

**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 7 December 2021  
**BY:** Executive Director of Place  
**SUBJECT:** Application for Planning Permission for Consideration

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*Note - this application was called off the Scheme of Delegation List by Councillor Kempson for the following reasons: First is due to the large number of objections from local residents. Secondly a similar application was refused permission two years ago and the situation and reasons for the rejection have not changed.*

Application No.      **21/01195/P**  
Proposal                Siting of snack van  
Location                **South Of Shore Road Carpark  
Belhaven  
Dunbar  
East Lothian**  
Applicant               Matsform Ltd

**RECOMMENDATION      Consent Granted**

## **REPORT OF HANDLING**

### **PROPOSAL**

The application site forms part of an existing grassed area to the south of the public carpark which is located to the west of the public non-classified Shore Road in Belhaven, Dunbar.

This application relates to an area of grassed land located at the southern end of the public car park at Shore Road Belhaven which is located at the eastern edge of the John Muir Country Park. The car park and therefore the application site is located within countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. It is also within (ii) the constrained coast as defined by Policy DC6 and (iii) within the Belhaven Bay Special Landscape Area. It is adjacent to but not within the Firth of Forth Special protection area and SSSI. The carpark is outwith, but immediately adjacent to, the Belhaven Conservation Area.

The public car park is accessed from the Shore Road public road that is adjacent to the eastern side of the car park.

In December 2019 planning application ref: 19/00744/P was refused against officer recommendation, for the siting of a mobile snack van in the Shore Road car park. The

reasons for the refusal of planning application 19/00744/P were:

1. In its prominent roadside location, the proposed mobile snack bar would harm the character and appearance of this part of the John Muir Countryside Park, and
2. The operation of the proposed mobile snack bar in such close proximity to residential properties would be likely to harm the privacy and amenity of those nearby properties.

Planning permission is now sought for the siting of a snack van within a different part of the public car park at Shore Road. It would be positioned adjacent to the wall that encloses the southern end of the car park some 90m to the southeast of the site of the snack bar the subject of refused planning permission 19/00744/P and would be of a different form and appearance to that refused snack van.

The proposed mobile snack bar would be in the form of a van with a service area to the rear which would feature a hatch on one side. It would be approximately 6.6 metres long and 2.5 metres wide and have a height of 2.8 metres. The van proposed by the applicant is to be dark green in colour.

The snack van is proposed to be situated at this location for trading from 0830 hrs to 1930 hrs March to October from Tuesdays to Sundays. This would vary from November to February when trading times would change to 0830 to 1630 hrs Tuesday to Sundays. The applicant has stated that the types of food to be sold include soup, hot and cold sandwiches and rolls, pancakes, Mediterranean wraps as well as Italian coffee, selection of teas, soft drinks, juices.

The pitch has been offered by East Lothian Council Estates. A condition of the licence is that there would no deep fat frying.

Since the application was first submitted, revised details have been submitted reducing the scale of the proposed snack van and changing it to a dark green colour.

Subsequent to the registration of this application, the applicant's has provided the following statement:

As a result of feedback, a lower height vehicle has been found. The lower height will make it less prominent, and the forest green colour was chosen to allow it to blend more into the natural surroundings. The van type was chosen over the trailer as it is more suitable for the terrain and will need less manoeuvring into position over the grass which could be vulnerable to erosion. As this is a new siting, the effect of the siting of the vehicle on the grass surface will need to be monitored with the Amenity Service team from the Council and we are happy to work with them in how to resolve any issues that arise. The van type will also support the use of electric batteries, which will be the only energy source to the food van. This should result in a quiet, no emissions food van that although it may create limitations in terms of hours per day the operator is willing to adapt to the local community's wishes. The plan is to store the vehicle locally in a secure facility when not working to reduce vehicle movements and support the local community.

The cutlery and packaging used by the food van will be compostable and consideration will be given on how to reduce waste, reuse, recycle and encourage customers to do the same. Recycling and general waste bins will be provided with self-closing lids. Information on where to find the local bins for walkers and tourists. We plan to litter pick and work with local community groups and the Council to ensure we prevent litter problems from occurring. We are considering trialling innovative solutions such as a deposit return litter bags to prevent litter issues.

## **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 South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018.

There are no relevant policies of the approved South East Scotland Strategic Development Plan (SESplan). Policies DC1 (Rural Diversification), DC6 (Development in the Coastal Area), DC9 (Special Landscape Areas), CH2 (Conservation Areas), TC4 (Hot Food Outlets), NH1 (Protection of Internationally Designated Sites), NH3 (Protection of Local Sites and Areas), NH5 (Biodiversity and Geodiversity Interests including Nationally Protected Species), NH13 (noise) DP2 (Design), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Also relevant to the determination of the application is the Countryside and Coast and the Special Landscape Areas Supplementary Planning Guidance of the adopted East Lothian Local Development Plan adopted by the Council in 2018.

## **REPRESENTATIONS**

A total of seventeen public objections to the siting of the proposed mobile snack bar have been received.

The main grounds of objection are:

1. the siting of a mobile snack van on the proposed site would generate unacceptable levels of additional vehicular traffic thereby creating a road safety hazard and increased parking demand;
2. the siting of a mobile snack van will have a negative visual impact on the proposed location and the wider area and views over Belhaven Bay;
3. the proposal would generate unacceptable levels of litter;
4. cooking odours and noise from the mobile snack van will harm the residential amenity of nearby residential properties; and
5. food choices offered by the mobile snack van are detrimental to public health.
6. the length of the 3 year temporary consent applied for too long and should be a trial period of 1 year;
7. impact on nearby trees;
8. the siting of the snack van on a wet part of the site and its impact on ground conditions;
9. the colour of the van being too prominent;
10. the hours of operation being unacceptable in impacting on residential amenity;
11. disturbance of wildlife habitat and impact on John Muir Country Park and requirement for EIA;
12. the van uses both gas and a generator for power and cooking. Both are deemed environmentally unfriendly;
13. the loss of privacy to gardens of nearby properties;
14. the loss of property values of nearby properties;
15. the size of the van exceeding the advertised pitch size and too high for the access barrier;
16. the environmental implication of the van and increased traffic with regards to climate change;
17. impact of the snack van on flood risk;

18. site not within a town centre location;
19. no assessment of need made for the snack van and its impact on trade to nearby shops;
20. Will single use plastics be used?
21. Has a Flood Risk Assessment been undertaken?
22. Planning permission has previously been refused for a snack van;
23. a better solution would be the conversion of part of the toilet block and thus negating the need for a van and generator;
24. Some visitors to the area avoid parking charges by parking on North Road.

## **COMMUNITY COUNCIL COMMENTS**

Both West Barns Community Council and Dunbar Community Council have submitted objections to this application. The grounds of objection are in relation to: (i) road safety; (ii) suitability of the vehicle proposed; (iii) commercialisation of the countryside; (iv) flood risk; (v) litter; (vi) environmental impact; and (viii) the proposal is suggested to be contrary to ELC Policy - Good Food Charter.

In response to the some of the points raised by the objectors and by the Community Councils:

This application is for the siting of a snack van. The Council as Planning Authority cannot refuse a planning application on the basis that there may be a “better” alternative proposal available elsewhere.

There would be no deep fat frying from the snack van and it would be powered by batteries. Therefore, there would be no detrimental impact on neighbouring properties by way of odour or noise.

The fact that a snack van was refused planning permission on a different part of the car park does not prevent the submission and determination of this planning application.

The supporting statement submitted with this application confirms that the applicant will provide litter bins during trading hours.

**The Council's Estates Team Leader** advises that East Lothian Council operate the car park at Shore Road and have issued the lease to the applicant to allow them to operate from this site. If issues arise from the ground conditions then the Council will work with the applicant to manage this issue.

Any pest control matters would be for **the Council's Environmental Health Service** to deal with under statutory nuisance provisions.

The siting of a snack van in this location is not a type of development that requires an EIA by The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017;

The application is not located within a flood risk area as defined by SEPA and therefore does not require a flood risk assessment.

The Shore Road car park is located adjacent to but is not within the Belhaven Conservation Area or within the part of Belhaven covered by Policy RCA1 of the adopted East Lothian Local Development Plan.

Whether there will be any customer demand for the snack van, the impact on other local businesses, the fact that the applicant will come from Musselburgh every day, the matter of visitors parking on North Road to avoid parking charges, the loss of a view from the windows of a neighbouring house, the type of food being sold not being healthy and the matter of the snack van being larger than that specified in the advert issued by Estates are not material planning considerations relevant to the determination of this planning application.

## **PLANNING ASSESSMENT**

Policy DC1 supports development in the countryside where it is for agriculture, horticulture, forestry, infrastructure or countryside recreation or other businesses that have an operational requirement for a countryside location, including tourism and leisure uses. Policy DC6 states that development proposed on the constrained coast will only be supported if it requires a coastal location. The siting and design of new development must respect the qualities of the particular coastal location.

Shore Road Car Park within John Muir Country Park is one of a number of large coastal car parks which are used by a range of visitors including families, surfers, horse riders, dog walkers and ramblers who wish to explore this part of East Lothian's coastline. It is therefore a popular coastal location within East Lothian. The proposed snack van is a business use that would serve visitors to the area who are participating in coastal and countryside activities based within this coastal area. Consequently the siting of the proposed snack van and the provision of food and drink from it would not be incompatible with this coastal location. Therefore, and as it would benefit and further the enjoyment of the visiting public, it is a use that would enable and enhance the attraction of John Muir Country Park as a popular tourist area. Consequently, the proposed snack van does not conflict with Policies DC1 and DC6 of the adopted East Lothian Local Development Plan 2018 or with the Countryside and Coast Supplementary Planning Guidance adopted by the Council in October 2018.

Policy DC9 of the adopted East Lothian Local Development Plan states that development within or affecting Special Landscape Areas will only be permitted where: (i) it accords with the statement of importance and does not harm the special character of the area or (ii) the public benefits of it would outweigh any adverse impacts and is designed, sited and landscaped to minimise such adverse impacts.

The Special Landscape Area Supplementary Guidance states that the Belhaven Bay Special Landscape Area has considerable scenic appeal, with a dynamic coastline changing from year to year, sometimes a wide expanse of sand, sometimes with channels cut by the sea. The Bay is heavily used in tourist marketing and marketing of businesses in this area and wider East Lothian. A considerable part of the tourist draw of beaches is in their landscape setting. In particular it states that recreation, both informal and formal is a key quality of this area. There are superb free outdoor recreational resources here, including the beaches and sea, and John Muir Country Park. Many of these rely for their appeal at least in part on their landscape setting. Furthermore, Belhaven Bay is a wide expanse of sandy beach backed by dunes, with considerable recreational value to families, surfers and other water sport participants.

In the guidelines for development within the SPG it states that any proposed development must not harm the coastal character and characteristic features of the area. It states that well sited small scale development to enable beach and other coastal recreation may be acceptable. Any proposed development must not harm views of the Belhaven Bay from Shore Road Car Park.

In accordance with the statement of importance of the Supplementary Planning Guidance on the Belhaven Bay Special Landscape Area the proposed snack van would be small in scale. It would facilitate and enable beach and other coastal recreation already taking place in this area of the John Muir Country Park. Furthermore, by being located within the southern part of the car park it would not encroach onto any undeveloped areas of the Belhaven Bay coast. Therefore the siting of the snack van would not harm the natural or scenic qualities of the area, harm the undeveloped character of Belhaven Bay, cause disturbance to areas not already in use as part of the busy Shore Road car park or harm the views of the Belhaven Bay from the car park. Consequently, the siting of the snack van would not harm the special qualities of the Belhaven Bay Special Landscape Area and would not conflict with Policy DC9 of the adopted East Lothian Local Development Plan 2018 or with the Special Landscape Areas Supplementary Planning Guidance.

Policy TC4 (Hot Food Outlets) of the East Lothian Local Development Plan 2018 states that proposals for hot food takeaways will be supported in town or local centres or designated employment areas provided they would not result in significant impacts on local amenity, including cumulatively with other existing or consented takeaways in the area, and are consistent with other relevant Plan policies, including in relation to parking and road safety. Mobile snack bars may also be permitted on suitable car parks or lay-by sites adjacent to main transport routes, subject to other Plan policies including consideration of visual and landscape impacts.

The proposed snack van would be positioned within the existing car park at Shore Road. Therefore the principle of siting the snack bar in this location is not contrary to Policy TC4. Furthermore, as so positioned the proposed snack van would be seen in relation to other motor vehicles using the car park. When seen in the context of that car park the proposed snack van would not appear harmfully out of keeping with its surroundings and would not harm the landscape character or visual amenity of the area. The proposal would also not result in more than one snack van operating in this car park.

The closest neighbouring residential properties to the application site are located to the east on the opposite side of Shore Road. By being located within the existing car park the proposed snack van would not cause overlooking of the rear gardens of neighbouring residential properties that would be any different to that already possible from the car park and from Shore Road. Therefore the siting of the snack van would not result in a loss of privacy to those neighbouring residential properties.

Due to its distance from neighbouring residential properties the siting of the snack van would not cause a loss of residential amenity through overshadowing.

**The Council's Environmental Health Officer** was consulted on this application. He advises that he has concerns that noise associated with the operation of any generator supplying power to the vehicle may impact on the impact of residential receptors. Therefore he requests that a condition be attached to any grant of planning permission that prevents generators being operated on site for the purposes of providing power to the proposed snack van. However, the applicant has confirmed that the snack van will use electric batteries and those will be the only energy source for the food van. Notwithstanding a condition will be attached to any grant of planning permission preventing the use of a generator. Subject to the imposition of that planning control the siting of the snack van would not give rise to a loss of amenity through noise nuisance to neighbouring residential properties consistent with Policy NH13 of the adopted East Lothian Local Development Plan 2018.

The Council's Environmental Health Officer did not raise any concerns in respect of smells from the snack van. A condition of the licence issued by East Lothian Estates is that there would no deep fat frying within the snack van. Therefore the siting of the snack van would

not give rise to a loss of amenity through odours or smell to neighbouring residential properties consistent with Policy.

On these considerations the proposed snack van does not conflict with Policies TC4, NH13 or DP2 of the adopted East Lothian Local Development Plan 2018.

**The Council's Biodiversity Officer** advises that the application site is within the Shore Road car park. She notes that the snack van would be located on an area of amenity grassland that is cut fortnightly and used as a car park. Grassland of this nature and with such frequency of use generally has limited bio-diversity value. The snack van will be temporary in nature and is small scale so is unlikely to result in a significant loss of habitat. She also adds that whilst the snack van would be very close (under 30m from) the Firth of Forth SPA and SSSI as noted above the proposal will not result in a significant loss of habitat and is unlikely to significantly increase disturbance levels (noise and recreational pressure) over and above what is currently experienced due to the very busy car park and water sports business located nearby. This proposal is therefore unlikely to result in significant effects on the Firth of Forth SPA and SSSI. Accordingly, the proposals do not conflict with Policies NH1, NH3 or NH5 of the adopted East Lothian Local Development Plan 2018.

**The Council's Principal Countryside Officer** advises that the applicant will be given a key to operate the existing metal gate in order to access and exit the application site. He also advises that the grass car park could be vulnerable to ground disturbance in wet weather, not just from the applicant's unit but also from visiting cars. However if it is wet he advises that there are means of managing this and if required measures would be put in place to prevent access from cars to that area of the grassed car park to minimise damage. Furthermore it would be prudent to attach a condition to any grant of planning permission requiring that the ground be repaired and restored at the end of the temporary consent.

On the matter of litter when granting planning permission for the siting of a snack van the Council as Planning Authority will generally impose a condition requiring that at least one litter bin be provided adjacent to the mobile snack van and that it shall be accessible to customers at all times whilst trading takes place. The normally imposed condition also requires that the area around the snack van shall at all times during trading and at cessation of trading each day, be kept free of litter and any other waste or refuse. It would be prudent to impose such a condition in this case. On top of this, **the Council's Estates Team Manager** advises that litter control will be covered in the lease and agreed in advance prior to the commencement of trading.

**The Council's Waste Services** also have no objection to the application stating that the applicant should be reminded that they are not permitted to use the coastal car parking bins to dispose of waste. The applicant would also need to set up a trade waste service with either ourselves or an external company.

In response the applicant has stated that recycling and general waste bins will be provided with self-closing lids. They also plan to litter pick and work with local community groups and the Council to prevent litter problems from occurring. They are also considering trialling innovative solutions such as a deposit return litter bags to prevent litter issues. The cutlery and packaging used by the food van would be compostable and consideration would be given on how to reduce waste, reuse, recycle and encourage customers to do the same.

Notwithstanding that planning permission is sought for the siting of the snack van on the application site throughout the year, there is no applied for limit on how many years this could be for. A mobile snack van, by its nature, is not satisfactory as a permanent use at the site. Therefore, it would be prudent for the Council, as Planning Authority, to allow the use

on a temporary basis only. A temporary permission for 1 year would allow the Council the opportunity to continue to review this use within the application site in the interests of safeguarding the landscape character and amenity of the area.

It would also be prudent to make the planning permission personal to the applicant and to limit the number of snack vans within this site to one, in order to safeguard against over-commercialisation. Furthermore, it would also be prudent to control, by condition, the hours of operation in accordance with those applied for and otherwise to ensure that litter bins be provided outside the snack van at all times whilst trading takes place, and that the area around the snack van be kept free of litter and any other waste or refuse at all times during trading and at cessation of trading each day. These controls can be made conditions on a grant of planning permission.

On all of the above considerations, and subject to the imposition of appropriately worded conditions, the proposed snack van does not conflict with Policies DC1, DC6, DC9, TC4, NH1, NH3, DP2 of the adopted East Lothian Local Development Plan 2018 or with the Special Landscape Areas Supplementary Planning Guidance.

**The Council's Road Services** advise that in terms of impact on the local road network the snack van is unlikely to be a "destination" in its own right and will more likely attract customers who are already using the car park or passing by Belhaven Bay on foot/cycle. Therefore the Council's Road Services does not anticipate that the proposed snack van will create significantly more additional vehicular movements to the Shore Road car park than already exists. Therefore as Shore Road is an existing car park accessed from an existing junction Shore Road and as no changes to the existing access or its associated junction are proposed through this application the Council's Road Services raises no objection to the application.

On all of the above, and subject to the imposition of that aforementioned condition, the proposed snack van would not be contrary to Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.

## **RECOMMENDATION**

That planning permission is granted subject to the following conditions:

- 1 Planning permission is granted for a temporary period of one year, beginning from the date of this grant of planning permission, and after which time all trading from the site shall cease and the mobile snack van shall be removed from the site and the grass area restored to its former condition to the satisfaction of the Planning Authority.

Reason:

To enable the Planning Authority to assess the environmental impact of the operation of this type of temporary use on the locality in the interests of safeguarding the landscape character and amenity of the area.

- 2 This permission is made personal to the applicant, Matsform Ltd and shall not be capable of being taken up by any other party.

Reason:

To prevent an over-commercialisation of the site in the interests of safeguarding the landscape character and amenity of the area.

- 3 No more than one mobile snack bar shall trade from the site at any one time.

Reason:

To prevent an over-commercialisation of the car park in the interests of safeguarding the landscape character and amenity of the area, and without detriment to the principle of the use of the car park for the parking of vehicles and the safe accessing and manoeuvring of those vehicles.



- 4 The mobile snack van hereby approved shall only operate during the hours of 0830 to 1630 from Tuesdays to Sundays from November to February and from 0830 to 1930 from Tuesdays to Sundays from March to October for the duration of its temporary siting, unless otherwise agreed by the Planning Authority.

Reason:

In the interests of safeguarding the landscape character and amenity of the area.

- 5 Two litter bins, each with a self-closing lid, shall be provided adjacent to the mobile snack van and shall be accessible to customers at all times whilst trading takes place. Prior to any use being made of the snack van details of the two litter bins, as well as a general strategy to minimise the impact of waste, shall be submitted to and approved in advance by the Planning Authority. The details shall show that one bin shall be used solely for recyclable materials and one bin shall be for general waste. The two litter bins shall thereafter be provided in accordance with the details so approved. The area around the snack van shall at all times during trading and at cessation of trading each day, be kept free of litter and any other waste or refuse. The bins and their contents shall thereafter be removed from the site and the site cleared from litter.

Reason:

In the interests of safeguarding the landscape character and amenity of the area.