

REPORT TO: Planning Committee

MEETING DATE: Tuesday 6 October 2015

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the List by Councillor McMillan for the following reasons: the original application was granted for a restaurant and hot food takeaway. To allow the building to be used solely as a takeaway changes the nature of the business and how it affects the town centre and neighbours. There has been much public comment and concerns that the business has operated as a takeaway from opening with detrimental effect on the town centre conservation area. I would wish the Committee to discuss this and the wider implications around PolicyENV2 as it might now be applied.

Application No. **15/00421/P**

Proposal Alterations and change of use of Shop (Class 1) use to hot food takeaway (Retrospective)

Location **81 High Street
Haddington
East Lothian
EH41 3ET**

Applicant Mr O Tildrim

Per Chalmers & Co

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

The premises that are the subject of this planning application occupy both the ground floor and the basement of a mid-terrace, three storey building located on the north side of Haddington High Street. The building is listed as being of special architectural or historic interest (Category B) and is within Haddington Town Centre and Haddington Conservation Area. To the east and north of the building are three-storey buildings and to the west is a two-storey building. The premises formally operated as a newsagent.

In October 2011 planning permission (ref: 09/00885/P) was granted for the change of use of the premises from a shop to a restaurant and hot food takeaway and for the installation of three louvre vent grilles on the rear (north) elevation of the building.

Following an investigation by the Council's Planning Enforcement service it was established that the premises had begun operating solely as a takeaway, in

contravention of planning permission 09/00885/P and therefore it was requested this situation be rectified by the operator of the premises by either applying for, and seeking planning permission to use the whole of the premises for takeaway use, or reverting to the authorised dual use the subject of planning permission 09/00885/P.

Planning permission is now sought retrospectively through this application for the change of use of the premises from a shop to sole use as a hot food takeaway and for associated works.

Through separate application 15/00421/LBC listed building consent is sought for alterations to the building.

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 Plan 2008.

Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DP6 (Extensions and Alterations to Existing Buildings), DP22 (Private Parking), ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas), ENV3 (Listed Buildings), ENV4 (Development within Conservation Areas) and R3 (Hot Food Outlets) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Scottish Planning Policy: June 2014.

Scottish Planning Policy echoes the statutory requirements of Section 59 of the Act requires 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 the building or its setting or any features of special architectural or historic interest which it possesses.

Scottish Planning Policy echoes the statutory requirements of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. It is stated in Scottish Planning Policy that proposed development that would have a neutral affect upon the character or appearance of a conservation area (i.e. does no harm) should be treated as one which preserves that character or appearance. The design, materials, scale and siting of new development within a conservations area should be appropriate to the character of the conservation area.

Four written objections to the application have been received. The main grounds of objection are that: (i) the proposed change of use would lower the tone of High Street, (ii) there are enough takeaways in Haddington, (iii) the premises is competition to other takeaways, (iv) the use of the premises leads to litter, noise, smells and people hanging around the street, and (v) the use may impact on the sale value of a neighbouring residential property. Additionally, one of the objectors raises concerns about private security.

The matter of private security and the affect of the proposal on property values are not material planning considerations in the determination of an application for planning application.

By being in Haddington Town Centre the premises are within an area defined by Policy ENV2 of the adopted East Lothian Local Plan 2008 as being of mixed use, in which uses appropriate to a town centre will be acceptable in principle. These uses include retail, business and office use, restaurants, leisure and entertainment. Policy ENV2 does not favour any one of these uses over another. Changes of use of retail units to other town centre uses will only be acceptable where the Council is satisfied that a retail use is no longer viable or the benefits of the proposed use to the viability and vitality of the area outweigh the loss of the shop. Proposals that would have a significant environmental impact, particularly on existing housing, will not be permitted.

Through the determination of previous application 09/00885/P it was established that the retail use of the premises is no longer viable. On this basis it would now be unreasonable for the Council to refuse to grant planning permission for the development on the basis that it has resulted in the loss of the shop use.

The hot food takeaway is a use appropriate to the town centre of Haddington. It is not be incompatible with the established mixed uses of the town centre. It is a town centre use supported by Policy ENV2 of the adopted East Lothian Local Plan 2008. It provides a service to the local community and by being in the town centre is centrally and thus conveniently located to the community. It contributes to the vitality and viability of the town centre. On these counts the change of use of the premises is not contrary to Policy ENV2 of the adopted East Lothian Local Plan 2008 and is consistent with national planning policy guidance given in Scottish Planning Policy: June 2014.

Policy R3 of the adopted East Lothian Local Plan 2008 supports the provision of hot food takeaways in town centres and other commercial areas subject to the criteria of the Policy being met, where applicable.

One criterion is for it to be demonstrated that the operation of a proposed hot food takeaway would not cause harm to local amenity and that in this consideration the cumulative effect of additional premises in locations already containing one or more hot food takeaways in close proximity will be relevant.

It is acknowledged that there are already several hot food takeaways in Haddington Town Centre. However, in their locations they are generally dispersed from one another. In the consideration of this application no evidence is presented through consultation on it or in public representation that approving the hot food takeaway use of the premises would, due to the location of the premises in the town centre and of the existing number of hot food takeaways result in a cumulative effect of hot food takeaway use harmful to town centre amenity.

A new vent grille and boiler flue have been installed on the rear elevation of the building to facilitate the use of the premises as a takeaway.

The Council's Environmental Protection Manager advises that any mechanical extract ventilation equipment used to vent the premises should be maintained to ensure their continued satisfactory operation and any cooking processes reliant on the extract system shall cease to operate if, at any time, the extract equipment ceases to operate. Such control can be imposed as a condition on a grant of planning permission.

The Environmental Protection Manager further advises that noise arising as a result of the premises should not exceed NR20 at any frequency when measured in any neighbouring residential property, assuming windows open 50mm. The Environmental Protection Manager states that following complaints regarding noise arising from the operation of the premises as a hot food takeaway due to the installed extract system, measurements made by Environmental Protection indicate that NR20 criteria is being exceeded within the residential property above the premises at Flat 1, 80 High Street and that this being taken up by Environmental Protection with the operator of the premises under Statutory Nuisance provisions. Therefore compliance with NR20 is controllable under legislation other than planning legislation. It is a principle of the planning system that its controls should not duplicate those of other legislation.

Subject to the above recommended control the hot food takeaway use would not have a significant adverse impact on the amenity of any neighbouring property and, in this, would be consistent with Policy ENV2 of the adopted East Lothian Local Plan 2008.

The applicant has not indicated intended opening hours for the hot food takeaway. In light of this and if planning permission is to be granted it would be prudent, in accordance with Policy R3 of the adopted East Lothian Local Plan 2008 to restrict the operation of the proposed hot food takeaway to the opening hours of between 7:30am and 12 midnight only.

On these considerations of amenity the hot food takeaway use of the premises is consistent with the requirements of Policies ENV2 and R3 of the adopted East Lothian Local Plan 2008 that town centre uses should not have a significant environmental impact, particularly on existing housing.

Police Scotland has been consulted on the application and have no comment to make on it.

Antisocial behaviour and litter matters are all controllable under legislation other than planning legislation.

The Council's Road Services advises that taking into account the parking requirements of the former use of the premises as a shop it is unlikely that the use of the premises as a hot food takeaway generates a materially greater parking requirement and, therefore no significantly greater impact on the parking situation in the town centre. Road Services raises no objection to the hot food takeaway use of the premises and on the matter of traffic impact it is not contrary to Policies DP22 or R3 of the adopted East Lothian Local Plan 2008.

The vent grille and boiler flue have been installed on the rear elevation of the building, which does not contribute positively to the special architectural or historic interest of the listed building. By its architectural form and backland location, neither does it contribute to the architectural or historic character of the Conservation Area. The vent grille and boiler flue are not visible from the High Street and are only be seen from within the enclosed private courtyard area to the rear of the premises. By virtue of their size, form, proportions, materials and positioning the vent grille and boiler flue are not harmful to the special architectural or historic interest of the listed building or the character and appearance of the Conservation Area.

The vent grille and boiler flue do not conflict with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies DP6, ENV3 or ENV4 of the adopted East Lothian Local Plan 2008 or with Scottish Planning Policy: June 2014.

CONDITIONS:

- 1 The mechanical extract ventilation equipment used to vent the premises shall be maintained to ensure their continued satisfactory operation and any cooking processes reliant on the extract system 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 hot food takeaway does not harm the amenity of nearby residential properties by cooking odours.

- 2 The operating hours of the hot food takeaway hereby approved (including the operation of machinery) shall only be between 7:30 am and 12 midnight on Mondays to Sundays inclusive.

Reason:

To safeguard the amenity of the area, including the amenity of neighbouring residential properties.