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PLANNING STATEMENT

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APPEAL TO THE REVIEW COMMITTEE AGAINST THE IMPOSITION OF CONDITION 1 IN THE GRANT OF APPROVAL FOR THE CHANGE OF USE FROM FORMER BANK(CLASS 2) TO FORM RESTAURANT (CLASS 3) AND HOT FOOD TAKEAWAY(SUI GENERIS), AT 100 HIGH STREET, TRANENT
APPLICATION REF: 17/01091/P

Background:

On 11th December 2017 application was made for the change of use of the premises at 100 High Street, Tranent from a bank (Class 2) to a restaurant(Class 3) with an ancillary hot food takeaway(sui generis).

The premises which previously were occupied by a branch of the TSB have been vacant for some time.

On 8th February 2018, consent was granted for the restaurant (Class 3) but consent was not granted for the small ancillary hot food takeaway(Sui Generis) and was confirmed in Condition 1 of the Decision Notice

This appeal is against the imposition of Condition 1, refusal to grant consent for the takeaway facility.

Assessment against policy:

In determining an application for planning consent, the proposal by law has to be assessed against the current approved development plan, in this case the East Lothian Local Plan 2008. In the context of the East Lothian Local Plan, the planning authority cite Policy T2 and claim that the proposed take away use would be contrary to that policy.

In determining an application the planning officer is required to produce a Report of Handling(ROH) which essentially explains the reasoning behind the decision, the policies and

guidance involved, the assessment of the proposal and the reasons why the proposal is at variance with the appropriate policies.

With reference to the Report of Handling the only party raising objection to the proposed development is the Council's Road Services and their objection relates solely to the takeaway element of the proposal and they claim that

" the proposed hot food takeaway would encourage parking in locations that could cause congestion and a hazard to pedestrians and other road users in a heavily trafficked area and would be contrary to Policy T2 of the adopted East Lothian Local Plan 2008"

Whilst the views of the Roads Service have to be given due consideration, in this case they amount to nothing more than a list of events which might happen if the application were approved. No substantive proof is offered and no evidence is produced which could verify the claims they are making. In the circumstances we do not believe that such objections are competent and can be founded upon in determining the application, and as such we consider the decision to refuse the takeaway element of the proposal to have no basis in law.

The councils views are based on the fact that as the site of the proposed restaurant is near a junction and is set on an extensive area of footpath that motorists will park on this extended area, then reverse back onto the roadway thereby potentially causing danger. We agree that such a scenario would be problematic, but given that anyone parking on the footpath will be breaking the law and be guilty of obstruction, this scenario cannot be realistically advanced as cause to refuse the takeaway. That would be akin to suggesting that there should be no jewellers shops as someone may try to break into them, or that no-one should be allowed a car as they may not maintain it.

It is not tenable to impose such a condition based solely on an action which is illegal in the first place. In essence the parking of vehicles on the footpath is not a planning matter but is a police matter and has to be dealt with through the appropriate legislation. It is not appropriate or desirable that planning legislation be used to address matters which are properly covered by other legislation.

Given that the proposed development is within a row of other properties all fronting onto the footpath, there is little to stop a motorist if so minded, from parking at any point on the footpath. As the entire length of the footpath and the extended area is delineated by bollards and the area immediately in front of both pends has traffic markings indicating that the roadway must be left clear it is apparent that parking in this zone is against the law.

Whilst we appreciate that notwithstanding these traffic conventions, a motorist may be inclined to park, is something which no amount of legislation can counter but cannot be used as a reason to deny the applicant the right to operate a small ancillary takeaway.

As detailed in the ROH this particular location is on an extended area of footpath designed presumably to provide some form of public space, yet that very same space is driven over by two existing uses, the motor garage and the funeral undertakers. Given that these two uses pre exist the formation of the public space it does rather question the merit of this space at this location when by virtue of these other uses the site cannot be made secure from motor vehicle penetration.

It is also alleged in the ROH that the Council's Road Service believe that the peak demand for takeaways starts at 5pm when pedestrian and road traffic is still high. In fact the peak time for takeaways is from 6.30 onwards when pedestrian and traffic volumes are much lower, so the argument that there will be conflict is unfounded.

With reference back to the aforementioned policy T2 and the requirement that new developments must have no significant adverse consequences for road safety, we agree entirely, however apart from describing a series of actions which may or may not happen and which are in any event against the law, no substantive evidence has been produced to support their claims.

Summary:

The application proposed a quality restaurant with a small takeaway facility, which in reality may be less than 20% of the overall trading area and would be subsumed within the Class3 designation.

In determining the application the planning officer has been influenced by the views of the Roads Service, which while mindful of the need to ensure public safety has nevertheless failed to provide any evidence to support their position. The views expressed are purely speculative and relate to a set of circumstances which may never happen and which if did happen would be a contravention of other traffic legislation and would be enforced through that legislation, not through planning legislation which is quite specific. It is not the role or function of planning legislation to address issues which are outwith the remit of that legislation. which is the case here.

In short the decision to refuse the takeaway element of the proposed development has no basis in law and should not have been imposed and we would therefore request that Condition 1 of the Decision Notice be removed.