



**MINUTES OF THE MEETING OF THE
LOCAL REVIEW BODY**

**THURSDAY 17 SEPTEMBER 2015
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor L Broun-Lindsay (Chair)
Councillor D Grant
Councillor K McLeod
Councillor P MacKenzie

Advisers to the Local Review Body:

Mr P McLean, Planning Adviser to the LRB
Mrs M Ferguson, Legal Adviser/Clerk to the LRB

Others Present

Ms E Carnegie, Applicant
Mr Carnegie
Ms A Mort, Chalmers and Co, Agent

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

None

Councillor Broun-Lindsay was elected to Chair today's meeting by Councillors McLeod, MacKenzie and Grant. Duly elected, Councillor Broun-Lindsay welcomed everyone to the meeting.

Morag Ferguson, Legal Adviser, stated that one planning application was being presented today in the form of written submissions and that a site visit had been carried out prior to the meeting today. She also advised that a Planning Adviser, who had had no involvement with the determination of the original application, would provide information on its planning context and background.

**1. REVIEW AGAINST DECISION (REFUSAL)
PLANNING APPLICATION No: 15/00120/P – PLANNING PERMISSION
FOR ALTERATIONS AND CHANGE OF USE OF DANCE SCHOOL (CLASS
11) TO CAFE (CLASS 3) AT 17 DALRYMPLE LOAN, MUSSELBURGH**

The Legal Adviser stated that the ELLRB was meeting today to review the above application which had been refused by the Appointed Officer. Members had been provided with written papers, including a submission from the Case Officer and review documents from the applicant. After hearing a statement from a Planning Adviser summarising the planning policy issues, Members would decide if they had sufficient information to reach a decision today. If they did not, the matter would be adjourned for further written representations or for a hearing session and Members would have to specify what new information was needed to enable them to proceed with the determination of the application. Should Members decide they had sufficient information before them, the matter would be discussed and a decision reached on whether to uphold or overturn the decision of the Appointed Officer. It was open to Members to grant the application in its entirety, grant it subject to conditions or to refuse it.

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

Phil McLean, Planning Adviser, stated that the property was a single storey building, most recently used as a dance studio. The application was seeking permission for a change of use to a class 3 cafe use and for the formation of new windows on the front, the alteration of an existing window to the side, and the installation of a roof vent.

The Planning Adviser stated that the Planning Act required decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicated otherwise. The Development Plan consisted of the approved Strategic Development Plan for Edinburgh and South East Scotland, known as SESplan, and the adopted Local Plan 2008. The application site was within a residential area of Musselburgh as designated in the Local Plan, and the main policy considerations relevant to the application were design, amenity, and road safety. The site was also within the designated Battle of Pinkie site. The key development plan policies in relation to these matters are Strategic Development Plan policy 1B and Local Plan policies ENV1, DP6, DP22, and T2.

The Planning Adviser stated that the application had been refused by the appointed officer on the basis that the proposed cafe would not have a sufficient level of off-street parking for customers or off-street provision for deliveries and therefore would

be a road safety hazard, contrary to Local Plan policies. The case officer had considered the proposals to be acceptable in other respects, in terms of the principle of the proposed change of use, design, privacy and amenity, subject to conditions.

The Planning Adviser advised that the applicant's request for a review had argued that the site was adjacent to the town centre and it was unfair to require on-site parking provision when similar businesses in the town centre did not have this. The applicant was also willing to accept a condition preventing the sale of takeaway food and controlling the timing of deliveries. In terms of consultations, the Council's Roads Services recommended refusal of the application on the grounds of road safety due to lack of parking for customers and deliveries and the Environmental Protection Manager recommended conditions to control odour and noise. Historic Scotland raised no objections.

The Planning Adviser advised that two representations had been received; one advised that the owners of the Caprice Restaurant would not be entering into an agreement with the applicant regarding car parking and the other raised concerns at the introduction of new windows on south or west elevations. The Planning Adviser pointed out that such windows were not in fact proposed but errors in the labelling of drawings might have given the impression that they were. One further representation had been received in response to the Notice of Review from the Council's Environmental Health Officer recommending that the bins were located in a secure store to prevent wilful fire raising.

The Chair invited questions from his colleagues and Councillor Grant enquired about traffic restrictions currently in place at the application site and the Planning Adviser replied that the consultation response from Road Services confirmed that there were no loading restrictions. Councillor McLeod also enquired if the proposed business would sell take-away food and the Planning Adviser responded that Members could impose a condition in respect of take-away food if they considered it appropriate. The Chair asked his fellow Members if they now had sufficient information to proceed to determine this application today and they unanimously agreed to proceed.

The Chair, noting the reason for refusal, stated that the key issue in respect of this application was off street parking provision.

Councillor MacKenzie stated that the property was less than 100 yards from Musselburgh High Street which offered various parking opportunities. He therefore did not consider that the reason for refusal was a valid one and would vote to uphold the appeal.

Councillor Grant was of the same view as his colleague and agreed with the applicant that shoppers to the High Street would be easily able to access the proposed cafe on foot. He too was therefore minded to uphold the appeal.

Councillor McLeod was of the same opinion as his colleagues and he too expected that the majority of customers would be likely to arrive on foot in view of its close proximity to the main shopping thoroughfare.

The Chair stated that the decision of the Case Officer to refuse the application was possibly a finely balanced one, given the location of the site. He agreed with the views of the other Members and advised that he would also vote to uphold the appeal, subject to appropriate conditions.

Decision

The ELLRB unanimously agreed to overturn the decision of the Appointed Officer to refuse the application, subject to the following conditions:

Conditions:

- 1 Any plant and equipment associated with the use and operation of the cafe hereby approved shall be designed and constructed so that noise emanating there from shall not exceed NR25 at any Octave Band Frequency when measured in any neighbouring residential property, assuming windows open at least 50mm.

Reason:

To ensure the use of the premises as a cafe does not harm the amenity of nearby residential properties.

- 2 Details of the extraction system to be used, including efflux velocities of stack emissions and any odour control measures to be implemented in the form of primary, secondary and tertiary treatments, shall be submitted to and approved in writing by the Planning Authority prior to the operation of the premises as a cafe.

Reason:

To ensure the use of the premises as a cafe does not harm the amenity of nearby residential properties.

- 3 Any extract equipment associated with the use and operation of the cafe hereby approved shall be maintained to ensure its continued satisfactory operation and any cooking processes reliant on such extract systems shall cease to operate if, at any time, the extract equipment ceases to function to the satisfaction of the Planning Authority.

Reason:

To ensure the use of the premises as a cafe does not harm the amenity of nearby residential properties.

- 4 The opening hours of the cafe hereby approved shall be restricted to 0900 to 1800 hours on Mondays to Sundays inclusive.

Reason:

To restrict the hours of opening to that which is applied for in the interests of safeguarding the amenity of neighbouring residential properties.

- 5 The external face of the timber frames of the windows hereby approved shall be painted, stained or treated with a timber preservative of a colour to be approved in writing by the Planning Authority prior to its use in the development, and thereafter the colour of paint, stain or timber preservative used for the external surface of the timber frames of the windows shall accord with the details so approved.

Reason:

In the interests of safeguarding the character and appearance of the area.

- 6 Prior to the commencement of development on the site, a Construction Traffic Method Statement designed to minimise the impact of the movements and activity of construction traffic in the vicinity of the application site shall be submitted to and approved by the Planning Authority and shall include any recommended mitigation measures for the control of construction traffic including the hours of construction work, which shall, as may be applicable, be implemented prior to the commencement of development and during the period of development works being carried out on the application site.

Reason:

To minimise the impact of construction traffic on the local road network.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (or any order revoking and re-enacting that Order with or without modification), no change of use to class 1 shop use (as defined in the Town and Country Planning (Use Classes) (Scotland) Order 1997, or any order revoking and re-enacting that Order with or without modification) shall take place without planning permission being granted on an application made to the planning authority.

Reason:

To allow the planning authority to control future changes of use that would otherwise be permitted development, in the interests of road safety.

8. Notwithstanding the labelling of the elevations on drawing number 03D, no window shall be formed on the south elevation of the building without planning permission being granted on an application made to the planning authority.

Reason:

For the avoidance of doubt, due to the incorrect labelling of the north elevation on drawing 03D, and to avoid impact on the privacy and amenity of neighbouring properties.

9. No development shall commence until such time as full details of the proposed new entrance gate and fixed fence panel as indicated on drawing number 03D have been submitted to and approved in writing by the planning authority. Such details shall include details of proposed materials and colours of paint, stain or timber preserve to be used. The development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing with the planning authority.

Reason: In the interests of safeguarding the character and appearance of the area.

The Legal Adviser stated that the Decision Notice would be issued within 21 days.