn from the Penicuik area. The 2012 study found that the Tesco opposite the site took 97% and Penicuik town centre 86% respectively of their convenience trade from the Penicuik catchment. However it is not considered that these differences are of great significance and so the proposed estimate of trade draw from the catchment of 80% is accepted. The suggested trade diversion estimates do not seem unreasonable and it seems logical that the greatest trade draw would be from the store nearest to the site i.e. Tesco. It is worth noting that the turnover of the store appears very low compared to other recent projects considered by the planning authority by a factor of about three.

In regards, turnover of development, there does not appear to be an indication of the likely end user in the Information submitted, such as if this is a discount retailer. The sales density originally quoted is about a third of the level quoted in a recent RIA for the Aldi convenience proposal at Thornybank, Dalkeith.

The RDPC study is relatively old and the current performance of similar stores elsewhere may be a better basis to assess current turnover than historic performance in a location. However the 2012 study pointed to convenience sector undertrading in Penicuik at the time and it is reasonable therefore to include in the RIA a sensitivity test based on updating the RDPC figures to the current price base, i.e. £5.43 million convenience turnover at 2018 prices.

It is therefore key to consider what percentage of trade diversion would be significant. There is no set percentage at which a trade diversion becomes significant and it will depend on how marginal the stores are. The 2012 Midlothian Retail Study showed undertrading however it is acknowledged the data itself is now reasonably old. The convenience stores, namely Lidl and B&M, 'anchor' the town centre and their loss would significantly affect the viability and vitality of the town centre.

There is not a specific set level at which trade diversion becomes significant, and if town centre operators are under trading even a small abstraction could impact on viability. If one or more town centre stores were to become unviable and, in the worst case, cease trading this would have a significantly adverse impact on the vitality and viability of a protected town centre. On this basis of the information above and assuming the same trade diversion estimates in Table 7 of the RIA, Penicuik town centre would lose about 20% of its convenience trade.

It is well documented that town centres and high streets across the country are facing challenging conditions, particularly in terms of changing shopping habits and having to deal with a Covid-19 and a post-Covid-19 environment. Town centres will require all the assistance they can get if they are to survive and act as sustainable community spaces. A diversion rate of around 20% from Penicuik town centre is significant in this context. It is possible that serious harm could be caused to the vitality and viability of the town centre as a result of siting a foodstore with a large floorspace on the application site.

The planning authority have concerns over the viability and vitality of Penicuik town centre. Whilst the High Street area has a low vacancy rate and a range of food,

retail and professional services, the pedestrianised John Street area has vacant units. There is a concern that this area is struggling to attract occupiers for the units. Agents for the owner of a number of units in Penicuik town centre has submitted an objection to the application. They state that they have been trying to encourage footfall and enhance the area, including temporary leases at reduced rents in order to limit the number of vacant units in the centre with limited success and they have strong concerns that the proposal would further impact their efforts in the town centre.

The planning authority would like to see vacant units in town centres being occupied before any new units are approved at out of town centre locations which will take existing trade away from town centres. There are units available in the town centre that could accommodate the proposed units that are in proximity to parking and have good public transport access.

The proposed retail (class 1) unit has a footprint of 640 square metres. There are two similarly sized units within Penicuik Town Centre – one 740 square metres and is currently vacant; the other is 541 square metres. This is not currently vacant but the agent acting for the owner of this site has said this is occupied on a temporary basis while trying to attract occupiers.

The proposed food and drink (class 3) unit has a footprint of 160 square metres. There are a number of vacant units within Penicuik town centre which are around 100 square metres and another than is 260 square metres. The agent acting for the owner of a number of units in Penicuik Town Centre has stated there is a unit of 150 square metres that is now vacant.

The references the supporting information includes to two units no longer trading appear to be a result of the applicant's agent not being able to visit Penicuik town centre due to restrictions on movement due to the pandemic. The case officer has visited the town centre a number of times during 2021 (both during and outwith lockdown periods) and based the assessment of the application on the vacancy levels at this time. As of April 2021, there are at least 7 vacant units within Penicuik town centre. As detailed above, the planning authority would like to see the existing units in the town centre occupied before allowing the development of new commercial units outwith the town centre.

#### Works to promote PTC

The Council is investing in Penicuik town centre through conservation area regeneration works that are mainly taking place in the High Street area. This includes improvements and repairs to buildings to improve the overall character of the area. Previous similar schemes in Dalkeith and Gorebridge town centres have seen not only an improvement in the physical buildings but also an improvement in the character of the wider town centre area. Supporting the current proposal would appear to contradict with other efforts by the Council to protect, enhance and promote Penicuik town centre.

#### Employment generation

The applicant's agent states the proposal would create 20 jobs, a mix of full and part time. While job creation is an important factor in the consideration of this planning

application, and a Council priority, given the outcome of the above assessment of the impact of the proposal on the town centre the creation of jobs at the application site could be potentially detrimental to existing employment within the town centre. If it were the case that jobs were to be lost in the town centre as a result of out-of-centre commercial units foodstore this would not be a sustainable approach to job creation.

### Design

The proposed building is relatively simple in design, with a flat roof and large areas of glazing that makes this clearly have the appearance of a commercial building. This would not detract from the character and appearance of the surrounding area.

### Impact on area/local residents

The building is in approximately the same footprint and of the same scale as the previous building on site and so it is not considered that there would be a significant impact on the light to surrounding properties or have an overbearing impact compared to what was there previously.

There are no windows on the gables of the commercial units to the north which would be adversely affected by noise from customers using the external seating area, any ventilation required or the service area.

### Transport and access

The existing access is to be widened and used by customers and service vehicles. The Policy and Road Safety Manager has not raised any concerns over this widening or the manoeuvrability of delivery vehicles to the front of the units and the relationship with the customer parking spaces. The parking area appears small to accommodate deliveries and manoeuvring room for larger vehicles. In addition, the service delivery area is located to the front of the proposed building, having a potential adverse impact on the visual amenity of the street scene.

The plans show electric vehicle charging points for two parking spaces. This is welcomed, however this should be increased to 4 parking spaces to meet with the guidance prepared by the Planning Authority.

### Other matters

The application site is within 400 metres of Strathesk Primary School and so there is no support for any ancillary takeaway element during school hours from the proposed class 3 unit. The applicant's agent has stated that the site is outwith 400 metres from the nearest school, based on walking routes. However the SG is map based.

### **Planning Obligations**

Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The circular advises that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the proposed development acceptable in planning terms (paragraph 15)

- serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)
- fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)
- be reasonable in all other respects

In relation to Midlothian Council, policies relevant to the use of Section 75 agreements are set out in the adopted Midlothian Local Development Plan 2017 and Midlothian Council Developer Contributions Guidelines (Supplementary Planning Guidance) and Supplementary Planning Guidance on Affordable Housing both approved in March 2012.

This proposed development, of which the principal element is the provision of commercial units, has been assessed in relation to the above guidance and it is considered that a Planning Obligation is required in respect of the following areas:

**A701 Relief Road**

The site is in proximity to the proposed A701 Relief Road. The 2017 Local Development Plan requires that the site contributes towards the delivery of this A701 Relief Road.

**Recommendation:** Refuse planning permission.



Appendix E

2. All sizes to be checked on site prior to construction.  
3. This drawing is the copyright of the author.



Key

- Site ownership boundary
- Application boundary  
(0.222 Ha / 0.549 Acres)

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5	01/09/2020	PLANNING ISSUE	AGE
4	24/08/2020	Updated in-line with AL(0)003 Proposed Site Plan	AGE
3	27/03/2020	Refuse bins relocated	AGE
2	2002/2020	Unit 2 repositioned to increase service yard.	AGE
1	08/11/2019	PLANNING ISSUE	SMC

**smith design associates**  
www.smithdesign.co.uk

Chartered Architects  
16 Lynedoch Crescent, Glasgow G3 6EQ  
0141 353 3501

client A F NOBLE & SON (PENICUIK) LIMITED

project Retail Unit  
Edinburgh Road, Penicuik

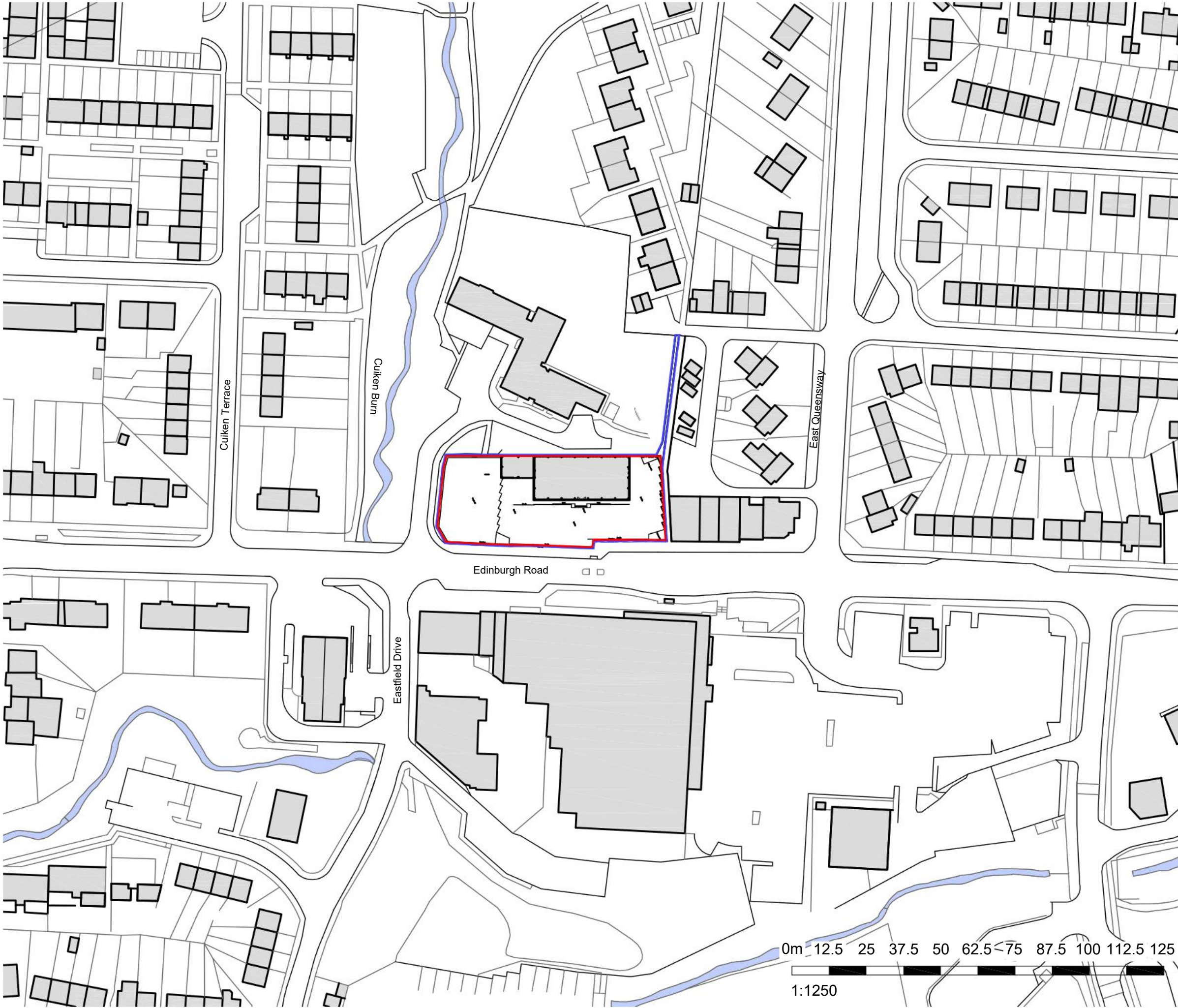
drawing Location Plan original size A3

scale 1:1250 drawn SMC

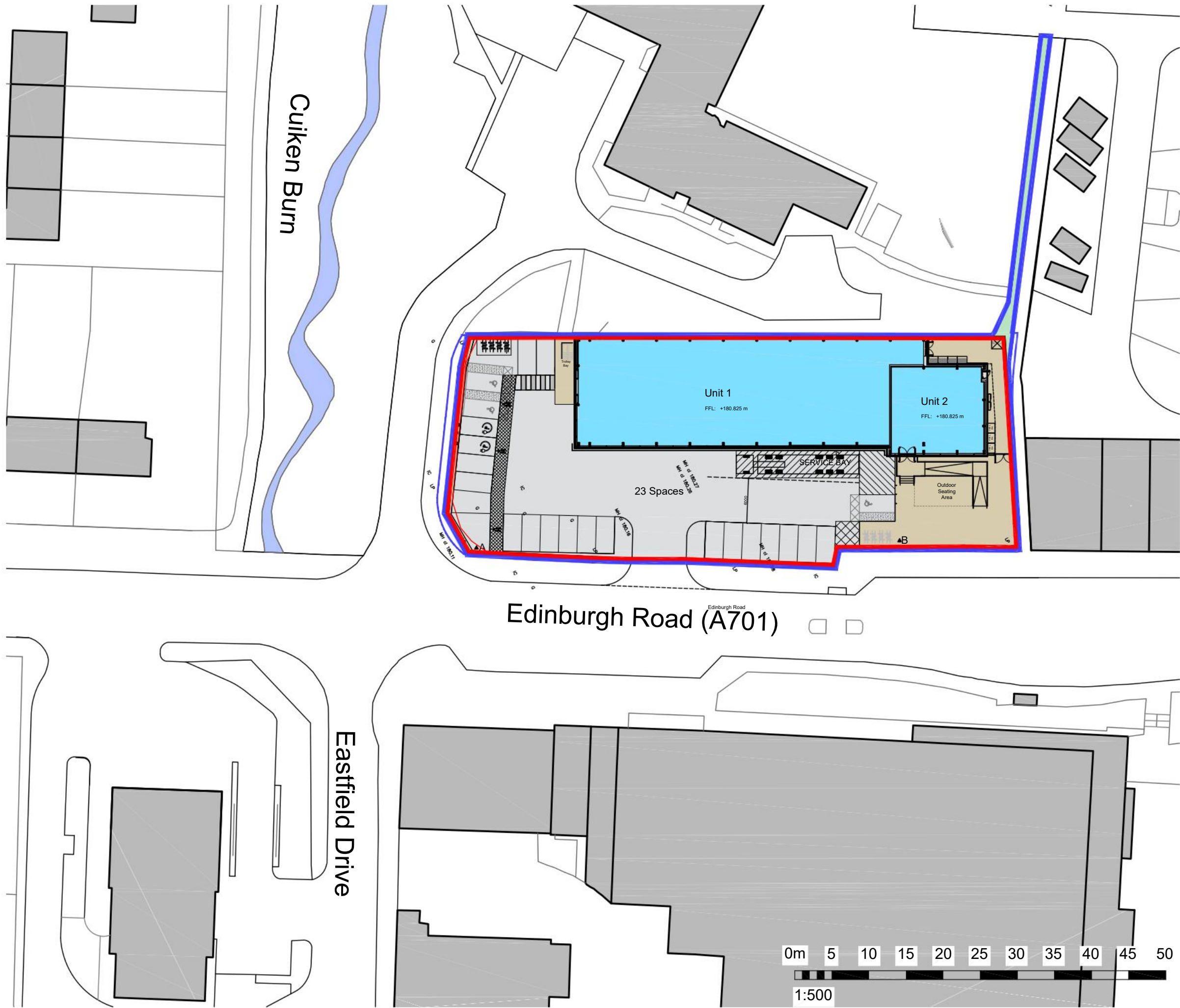
date 10.09.19 checked

status PLANNING passed

job no. G2789 drawing no. AL(0)001 revision 5







2. All sizes to be checked on site prior to construction.  
3. This drawing is the copyright of the author.



Key

- Site ownership boundary
- Application boundary (0.222 Ha / 0.549 Acres)
- Proposed Units (via extension & sub-division)

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4	24/08/2020 Updated in-line with AL(0)003 Proposed Site Plan	AGE
3	27/03/2020 Refuse bins relocated	AGE
2	2002/2020 Unit 2 repositioned to increase service yard.	AGE
1	08/11/2019 PLANNING ISSUE	SMC

**smith design associates**  
www.smithdesign.co.uk

Chartered Architects  
16 Lynedoch Crescent, Glasgow G3 6EQ  
0141 353 3501

client A F NOBLE & SON (PENICUIK) LIMITED

project Retail Unit  
Edinburgh Road, Penicuik

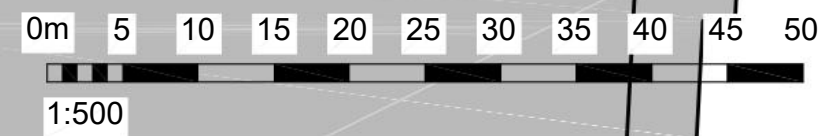
drawing Location Plan original size A3

scale 1:500 drawn SMC

date 10.09.19 checked AD

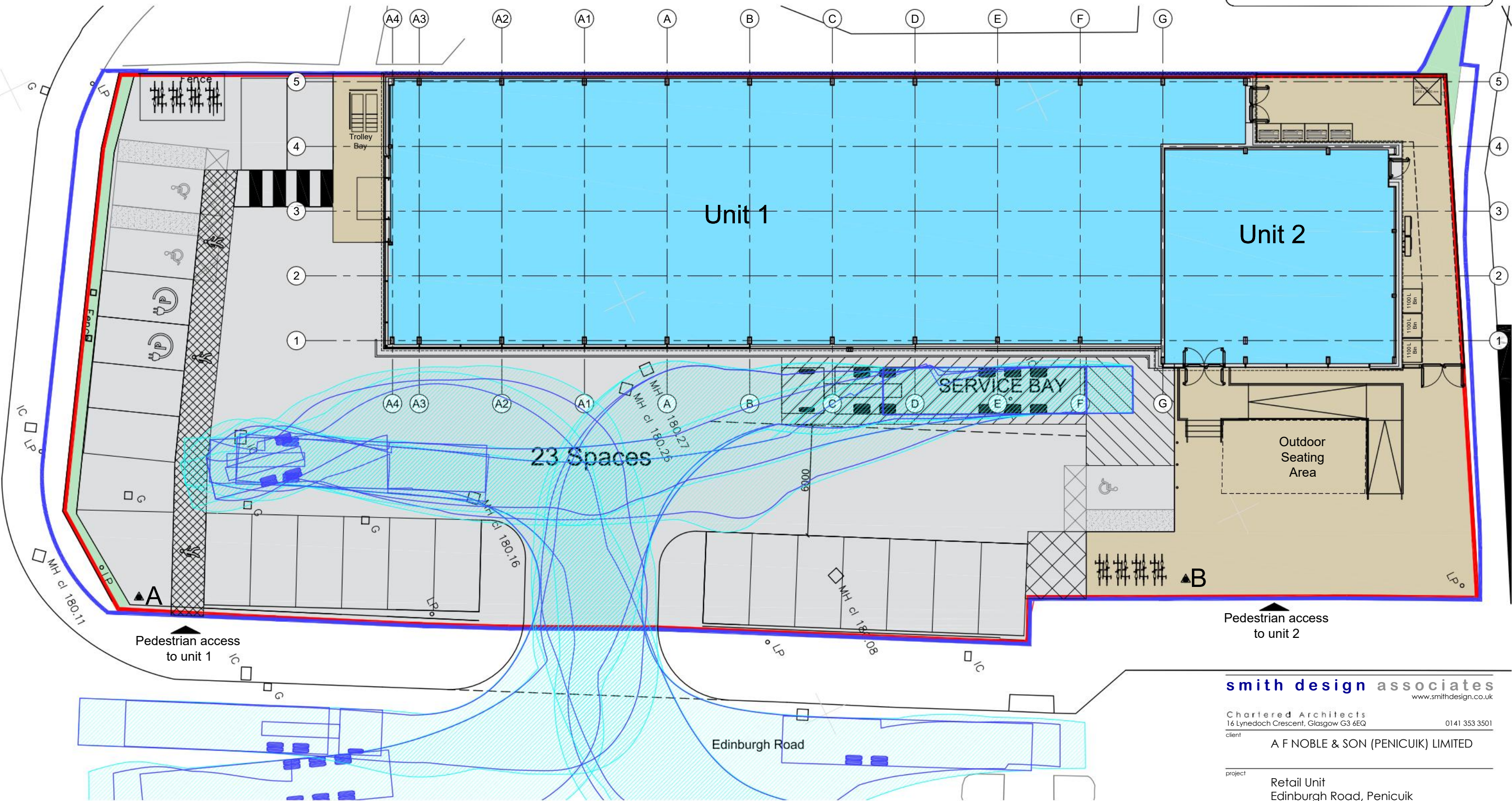
status PLANNING passed

job no.	drawing no.	revision
G2789	AL(0)001	4





2. All sizes to be checked on site prior to construction.  
3. This drawing is the copyright of the author.



#### Key

- Site ownership boundary
- Application boundary
- Proposed Units (via extension & sub-division)

0m 2 4 6 8 10 12 14 16 18 20  
1:200



6	24/08/2020	2no. EV charging bays added Vehicle access widened. Cycle parking added.	AGe
5	08/07/2020	Site ownership boundary updated	
4	27/03/2020	Refuse bins relocated	AGe
3	25/02/2020	Dimensions added	AGe
2	0002/2020	Unit 2 repositioned to increase service yard.	AGe
1	08/11/2019	PLANNING ISSUE	AGe

**smith design associates**  
www.smithdesign.co.uk

Chartered Architects  
16 Lynedoch Crescent, Glasgow G3 6EQ 0141 353 3501

client A F NOBLE & SON (PENICUIK) LIMITED

project Retail Unit  
Edinburgh Road, Penicuik

drawing Proposed Site Plan original size A3

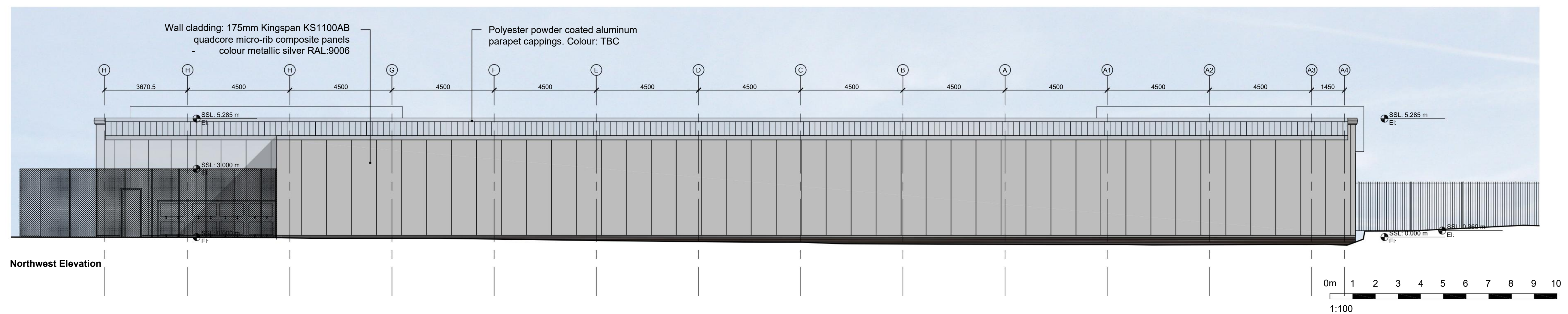
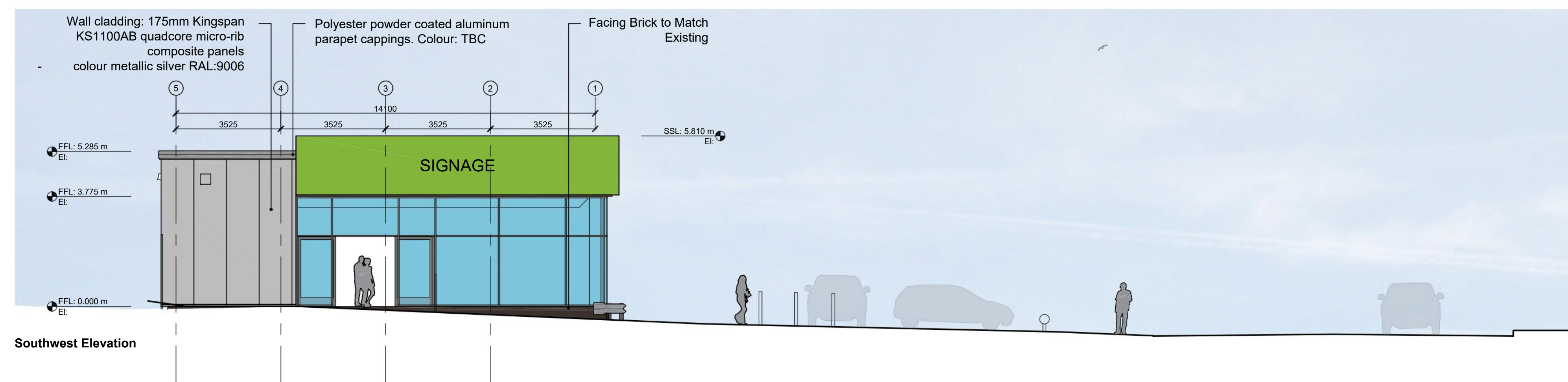
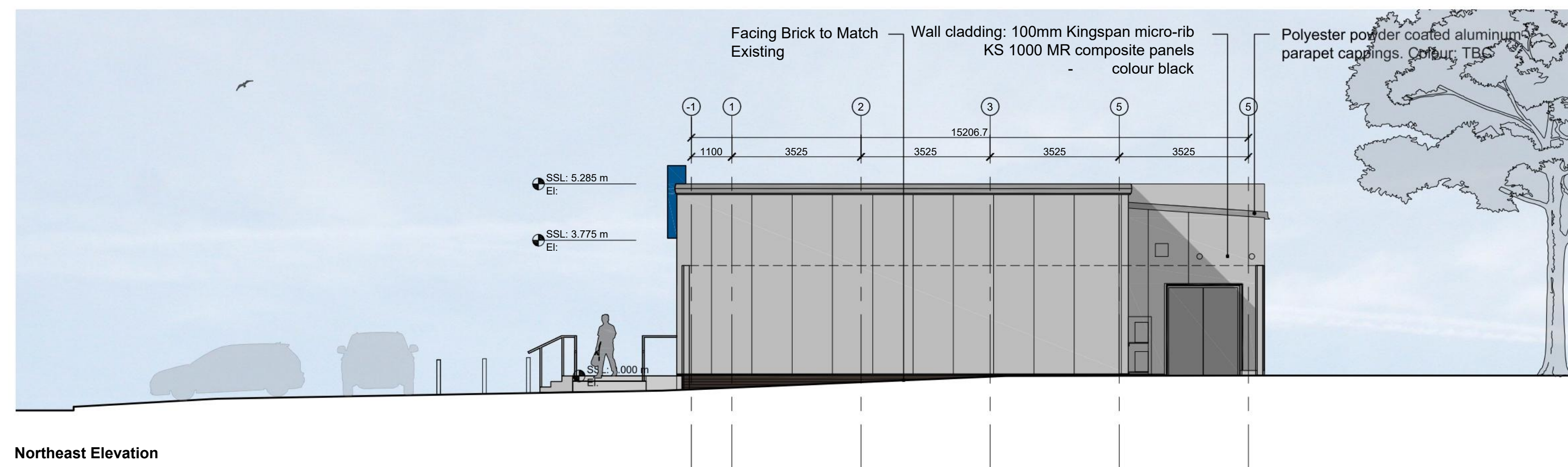
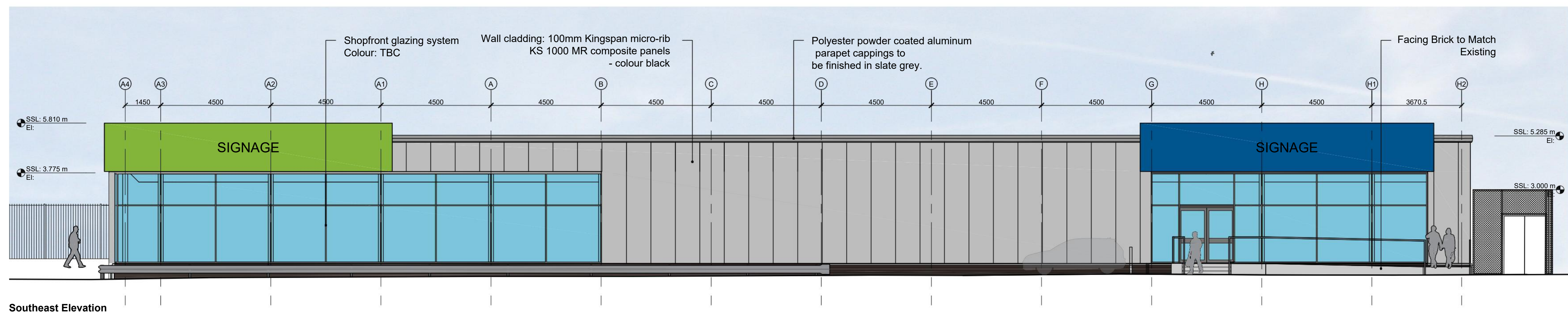
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date 10.09.19 checked AD

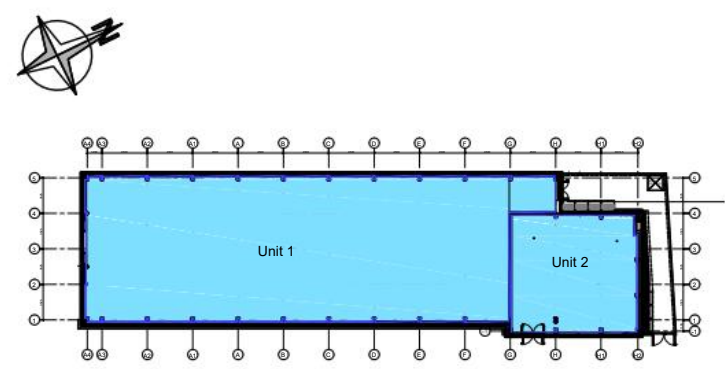
status PLANNING passed

job no. G2789 drawing no. AL(0)003 revision 6






2. All sizes to be checked on site prior to construction.
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**Reference Plan**  
NOT TO SCALE

5	02/09/2020	Annotated scale updated	AGe
4	24/08/2020	Updated in line with AL(0)003 Proposed Site Plan	AGe
3	25/02/2020	Plant added	AGe
2	20/02/2020	Unit 2 repositioned to increase service yard	AGe
1	08/11/2019	PLANNING ISSUE	AGe



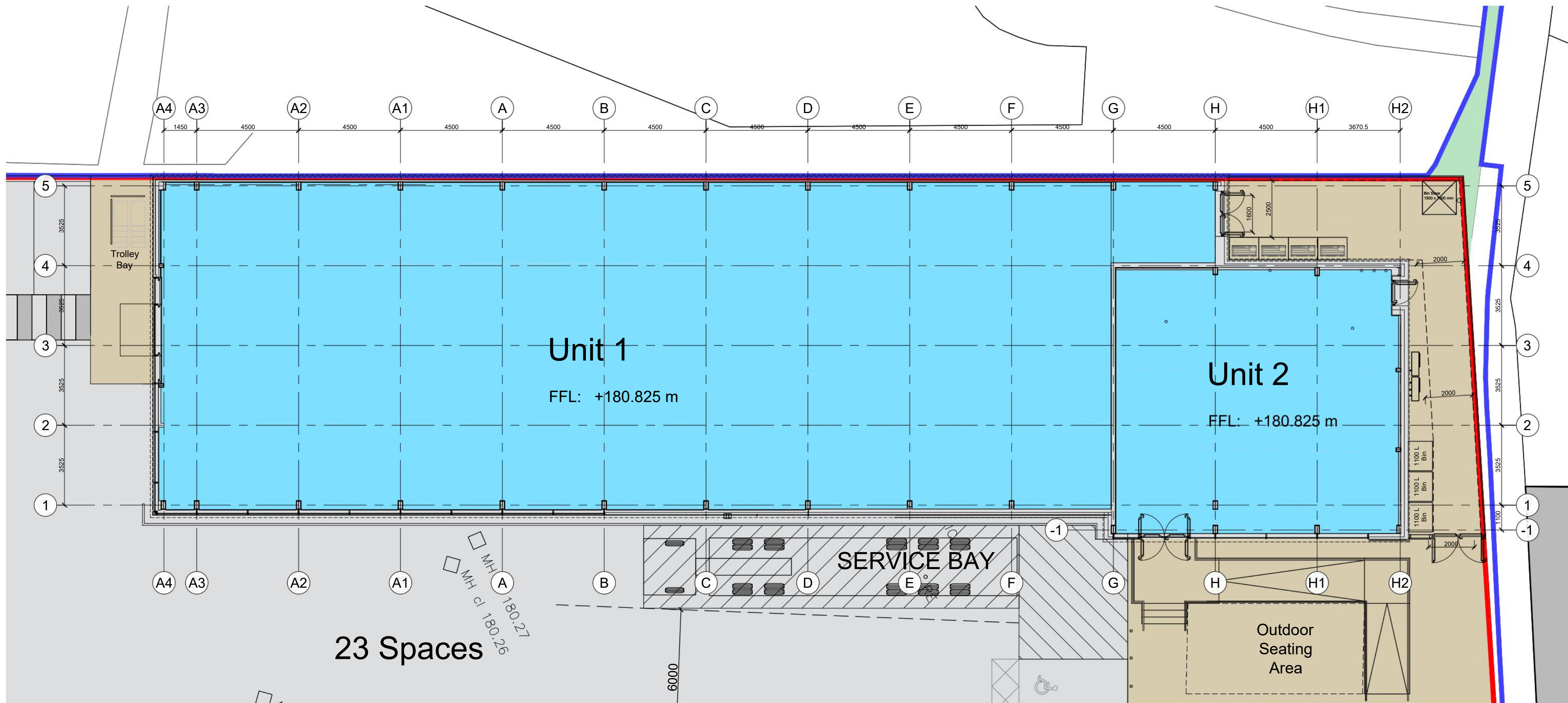
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Chartered Architects 16 Lincolns Crescent, Glasgow G3 6EQ		0141 353 3501
client	A F NOBLE & SON (PENICUIK) LIMITED	
project	Retail Unit Edinburgh Road, Penicuik	
drawing	Proposed Elevations	original size A1
scale	1:100	drawn AGe
date	12/09/2019	checked -
status	PLANNING	passed -

job no.	drawing no.	revision
G2789	AL(0)009	5

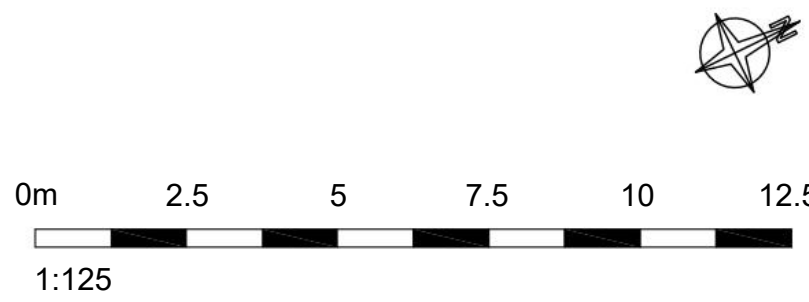


2. All sizes to be checked on site prior to construction.  
3. This drawing is the copyright of the author.



Key

- Site ownership boundary
- Application boundary
- Proposed Units (via extension & sub-division)



5	24/08/2020	Updated in-line with AL(0)003 Proposed Site Plan	AGe
4	10/03/2020	Unit 2 area fill ammended	AGe
3	25/02/2020	Dimensions added	AGe
2	20/02/2020	Unit 2 repositioned to increase service yard	AGe

1	08/11/2019	PLANNING ISSUE	AGe
<b>smith design associates</b> www.smithdesign.co.uk			
Chartered Architects 16 Lynedoch Crescent, Glasgow G3 6EQ 0141 353 3501			
client	AF NOBLE & SON (PENICUIK) LIMITED		
project	Retail Unit Edinburgh Road, Penicuik		
drawing	Proposed Ground Floor Plan	original size	A2
scale	1:125	drawn	AGe
date	12/09/2019	checked	-
status	PLANNING	passed	-
job no.	G2789	drawing no.	AL(0)005
		revision	5