



**MINUTES OF THE MEETING OF THE  
PLANNING COMMITTEE**

**TUESDAY 6 MAY 2014  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Committee Members Present:**

Councillor N Hampshire (Convener)  
Councillor D Berry  
Provost L Broun-Lindsay  
Councillor S Brown  
Councillor J Caldwell  
Councillor T Day  
Councillor A Forrest  
Councillor J Gillies  
Councillor J Goodfellow  
Councillor D Grant  
Councillor W Innes  
Councillor P MacKenzie  
Councillor K McLeod  
Councillor J McMillan  
Councillor T Trotter  
Councillor J Williamson

**Council Officials Present:**

Mr R Jennings, Head of Development  
Mr I McFarlane, Service Manager – Development Management  
Ms C Molloy, Senior Solicitor  
Mr K Dingwall, Principal Planner  
Ms S Greaves, Planner  
Ms K Slater, Planner  
Ms L Lauder, Environmental Protection Group Leader

**Clerk:**

Ms F Currie, Committees Assistant

**Visitors Present:**

Item 2 – Mr R Salter  
Item 3 – Ms L Russell  
Item 3 – Prof. D Ingram

**Apologies:**

Councillor S Currie  
Councillor J McNeil

**Declarations of Interest:**

None

**1. MINUTE OF THE MEETING OF THE PLANNING COMMITTEE OF 1 APRIL 2014**

The minute of the Planning Committee of 1 April 2014 was approved.

**2. PLANNING APPLICATION NO. 14/00064/PM: REMOVAL OF CONDITION 6 AND VARIATION OF CONDITION 7 OF PLANNING PERMISSION IN PRINCIPLE 08/00669/OUT TO REMOVE REQUIREMENT FOR ZERO AND LOW CARBON EQUIPMENT AND TO ALLOW SUBMISSION OF GREEN TRAVEL PLAN PRIOR TO OCCUPATION OF BUILDINGS ON LAND BOUNDED BY MUSSELBURGH GOLF COURSE, OLD CRAIGHALL SERVICES AND B6415**

A report was submitted in relation to Planning Application No. 14/00064/PM Keith Dingwall, Senior Planner, presented the report, summarising the key points. He advised Members that there was disagreement between the applicant and the Council regarding the status of planning permission 08/00669/OUT but that this would be addressed in more detail by Mr Salter in his presentation. The application before the Committee today was for removal and variation of conditions and the report recommendation was to grant consent for the application.

In response to questions from Members, Mr Dingwall advised that although the Travel Plan makes practical provision for bus services to the site, the Council cannot insist that bus companies provide services.

Mr Bob Salter of Geddes Consulting, agent for the applicant, addressed the Committee. He explained that the Lothian Park development would seek to secure 500 jobs for the local area. In the three years since planning permission was granted, agents had been trying to attract businesses to the site however the economic downturn had hindered progress. It was his view, and that of the applicant, that this application for removal and variation of conditions should be viewed in the light of an application to extend the original planning permission. He stated that this view was supported by current Scottish Government guidance. He concluded that, without this planning permission, Lothian Park could not respond to the interest of businesses looking to relocate to East Lothian.

In response to questions from Members, Mr Salter advised that discussions had taken place with Queen Margaret University and Persimmon Homes about a footpath from the railway station to the site. Provision had also been made for two bus stops and cycle access and storage. Further than that, it would be for individual businesses to consider the needs of their employees.

Ms Catherine Molloy, Senior Solicitor, advised Members that it should be recognised that there had been extensive correspondence between the Council and the applicant with a view to addressing this legal point. However, despite this engagement, the position of the Council differed from that of the applicant. Ms Molloy advised that planning permission in principle 08/00669/OUT had lapsed on 26 January 2014, three years after it was granted. The applicant took the view that this new application (submitted prior to 26 January 2014) and under Section 42 of the Planning Act would automatically ensure that the life of the planning permission was extended for a further 3 years. Ms Molloy advised that the Council did not agree with

this position. The position of the Council was that, due to changes in August 2009, a Section 42 application to deal with extending the life of a planning permission was not competent (regardless if a time limit condition had been referred to in error). An alternative process to deal with this had been introduced under Regulation 11 of the Development Management Procedures. Ms Molloy also noted that regardless of the Scottish Government guidance and Circulars referred to by the applicant, the strict legal interpretation was based on the legislation. Section 42 of the Planning Act permits the planning authority to consider only the question of developing land without compliance with conditions previously attached. As the ability to use time limits as conditions had been revoked in August 2009, Section 42 was no longer competent.

Following further questions from Councillor Berry, Mr McFarlane confirmed that the application was simply for the removal and variation of conditions. He advised Members that this interpretation of the planning legislation was supported by the majority of Scottish planning authorities. Mr McFarlane said he was happy to discuss the matter of renewal with the applicant, and there was no shortage of support for the development. However, an application to renew a planning permission needed to be made under Regulation 11 of the relevant legislation in the proper way, to allow proper consideration to be given to updated information on transport, education and environmental matters to allow a decision to be reached. This application made under Section 42 of the Planning Act did not allow consideration of matters other than the conditions for which changes had been applied. Therefore it could not be treated as a renewal.

Provost Broun-Lindsay agreed with the views of officers in relation to the original application – the three year deadline had expired. Whether or not to revive the application was a matter for another day. In the meantime, he would be supporting the report recommendation.

Councillor Goodfellow was persuaded by Mr McFarlane's arguments. He agreed that the correct procedure would be for a new application to be submitted. He would be supporting the report recommendation.

Councillor Innes also accepted the views of officers. He had supported the original application and considered it important to take a consistent view. The legal arguments were a matter for the applicant and could not be determined by this Committee. He would be supporting the report recommendation.

Councillor Caldwell expressed disappointment that the original application had not come to fruition with all of the attendant benefits that new businesses and a hotel would bring to Musselburgh. He accepted the views of officers on the legal position. He would be supporting the report recommendation.

Councillor Williamson echoed Councillor Caldwell's comments and indicated that he would be supporting the report recommendation.

The Convener brought the discussion to a close. He reminded Members that, should they approve the recommendation, the original planning application would not go ahead. A new application or a challenge to the legal position would be required to determine whether the development could progress. He would be supporting the recommendation to grant planning permission as set out in the report.

The Convener moved to the vote on the report recommendation:

For: 16  
Against: 0  
Abstentions: 0

### Decision

The Committee agreed to grant planning permission for the removal of condition 6 and the variation to condition 7 of planning permission in principle 08/00669/OUT as follows:

1 Condition 7

A Travel Plan to minimise private car trips and to encourage use of alternative modes of transport shall be submitted to and approved by the Planning Authority prior to the occupation of any component part of the business park development. The Plan shall include proposals for enabling persons to travel to and from the development by public transport. Additionally the Plan shall include: details of the measures to be provided; the timetable for introducing them; the system of management, monitoring, review, reporting and duration of the Plan.

The Travel Plan shall thereafter be implemented in accordance with the details so approved.

Reason:

In the interests of ensuring sustainable travel patterns in respect of the use of the scheme of development.

**3. PLANNING APPLICATION NO. 13/01029/P: VARIATION OF CONDITION 2 OF PLANNING PERMISSION 12/00011/P TO ALLOW ADDITIONAL DINING PLACES AND VARIATION OF CONDITION 4 OF PLANNING PERMISSION 12/00011/P TO EXTEND THE OPENING HOURS OF THE CAFE/RESTAURANT TO ALLOW OPERATION BETWEEN 9AM – 11PM MONDAY TO SUNDAY INCLUSIVE (PART RETROSPECTIVE) AT 96 HIGH STREET, NORTH BERWICK**

A report was submitted in relation to Planning Application No. 13/01029/P Stephanie Greaves, Planner, presented the report, summarising the key points. The proposed decision set out in the report was to grant consent for the application.

In response to questions from Members, Ms Greaves advised that the amenity space to the rear of the premises was already overlooked and there would be no increase in overlooking in relation to the extension of opening hours.

Ms Lisa Russell of WYG, agent for the applicant, addressed the Committee. She confirmed that the deli was still the main business use for the premises. The extension to business hours for the cafe would provide the flexibility to run a “pop up” restaurant every other Saturday and to host occasional events such as birthday parties. The applicant had no plans to make regular use of the extended hours and the additional tables and chairs would be stored in the basement when not in use.

Prof. David Ingram spoke against the application. He and his wife live above the premises. While they have no objection to an occasional pop-up restaurant, they are concerned that the application seeks an extension to the cafe opening hours every night. He suggested that the extension be limited to certain nights or occasional use. Prof. Ingram also requested that the windows to the rear remain closed at all times to preserve the amenity of the shared garden area and limit overlooking.

In response to a question from Councillor Berry, the applicant, Mr McLaughlin, agreed that frosted glazing could be applied to the rear windows to limit overlooking.

Local Member Councillor Berry said that he had been approached by a number of residents with concerns about late opening of the cafe. He felt that while there was the possibility of disturbance to local residents there were already a number of other business open until 11pm and he was not aware of any significant problems. On balance, he was minded to support the application.

Local Member Councillor Day considered this to be a high quality business and did not anticipate any problems as a result of extended opening hours. However, should there be issues these would be better addressed through licensing rather than planning. He would be supporting the report recommendation.

Local Member Councillor Goodfellow agreed that licensing would control much of the use of the premises. His only concern related to overlooking of the amenity space to the rear of the building. He would support the application, subject to the rear windows being obscure glazed and being kept closed.

In response to a question from the Convenor, Ms Lillianne Lauder, Environmental Protection Group Leader, confirmed that adequate ventilation would be required to meet environmental health standards but that this could be done in a variety of ways.

Councillor Day accepted the idea of obscure glazing but requested that this be restricted to a panel at head height, rather than the full window.

Mr McFarlane confirmed that a condition could be added to the planning permission and proposed the following wording: “within one month of the date of this planning permission, the rear windows of the premises shall be obscure glazed to a detail to be approved in advance by the Planning Authority”.

The Convenor brought the discussion to a close. He noted that Members appeared to be in agreement over the application with the inclusion of an additional condition relating to obscure glazing. He would be supporting the recommendation to grant planning permission subject to the inclusion of the additional condition.

The Convenor moved to the vote on the report recommendation, as amended:

For: 16  
Against: 0  
Abstentions: 0

### **Decision**

The Committee agreed to grant planning permission subject to the following conditions:

1 Condition 2

The cafe use hereby approved shall be limited to the three areas coloured yellow for tables and seating and for the W.C. facilities as delineated on drawing no. 100.10/Rev A docketed to this planning permission.

Reason:

To ensure that the amount of cafe use remains as applied for and hereby approved.

2 The hours of operation of the café use hereby approved shall be restricted to 9.00am to 11.00pm on Mondays to Sundays inclusive.

Reason:

To restrict the hours of operation of the café use to that applied for and to safeguard the amenity of the area, including the amenity of neighbouring residential properties.

- 3 Within one month of this planning permission, the rear windows of the premises shall be obscure glazed to a detail to be approved in advance by the Planning Authority.

Reason:

To protect the amenity of the garden of the building.

**4. PLANNING APPLICATION NO. 14/00083/P: PART CHANGE OF USE FROM RETAIL (CLASS 1) TO CAFE USE (CLASS 3) AND REPAINTING OF SHOP FRONT (RETROSPECTIVE) AT 91 HIGH STREET, NORTH BERWICK**

A report was submitted in relation to Planning Application No. 14/00083/P Kirsty Slater, Planner, presented the report, summarising the key points. The proposed decision set out in the report was to grant consent for the application.

Local Member Councillor Berry said he had received representations from other cafe owners on the High Street expressing concerns about over provision and the potential impact on their trade.

Local Member Councillor Day commended the development of these premises as a market place for local businesses. He would be supporting the application.

Local Member Councillor Goodfellow agreed with Councillor Day: a previously derelict site had been transformed into a thriving business. He would be supporting the application.

Provost Broun-Lindsay was also in agreement. He would be supporting the application.

The Convener brought the discussion to a close. He would be supporting the recommendation to grant planning permission as set out in the report.

The Convener moved to the vote on the report recommendation:

For: 16

Against: 0

Abstentions: 0

**Decision**

The Committee agreed to grant planning permission subject to the following conditions:

- 1 The cafe use hereby approved shall be limited to the area outlined in red on drawing no. 11 docketed to this planning permission.

Reason:

To ensure that the cafe use hereby approved remains ancillary to the retail use of the premises, in accordance with Policy ENV2 of the adopted East Lothian Local Plan 2008.

- 2 The preparation, including cooking, and sale of hot food within the cafe hereby approved shall be restricted so that no shallow or deep fat frying of food shall take place on the premises, unless otherwise approved by the Planning Authority.

Reason:

To restrict the operational use of the cafe in accordance with the proposed means of ventilation of that use, in the interests of safeguarding the amenity of the area.

Signed

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Councillor Norman Hampshire  
Convener of the Planning Committee