



## Appeal Decision Notice

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Decision by Euan McLaughlin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2372
- Site address: 102 Pilton Drive, Royston, Edinburgh, EH5 2HF
- Appeal by Trilogy (Leamington Spa) Ltd against the decision by City of Edinburgh Council
- Application for planning permission 21/04058/FUL dated 28 July 2021 refused by notice dated 17 December 2021
- The development proposed: Erection of coffee shop with drive-thru facility
- Application drawings: 173\_PL\_01\_Rev A Location Plan; 173\_PL\_02 Existing Site Plan; 173\_PL\_03 Proposed Site Plan; 173\_PL\_04 Proposed Building Plan and Elevations
- Date of site visit by Reporter: 29 April 2022

Date of appeal decision: 07 June 2022

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### Decision

I allow the appeal and grant planning permission subject to the four conditions listed at the end of the decision notice. Attention is drawn to the three advisory notes at the end of the notice.

### Preliminary matters

An application was made on behalf of the appellant for an award of expenses against the council. My decision on this application is included in a separate decision notice.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this case consists of the approved Edinburgh and South East Scotland Strategic Development Plan, June 2013 and the adopted Edinburgh Local Development Plan, November 2016. Parties have not drawn any policies from the strategic development plan to my attention. While the Local Development Plan is now more than 5 years old it is the most recent expression of council policy and remains part of the development plan.
2. The parties refer me to the following Local Development Plan policies, Des 5 Development Design – Amenity, Des 6 Sustainable Buildings, Des 7 Layout Design, Tra 2 Private Car Parking and Env 22 Pollution and Air, Water and Soil Quality.
3. The appeal site forms part of the Morrisons supermarket car park which sits on the north side of the A902 Ferry Road. It is located west of the petrol filling station and access would be taken from Pilton Road via the existing access road and roundabout. The surrounding area is mixed use. The proposal comprises of a single storey building centrally located in the site, with associated drive-thru and parking to the north.

4. Having regard to the provisions of the development plan, the main issues are, the impact on amenity and air quality, sustainable transport, road safety and parking.

#### Amenity and air quality

5. Policy Des 5 identifies a requirement for new buildings to meet the needs of occupiers with consideration given to the impacts on neighbouring properties. Permission will be granted where it is consistent with five criteria. The council does not identify any conflict with criteria b), c) and d). It is concerned that the development would adversely affect the amenity of neighbouring developments due to an increase in traffic and therefore fails to meet the requirements of criteria a). The appellant's Transport Appeal Statement states that the proposal would create up to 27 additional trips during Saturday at peak hour and that this is not considered a material increase. The council's Transport Consultation Response to the proposal finds that the additional vehicle trips are considered to be acceptable. I have no evidence before me that the additional level of traffic associated with the proposal would result in the detriment of neighbouring amenity.

6. I have also considered the impact of noise on neighbouring amenity. The appellant's Noise Assessment identifies that the nearest noise sensitive property to the site is Ferryfield House, a nursing home located to the northeast of the site. It concludes that the noise associated with the proposal would not cause a significant adverse impact and the council do not dispute this position. I find based on the proposal's location in an existing car park, next to a petrol station and busy thoroughfare that there is already some ambient background traffic and other noise. I do not identify that the proposal would be detrimental to neighbouring amenity on the basis of increase in traffic or noise. No other amenity concerns have been raised, and I find the proposal would accord with policy Des 5 a).

7. Criteria e) includes the requirement for the provision of cycle storage and the council determines that the proposal fails to integrate this into the design. I find that this requirement could be addressed through a suitable planning condition requiring the provision of cycle parking within the proposal site prior to commencement of operation. I have considered the council's suggested condition but have modified it to clarify the provision of short-stay cycle parking in line with the requirement of the Edinburgh Design Guidance 2017. On this basis I find that the requirements of policy Des 5 e) can be satisfied.

8. Policy Env 22 supports developments which do not have significant adverse effects for health, the environment and amenity. This reflects the requirements of Scottish Planning Policy. I do not consider that the council has provided any substantive evidence that the proposal would have an impact on air quality or amenity as a result of engine idling while patrons use the drive-thru facility. The appellant's have submitted an Air Quality Constraints and Opportunities Appraisal Statement with this appeal, and I note that this was not before the council when it made its decision. This includes that the site is not within an Air Quality Management Area and the local air quality is mainly influenced by existing road traffic emissions, from both Ferry Road and the local road network. This appraisal does not identify any significant effects on air quality as a result of traffic emissions related to the proposal. For the same reasons as above, I do not find that the proposal would be detrimental to neighbouring amenity or create significant noise pollution. I also find it would not have significant adverse impact in terms of air quality and the proposal would comply with Policy Env 22 Pollution and Air, Water and Soil Quality.

Sustainable transport, road safety and parking

9. Policy Des 6 b) requires that proposals incorporate features that will reduce or minimise environmental resource use and impact. The council only identifies that the proposal would not meet the requirements of criteria (v). This requires that proposals demonstrate measures to encourage the use of sustainable transport, particularly cycling, including cycle parking and other supporting facilities. I observed during my site visit that the site is located within the car park of the existing supermarket which already allows for accessibility by active travel modes. The main pedestrian access to the supermarket from Pilton Drive to the east provides a direct connection between the proposal and the wider pedestrian and cycling network. Segregated cycle lanes and a bus stop are located on Ferry Road directly south of the proposal.
10. I find that the proposal site already provides for accessibility by active travel modes and consider it accords with Scottish Planning Policy in supporting and encouraging the use of sustainable transport. I find that along with the provision of cycle parking, as identified above, the proposal would comply with Policy Des 6 b) (v).
11. The City Mobility Plan 2021 sets out the council's strategic approach to sustainable travel around Edinburgh. It seeks to increase the proportion of trips made by active and sustainable travel modes while also reducing harmful emissions from road transport. It categorizes Ferry Road as one of the busiest roads in the city. While the Plan does not specify a reduction in short car trips it seeks to reduce the use of private vehicles overall in preference for more sustainable modes of transport.
12. The council's key concern with this proposal appears to relate to the drive-thru element and not the principle of the coffee shop use itself. The appellant's Transport Statement estimates that 40% of the vehicular trips to the proposal will be from customers passing by, 40% will be linked to customers of the supermarket and 20% will be new trips. A separate assessment of other similar drive-thru's finds that only 8% of new trips are attributable with the remaining 92% being pass-by/linked trips. The council's appeal statement includes that the Transport Statement evidence is not robust enough but does not further expand on this position.
13. While I accept the provision of the drive-thru will add to the convenience of using the proposal I do not find there is any direct correlation between it and a significant increase in vehicular trips. If the drive-thru was not in place, customers could simply park in the car park and access the restaurant to place their order. The proposal allows for access from other sustainable modes of transport, so I do not consider that customers are required to use private vehicles when using the coffee shop. I do not consider that the proposal is contrary to the City Mobility Plan.
14. Policy Des 7 provides six layout design criteria which new development must meet. The council identify that the proposal is contrary to criteria c), e) and f). Criteria c) requires the layout to encourage walking and cycling and restrict traffic speeds while minimising conflict between pedestrians, cyclists, and motorised traffic. The proposal includes the provision of a direct connection to the existing pedestrian path network. Where this passes over the drive-thru lane it would be delineated with a zebra type crossing providing priority for pedestrians. On this basis I find the proposal would meet the requirements of criteria c). I also note that the council's Transport Consultation Response has not identified any specific safety concerns with the proposed site layout.

15. Criteria e) includes the provision of safe and convenient access and movement within and around the site, with particular regard to the needs of people with limited mobility and special needs. I observed that the existing path network around the site provides for those with limited mobility and special needs, with road crossings at grade level or drop kerbs in place to access raised pavements. Within the site all the paths and crossings appear to allow for ease of access and two disabled parking bays are provided within the proposal. I find the proposal would meet the requirements of criteria e).

16. Criteria f) requires the connection of pedestrian and cycle routes to the wider network. While I have identified that there are existing connections these can be strengthened. I consider that the council's suggested requirement for a direct access between the site and Ferry Road would help improve connectivity to the wider network and meet the requirements of criteria f). This requirement can be secured through a planning condition. Having considered the layout of the proposal I find that it would comply with Policy Des 7. I have considered the proposals against the requirements of the Edinburgh Design Guidance October 2017. Subject to the requirements identified above I find that the proposal would adhere to the principles of this guidance.

17. The non-statutory Guidance for Business 2021 provides guidance to assist businesses in preparing applications for a change of use. It states that in assessing planning permission regard will be given to the effect on amenity and potential road safety and parking problems. I have addressed the impact on amenity and road safety above. With regards to parking, Policy Tra 2 seeks to ensure car parking provided accords with council standards. The appellant's Transport Statement undertook an assessment of the existing supermarket car park and the impact of the proposed development on parking availability. It is identified that the proposal would reduce the overall level of parking by 51 spaces but at peak occupancy the car park would only be 43% full. It is concluded that there is sufficient parking available, and the council's Transport Consultation Response does not raise any concerns relating to parking. For this and the reasons set out above I find the proposal would meet the requirements of Policy Tra 2 and the Guidance for Business 2021.

#### Development Plan conclusion

18. My assessment above leads me to conclude that subject to the conditions which I attach to the consent there is no conflict with the development plan.

#### Other matters

19. I have considered the representations in full. I recognise that there is widespread support through both national and local policy for the reduction in private car use and I acknowledge concerns that the provision of the drive-thru would increase private car use. However, I have considered the proposal in line with the adopted Local Development Plan which does not place a restriction on drive-thru's. As above I also find there is limited evidence that the drive-thru element would directly increase the level of private car trips associated with the proposal.

20. The appellant states that 15 full and part time jobs will be created. In considering this proposal against the sustainable development principles of Scottish Planning Policy I recognise there would be economic benefits, but in any event, I have found that it is in compliance with the development plan.

21. The site is bounded by trees on its eastern and southern boundary. These are to be retained and I consider the council's suggested condition in relation to tree protection during construction is appropriate.

## Conclusion

22. For the reasons set out above, I do not identify any significant impact on amenity, air quality, sustainable transport, road safety and parking as a result of the proposal. I therefore conclude that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission.

*Euan McLaughlin*

Reporter

## Conditions

1. Notwithstanding the provisions of Part 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) or any subsequent order, the premises shall be restricted to Class 3 as specified by the Town and Country Planning (Use Classes) (Scotland) Order 1997 and shall not be used for any other purpose.

Reason: In order to consider the transport and amenity effect of any change of use.

2. Prior to the operation of the coffee shop and drive-thru, short-stay cycle parking shall be provided on site in accordance with cycle parking standards in the Edinburgh Design Guidance. A drawing showing the details of the number of spaces, location of the spaces and type of cycle parking racks shall be provided to and approved in writing by the council as planning authority.

Reason: To comply with the Edinburgh Design Guidance and to ensure adequate cycle parking is provided.

3. No development shall take place until the applicant has submitted, for approval in writing by the council as planning authority, details of a pedestrian link from Ferry Road to the entrance of the development hereby approved. The approved pedestrian link shall be completed prior to the opening of the development.

Reason: To improve pedestrian links to the development.

4. The trees on the site shall be protected during the construction period by the erection of fencing, in accordance with BS 5837:2012 "Trees in relation to design, demolition and construction".

Reason: In order to safeguard trees.

## Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).



## Claim for an Award of Expenses Decision Notice

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Decision by Euan McLaughlin, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-230-2372
- Site address: 102 Pilton Drive, Royston, Edinburgh, EH5 2HF
- Claim for expenses by Trilogy (Leamington Spa) Ltd against City of Edinburgh Council
- Date of site visit by reporter: 29 April 2022

Date of decision: 07 June 2022

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### Decision

I find that the planning authority has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

### Reasoning

1. Scottish Ministers' policy on expenses in planning appeals is contained in Circular 6/1990: Awards of expenses in appeals and other planning proceeding. It sets out the three conditions which would normally need to be met for a claim to be successful:

- A claim must be made at the appropriate stage in proceedings;
- The party against whom the claim is made (in this case, the planning authority) must have acted unreasonably; and,
- That unreasonable conduct must have caused the party making the claim to incur unnecessary expense.

2. The claim was made at the appropriate stage of the proceedings.

3. The appellant sets out three reasons why it is considered the planning authority has acted unreasonably. These are firstly that the planning authority have failed to support all seven of their reasons for refusal with technical, substantive, or justifiable evidence. Secondly that the planning authority, in pursuing their reasons for refusal, have failed to acknowledge the appellant's evidence that was submitted at the appeal stage to address the reasons for refusal (e.g., the Air Quality Constraints and Opportunities Statement and Transport Appeal Statement). And finally, that the planning authority has failed to have regard to other important material considerations in reaching their decision, such as job creation.

4. In considering the appellant's first reason, I am conscious that the report of handling recommended that the application be granted planning permission. However, the committee is not required to accept this recommendation in making its decision. In this case the report of handling did not provide an assessment of policy Env 22 which the committee identified the proposal failed to meet. Although I have come to a different

conclusion from the planning authority on its evidence, I find that the committee's decision and supporting reasons were based on matters of planning judgement which were directly related to the proposal. I therefore do not find that the planning authority has acted unreasonably in making and supporting the reasons for its decision.

5. Regarding the appellant's second reason for making the claim, the committee made its decision and supporting reasons for refusal based on the information before it at that time. This did not include the additional information included by the appellant within their appeal submission. On this basis, I do not find that the planning authority has acted unreasonably by not acknowledging or commenting on this additional evidence.

6. The appellant's final reason does not identify any other material considerations which were not considered by the committee apart from job creation. I note that the report of handling specifies that the proposal will contribute to the economy through the creation of jobs. Given this inclusion within the report of handling I would expect the committee to have considered this as part of its deliberations. I therefore do not find that the planning authority has failed to have regard to this aspect. In light of the above, I conclude that the planning authority has not acted unreasonably.

7. Overall, I conclude that the planning authority has not acted unreasonably, and the claim fails on the second test. In turn, I do not find that the appellant has incurred any additional unnecessary costs. Consequently, I find that an award of costs is not justified.

*Euan McLaughlin*

Reporter