

REPORT TO: Planning Committee
MEETING DATE: Tuesday 18 August 2020
BY: Head of Development
SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor Currie for the following reason: Given the large number of objections from local residents and the range of concerns expressed I believe that the Planning Committee would benefit from a site visit and considering the application in public by the full committee.

Application No. **20/00044/P**

Proposal Erection of drive-thru restaurant (fast food) (class 3) and associated works

Location **Land East of Inveravon Terrace
Olivebank Road
Musselburgh
East Lothian**

Applicant McDonald's Restaurants Ltd

Per Planware Ltd

RECOMMENDATION **Consent Granted**

REPORT OF HANDLING

PROPOSAL

This application relates to an area of land that comprises part of the access road to, and the northern part of the customer car park that serves, the Tesco supermarket, Musselburgh. It is to the south of the Tesco Petrol Filling Station.

The site is not located within Musselburgh Conservation Area but is within the defined Musselburgh Town Centre. The site is within the wider designated area of the Battle of Pinkie.

To the east of the site lies residential properties on Inveresk Road and the former Tesco supermarket site, for which approval of matters specified in conditions (ref: 16/01029/AMM) has been granted for the erection on that site of 140 flats, construction of which is underway. To the west of the site is Eskmills Bowling Club and amenity housing flats for elderly people. Musselburgh Grammar School lies some 280m to the southeast of the site

Planning permission is sought for the erection on the application site of a drive thru restaurant and for the formation of access roads and footpaths, an outdoor seating area and

play area, drive-thru canopies and customer order displays, car parking, cycle parking and hard and soft landscaping. Planning permission is also sought for works to the internal Tesco access road to facilitate the proposed development, including an upgrading of part of it to accommodate HGV vehicles as well as resurfacing works and altered road markings for the proposed amended road layout.

The proposed drive thru restaurant would be located on the western part of the site. It would be comprised of a single storey building, with a number of flat roofs at differing heights and would at its highest be some 5.8m in height. It would have a largely rectangular shaped footprint some 31m in length by some 13.5m in width. It would have a gross floor area of 413.4m² which would comprise the public dining area (101 covers), counter and a corridor leading to male/female/disabled toilets, and the non-trading part of the building comprising of the kitchen and service counters, an office, drive thru booths to the north (for payment and collection on the drive thru lane), a staff room, staff changing rooms, store, external store, freezer and chiller rooms and corral area (for waste management).

There would be 2 small associated outdoor seating areas and a small play area located to the side (south) of the building. The drive thru component would comprise a road that would run in an arc around the north and south sides, and west rear of the building, which includes the introduction of a fast forward lane, which will allow for a customer to pull forward to a third booth, if there is a small delay in their order, to allow the traffic flow to be retained through the drive-thru lane.

Access into the site would be from the existing internal Tesco access road, however to facilitate the proposed development a part of it would be upgraded and resurfaced, and altered road markings would be applied for the proposed amended road layout to allow for turning into the site.

The proposed layout includes a total of 30 car parking spaces to the east of the restaurant building which includes 2 disabled bays and 2 Grill Bays and the provision of 4 cycle stands with 8 cycle parking spaces. The applicant informs that additional parking is available within the main Tesco car park. Pedestrian access points are proposed on both the north and south side of the site, with the north access point connecting into the existing footpath network.

The site would be lit with ten 6m high pole mounted lights positioned around the car parking area and drive thru area as well as close to the site entrance.

The perimeter of the south and west sides of the site would be enclosed with a mix of 600mm and 900mm high close boarded fencing and the site landscaped. Four trees and some hedging would be removed to facilitate the proposed development.

It is intended that the proposed drive thru restaurant would operate 24 hours per day, 7 days per week. Servicing of the restaurant would be undertaken by a dedicated supplier, and would take place approximately 3 times per week, lasting between 15 - 45 minutes depending on the delivery required, with the deliveries taking place between 6am and 11pm.

It is anticipated that the proposed drive thru restaurant would employ 65 full and part time staff.

A Noise Assessment, Low and Zero Carbon Report, Odour Control Report, Travel Plan, Drainage Maintenance Plan, Flood Risk Assessment, Transport Assessment, Lighting Strategy, Air Quality Assessment and a Planning Statement & Planning Addendum have been submitted in support of the application.

The applicant's submitted Planning Statement & Planning Addendum informs that based on the assessment of all the low and zero carbon technologies, air source heat pumps are proposed to be used for the development as a preferred renewable and low carbon technology to meet the total heating, cooling and water demand of the building. In terms of construction, the environmental considerations for the new elements of the building and its fit out include the selective use of materials and modern methods of construction to reduce waste; the inclusion of building energy management systems and 100% green energy supply generated off site and installation of waterless urinals which save 150 million litres of water per year nationally. It continues that McDonald's is committed to using recycled materials wherever possible, throughout the business. In the UK, approximately 90% of McDonald's food packaging is made from renewable sources. Recycled paper and virgin fibres from certified sustainable forestry sources represent around 55% and 69% respectively of the renewable resources used. All of McDonald's napkins and cup carriers are made from 100% recycled paper. The majority of the boxes used to package hot food (such as Big Macs®, Filet-o-Fish®, Chicken McNuggets®, Apple Pies, French Fries, and Happy Meal® boxes) are made from 72% recycled fibres. Waste cooking oil from the restaurants is collected by delivery vehicles and later recycled as biofuel. This is then used in the delivery fleet, providing a carbon saving of around 8,200 tonnes per annum. By using larger delivery vehicles McDonald's can deliver to more stores in a single trip, reducing the frequency of return trips to the supply centre.

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 policies of SESplan relevant to the determination of this application. Policies TC2 (Town and Local Centres), DP1 (Landscape and Streetscape Character), DP2 (Design), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH5 (Battlefields), NH8 (Trees and Development Sites), NH11 (Flood Risk), NH12 (Air Quality), NH13 (Noise), T1 (Development Location and Accessibility), T2 (General Transport Impact) and DEL1 (Infrastructure and Facilities Provision) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of this application.

REPRESENTATIONS

160 written representations to the application have been received. Of these 157 object to the proposed development, 2 are in support of it and 1 neither objects to nor supports it.

The main grounds of objection can be summarised as follows:

- * Increase in traffic congestion and pollution in the local area as well as road and pedestrian safety impacts;
- * Impacts on air quality and noise and odour issues;
- * Impact of light pollution;
- * The proposed development would harmfully impact on the amenity of nearby residential properties and on recreational amenity;
- * Impact on existing businesses;
- * Impacts on diet and healthy eating, particularly to children given the site's proximity to Musselburgh Grammar School;
- * Increase in litter problems and seagulls;
- * Proximity to an existing McDonalds restaurant and other fast food outlets;
- * Increase in litter and anti-social behaviour;

- * Impact on Climate Change in terms of impact on air quality and car emission from congestion;
- * Impact on historic environment and in particular on the Category A listed building of Old Bridge;
- * Loss of parking within the existing car park;
- * Impacts on parking in the surrounding area;
- * Traffic modelling is inaccurate.

The objections on the grounds of anti-social behaviour and proximity to existing McDonalds restaurants are not material considerations in the determination of this application. Neither is the matter of commercial competition.

The grounds of support are that the proposal would create jobs, and that McDonalds restaurants recycle packaging, tidy up areas they are near, work with communities for charities and sponsorship, give back to communities more than they take from communities, are kids, babies and disabled friendly and are affordable for many struggling families.

COMMUNITY COUNCIL

Musselburgh and Inveresk Community Council object to the application on the following grounds:

(i) they have on previous occasions stated that traffic management is dreadful, and emissions are terrible in Musselburgh;

(ii) the traffic modelling undertaken by the applicant was carried out during lockdown and thus it can have no true relevance as the streets were all but deserted.

(ii) Musselburgh continues to be surrounded with new builds adding to the traffic congestion in the town. Work has begun on the old Tesco site (next door) to build 140 flats which will only add to the emissions;

(iii) East Lothian Council's Climate Change Strategy 2020–2025 was approved at the Cabinet meeting on 21 January 2020. Approval of this application would seem to be at odds with the Climate Change Strategy set out by the Council's commitment to tackling the Climate Emergency at a local level and the vision and overall aims for a 'Net Zero Council' and a 'Carbon Neutral East Lothian' over the next five years;

(iv) the site has two schools in close proximity and the Community Council have been inundated with concerns from families regarding this application.

It terms of the Community Council's comment that the applicant's traffic modelling was carried out during lockdown this is not accurate. The traffic impact calculations of the proposed development were inputted into the Council's commissioned East Lothian Transport Appraisal model, which was produced to inform the East Lothian Local Development Plan, and takes into account the implications of housing and economic land allocations of the Plan on the transport network.

PLANNING ASSESSMENT

Policy TC2 of the adopted East Lothian Local Development Plan 2018 states that within a town or local centre, uses that will be acceptable in principle include retailing, business and office use, restaurants, leisure and entertainment. Proposals that would have a significant environmental impact, particularly on housing, will not be permitted.

There is no requirement for the applicant to demonstrate a locational or market need for the proposed drive thru restaurant. By virtue of being within Musselburgh Town Centre the

principle of the proposed drive thru restaurant use is acceptable, provided the environmental impacts are acceptable and other policy requirements are met. Accordingly, the drive thru restaurant use of the site does not conflict with Policy TC2 of the adopted East Lothian Local Development Plan 2018.

The proposed development, by being sited on land comprising part of the existing Tesco car park and being situated between the Tesco supermarket building and its associated Petrol Filling Station and car wash, would be seen in the context of those large commercial buildings, and in the context of the nearby bowling club and Primary Care Centre, as well as existing and new residential buildings (when constructed). Also as a result of differing ground levels and the presence of existing buildings and structures, the proposed development would be relatively contained in views from Olive Bank Road. In such a locational context the proposed drive thru restaurant building, by its height and modern contemporary design would sit comfortably within its mixed use location. It would not by its architectural form, size or positioning appear as an incongruous or overly dominating feature within the wider area. Moreover, and with the addition of a proposed scheme of landscaping, the proposed building together with the associated outside seating and play area, car parking and drive thru canopies would be suitably contained within the site and would not appear overly conspicuous or incongruous. They would be appropriate to their location in terms of their positioning, size, form, massing, proportions and scale. Consequently they would not be harmful to the visual amenity of the area, including to the setting of the Musselburgh Conservation Area or to the setting of the river Esk and its embankment.

Due to its position within the Tesco car park and that the existing Petrol Filling Station would sit between the application site and the Old Bridge, the proposed development would not have any immediate visual relationship with the Category A listed Old Bridge, or any other nearby listed building that would result in harm to its setting.

On these matters of siting and design, and impact on the setting of Musselburgh Conservation Area and listed buildings, the proposed development would not be contrary to Policies DP1, DP2, CH1 or CH2 of the adopted East Lothian Local Development Plan 2018.

The Council's Public Health and Environmental Protection Officer advises the proposed development has potential to have a harmful impact upon existing sensitive receptors due to noise, on local air quality (in particular the nearby Air Quality Management Area in Musselburgh High Street) and has the potential for increased littering within the vicinity of the site. He also notes there is also a significant gull problem within the immediate vicinity with nesting gulls recorded at the bus depot, Eskmills Industrial Estate and at the nearby Tesco.

On the matter of noise the Public Health and Environmental Protection Officer has perused the applicant's submitted Noise Assessment. He advises that it has considered sources of noise that are under the control of the operator of the drive thru restaurant arising from fixed plant, noise from vehicle movements and deliveries and on assessment of it, the Public Health and Environmental Protection Officer is satisfied that normal operational noise arising from the proposed development will not result in a harmful loss of amenity to any neighbouring or nearby residential property or other neighbouring land use. However he does advise that noise arising from the use of the premises during operational hours could harmfully impact upon neighbouring amenity. Accordingly he recommends that:

- (i) noise associated with the operation of any associated plant and/or equipment should not exceed Noise Rating curve NR25 at any octave band frequency within any residential property. All measurements to be made with windows open at least 50mm;
- (ii) deliveries should only be permitted between the hours of 0700-2300 on any day;
- (iii) the proposed drive thru restaurant can be allowed to operate 24 hours a day 7 days a

week for a temporary period of 1 year. Thereafter operating hours should be restricted to between 0700 to 2300 hours on any day; this will allow the operation of the proposed drive thru restaurant to be monitored and any impacts upon local amenity to be assessed;

(iv) the use of the external seating/eating area and play area should be restricted to between the hours of 0700 to 2100 on any day.

The Public Health and Environmental Protection Officer advises that his recommendation to allow the operation of the proposed drive thru restaurant 24 hours a day 7 days a week for a temporary period of 1 year would allow the operation of it to be monitored and any impacts upon local amenity assessed. This can be made a condition of a grant of planning permission.

On the matter of lighting, the Public Health and Environmental Protection Officer advises subject to control over light spillage, which can be imposed as a condition on a grant of planning permission, there would no harm from the lighting of the site to the amenity of nearby residential properties.

On the matter of air quality, the Public Health and Environmental Protection Officer advises that the proposed development is anticipated to result in up to 541 customer vehicles visiting the premises daily, which is a significant number of additional vehicles given the proximity of the application site to the Air Quality Management Area (AQMA) in Musselburgh High Street, which is located approximately 230m to the northeast of it. Access/egress to and from the proposed drive thru restaurant would also be located at a junction where there is existing congestion.

The Public Health and Environmental Protection Officer has perused the applicant's submitted Air Quality Assessment (AQA), and advises it has considered the impacts on NO₂, P10 and PM_{2.5} against both long term and short term mean Air Quality Objectives and has due regard to relevant guidance and methodology. He advises that the AQA concludes that impacts upon air quality at sensitive receptors would not be significant, and he agrees with this conclusion. He advises that whilst it is acknowledged that additional traffic would have an impact upon queuing and reduce traffic speeds, the composition of the increased traffic would be from Light Duty Vehicles (passenger cars) which are less polluting than Heavy Duty Vehicles and buses. In addition, sensitive receptors are set back from the road and in an open setting that will facilitate dispersal of pollution. Furthermore, he advises that not all of the additional traffic generated would travel eastwards from the application site along Mall Avenue towards the AQMA on Musselburgh High Street. Finally, he advises that the composition of the road traffic by the proposed opening date in 2021 would have improved since the baseline year of 2018 with older, more polluting vehicles being replaced by newer vehicles and enhanced engine technology. On the basis of the above the Public Health and Environmental Protection Officer advises the proposed development would have no harmful impact on air quality nor on the objectives of the AQMA and in this regard would not harm the amenity of the area.

On the matter of litter, the Public Health and Environmental Protection Officer recommends that a litter management plan be submitted for the prior approval of the Planning Authority. This should include measures for the escape of waste from bins and the location, frequency and distance from the site of litter picks. Such a requirement could be imposed as a condition on a grant of planning permission.

The Public Health and Environmental Protection Officer advises that there is a significant local gull population with the following information on nests/numbers known as of 2018:

(i) Bus depot – 36 nests/pairs = 72 birds; each nest producing an average of 3 chicks per year or 108 chicks in total.

(ii) Eskmills Industrial Estate – 15 nests/pairs = 30 birds; each nest producing an average of 3 chicks per year or 45 chicks in total.

In addition to the above, Tesco also have nesting gulls but there is no information on the number of nests/pairs as Tesco carry out gull control using their own contractor. East Lothian Council carry out an annual gull control programme aimed at controlling the number of eggs/chicks, however the Council's Public Health and Environmental Protection service cannot use Statutory Nuisance provisions of the Environmental Protection Act 1990 to control wild birds and carry out the Gull Control under licence due to ongoing health and Safety concerns presented to the local population.

The Public Health and Environmental Protection Officer states that the proposed drive thru restaurant building has a number of flat roofs that could provide an ideal location for birds to nest. Accordingly, he recommends that a pest management plan be submitted for the prior approval of the Planning Authority, which could be imposed as a condition on a grant of planning permission.

Subject to the imposition of the above mentioned conditions the operation of the proposed drive thru restaurant would not cause a harmful loss of air quality, harm from pests or harm to the amenity of the occupants of neighbouring or nearby residential properties.

In relation to considerations of contaminated land issues, **the Council's Environmental Protection Officer** (Contaminated Land) advises that he has appraised the submitted Site Investigation Report submitted by the applicant and confirms that the reporting has been carried out in accordance with best practice guidelines and the relevant standards and there is no requirement for any further investigative works to be undertaken. He further advises that the investigation and assessments carried out have identified no risk to the proposed development from any on-site contaminants contained within the topsoil or made ground. He notes that there are indications of asbestos contamination on the site which will have to be taken into account, and that the gas monitoring and risk assessment carried out have identified the site as falling within a Characteristic Situation 2 meaning that gas protection measures will be required for the development.

In this regard the Environmental Protection Officer (Contaminated Land) advises that a Remediation Statement should be submitted detailing the measures to be implemented for the site and also confirming the validation procedures to be undertaken in order to verify these measures. On completion of the remedial works a Verification Report should be submitted confirming that all the remedial measures have been successfully carried out. This requirement can be secured through a condition attached to a grant of planning permission for the proposed development.

The proposed drive thru restaurant would be located sufficiently far away to ensure that there would be no loss of amenity through overlooking or overshadowing of any nearby residential property.

ON these considerations the proposed development is consistent with Policies DP2, NH12 and NH13 of the adopted East Lothian Local Development Plan 2018.

The advice from **the Council's Landscape Officer** is that there would be a loss of 5 young semi mature Rowan trees, and some small linear strips of ground cover planting to accommodate the proposed development. This planting was carried out as part of the planning approval for the Tesco store, and its loss must be mitigated. He advises that there are a number of trees between the northern boundary of the site and access route into the Tesco store along an embanked strip that will, in time, soften and semi screen the development from views into the site from the north. To integrate the proposed

development within the wider setting and mitigate the tree loss, the Landscape Officer recommends that a minimum of eight new small to medium sized tree species be planted within the curtilage of the development, new trees should comprise species with compact crowns such as Rowan (*Sorbus aucuparia* - streetwise) or similar approved, and be heavy standards 3.0 to 3.5m in height and 12 to 14cm in circumference when planted. The requirement of a scheme of landscaping can be made a condition on a grant of planning permission for the proposed development, in which case it is not contrary to Policy NH8 of the adopted East Lothian Local Development Plan 2018.

The Council's Waste Services were consulted on the application and raised no objection.

Sottish Water raise no objection to the application.

SEPA reviewed the information provided in this consultation and it is noted that the application site lies outwith the medium likelihood (0.5% annual probability or 1 in 200 year) flood extent of the SEPA Flood Map. They advise that the application site is not located within an area identified to be at risk of flooding, advising that Section 4.2 within the applicant's submitted Flood Risk Assessment indicates that finished floor levels are proposed to be 10.30mAOD. Review of LiDAR Data and the recent model outputs from the Musselburgh Flood Protection Scheme, indicates that the site is outwith the fluvial flood extent and a significant height above the River Esk. Therefore, SEPA raise no objection to the proposed development on flood risk grounds.

The Council's Flooding and Structures Manager raises no objection to the application, satisfied it would not be at risk from flooding.

As part of the application site lies within an area at high risk due to former coal mining, **The Coal Authority** have been consulted on the application. The Coal Authority advise that records indicate that part of the application site is within an area of possible shallow coal mining. At their request, the applicant has submitted a Phase I and Phase II Site Investigation Report. Having reviewed these, The Coal Authority considers that the content and conclusions of the Phase I and II Site Investigation Report are sufficient in demonstrating that there are no shallow coal seams likely to be present beneath the application site and no further works are considered necessary. The Coal Authority therefore raises no objection to the proposed development.

Historic Environment Scotland have been consulted on this application and they have raised no objection to the proposed development on the setting of the A listed Old Bridge. Nor do they have any comments to make in terms of impact of the proposals on the Battle of Pinkie Battlefield Site or on any other aspects of the Historic Environment.

At the request of **the Council's Road Services and Planning Service**, the applicant has undertaken a traffic network modelling exercise to predict the traffic impact on the local road network as a result of the proposed development, to be read in conjunction with the submitted Transport Assessment. The traffic modelling concludes that there would be no adverse impact on the operation of the local road network as a result of increased traffic arising from the use of the proposed development.

The Council's Road Services advise that they accept the conclusions of the traffic network modelling exercise, that the traffic impact associated with the proposed development would be minimal and there would be no adverse impact on the operation of the local highway network.

In terms of parking provision, Road Services advise that the submitted Transport Assessment concludes that the site location and demographic means that the maximum

parking demand at the proposed drive thru restaurant would be 28 spaces. Although up to 20 staff would be also be on-site at any one time, only 25% of them are expected to arrive by car (based on the applicant's experience at their other stores).

Road Services state that it is noted that there is a significant shortfall in the number of parking spaces being provided when compared to the Council's Parking Standards for a foodstore (Tesco) and a restaurant (proposed development) as detailed below:

Tesco:

Spaces required by ELC Parking Standards – 575

Maximum number of spaces in use currently – 209

Provision after completion of proposed development – 345

Proposed drive thru restaurant:

Spaces required by ELC Parking Standards – 50

Maximum number of spaces in use currently – 0

Provision after completion of proposed development – 30

However, Road Services advise that parking counts by the applicant on Friday 21st June 2019 were also taken and these actual counts are much lower than the Council's parking standards would require. The maximum number of spaces in use in the Tesco car park at any time on the observed days is 209. Road Services accept that this is representative of a normal busy day. The loss of parking in Tesco car park as a result of the proposed development would still allow a spare capacity of 136 spaces which would be ample for any peak shopping days, and still allow for staff use and overspill use from surrounding premises.

Road Services therefore advise that they are satisfied that there would remain sufficient parking in the Tesco car park to accommodate the demands of the Tesco store itself, any overspill from the proposed development and any overspill from surrounding uses and that the parking provision for the proposed drive thru restaurant is acceptable.

Notwithstanding the above, Road Services do object to the application on the grounds of lack of accessibility for non-car users. They state that there would be a significant number of pedestrian and cycle trips to the site, particularly from Musselburgh Grammar School and the town centre and these desire lines are not accommodated in the site layout. They further state that there are no good links to nearby bus stops or cycle routes.

However, Policy T1 of the adopted East Lothian Local Development Plan 2018 states that "New developments shall be located on sites that are capable of being conveniently and safely accessed on foot and by cycle, by public transport as well as by private vehicle". Policy T1 doesn't require separate walking and cycling routes or that they be the most direct route, only that sites are capable of being accessed, which the application site is. Pedestrians approaching from the north are able to access the site from Olive Bank Road, and enter the site from the north side, and those approaching from the south can enter at the ramp close to the Tesco entrance and then follow the path running directly up the centre of the Tesco car park to the site. Moreover the application site is within the defined Musselburgh Town Centre, and therefore the site is easily and safely accessible to non-car users and within proximity to bus stops.

Road Services advise that if planning permission were to be granted, they recommend that a revised Travel Plan be submitted to minimise private car trips and to encourage use of alternative modes of transport such as buses, cycling and walking.

In consideration of the above it is concluded that the proposed development is consistent with Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.

Policy DEL1 of the adopted East Lothian Local Development Plan 2018 states that new development will only be permitted where the developer makes provision for infrastructure required as a consequence of their development in accordance with Scottish Government Circular 2/2012 or any revision. Developer contributions will be required from all development proposals that meet or exceed the thresholds:

- * Proposals for 5 or more dwellings
- * Employment, retail, leisure or tourism proposals of 100sqm gross floor space or larger;

The exact nature and scale of developer contributions required in association with all relevant new development proposals, including windfall proposals, will be assessed on a case by case basis. In the case of employment, retail, leisure or tourism proposals these contributions would be limited to transport interventions, such as road or rail improvements.

In this instance due to the relatively small gross floor area of the development the contributions that would be required would be negligible. Therefore the Council's Road Services advise that no developer contributions are sought in this instance.

Many written objections are made on the grounds of the proximity of the proposed drive thru restaurant to Musselburgh Grammar School, and that such a facility promotes unhealthy eating and thus would lead to harmful health consequences.

The East Lothian Local Development Plan 2018 does not contain any policies restricting the location of drive thru restaurant facilities to a certain distance from schools, or any other educational establishments. Nor does it contain any policies relating to unhealthy eating or the health consequences of proposed developments. Thus, and in the absence of national guidance on health consequences of proposed developments, no significant weight can be given to these matters.

A recent planning appeal decision by a Scottish Government Reporter came to this same conclusion on the health impacts of a proposed drive thru restaurant. It is therefore concluded that there are no planning grounds to refuse this application on the proximity of the proposed development to schools, or on health grounds.

At its meeting on Tuesday 27th August 2019 the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on Tuesday 3rd September 2019 the Council's Planning Committee decided that a report on the actions to be taken to reduce the carbon emissions from the building and from the completed development should be required on relevant applications for planning permission. The applicant has submitted a Low and Zero Carbon Report advising that air source heat pumps are proposed to be used for the development as a preferred renewable and low carbon technology to meet the total heating, cooling and domestic hot water demand of the building, combined with use of 15m² of photovoltaic panels to reduce the overall carbon emissions by 16.10% compared to the notional building. The effective measures required to reduce carbon emissions will be secured through the subsequent building warrant process. In order to further reduce carbon emissions, it would also be prudent to require proposals for the provision of new car charging points and infrastructure for them. This could be secured by a condition imposed on a grant of planning permission for this proposed development.

RECOMMENDATION

It is recommended that planning permission be granted subject to the undernoted conditions:

- 1 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 2 A detailed schedule of materials and finishes and, if requested, samples of such materials and finishes for all components of the development, including ancillary structures, hard ground surfaces and boundary enclosures shall be submitted to and approved by the Planning Authority prior to the material and finishes being used in the development. The materials and finishes used in the development shall accord with the schedule and samples of them so approved.

Reason:

To enable the Planning Authority to control the materials, finishes and colour to be used to achieve a development of good quality and appearance in the interest of the visual amenity of the area.

- 3 The hours of operation of the drive thru restaurant hereby approved shall be 24 hours a day 7 days a week for a temporary period of 1 year only, which shall begin on the commencement of use of the premises. The date of commencement of use of the drive thru restaurant shall be provided in writing to the Planning Authority prior to it being open for business. Thereafter the hours of operation of the drive thru restaurant shall be restricted to between 0700 to 2300 hours on any day.

Reason:

In the interests of safeguarding the amenity of the occupiers of nearby residential properties.

- 4 Noise associated with the operation of the development hereby approved and from any associated plant and/or equipment shall not exceed Noise Rating curve NR25 at any octave band frequency within any residential property. All measurements to be made with windows open at least 50mm.

Reason:

In the interests of safeguarding the amenity of the occupiers of nearby residential properties.

- 5 There shall be no service delivery to the drive thru restaurant and no unloading or loading of service vehicles within the site outwith the hours of 0700 to 2300 hours on any day.

Reason:

In the interests of safeguarding the amenity of the occupiers of nearby residential properties.

- 6 The use of the external seating/eating area and play area of the drive thru restaurant shall be restricted to between the hours of 0700 to 2100 on any day.

Reason:

In the interests of safeguarding the amenity of the occupiers of nearby residential properties.

- 7 The design and construction of any artificial lighting within the application site shall take account of the guidance contained within Annex 1 to Appendix 2 of Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008. Accordingly, within an E3 Zone, i.e. Medium district brightness area such as small town centres or urban locations, the following criteria shall be met prior to any external lighting units becoming operational and thereafter shall be maintained:

(i) Light Trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 10 between the hours of 0700 to 2300 and shall not exceed 2 between the hours of 2300 to 0700.

Reason:

In the interests of safeguarding the amenity of the occupiers of nearby residential properties.

- 8 Prior to the commencement of use of the drive thru restaurant as hereby approved a Litter Management Plan shall be submitted to and approved in writing by the Planning Authority. The Litter Management Plan shall include details on:

(i) measures to prevent escape of waste from bins or other receptacles, including by birds or other animals;
(ii) location, frequency and radius of litter picks from the application site;
(iii) a location map showing the areas to be covered and boundaries of the Litter Management Plan; and
(iv) details on measures to be taken in event of complaints being received by the Planning Authority regarding litter arising from the proposed development.

All the measures identified in the approved Litter Management Plan shall be in place and fully operational for the opening of the drive thru restaurant to members of the public and shall continue in operation for the duration of the approved use, unless otherwise agreed in writing by the Planning Authority.

Reason:

In the interests of protecting the character and amenity of the surrounding area.

- 9 Prior to the commencement of use of the drive thru restaurant as hereby approved a Pest Management Plan shall be submitted to and approved in writing by the Planning Authority. The Pest Management Plan shall include details on measures to be taken to control or minimise any health and safety risks presented to members of the public due to gulls that may nest on the roof of the drive thru restaurant. This may include, but not be limited to, details of proofing measures to be taken to prevent or minimise nesting and measures to be taken to control nesting gull numbers.

All the measures identified in the approved Pest Management Plan shall be in place and fully operational for the opening of the drive thru restaurant to members of the public and shall continue in operation for the duration of the approved use, unless otherwise agreed in writing by the Planning Authority.

Reason:

In the interests of protecting the amenity of the surrounding area.

- 10 Prior to the commencement of development (and where risks have been identified), a detailed Remediation Statement shall be submitted to and approved by the Planning Authority which shall demonstrate that the application site is to be brought to a condition suitable for the intended use by the removal of unacceptable risks to all relevant and statutory receptors. The Statement should detail all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures.

Following completion of the measures identified in the approved Remediation Statement, a Verification Report shall be submitted to and approved by the Planning Authority prior to the commencement of use of the development hereby approved that demonstrates the effectiveness of the remediation carried out.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable prior to the occupation of any of the residential units.

- 11 A Travel Plan to minimise private car trips and to encourage use of alternative modes of transport such as buses, cycling and walking shall be submitted to and approved by the Planning Authority prior to construction commencing. Additionally the Travel Plan shall include details of the measures to be provided, the methods of management, monitoring, review, reporting and duration of the Plan.

Reason

In the interests of encouraging sustainable methods of transport.

- 12 Prior to the commencement of development a scheme of landscaping shall be submitted to and approved by the Planning Authority. This shall include a minimum of eight new small to medium sized tree species to be planted within the site, new trees should comprise species with compact crowns such as Rowan (*Sorbus aucuparia* - streetwise) or similar approved, and be heavy standards 3.0 to 3.5m in height and 12 to 14cm in circumference when planted.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in

the first planting and seeding season following the completion of the development. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation. No trees or shrubs, detailed in the approved landscaping plans to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority.

Reason:

In the interests of achieving an appropriate landscaped setting for the development.

- 13 Prior to the commencement of development, details of the provision of new car charging points and infrastructure for them shall be submitted to and approved in writing by the Planning Authority. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

To minimise the environmental impact of the development.