

East Lothian Council

Scheme of Delegation List of Applications

Ward	Application No.	Address
0001	18/00742/P	Fisherrow Service Station Edinburgh Road Musselburgh East Lothian EH21 6DN
0004	21/00564/P	48-52 Dunbar Road North Berwick East Lothian EH39 5AB

Our Ref: GL
Ask For: **Keith Dingwall**
Direct Line: **Extn.7229**

Date: 8th July 2021

To: All Members of the Council

Dear Member,

SCHEME OF DELEGATION LIST

APPLICATIONS FOR PLANNING PERMISSION/PLANNING PERMISSION IN PRINCIPLE/APPROVAL OF MATTERS SPECIFIED IN CONDITIONS

Under the Council's Scheme of Delegation the Service Manager - Planning as the Council's Appointed Officer is authorised to determine all applications for (i) planning permission, (ii) planning permission in principle, and (iii) approval of matters specified in conditions for developments of a local development type.

The only exception in respect of local development types is where, under the provisions of Section 43A(6) of the Town and Country Planning (Scotland) Act 1997 the Elected Members, as Planning Authority, if they think fit, decide that an application be determined by them as Planning Committee instead of it being determined by the Appointed Officer. Any such decision to determine an application must, by statute, include a statement of the reasons for this; a copy of which will be served on the applicant.

With regard to Section 43A(6), you are presented with this Scheme of Delegation List of reported applications of a local development type which are the subject of public objection or which raise important planning issues. It is the basis for you to decide whether to refer any one of these applications to the Planning Committee for a Planning Authority determination. Under this procedure you have until 5.00pm next Thursday to make your decision.

If your decision is to have an application referred to the Planning Committee for a determination **you must, using the form below or an electronic version of it, give in writing your 'Statement of Reasons' for your decision, which must be emailed to and received by planningcallin@eastlothian.gov.uk no later than 5.00pm next Thursday.** Your statement of reasons will be sent to the applicant.

Otherwise the decision on the applications reported on this List will be the decision of the Appointed Officer and will be issued next Friday or on the expiry of any further action required.

For your information, I attach copies of all letters of representation received for applications reported on this List.

Yours faithfully,



Keith Dingwall
Service Manager - Planning

EAST LoTHIAN COUNCIL

SCHEME OF DELEGATION

STATEMENT OF REASONS FORM

(NB. This form is not to be used to give a Statement of Reasons for more than one application at a time)

Under the provisions of Section 43A(6) of the Town and Country Planning (Scotland) Act 1997 the Planning Authority may, if they think fit, decide themselves to determine an application instead of it being determined by the Service Manager - Planning as the Council's Appointed Officer, through the Council's Scheme of Delegation.

As a Member of the Planning Authority I hereby decide that application no..... be taken from the Scheme of Delegation List dated..... and that it be brought to a meeting of the Planning Committee for a Planning Authority determination instead of it being determined by the Appointed Officer.

My Statement of Reasons for my decision is:

Name

(Member)

Signed

Dated

Application No. [18/00742/P](#)

Proposal Erection of building for Class 3 Food & Drink use and associated works

Location **Fisherrow Service Station
Edinburgh Road
Musselburgh
East Lothian
EH21 6DN**

Applicant The Motor Fuel Group

Per Apt Planning & Development Ltd.

Ward 0001

RECOMMENDATION Application Refused

REPORT OF HANDLING

PROPOSALS

The application site consists of a roughly triangular shaped area of land, measuring some 5,108 square metres (0.51 of a hectare) that is located on the north side of the A199 classified public road (known as Edinburgh Road) on the western approach into Musselburgh. The southeastern part of the site comprises the Fisherrow Service Station and its associated structures, including fuel pumps and canopy, underground storage tanks, LPG storage tank compound and car wash enclosure. The remaining areas of land of the site, being the greater part of the site, comprise an area of open space. The land of the site is raised above the level of the adjacent public footpaths by some 500mm and is enclosed by a low brick faced retaining wall with a flat concrete cope.

There are a number of trees on the northern half of the site. There is a row of six trees close to the northern boundary of the western part of the site. A further two trees are located further to the south on the site between the row of six trees and the property of 224 New Street. A further three trees are located on the northeast part of the site: one to the west of the existing LPG storage tank compound and two to the east of it. Otherwise there are shrubs, hedging and small trees on parts of the east and south boundary and adjacent the galvanised palisade fencing that encloses the existing LPG storage tank compound. The northeast corner of the site and the western two-thirds of the site are laid to grass.

The existing petrol filling station (Fisherrow Service Station) building is single storey in height with a predominantly brick finish to its external walls and a dual pitched and piended roof clad with slates. The building is located close to the eastern and southern boundaries of the site with the fuel pumps and canopy to the west of it, the car wash to the north of the fuel pumps and canopy, an LPG storage tank compound further to the north of the position of the car wash, and the underground fuel storage tanks further to the west of the fuel pumps and canopy. A service road passes to the north and east of the existing petrol filling station building, allowing vehicles

exiting the car wash facility to re-join petrol filling station traffic exiting the site via a traffic signalised junction on to the A199 classified public road.

A one-way system for vehicular access and exit operates at the existing petrol filling station with vehicular access being taken from the A199 classified public road on the southern side of the petrol filling station, some 30-35 metres to the west of the existing traffic signal controlled junction of the A199 classified public road (Edinburgh Road) with North High Street, the B6415 classified public road (Newhailes Road) and Harbour Road, and vehicular exit from the petrol filling station being from the southeast corner of the petrol filling station by way of a traffic signalised junction on to the existing traffic signal controlled junction of the A199 classified public road (Edinburgh Road) with North High Street, the B6415 classified public road (Newhailes Road) and Harbour Road.

The application site is bounded to the south/southwest by the A199 classified public road (Edinburgh Road), on the opposite side of which are residential properties, to the east by the public road of Harbour Road, on the opposite side of which are a combination of residential properties, commercial properties and under-croft car parking, and to the north/northwest by a combination of the commercial property of 224 New Street, from which a fishmongers operates, and the public road of New Street. On the opposite side of New Street are a flatted residential building and a nursing home. Also to the north/northwest is the car park of Fisherrow Harbour. At the western end of the triangular shaped island of land, of which the application site comprises the main part, is a small landscaped area of amenity space comprising seating and hard and soft landscaping.

The application site is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. It is also identified as being part of the wider developed coastal area at Musselburgh by Policy DC6 of the adopted East Lothian Local Development Plan 2018.

A strip of land along the eastern part of the site is within the designated battlefield area of the Battle of Pinkie and a small part of the northeast part of the site is within the Fisherrow Sands Special Landscape Area. The site is also identified by the Coal Authority as being within an area at low risk from past mining related activity where their Standing Advice applies. The Category B listed Fisherrow Harbour is located some 40 metres away to the north.

In December 2001 planning application 01/01208/FUL was registered for the installation of an above ground LPG storage tank and dispenser and associated works on land to the west of the existing underground fuel storage tanks, which are located to the west of the vehicular access and to the west of the fuel pumps and canopy of the petrol filling station. The Planning Officer expressed concerns about the position of the proposed LPG storage tank compound, which would be readily visible from all sides, including from Edinburgh Road, one of the main accesses into Musselburgh, and that, by virtue of its form, scale and position, the compound would appear as a prominent and intrusive feature, harmful to the character and appearance of the area. Following these concerns raised by the Planning Officer, planning application 01/01208/FUL was withdrawn by the applicant's agent.

Subsequent discussions between the Planning Officer and the applicant/agent resulted in the LPG storage tank compound being located to a position to the north of the car wash and thereby leaving the western part of the site remaining as grassed open space. Planning permission 02/00269/FUL was granted in April 2002 and the LPG storage tank compound is presently located in that approved position on the northeastern part of the site.

In February 2006 planning permission 05/01048/FUL was granted for the removal of the existing underground storage tanks and their replacement with two new underground storage tanks, offset fills, vents floodlight, interceptor, dispensers and minor forecourt surfacing and drainage.

Through this further application, planning permission is now sought for the erection on the western part of the site of a 'drive-thru' coffee shop/café building (Class 3 Food & Drink use) and for associated works. The associated works comprise the provision of new car wash facilities on the eastern part of the site, the formation of an access road, car parking areas, footpaths, other hard surfaced and gravel surfaced areas, ramps, seating, bicycle parking provision, bin storage, landscape mounding and landscape planting.

The proposed coffee shop/café building would be positioned towards the western end of the application site, some 35 metres to the west of the existing underground fuel storage tanks. An access road, footpaths, seating area, bicycle storage, bin storage and hard and soft landscaped areas would be formed and erected, as relevant, on the intervening land between the proposed coffee shop/café building and the existing underground fuel storage tanks. The proposed access road would encircle the proposed building allowing for the 'drive-thru' service window on the northwest side of the proposed building.

The proposed coffee shop/café building would be some 16.725 metres in length by some 9.058 metres in width, with an additional element projecting a further 1.3 metres away from its northwest elevation and with a width of some 4 metres. The building would have a maximum height of 4.21 metres to the top of the highest point of its mono-pitched roof. A narrow projecting component, designed to accommodate the display of signage ('sign blade'), would be positioned on the eastern (higher) part of its roof and would project a further 1.2 metres (maximum) above the surface of the highest part of its mono-pitched roof. The walls of the proposed building would be clad with a combination of dark grey/black coloured composite cladding panels, profiled acetylated vertical boards and clay facing brick. The mono-pitched roof would be clad with a light grey coloured single ply roofing membrane with an aluminium profiled fascia (RAL 7016). The frames of its windows would be of powder coated aluminium construction (RAL 7021) and its external doors would be of aluminium framed composite construction (RAL 7021). The southeast (front) elevation wall of the proposed building would be predominantly glazed. The projecting component on the northwest side of the proposed building would form the vending kiosk from which 'drive-thru' sales would take place.

The proposed building would be used as a café/coffee shop, a use within Class 3 (Food and Drink) of the Town and Country Planning (Use Classes) (Scotland) Order 1997, with a 'drive-thru' access. An external seating area and bicycle storage would be provided on a hardstanding area located to the southeast side of the proposed building.

The proposed bin storage enclosure would measure some 4.5 metres in length by some 4.35 metres in width and would be some 2.0 metres in height. It would comprise a timber fenced enclosure with timber gates in its south side. It would be located further to the east of the external seating area and access road, in a position to the south of the south elevation of the existing commercial fishmongers premises of 224 New Street, which is located immediately to the north of the site and is part of the island of land of which the application site comprises the main part.

The existing car wash facility of the petrol filling station comprises a 'drive-thru' facility and it is proposed to remove this and for it to be replaced with two jet wash bays that would be positioned further to the north of the position of the existing 'drive-thru' car wash facility on the site, immediately to the south of the existing LPG storage tank compound. Each of the proposed two

jet wash bays would be enclosed on three sides by Perspex screen fencing measuring some 3.0 metres in height, and would have open access on their south sides.

Service access to the proposed development and vehicular access for customers to the proposed development would be taken from the A199 classified public road (Edinburgh Road) via the existing petrol filling station access, and egress from the proposed site would be via the existing traffic light controlled petrol filling station exit. A total of 22 on-site car parking spaces would be provided within the associated parking area, of which 2 would be available for disabled users. The proposed access road would follow a roughly circular route from the existing vehicular access along the southwest part of the site, passing to the northwest and southeast sides of the proposed building and then along the northern part of the site to the south of the existing commercial fishmongers premises of 224 New Street and would connect with the existing petrol filling station forecourt on its west side adjacent to the car wash facility. New pedestrian accesses and footways would be formed into the site from Edinburgh Road and New Street and new footways would connect the proposed parking areas with the proposed café/coffee shop building.

It is proposed that two areas of landscaping would be provided comprising a community garden and an amenity space, respectively, on the northeast part of the site and towards the southwest end of the site. Further landscaping is proposed on the northern and southern parts of the site and within the proposed car parking area. The Planning Design and Access Statement (May 2019) submitted with the application explains that it is proposed that the green space to be formed at the western end of the site would comprise earth embankments and feathered tree planting, which would screen the proposed built development, and that both areas of proposed green space would enhance the landscaping of the site. The proposed area of green space at the northeast corner of the site would include seating and natural play features and would provide a community garden designed to maximise views towards Fisherrow Harbour. It is further explained that feathered tree planting and meadow planting would be used to soften the edge of the proposed development.

As well as the Planning Design and Access Statement (May 2019), a Transport Statement (dated July 2018) prepared by Dynamic Transport Planning Ltd, a peer review of the Transport Statement prepared by SWECO (dated 20th November 2020), a Supplementary Operational Capacity Study (prepared by SWECO, dated 10th March 2021) and a Tree Survey and Arboricultural Constraints Report (dated May 2018) prepared by Donald Rodger Associates Ltd have been submitted in support of the application.

The Planning Design and Access Statement states that the applicant has an existing successful commercial operation at Edinburgh Road and that the proposed development would enhance the amenity of its customers as well as providing an opportunity to integrate with the harbourside to the north, the coastal frontage and the immediate town centre locality.

It is stated that the proposed new building has been sensitively designed for the site and would be set amongst a high quality new landscape proposal for the site. It is stated that the scale, massing and siting of the proposed development is considered to be appropriate to the site's natural topography and is commensurate to the size of the existing petrol filling station, and that the scale and height of the proposed building is directly comparable to those of the surrounding buildings. It is further stated that the proposed development would positively contribute to the area's visual appeal and generally seeks to enhance sustainability through a high quality design.

The Planning Statement addresses the circumstance of the proposed development relative to the development plan and other material considerations. It argues that the proposals should be viewed in the context of the mixed use nature as well as the residential nature of the immediate

locality around Fisherrow Harbour and Edinburgh Road, and that in terms of the local economic benefit, it is expected that the project would support a number of additional local part time jobs at the site when operational and there would also be additional employment on the site during construction. The Statement further purports that the site is not specifically allocated as recreational amenity open space and the function of it as such is doubtful. The Statement further states that the landscape setting and amenity value would be enhanced by the proposed development through the creation of landscape amenity space at the western end of the site and a community garden on the northeast part of the site.

Since the application was first registered, the drawings have been amended to take on board comments from the Planning Officer regarding the design of the proposed building, including to reduce the height and form of the proposed 'sign blade', and to respond to comments from the Council's Road Services and Landscape Officers. The application drawings have also been amended to correct errors shown on them and to relocate the proposed bin storage compound from the west side of the neighbouring building of 224 New Street to a position to the south side of that building.

Further information addressing the 'Town Centre First' principle and on the impact of vehicle movements associated with the proposed development on the access and egress junctions of the existing petrol filling station have also been submitted.

A tree survey and arboricultural constraints report prepared by Donald Rodger Associates (dated May 2018) has also been submitted.

Under the provisions of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 the proposed development falls within the category of a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. On 15 November 2018, the Council issued a formal screening opinion to the applicant. The screening opinion concludes that it is East Lothian Council's view that the proposed development is not likely to have a significant effect on the environment such that consideration of environmental information is required before any grant of planning permission. It is therefore the opinion of East Lothian Council as Planning Authority that there is no requirement for the proposed Class 3 Food & Drink use and associated works to be the subject of an EIA.

DEVELOPMENT PLAN

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved Edinburgh and South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan (ELLDP) 2018 together with its adopted supplementary guidance.

The purpose of the approved Edinburgh and South East Scotland Strategic Development Plan (SESplan) is to set out the strategic planning framework to assist preparation of local development plans. Its policies are generally not relevant for assessing individual planning applications. There are no policies of the Edinburgh and South East Scotland Strategic Development Plan (SESplan) relevant to the determination of this application.

Policies RCA1 (Residential Character and Amenity), TC1 ('Town Centre First' Principle), OS1 (Protection of Open Space), DC6 (Development in Coastal Areas), DC9 (Special Landscape Areas), CH1 (Listed Buildings), CH5 (Battlefields), DP1 (Landscape Character), DP2 (Design), NH8 (Trees and Development), T1 (Development Location and Accessibility), T2 (General Traffic Impact) and DEL1 (Infrastructure and Facilities Provision) of the ELLDP 2018 are relevant to the determination of this application.

Also material to the determination of the application is Scottish Planning Policy (Revised December 2020). In paragraph 28, it advises that the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost. This means that policies and decisions should be guided by principles, including supporting delivery of accessible housing, business, retailing and leisure development.

Paragraph 93 of Scottish Planning Policy further states that the planning system should promote business and industrial development that increases economic activity while safeguarding and enhancing the natural and built environments as national assets.

Scottish Planning Policy highlights that the planning system should apply a town centre first policy when planning for uses which attract significant numbers of people, including retail facilities. This requires that locations are considered in the following order of preference:

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

It further states that Planning authorities, developers, owners and occupiers should be flexible and realistic in applying the sequential approach, to ensure that different uses are developed in the most appropriate locations.

Also material to the determination of the application are Section 59 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 and the Scottish Government's policy on development affecting a listed building or its setting given in Scottish Planning Policy (Revised December 2020).

Scottish Planning Policy echoes the statutory requirements of Section 59 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 that in considering whether to grant planning permission for development which affects a listed building or its setting a planning authority shall have special regard to the desirability of preserving and enhancing the building, its setting and any features of special architectural or historic interest which it possesses.

Also material to the determination of the application is the planning history for the site.

REPRESENTATIONS

A total of twelve representations have been received in respect of this planning application. Two of those twelve representations have been received from the same party. All of the twelve representation have been made by residents of Musselburgh. All of the twelve representations raise objection to the proposed development, and, as summarised, the main grounds of objection are:

- 1, the road network at the petrol filling station is heavily congested and dangerous and is not suitable for a 'drive-thru' restaurant, and additional use of the vehicular entrance and exit to and from the petrol filling station associated with the proposed development would only make the traffic situation worse and would be likely to result in additional road and pedestrian accidents;
- 2, the Transport Assessment assesses the impact on the traffic signalled junction onto which the petrol filling station exits in isolation and should have looked at the wider impacts on the road network, as the proposed development would put unacceptable additional demand on the capacity of the road network and the traffic signalled junction onto which the petrol filling station exits, resulting on further pressure on the other traffic controlled junctions throughout Musselburgh;
- 3, the proposed development would result in road and pedestrian safety hazards including those associated with the positioning of the new access road and parking relative to the existing entrance junction of the existing petrol filling station from Edinburgh Road, the additional demand on the existing entrance and exit junctions of the petrol filling station and vehicles not complying with the on-site layout (i.e. cutting across the petrol station forecourt);
- 4, vehicles regularly do not abide by the traffic signalled junction and exit incorrectly from the petrol filling station causing road safety hazards for both vehicles and pedestrians, including school children, and this is likely to be exacerbated by the additional vehicle trips generated by the proposed development;
- 5, hazardous to pedestrians approaching from the west and south;
- 6, the proposed development is likely to have late opening hours and would result in noise, mess and litter dropping in the area, and light pollution to neighbouring properties;
- 7, difficulty for service vehicles accessing the site, which could result in Edinburgh Road being blocked and hazards for both vehicles and pedestrians on the public road and footpath;
- 8, a 'drive-thru' facility is not needed at this location and given the road capacity issues at this location, we should be encouraging people out of vehicles rather than encouraging them to use a 'drive-thru' to get a cup of coffee;
- 9, the High Street or North High Street, which have parking restrictions and better footfall would be a better location for this coffee shop;
- 10, the proposals would result in inappropriate parking on nearby streets resulting in vehicular and pedestrian road safety hazards;
- 11, harmful impact on other businesses in the locality;
- 12, loss of and harmful impact on this existing dominant area of green space, which is seen as a welcoming gateway to the town on the approach into Musselburgh, the open nature of which is much more appealing than a building in this location and which the development of would be detrimental to both the built environment of Musselburgh and the community generally;
- 13, loss of an area of green space in an area that already has too few green spaces;
- 14, a building of this description and use would not fit into the setting of the area;

15, another food outlet is not required at this location: there are 17 located at Fort Kinnaird and 14 located on North High Street, all within less than a 2 mile radius;

16, there are multiple retail units on the High Street that are sitting empty and these should be used before allowing green space to be developed;

17, Fisherrow Harbour should be celebrated and the proposed development could become a blot on the landscape and would take away from, rather than enhance, the harbour;

18, the proposed signage due to its height, alignment, positioning and illumination would cause a visual intrusion;

19, the proposed development would result in the value of neighbouring properties being reduced;

20, the proposed development would be detrimental to work being done by Fisherrow Waterfront Group to create a promenade hub for Musselburgh;

21, the proposed 'drive-thru' fast food establishment is not suited to the environment of the harbour area and would be detrimental to the amenity and character of the area;

22, the site is encircled by dwellings and the proposals would have a detrimental impact on their amenity from increase in traffic (cars, vans, and HGVs) from early morning until late at night, noise and light pollution;

23, the proposed bin storage area would have a harmful impact on the light received by windows of the work area of the adjacent fishmongers' premises;

24, car fumes from the parking area of the proposed development would detrimentally impact on the quality of the products of the adjacent existing fishmongers' business; and

25, loss of trees from the area of green space would be unacceptable.

The matter of commercial competition is not a material planning consideration in the assessment of an application for planning permission.

The matter of the impact of the proposed development on the value of a neighbouring property is not a material planning consideration in the determination of an application for planning permission.

Any signage associated with the development on the site does not form part of this application for planning permission, rather it would be the subject of a separate application(s) for advertisement consent.

COMMUNITY COUNCIL COMMENTS

Musselburgh and Inveresk Community Council, as a consultee to the application, comment that Musselburgh residents have raised concerns to the Community Council on the grounds of access, noise from car engines and doors. However, the Community Council comment that the residents' greatest concern was for the loss of the grass open space that welcomes people in and out of Fisherrow and Musselburgh.

PLANNING ASSESSMENT

Scottish Water have been consulted on the proposed development and raises no objection to the proposed development.

At its meeting on Tuesday 27th August 2019, the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on Tuesday 3rd September 2019, the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority a report on the actions to be taken to reduce the carbon emissions from the building and from the completed development should be imposed on relevant application for planning permission. Such requirement could be controlled by a planning condition.

Policy DEL1 of the adopted East Lothian Local Development Plan 2018 and the Local Development Plan Developer Contributions Framework Supplementary Guidance require that development meeting specific criteria, including employment, retail, leisure or tourism proposals of 100 square metres gross floor space or larger, may be required to make financial contributions towards transport infrastructure. Although the proposed development would meet the floor space criteria, the Council's Planning Obligations Officer confirms that there would be no requirement to seek financial contributions towards transport infrastructure because the proposed development would be outwith the buffer of the Segregated Active Travel Corridor and as such a contribution is not justified. Furthermore, as a windfall proposal, the proposed development has not been assessed as part of the Local Development Plan Cumulative Transport Appraisal and the scale of the development is small such that the level of contribution is likely to be 'de minimus' and therefore in conclusion no financial contribution is required.

The proposed building would be single storey in height with a predominantly simple rectangular shaped footprint and a mono-pitched roof, and it would be positioned perpendicular to Edinburgh Road with its front (southeast) elevation facing across its external seating area, car parking and access road towards the petrol filling station.

The buildings of the locality are of a variety of heights and forms. The petrol filling station building on the southeast part of the site is single storey in height with a dual pitched and piended roof. The fishmonger's premises to the north of the site is single storey in height with attic accommodation in its roof space and with a gabled form. There are two storey houses to the south of the application site on the opposite side of Edinburgh Road. Those houses are primarily of a dual pitched and piended roofed form. The commercial and residential buildings of Harbour Road comprise 4-storey terraced buildings with piended roofs. The commercial and residential buildings of New Street are single storey, two storeys and three storeys in height, some with shallow piended roofs and others with mono-pitched roofs.

The buildings of the locality are generally of a predominantly tradition architectural form with some modern interventions displayed through different glazing patterns and mono-pitched roofs. Notwithstanding the mixed architectural form, character and design of the surrounding buildings, many of them have a predominantly painted or through coloured rendered finish or a natural stone finish to their external walls and roofs are predominantly clad with a natural slate finish. Due to the mixed architectural form, character and design of the surrounding buildings, these predominant external finishes are supplemented with architectural detailing finished in facing brick, composite cladding and cast stone, and there are also concrete tile and profiled metal roof sheet finishes to some roofs.

In this context there is no uniformity of height, architectural style, form or character to the buildings of the area, and the buildings of the locality have a mixed architectural style, form, character and external finish. Nor is there any uniformity in the positioning of buildings relative

to the public road and footpaths. It is in this context that the proposed building must be considered.

In this context, the proposed building, by virtue of its height, size, scale, and architectural form and character would not be out of keeping with the built form of the area. Its palette of external finishes of dark grey/black coloured composite cladding panels, profiled acetylated vertical boards and clay facing brick for its walls and light grey coloured single ply roofing membrane with an aluminium profiled fascia (RAL 7016) for its roof would harmonise with the finishes of the other buildings of the area and would not be out of keeping with them.

The proposed jet wash facility comprising two jet wash bays would occupy a similar sized area of land as does the existing drive-through car wash facility and would not be a dissimilar height to the existing drive-through car wash facility. In the context of their positioning alongside the existing petrol filling station, canopy, fuel pumps and LPG storage tank enclosures, and in the context of the surrounding built form, and by their size, form, height and appearance, the proposed jet wash facility would not appear out of keeping with the built form of the area.

In the context of its location as part of the built urban form of this part of Musselburgh, and in that the northeast part of the site, which is the part within the Fisherrow Sands Special Landscape Area, would remain as a landscaped area, the proposed development would not have a detrimental impact on the Fisherrow Sands Special Landscape Area.

In the context of its location as part of the built urban form of this part of Musselburgh, and in that the northeast part of the site, which is the part within Fisherrow Sands Special Landscape Area, would remain as a landscaped area, the proposed development would not have a detrimental impact on the Fisherrow Sands Special Landscape Area.

In the context of its location as part of the built urban form of this part of Musselburgh, the proposed development would not have a detrimental impact on the designated battlefield of the Battle of Pinkie.

Due to the intervening distance and buildings, and by virtue of its height, size, scale and appearance, the proposed development would not have a detrimental impact of the setting of the Category B listed Fisherrow Harbour to the northeast of the application site.

Historic Environment Scotland raise no objection to the proposals. They express no concerns as to the effects of it on the designated battlefield of the Battle of Pinkie.

On these foregoing considerations of design and impact on heritage assets, the proposed development does not conflict with Policies DP1, DP2 CH1 and CH5 of the adopted East Lothian Local Development Plan 2018.

Local Development Plan Policies RCA1 and DP2 require amongst other considerations that the proposed development should not have a significant environmental impact on existing housing and should not have a harmful impact on privacy and amenity of neighbouring residential properties through a loss of sunlight, daylight or through overlooking.

The nearest neighbouring residential properties are 13 metres away to the east on the opposite side of Harbour Road, 20 metres away on the south side of Edinburgh Road and 29 metres away to the northwest on the opposite side of New Street.

By virtue of its size, form, height, positioning and orientation to neighbouring properties, the proposed building would not result in a harmful loss of sunlight or daylight to any neighbouring property.

Nor due to its positioning and orientation to the nearest neighbouring residential properties, would the proposed building have any windows within 9 metres of the private garden of any residential property or within 18 metres of any directly facing windows of any neighbouring residential property. Thus, the proposed development would not allow for harmful overlooking of any neighbouring property.

The proposed bin storage area would be positioned some 2.5 metres away from the south elevation/southeast corner of the existing building of 224 New Street. There is a pedestrian door in the south elevation wall and three windows on the northwest elevation wall of 224 New Street. In the position proposed for it and at a height of some 2 metres, the proposed bin storage area would not result in a harmful loss of sunlight or daylight to that neighbouring property.

By virtue of its positioning and orientation to the nearest neighbouring building of 224 New Street, and by virtue of its 3.0 metres height, the proposed jet wash facility would not result in a harmful loss of sunlight or daylight to any neighbouring property.

Accordingly, on these matters of overshadowing and loss of daylight and overlooking, the proposed development would not conflict with Policies RCA1 and DP2 of the adopted East Lothian Local Development Plan 2018.

The application site is within an area of predominantly residential character and amenity covered by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. The principle purpose of Local Development Plan Policy RCA1 is to safeguard the residential character of the area from the adverse impact of uses other than housing. Development incompatible with the residential character and amenity of the area will not be permitted.

The use of the proposed building would be as a café/coffee shop with a 'drive-thru' facility, a food and drink use which is within Class 3 of the Town and Country Planning (Use Classes)(Scotland) Order 1997. Although the site is located within an area identified as being of residential character and amenity by Local Development Plan Policy RCA1, it is bounded to the east by a mix of residential and commercial properties, including the existing 24-hour petrol filling station located on the southeast part of the site. The Fisherrow Harbour, which attracts tourists and visitors, and its associated car park are located to the northeast of the site on the opposite side of New Street. Furthermore, on the opposite (southeast) side of the traffic controlled junction of Edinburgh Road with North High Street, Newhailes Road and Harbour Road is an area of retail and commercial businesses that are identified as a 'local centre' by Local Development Plan Policy TC2. It is in this context that the principle of the proposed use must be considered.

By its proximity to the 'local centre' to the southeast, to the Fisherrow Harbour to the northeast and due to the location of the existing petrol filling station on the southeast part of the site, and in its location at the gateway road junction on the western approach into Musselburgh, the application site is located at a busy road junction with generally higher levels of activity and ambient noise generated by the busy road junction and the existing petrol filling station. The proposed Class 3 coffee shop/café use would be a use similar to other uses in the locality and in principle would complement the uses of the adjacent 'local centre' to the southeast and would add to the existing facilities available to tourists and visitors of the Fisherrow Harbour, who are already attracted to this part of Musselburgh. In this context, the proposed 'drive-thru' coffee shop/café would not be an inappropriate use within the specific locational circumstances of this predominantly residential area and there is no reason in principle that the proposed 'drive-thru'

coffee shop/café use (Class 3 use) could not satisfactorily co-exist with the existing uses in the area, including the existing residential uses. Accordingly, the proposed 'drive-thru' coffee shop/café would in principle not conflict with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

It is proposed that the proposed 'drive-thru' coffee shop/café would be open for business 7 days per week (i.e. 365 days per year) between 6.00am and 11.00pm each day.

The Council's Senior Environmental Health Officer advises that generally to limit the impact of noise from a proposed development on the amenity of residential properties it is recommended that the hours of operation do not exceed 07:00 hours to 23:00 hours. However, in the particular circumstances of the locus of the proposed coffee shop/café with 'drive-thru', at a busy road junction and in the context of the existing petrol filling station, noise impacts from the proposed coffee shop/café with 'drive-thru' would be masked by existing ambient noise levels from road traffic. The Senior Environmental Health Officer also notes that the petrol filling station shop is open 24 hours per day and is used frequently. He therefore advises that the proposed days/hours of operation of 7 days per week between 6.00am and 11.00pm each day would not result in harmful impacts on the amenity of neighbouring residential properties or other uses. The days/hours of operation of the proposed business could be secured through the use of a planning condition.

Accordingly, the Council's Senior Environmental Health Officer raises no objection to the proposed development on matters of amenity, being generally satisfied that there is adequate separation distance between the proposed use and the neighbouring residential properties to ensure that impacts from noise and odour associated with the proposed coffee shop would be minimal, and that otherwise any issues could be resolved through Environmental Protection Statutory Nuisance legislation. However, the Senior Environmental Health Officer recommends that as a precaution, a condition should be imposed to restrict cooking processes by prohibiting shallow or deep fat frying in the premises. This matter could be controlled by a planning condition.

The Council's Environmental Protection Officer (Contaminated Land) advises that taking account of the historic uses of the site and the possibility of associated contamination issues, a suitable Geo-Environmental Assessment, including preliminary investigation, site survey should be carried out, and any recommended remedial works should be undertaken prior to the commencement of development on the site. This matter could be controlled by a planning condition. Subject to the aforementioned conditional control, the Environmental Protection Officer (Contaminated Land) raises no objections to the proposed development on matters relating to contamination.

On these foregoing amenity considerations, the proposed coffee shop/café with 'drive-thru' would not compromise the predominantly residential character and amenity of the area and in principle could satisfactorily co-exist with the existing uses in the area, and thus would not conflict with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

It is now necessary to consider whether the proposed development would adversely affect the vitality or viability of Musselburgh Town Centre.

Local Development Plan Policy TC1 states that a 'town centre first' approach will be applied where appropriate to retail, commercial, leisure, office and other development proposals that would attract significant footfall, and applicants should provide evidence that locations have been considered in the order of preference set out in the Policy. Out-of-centre locations will only be considered where an applicant can demonstrate that: all town or local centre, edge of centre and

other commercial centre options have been assessed and discounted as unsuitable or unavailable; the scale of the proposed development is appropriate, it 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 centres.

The proposed coffee shop/café with 'drive-thru' would be a nature of development that would have the potential to attract significant footfall. Although it is located to the northwest of a 'local centre', the application site does not fall within a 'town centre' or 'local centre' of the adopted East Lothian Local Development Plan 2018. In its position to the northwest of the 'local centre', it would be reasonable to consider the application site to be an 'edge of centre' location.

In correspondence submitted by the applicant's agent it is stated that the proposed use would be complementary to the applicant's existing petrol filling station and the site is an ideal location for such a complementary use. It is stated that a key element of the proposed business is the 'drive-thru' facility and its association as a complementary facility to the applicant's existing petrol filling station business. It is stated that the proposed coffee shop/café with 'drive-thru' would benefit from a high proportion of shared trips from customers attending the petrol filling station and would to a lesser degree benefit from passing vehicular and pedestrian traffic, rather than customers diverting from their usual route to directly visit the proposed business. It is further stated that given the nature of the proposals, there would not be significant footfall generated and more importantly diverted from Musselburgh Town Centre. The supporting correspondence further states that the proposed coffee shop/café with 'drive-thru' would support the existing petrol filling station business, through significant new investment and job creation in the locality, and would add to and enhance local facilities in this part of Musselburgh. It is stated that there are no suitable sites elsewhere within Musselburgh Town Centre that could accommodate either the proposed coffee shop/café 'drive-thru' on its own or in combination with a petrol filling station. The supporting correspondence concludes that given its small scale, the proposed development would not undermine the role and function of Musselburgh Town Centre or its vitality and viability, and that the proposed site is an accessible 'edge of centre' location of Musselburgh.

The Council's Economic Development Manager has considered the proposals, and advises that the East Lothian Economic Development Strategy 2012-22 has two strategic goals of increasing the number of businesses in East Lothian with growth potential and increasing the proportion of East Lothian residents working in and contributing to East Lothian's economy. The Strategy has a target to create 7,500 new jobs within 10 years, of which some 2,064 are required in Musselburgh. The Economic Development Manager concludes that they are supportive of the proposals as they would create additional part-time employment in the locality.

In respect of the sequential assessment, Economic Development advise that the application site is an 'edge of centre' location and that there are no alternative town centre nor local centre locations available for this scale and type of development. Thus, Economic Development raise no objection to the proposals on the matter of the sequential test.

Whilst in many respects the proposal would be independent from the existing petrol filling station, it would nevertheless be closely linked to it and it would not be unreasonable to assume that it would be likely to rely to some degree on shared customer traffic and passing traffic, rather than being a destination in its own right.

The applicant's business model is to provide a 'drive-thru' coffee shop/café in close proximity to the existing petrol station, and that these proposed and existing businesses would be mutually supportive of each other, and it is therefore unlikely that a site suitable to accommodate this

proposal or a similar proposal would be able to be identified in a more sequentially preferable location (i.e. within a town or local centre). In addition, a coffee shop/café with 'drive-thru' is not generally a type of development that would be expected to be accommodated within a town centre. Accordingly, taking account of its 'edge of centre' location, and its association with the existing petrol filling station, the proposed development does not conflict with Policy TC1 on the matter of the sequential test.

Accordingly, the proposed development does not conflict with Policy TC1 of the adopted East Lothian Local Development Plan 2018.

Vehicular access, including service access to the proposed development would be taken from the A199 classified public road (Edinburgh Road) via the existing petrol filling station access, and egress from the proposed development would be via the existing traffic light controlled petrol filling station exit. A total of 22 on-site car parking spaces would be provided within the associated parking area, of which 2 would be available for disabled users.

A Transport Statement prepared by Dynamic Transport Planning Ltd (dated July 2018), an additional cycle time survey information (received November 2018 and August 2019), a peer review of the Transport Statement prepared by SWECO (dated 20th November 2020), and a Supplementary Operational Capacity Study (prepared by SWECO, dated 10th March 2021) have been submitted with the application.

The Council's Road Services comment that the access to the existing petrol filling station (PFS) and thus also to the application site is 'uncontrolled' and that the egress from the PFS and also from the proposed development would be via the 'controlled' exit from the PFS which is part of the traffic signalised junction of the A199 Edinburgh Road/North High Street/B6415 Newhailes Road junction. Road Services note that the traffic signal control of the junction was introduced some time prior to 1996, however the PFS exit was not 'controlled' until December 2011. The reason for the PFS exit being 'controlled' was that it was causing increasing road safety concerns.

The Council's Road Services summarise the Transport Statement (dated July 2018) advising that the document includes traffic surveys and queue length surveys and a limited junction operation/cycle time survey, and that they present traffic generation figures from the TRICS database and applies/adds these to surveyed traffic flows, and models the junction using LINSIG software to model the operation of the traffic signalled junction. Road Services note that the Transport Statement states that there is good correlation between the measured queue length and the modelled queue length in the existing or no development scenario, and goes on to state that the junction would operate within its practical capacity and that the impact of the development related traffic is not material, with negligible impact on queuing and delays at the junction, finding that the effect of additional development traffic would have minimal effect on the junction and would have a positive Percentage Reserve Capacity (PRC).

The Council's Road Services have assessed the supporting Transport Statement and additional information and in their initial consultation comments they advise that they disagree with the findings of the Transport Statement. They advise that traffic signal controlled junction from the existing petrol filling station, which would be used by vehicle movements generated by the proposed development, cannot absorb any further vehicular traffic, and thus the vehicle movements associated with the proposed development would have a detrimental impact on the operation of the existing traffic signal controlled junction, and thus the flow of traffic through Musselburgh.

Road Services further advise that, on assessment of the Transport Statement, even under existing conditions, several of the arms of the junction are nearly at capacity (i.e. 90% of saturation on any

arm is the accepted limit where after performance decreases and queuing increases significantly) and that furthermore, the traffic signal controlled junction will be under further pressure as development around Musselburgh proceeds over the period of the Local Development Plan (LDP). In their initial comments, Road Services also advised that the proposal would also be likely to increase queuing within the petrol station forecourt.

In response to the cycle time survey information (November 2018), Road Services advise that the information that has been provided is very limited, only 3 cycles in the AM peak period and 4 cycles in the PM peak period and it is difficult to determine from this partial survey information if this accurately reflects how the junction operates over a full hour in peak periods. Thus, the survey information does not demonstrate a robust assessment of the operation of the junction.

Road Services advise that the cycle time survey information submitted by the applicant's Transport Consultant appears to indicate that the service station arm of the traffic signal controlled junction and the pedestrian stage are respectively each called once every 2 cycles. Road Services advise that contrary to the cycle time survey information provided, after consulting with engineering/signals manager, they would anticipate that both of these stages would be called every cycle in the AM peak period, as there is a School Crossing Patrol guide in attendance at the junction meaning the pedestrian stage will be likely to be called most cycles and the petrol filling station egress is also busy at that time. Road Services further advise that additional traffic movements associated with the proposed development are likely to increase the probability of the petrol filling station egress being called more frequently in the operation of the junction with a resulting unacceptable impact on the traffic flowing through the junction.

Further information was subsequently sought from the applicant's agent to clarify how the junction was modelled, specifically what stage sequence had been used for the modelling. That information did not change the initial response from Road Services.

Road Services explain that the junction has 5 'stages': (1) A199 Edinburgh Road/North High Street; (2) Edinburgh Right Turn Arrow; (3) Newhailes Road; (4) petrol filling station exit (PFS); and (5) pedestrian 'all red' stage, and that all stages are potentially demand dependent, which means that the running of certain stages or sequence of operation can vary to some extent. However, the default setting will be for the signals to stay on the main road (i.e. A199 Edinburgh Road/North High Street), until there is demand for another arm of the junction or pedestrian crossing demand.

The applicant's Transport Statement models the junction as running the PFS exit every other cycle and the pedestrian stage every other cycle (i.e both of these stages were not modelled in the same cycle), and has based this approach on a limited survey of 7 cycles and argues that this methodology is validated by the queue length survey.

Road Services explain that the modelling of the junction provided in the Transport Statement and cycle time surveys is not considered to be entirely correct or adequate to assess the impact of the proposals on the traffic signalised junction, as officer experience suggest that the pedestrian stage is called regularly during the morning peak in particular. They advise that the modelling of the operation of the traffic signal controlled junction is critical and the applicant's transport consultant has not run every traffic control stage in their initial assessment.

In their initial consultation response, Road Service conclude that with regard to the capacity of the junction, the percentage increase of traffic using the PFS exit as a result of the proposed development would be significant at some 30% extra during the AM peak and some 42% extra during the PM peak, and would increase the likelihood that the PFS exit stage would be called more often than at present in the traffic signal stages thereby having a detrimental impact on the

operation of the junction. Thus, in their initial consultation response, Road Services recommended refusal of the application.

Further information was subsequently sought from the applicant's agent to demonstrate a further modelled assessment of the operation of the junction with the petrol filling station exit and pedestrian stages being called in each sequence. This full assessment was requested by Road Services, based on officer experience of operation of the junction, in order to provide a robust assessment of the junction operation.

A Supplementary Operational Capacity Study (prepared by SWECO, dated 10th March 2021) was subsequently submitted by the applicant's agent. The Supplementary Operational Capacity Study (dated 10th March 2021) models the junction as running all stages in every cycle to represent a worst case scenario and assesses the effect of possible mitigation measures. The Supplementary Operational Capacity Study (prepared by SWECO, dated 10th March 2021) recommends mitigation measures to: (i) provide improved pedestrian facilities at the junction with 'on-crossing' detection to reduce lost or wasted time in the operation of the traffic signal cycle; and (ii) introduction of a left turn filter arrow from Newhailes Road to run during the A199 right turn indicative green arrow. An additional drawing was also submitted showing details of the proposed road markings to be added to the signalised junction.

On assessment of the Supplementary Operational Capacity Study (prepared by SWECO, dated 10th March 2021) Road Services advise that, subject to the provision of both of the mitigation measures proposed, this further survey indicates that the traffic signalised junction would operate satisfactorily with the additional traffic generated by the proposed development in both the AM and PM peaks.

Road Services advise that the electrical installation and associated equipment of the traffic signalised junction will require to be upgraded to enable the mitigation measures to be implemented. They advise that the cost of the upgrading of the signalised junction to enable the mitigation measures and the implementation of the mitigation measures to the signalised junction, including the additional road markings, has been calculated to be £67,000.00 (sixty seven thousand pounds). Road Services advise that the upgrading of the signalised junction, including the additional road markings, is required prior to the commencement of the operation of the coffee shop/café with 'drive-thru'.

The financial contribution of £67,000.00 (sixty seven thousand pounds) to facilitate the implementation of the mitigation measures to the signalised junction, including the additional road markings, could be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or some other legal agreement designed to secure the financial contribution. The applicant's agent has confirmed the applicant's agreement to entering into such an agreement for the financial contribution.

Road Services also advise that the Council's adopted parking standards require that restaurants provide 1 space per 7 square meters of Public Floor Area (PFA) and that the café/coffee shop use would equate to the same requirement. On this basis, Road Services advise that this proposal would therefore require 12 spaces to be provided to serve the café/coffee shop. Drawing no. 18030-L-200 E07, 'General Arrangement' shows 20 parking spaces and 2 disabled user spaces would be provided (total 22). Accordingly, Road Services advise that the proposed on-site parking provision would be acceptable.

Road Services also note that on-site cycle parking provision would be provided.

Road Services are also satisfied that the internal site layout would provide sufficient internal manoeuvring space.

Accordingly, Road Services confirm that: (i) subject to securing the financial contribution to secure the provision of the mitigation measures proposed in the Supplementary Operational Capacity Study (prepared by SWECO, dated 10th March 2021) and to the following matters being controlled by conditions, they remove their initial objection to the proposals and raise no objection to the proposed development:

- o The upgrading of the traffic signalised junction in accordance with the mitigation measures of the Supplementary Operational Capacity Study (prepared by SWECO, dated 10th March 2021);
- o The internal access road and parking areas shall be laid out as shown on drawing no. 18030-L-200 E07 'General Arrangement';
- o 22no. parking spaces, including 2 no. accessible parking spaces shall be provided as shown on drawing no. 18030-L-200 E07 'General Arrangement';
- o A barrier rail shall be installed on the adjoining footway opposite the new and existing pedestrian access location, subject to assessment of the footway width and possible risk, in accordance with the details of such assessment and installation to be submitted for the approval of the Planning Authority; and
- o A Construction Method Statement to minimise the impact of construction activity on the safety and amenity of the area

Accordingly, on these matters of vehicular access and egress from the site, on-site parking provision, cycle parking provision, and manoeuvring space, the proposed development does not conflict with Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.

It is now necessary to consider the impact of the proposed development on open space and on the trees within the site.

Policy OS1 states that recreational, leisure and amenity open space will be safeguarded to meet the recreational needs of the community or protect the amenity or landscape setting of an area. Alternative uses will only be considered where there is no significant loss of amenity or impact on the landscape setting and:

- i. The loss of a part of the land would not affect its recreational, amenity or landscape function, or
- ii. Alternative provision of equal community benefit and accessibility would be made available, or
- iii. Provision is clearly in excess of existing and predicted requirements.

The Proposals Map of the Local Development Plan identifies larger areas of value as open space subject to Policy OS1. The pretext to Policy OS1 does however advise that it has not been possible to identify all areas that are subject to Policy OS1. Paragraph 3.122 of the Local Development Plan states, amongst other matters, that the Council will consider the value of land not formally identified as being recreational, leisure or amenity open space based on its contribution to the amenity of the area against Policy OS1.

In this case, due to its relatively small size, the site is not specifically identified by Policy OS1. However as the site has amenity and landscape open space potential, then the proposal must be assessed against the requirements of Policy OS1.

The land that is the subject of this application is prominently located on the north side of a major road junction on the western approach into Musselburgh along the A199 Edinburgh Road, just before that road becomes North High Street. The site comprises the majority of an island of land that is bounded by the A199 Edinburgh Road, Harbour Road to the east and New Street to the northwest, and is readily visible in public views from all sides.

The part of the application site on which the proposed building and its associated access road, footpaths and parking areas would be located is presently laid to grass, and there are a number of large trees on the northern half of it, between its western end and the existing property of 224 New Street and towards its northeast corner. It is easily accessible to the public due to there being no means of enclosure of its boundaries. The site has visual amenity value and is an important area of green space on the western approach into Musselburgh along Edinburgh Road. The grassed area of the site and the trees on the northern part of it make a significant positive contribution to the landscape character of this gateway into Musselburgh and to the setting and approach to the Category B listed Fisherrow Harbour to the northeast of the site, and are an important feature of and make a positive amenity contribution to this approach into Musselburgh.

At the time of the Planning Officer's site visit in October 2018 and during the preceding 10 years, as can be seen on visual images on 'Google-Maps', the grassed area of the site was being well maintained and kept in good condition by the site owner. In the intervening period it has been allowed to become overgrown, and the grass surface has only periodically been cut. Although at the time of the writing of this report the site is presently overgrown, the condition of the site is reversible (i.e. the grass could be cut and maintained) and the area of open space continues to be important to the landscape character of the area and to add to the quality of the urban environment of this part of Musselburgh.

The erection on the site of the proposed building and the formation of its associated hardstanding areas would result in the majority of the presently grassed area of the application site being developed. Only a small part of the western end of the site and a small part of the northeast corner of the site would be retained as amenity green space. The proposed building and its associated hardstanding areas would dominate the site. Although the applicant is aiming to retain two areas of amenity green space on the site, the physical appearance of the proposed building and its associated hardstanding areas (roads, footpaths, parking areas, outdoor seating area) and the visual impact of them would result in the loss of the open character of the grassed amenity space and the removal of some of the trees, which contribute to the landscape character of the area, all to the detriment of the amenity and landscape character and appearance of this gateway approach into Musselburgh from the west, and to the setting and approach to the Category B listed Fisherrow Harbour to the northeast of the site. The loss of the majority of the grassed area of amenity open space to the proposed built form would result in a significant loss of amenity and a harmful impact on the landscape setting of this gateway approach into Musselburgh, which would have a detrimental impact on the amenity and landscape function that this area of important green space provides to this part of Musselburgh.

In terms of Policy OS1 there can be no doubt that the proposed development would significantly change the site's natural character by removing a substantial area of the 'green' space and replacing it with a new building and associated roadway, footpaths, parking and other hardstanding areas. Such proposed development of the site would result in a significant loss of the majority of the open green space of the site, which is an important feature of this approach into Musselburgh and which makes a positive amenity contribution to this approach into Musselburgh, and the loss of which would have a significant detrimental impact on the landscape setting of the area. Whilst alternative green space provision is proposed at the western end of the site and on the northeast corner of it, those two proposed green spaces would be significantly smaller in size than the existing green open space provision and in terms of their impact on the

landscape character of the area as an important feature of this western approach into Musselburgh, they would not be of equal provision to the green open space that would be lost as a result of the proposed development. Furthermore it is questionable whether those green spaces would be used in the context proposed for them given their positioning, as respectively relevant, close to the 'drive-thru' access road and alongside the petrol filling station, jet wash bays and LPG storage compound. The two proposed green spaces would not be of equal community benefit and would not compensate against the impacts of the proposed development on the landscape setting of the area and the loss of the existing area of open space.

Accordingly, the loss of the majority of the large area of existing grassed amenity open space in its location close to the Fisherrow Harbour and in this prominent location adjacent to the busy Edinburgh Road on the western approach into Musselburgh, would significantly compromise the landscape setting and amenity value of the site, including through the removal of three of the mature trees on the northern half of the western part of the site. On these considerations of the impact of the proposed development on the area of amenity open space, the principle of the development of the site for the proposed development is contrary to Policy OS1 of the adopted East Lothian Local Development Plan 2018.

Local Development Plan Policy NH8 seeks to retain trees or woodland areas that are important to the landscape character of an area and for them to be incorporated into development proposals. The loss of such trees will only be supported where their loss is essential to facilitate development that would contribute more to the good planning of the area than would retaining the tree(s).

There is a row of six trees close to the northern boundary of the western part of the site, a further two trees are located further to the south on the site between the row of six trees and the property of 224 New Street, and a further three trees are located on the northeast part of the site: one to the west of the existing LPG storage tank compound and two to the east of it.

These trees along with the grassed open space of the majority of the application site contribute positively to the landscape character of this part of this western gateway approach into Musselburgh along the A199 classified public road, and to the setting of the approach to the Category B listed Fisherrow Harbour to the northeast of the site.

It is proposed that four trees would be removed from the site. One tree (tag 734) would be felled and removed from its position on the northeast part of the site to the east of the LPG storage tank compound, one tree (tag 737) of the row of six trees would be felled and removed from its position close to the northern boundary of the site, and two trees (tags 735 and 736) would be felled and removed from the centre of the site.

The supporting Planning Design and Access Statement advises that with the exception of the trees that are proposed to be removed, the proposed development has been designed to work around the existing trees to be retained, including their ground levels and root protection zones (RPZ), and that no dig paving construction would be proposed within the RPZs of retained trees wherever possible, and that all works to retained trees including potential root and/or canopy pruning would be undertaken only with the advice of an approved Arboriculturalist.

The Council's Landscape Officer (Policy & Strategy) has assessed the landscape chapters of the Planning Design and Access Statement and the Tree Survey and Arboricultural Constraints Report prepared by Donald Rodger Associates (dated May 2018), along with a number of emails received from the applicant's agent regarding the proposed landscape works and impact on the existing trees.

The Landscape Officer notes the existing attractive 'green' open space composition of the grassed area of land of the site and the trees that are generally on the northern part of the site.

The landscape advice is that the development of the site in the manner proposed would significantly change the site's natural character by removing a substantial area of the existing 'green' space, including the removal of four trees, and replacing it with a new building and associated hard-landscaping, detracting from the open green visual character of the existing site and thus detracting from the visual character of the wider streetscape.

Furthermore, the landscape advice also is that the proposed development would be within the root protection areas (RPAs) of retained trees tagged 732, 733, 738 to 742 as defined by British Standard 5837: 2012 ~ 'Trees in relation to design, demolition and construction', and the encroachment into the trees RPAs would be harmful to and would have a detrimental impact on the health and vitality of those retained trees. The reason being that due to the raised nature of the site above the level of the public footpath and road, and the positioning of the trees on the site relative to the existing retaining wall around the edges of the site, and the positioning of some of the trees close to other trees (as relevant), the root protection areas (RPAs) of the trees are likely to be asymmetrical and irregular in shape, extending into the site rather than beyond the site and thus requiring a larger construction exclusion zone (CEZ) within the site. The Landscape Officer notes that the applicant's arboricultural report states that necessary adjustment to root protection areas have been made to reflect the existing constraints on their RPAs however, he also notes that the application drawings and the drawing accompanying the arboricultural report do not reflect this. Thus, the proposed development encroaches into the RPAs of the trees and is likely to do so to a greater extent than is shown on the application drawings and would have a greater impact on them due to their asymmetrical RPAs. Furthermore, as the majority of the retained trees are large species trees, the close proximity of the proposed development within their RPAs would result in there being inadequate space to allow for future growth of the retained trees.

The Landscape Officer notes that the supporting tree survey report states that "No dig paving construction will be proposed within the RPZ of retained trees as far as possible" and advises that "as far as possible" is not an acceptable statement, and that it has not been demonstrated that the trees indicated for retention could be retained even with the proposed development extending into their RPAs in the manner proposed and it is likely that the retained trees would be lost.

In respect of tree 733, the landscape advice is that the formation of the footpath within its RPA may be acceptable subject to the footpath being formed on top of the existing surface, appropriate timber edging being proposed, there being no compaction of materials within the RPA of the tree and the hard-core material being single sized free draining rounded stone and the surface material being permeable open jointed block paving on a clean course sand (not building sand) to allow moisture and air through to the root plate of the tree. This is not the detail provided on the application drawings but such requirement could be controlled by a planning condition. However, the formation of the proposed bund as part of the proposed community garden would have a detrimental impact on the RPA of tree tagged 733 as well as tree tagged 732 and would not be supported.

In respect of the removal of tree tags 734 and 737, the tree report identifies these trees as, respectively, being, a goat willow that is in poor condition, and a sycamore in fair condition, and the landscape advice is that the removal of these trees would be acceptable subject to replacement planting being carried out. The requirement for replacement planting could be controlled by a planning condition.

In respect of the removal of tree tags 735 and 736 the landscape advice is that these two trees are early mature sycamore trees in fair condition and with between 20-40 years and more than 40

years life expectancy, that together with the other trees on the site have significant visual amenity value and contribute positively to the landscape character of the area. The landscape advice is that the removal of these trees would not be supported.

Policy NH8 states that in the case of individual trees or groups of trees (not woodland) that make a positive contribution to the landscape character of the area, development will only be permitted where their loss is essential to facilitate development that would contribute more to the good planning of the area than would retaining the trees or group of trees.

Trees can improve the quality of the environment and provide a range of benefits, including contributing to green network objectives and mitigating climate change. In the case of trees 735 and 736, these trees, together with the other trees on the site that are proposed to be retained, contribute positively to the character and amenity of the area and along with the existing grassed area of the amenity open space of the application site make a significant positive landscape amenity contribution to this approach into Musselburgh, the loss of which would have a significant detrimental impact on the landscape character and setting of the area. The development of the site in the manner proposed would result in the loss of two trees (tagged 735 and 736) and the potential loss of more trees due to the encroachment of the development into the RPAs of the retained trees, and would also result in the detrimental loss of the area of amenity open space of which the trees are a part.

The development of the site would result in some additional employment and would be likely to contribute to the local economy however, the proposed development would primarily be for the private gain of the applicant in the expansion of their business. On balance, the limited employment generation and contribution to the local economy that the proposed development would be likely to make are not considered to contribute more to the good planning of the area than would the retention of the area of amenity open space and the trees that form part of it.

The Landscape Officer further advises that the new tree planting on the site is welcomed however, due to the extent of hardstanding, there appears to be insufficient space for the extent and positioning of the replacement tree planting to grow healthy rooting systems for long-term establishment.

In conclusion, on balance for the reasons set out above the proposed development would have a detrimental impact on trees that make a significant positive contribution to the landscape character and amenity of the area and the proposed development is not considered to contribute more to the good planning of the area than would the retention of the area of amenity open space and the trees that form part of it, and thus, the proposed development would be contrary to Policy NH8 of the adopted East Lothian Local Development Plan 2018.

In conclusion, the proposed building and its associated development would, in the context of the loss of the area of amenity open space and the loss of the trees from the site, have a significant detrimental impact on the amenity of the area and the landscape character of this western gateway into Musselburgh, and as such would be inappropriate development that would be harmful to the character of the streetscape and the approach to the setting of the Category B listed Fisherrow Harbour, contrary to Policies OS1 and NH8 of the adopted East Lothian Local Development Plan 2018.

Policy DC6 states that development proposals in the developed coastal area will be supported in principle where such development complies with other relevant development plan policies. In that the proposed development would be unsympathetic development, harmful to the character and appearance of this part of the western approach in to Musselburgh, and in that it would result in the loss of open space important to the character, appearance and amenity of the area, and in

that it would result in the loss of trees that make a significant contribution to the landscape character of the area, and thus would, as relevant, be contrary to Policies OS1 and NH8, the proposed development would also be harmful to this part of the East Lothian coastal area contrary to Policy DC6 of the adopted East Lothian Local Development Plan 2018.

It is now necessary to consider whether or not there are any material considerations that would outweigh this conflict with the development plan. As set out above, the development of the site would result in some additional employment and would be likely to contribute to the local economy. However this does not outweigh the significant detrimental impact on the amenity of the area and the landscape character of this western gateway into Musselburgh.

Under Section 179 of the Town and Country Planning (Scotland) Act 1997 the Council as Planning Authority may serve a notice on the owner, lessee or occupier of land where it appears to the Planning Authority that the amenity of any part of their district is adversely affected by the condition of any land in their district. Such notice under Section 179 requires steps for abating the adverse effect, as may be specified in the notice, to be taken within a specified period.

As stated earlier in this report, at the time of the Planning Officer's site visit in October 2018 and during the preceding 10 years, as can be seen on visual images on 'Google-Maps', the grassed area of the site was being well maintained and kept in good condition by the site owner. In the intervening period it has been allowed to become overgrown, and the grass surface has only periodically been cut, resulting in the site, which is predominantly laid to grass, appearing unkempt and overgrown at this gateway into Musselburgh and East Lothian from the west to the detriment of the amenity of the area. More recently, at the time of the writing of this report the grass remains uncut and the site is overgrown and unkempt. Recent approaches to the applicant by Musselburgh and Inveresk Community Council requesting the cutting of the grass have been declined by the applicant with the reason given being that it is the applicant's opinion that their planning application remains undetermined and that there has been little meaningful engagement from the Planning Service regarding the application.

This site is important to the landscape character and amenity of the area and when the grassed area is being maintained it adds to the quality of the urban environment of this part of Musselburgh. At the time of the writing of this report, the amenity of the area is being adversely effected by the overgrown and unkempt condition of the site. Thus, if the grass is not cut and remains overgrown, then a notice requiring proper maintenance of land under Section 179 of the Town and Country Planning (Scotland) Act 1997 will be served requiring the grassed areas of the site to be cut to a short mown appearance with the period of compliance being one month.

REASONS FOR REFUSAL:

- 1 The loss of the majority of the large area of existing grassed amenity open space at this prominent location adjacent to the busy classified A199 Edinburgh Road on the western gateway approach into Musselburgh, and close to the Category B listed Fisherrow Harbour, would significantly compromise the landscape setting and amenity value of the site, including through the removal of three of the mature trees on the northern half of the western part of the site, and thus would be harmful to the landscape character and amenity of the area, all contrary to Policy OS1 of the adopted East Lothian Local Development Plan 2018.

- 2 The proposed development would have a detrimental impact on trees that make a significant positive contribution to the landscape character and amenity of the area and would not contribute more to the good planning of the area than would the retention of the area of amenity open space and the trees that form part of it. Thus, the proposed development would be contrary to Policy NH8 of the adopted East Lothian Local Development Plan 2018.
- 3 As development contrary to Policies OS1 and NH8 of the adopted East Lothian Local Development Plan 2018, the proposed development would also be harmful to this part of the East Lothian coastal area and contrary to Policy DC6 of the adopted East Lothian Local Development Plan 2018.

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Application No. [21/00564/P](#)

Proposal Section 42 application for variation of condition 1 of planning permission 20/01120/P

Location **48-52 Dunbar Road
North Berwick
East Lothian
EH39 5AB**

Applicant Aldi Stores Ltd

Per Avison Young (UK) Ltd .

Ward 0004

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

This application relates to the Aldi supermarket in North Berwick. The site of the store occupies a corner site immediately to the south of the junction of Glenburn Road and Dunbar Road. The service yard for the store is located to the west of the site and is accessed off Glenburn Road, as is the store car park for customers. It is within a mixed use area as defined by RCA1 of the adopted East Lothian Local Development Plan 2018. It is outwith the defined town centre of North Berwick.

Outline planning permission ref: P/00696/92 (now planning permission in principle) was granted on 18 March 1993 for the erection of the supermarket and associated access and car parking.

In February 2015 planning permission (Ref: 14/00968/P) was granted for a variation of Condition 7 of planning permission P/00696/92 to change the opening hours from 08.00 to 20.00 Monday to Friday and 08.00 to 18.00 Saturdays and Sundays to 08.00 to 22.00 Monday to Saturday and 09.00 to 19.00 Sundays.

In January 2021 planning permission (Ref: 20/01120/P) was granted for a variation of Condition 1 of planning permission 14/00968/P to change the opening hours from 0800 to 2200 Monday to Saturday and 0800 to 1900 hours on Sundays to 0800 to 2200 Monday to Saturday and 0800 to 2000 hours on Sundays.

Condition 1 of planning permission 20/01120/P states:

"The supermarket will not be open to trading outwith the hours of 0800 to 2200 Monday to Saturday and 0800 to 2000 hours on Sundays. No goods delivery vehicles will enter or leave the site or remain parked within the site between 2300 to 0700 hours Mondays to Sundays. No offloading or loading of goods or refuse to or from vehicles or containers will take place to or from the premises during those hours.

Reason:

To safeguard the amenity of the occupants of nearby residential properties'

Planning permission is now sought for a variation of condition 1 planning permission 20/01120/P to change the hours that restrict goods delivery vehicles entering or leaving the site to offload or load goods or refuse from 2300 to 0700 hours Mondays to Sundays to 2300 to 0530 hours Mondays to Sundays.

The change of the hours that restrict goods delivery vehicles entering or leaving the site is sought in order to allow a sufficient period of time for fresh goods to be delivered and stacked for sale within the store prior to its amended hours of opening.

A Planning Statement and an Acoustic Report (dated April 2021) have been submitted in support of the application.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018.

There are no policies of the approved South East Scotland Strategic Development Plan (SESplan) relevant to the determination of this application. Relevant to the determination of the application are Policies RCA1 (Residential Character and Amenity) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018.

One public objection has been received to the application on grounds that the proposed change of the hours that restrict goods delivery vehicles entering or leaving the site will result in increased levels of noise and pollution affecting the amenity of neighbouring residential properties.

North Berwick Community Council have been consulted on the application and object to the application on grounds that noise generated by the arrival and departure of trucks and the unloading process during the proposed amended hours would negatively impact on the amenity of the occupants of residential properties located on Glenburn Road.

The supermarket use of the site has previously been established by the grant of outline planning permission P/00696/92 (now planning permission in principle). The determination of this application therefore rests on an assessment of the likely additional impacts the proposed change of the hours that restrict goods delivery vehicles entering or leaving the site by one-and-a-half hours to 2300 hours-0530 hours Mondays to Sundays would have on the amenity of any neighbouring uses, including neighbouring residential properties.

With regard to these considerations Policy RCA1 of the adopted East Lothian Local Development Plan 2018 requires that the predominantly residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing and that development incompatible with the residential character and amenity of an area will not be permitted.

The submitted Acoustic Report provides an assessment of the effect that the proposed changes of the hours that restrict goods delivery vehicles entering or leaving the Aldi store by one-and-a-half hours to 2300 hours-0530 hours Mondays to Sundays would have on the pre-existing noise

climate and on the closest residential properties. It informs that the primary noise source within the vicinity of the site during the hours of 2300 hours-0530 hours Mondays to Sundays is traffic noise from vehicles passing along Dunbar Road and the local road network. It concludes that the noise generated from the proposed extended period for goods delivery vehicles entering or leaving the Aldi store would not result in any harmful loss of amenity for the nearby residential properties.

The Council's Public Health and Environmental Protection Officer has perused the Acoustic Report and raises no objection to the application, being satisfied that the proposed change to allow goods delivery vehicles to enter or leave the site to offload or load goods or refuse from 2300 to 0530 hours Mondays to Sundays would not result in any harmful noise impacts on any neighbouring or nearby residential property and thus would not result in any harmful impact on the amenity of such residential properties.

The Council's Roads Services have been consulted on the application and raise no objection to it, being satisfied it would not cause issues of road safety consistent with Policy T2 of the adopted East Lothian Local Development Plan 2018.

As there would be no harmful impact on the amenity of neighbouring residential properties by the proposed change of the hours that restrict goods delivery vehicles entering or leaving the site by one-and-a-half hours to 2300 hours-0530 hours Mondays to Sundays, the proposed variation of Condition 1 of planning permission 20/01120/P does not conflict with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

Annex I of Planning Series Circular 3/2013 (Development Management Procedures) provides guidance on applications for planning permission under section 42 of the Town and Country Planning (Scotland) Act 1997, as amended. The application that is the subject of this report is made under section 42 of the Act. Annex I states that "Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should apply and ensure (where appropriate) that permission is granted subject to the conclusion of any appropriate planning obligation". Therefore, planning permission should be granted subject to the applied for variation to condition 1 and subject to all of those conditions from planning permission 20/01120/P where it is intended these should apply. In this case condition 2 (Noise Levels) should continue to apply.

CONDITIONS:

- 1 The supermarket will not be open to trading outwith the hours of 0800 to 2200 Monday to Saturday and 0800 to 2000 hours on Sundays.

No goods delivery vehicles will enter or leave the site or remain parked within the site between 2300 to 0530 hours Mondays to Sundays. No offloading or loading of goods or refuse to or from vehicles or containers will take place to or from the premises during those hours.

Reason:

- 2 To safeguard the amenity of the occupants of nearby residential properties
- 2 Noise levels emanating from the site shall not exceed L90 background levels by more than 5dBA as measured in accordance with BS4142 in relation to nearby noise sensitive

properties within the proviso that noise levels originating from the ventilation and refrigeration plant shall not exceed noise rating curve (NR25) at any frequency when measured in the bedrooms of nearby properties.

Reason

To safeguard the amenity of the occupiers of nearby residential properties

Letters From

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