

# Food and drink and other non-retail uses in Town Centres Supplementary Guidance





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## Food and Drink Supplementary Guidance

### 1. Introduction

**1.1** This Supplementary Guidance (SG) relates principally to policies TCR1 (*Town Centres*) and TCR2 (*Location of New Retail and Commercial Leisure Facilities*) within section 4.6 of the Midlothian Local Development Plan 2017 (MLDP). This document seeks to provide detailed guidance and clarity in relation to developments within Midlothian's town centres and developments which may affect or undermine the performance of those town centres.

**1.2** The abovementioned policies seek to protect and enhance Midlothian's town centres and the amenity and range of services provided to local communities. This document aims to provide a local context to national aspirations to support town centres whilst being realistic about the role town centres play in today's society, the facilities provided and how to respond to people's needs as town centres change as people's shopping habits evolve particularly in respect of the rise of online retail.

**1.3** While the main focus of this document is clarifying the aims, objectives and criteria of policies TCR1 and TCR2, applicants should be aware that all policies in the Local Development plan can apply to any proposal. This Supplementary Guidance should be read in conjunction with the Midlothian Local Development Plan and with other MLDP policies, in particular DEV2 (*Protection Amenity within the Built-Up Area*) and ENV18 (*Noise*).

### 2. Importance of Town Centres

**2.1** The National Planning Framework (NPF) and Scottish Planning Policy (SPP) emphasise that town centres are a key element of the economic and social fabric of the country. Town centres are at the heart of their communities and, if successful, can be hubs for a range of activities. At their best they are places which encourage economic development and social interaction. At their worst they stigmatise areas. It is important that town centres are supported and allowed to thrive in order to meet the needs of residents, businesses and visitors.

**2.2** Whilst the nature of the use of these areas may have changed from being predominantly retail hubs to a more holistic range of facilities, town centres remain places people visit and utilise and, therefore, their vitality and viability must be protected. They must be attractive in terms of the range of services they provide but also aesthetically pleasing, safe and welcoming places.

**2.3** Planning's role in town centres should be proactive and reasonably flexible, enabling a wide and diverse range of uses which bring people into these areas and by discouraging development which would harm them. Town centres, rather than being solely retail centres, should be hubs for social interaction, where there is a confluence of a range of sustainable activities. The planning system encourages a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening. A healthy town centre

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will encompass a varied mix of activities, including retail, commercial, leisure and community facilities such as health centres, hospitals and schools, along with an emphasis on town centre living. The integration of residential and other uses is important as this encourages active town centres throughout the day and evening. This combination of uses encourages people into town centres, creating a high level of footfall and vibrancy.

### 3. Protection of Town Centres

**3.1** The NPF and SPP adopt a town centres first approach which not only protects and enhances town centres but encourages local job creation. The town centres first principle applies to activities which attract significant numbers of people and footfall including shopping, commercial leisure uses, offices, community and cultural facilities, as well as the promotion of residential uses in these areas. The NPF, SPP and MLDP advocate sequential testing for developments of these uses, which ranks the preferred locations for these uses as follows:

- town centres (including local centres);
- edge of town centres;
- other commercial centres identified in the development plan; and
- out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

**3.2** The town centre first principle promotes an approach to wider decision-making which puts the health and vibrancy of town centres at the forefront of decision making for retail, some commercial and leisure uses. As the role of town centres has changed, with less emphasis on retail and more focus on providing a range of services, including community assets, this approach works with highlighting town centres as locations for a range of uses appropriate to such areas.

**3.3** The MLDP further clarifies the sequential approach by setting out a network of centres in Midlothian. The Council will apply the sequential approach with reference to the network of town centres, having regard to the expected catchment of the development. There are no regional or strategic town centres within Midlothian (as defined by the Strategic Development Plan for South East Scotland, [SESPlan]), therefore the Council's network of town centres is as follows:

Town Centre	Bonnyrigg, Dalkeith, Gorebridge, Loanhead, Mayfield, Newtongrange, Penicuik, Shawfair
Commercial centre	Straiton Commercial Centre
Potential out of centre location	Main corridor from Gorebridge/Redheugh to Newtongrange

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Local Centres	Danderhall, Bonnyrigg/Hopefield, Bonnyrigg/Poltonhall, Dalkeith/Thornybank, Dalkeith/Wester Cowden, Dalkeith/Woodburn, Eskbank Toll, Gorebridge/Hunterfield Road, Bilston, Penicuik/Edinburgh Road, Roslin and Pathhead
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**3.4** The creation of retail and commercial leisure facilities outwith town centres must comply with policy TCR2 of the MLDP. As a town centre first sequential test applies, applications for such development outwith town centres must demonstrate this will not undermine the vitality and viability of town centres within the expected catchment of the proposed development. Retail Impact Assessments will be required for all proposals of more than 2,500 square metres gross floor area, and also smaller proposals where the Council is of the view these may pose a threat to existing centres.

**3.5** Where new development gives rise to a need, the local development plan gives scope for the Planning Authority to secure measures which will mitigate specific adverse impacts in terms of local infrastructure. Opportunities to improve town centres are set out in the settlement statements within the MLDP, however other measures may be brought forward during the lifetime of the plan and this Supplementary Guidance.

### 4. Identifying Town Centres

**4.1** The physical extent of the town centres and the commercial centre at Straiton, set out in the network of centres, are identified on the maps attached to the MLDP, including within the settlement statements. Each town centre has its own distinct character and range of services.

**4.2** The town centres serve needs arising in Midlothian, primarily. Dalkeith is Midlothian's administrative centre, and attracts shoppers from across the county. The other centres are more localised in scale.

**4.3** The role of the commercial hub at Straiton is to accommodate development serving the regional catchment. It is envisaged that Straiton may acquire the characteristics of a traditional town centre through diversification of uses and local residential growth.

**4.4** Local centres vary in size. Should clarity be required in connection with identifying the extent of local centres this can be advised by the Planning Authority.

### 5. Principles

**5.1** The Scottish Government's *Town Centre Action Plan*, which was its response to the *National Review of Town Centres* carried out by an External Advisory Group in 2012, sets out six key themes to support town centres:

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- Town Centre Living: To encourage more people to live in town centres;
- Vibrant Local Economies: To support sustainable economic growth and promote job creation;
- Enterprising Communities: Community led regeneration supported by local people;
- Accessible Public Services: Encouraging the location of public services in town centres;
- Digital Towns: Supporting the delivery of digital towns to enhance opportunities for town centres and businesses;
- Pro-active Planning: Undertake town centre health checks which assess the strengths, weaknesses and resilience of a town centre.

### 6. Town Centre Health Checks

**6.1** Scottish Planning Policy highlights the importance of monitoring the vitality and viability of our town centres. Regular review of the network of centres, development activity and a town centre's performance are all parts of the monitoring process, which includes Town Centre Health Checks. The purpose of these health checks is to assess the strengths, vitality, viability, weaknesses and resilience of Midlothian's town centres. These are a means of assessing the state of these areas and can provide a sound information base to identify any future actions in forthcoming local development plans. The results of these checks can also inform other action plans.

**6.2** The TCHC pulls together a range of information from a wide range of sources and presents this under a list of indicators for each town centre. These are carried out every two years involving planning, transportation and economic development officers.

**6.3** There is potential for these TCHCs to inform future guidance to support improvements in hard to adapt areas of town centres. The undertaking of TCHCs can contribute to a clear agenda for poorly performing town centres.

### 7. Trends in retailing

**7.1** Fluctuations in the performance of the national economy and the rise in online retailing are changing the way town centres function. The increase in internet shopping is likely to continue and impact on retailing within town centres. Therefore, the service offered by retailers in town centres will need to diversify. The Council will support diversification which enhances the vitality and viability of town centres. The Council will also encourage the utilisation of technological advances, such as town centre wifi, to support town centres.

### 8. Health

**8.1** The Council is concerned regarding the impact that unhealthy lifestyles are having on the health and wellbeing of local communities. While the Council is committed to addressing the matter of protecting open space and places for exercise, through separate Supplementary



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Guidance, it is also necessary for the Council to consider the impact of unhealthy eating and diets on its communities. Unhealthy eating, a poor diet and being overweight has a significant impact on health. People who are overweight have a higher risk of developing type 2 diabetes, heart disease and certain cancers. Being overweight can also affect self-esteem and mental health. The Council recognises that hot food takeaways and mobile takeaway vans are a contributing factor to unhealthy diets, particularly where they are located in close proximity to schools.

**8.2** In 2014 the Scottish Government's publication *Beyond the School Gate* recognised that the food environment around schools has an important role in promoting a healthy diet and addressed the matter of the role of the planning system in restricting particular food outlets. Where the Council can make planning decisions which positively affect the health and wellbeing of its communities it should do so. The proximity of schools to proposed hot food takeaways is a material planning consideration in the assessment of applications. Other Local Authorities have experienced similar issues regarding hot food takeaway units near schools and have introduced Supplementary Guidance to address these concerns. The use of such guidance in assessing applications have been supported in case law.

### 9. Delivery

**9.1** This SG provides a detailed position statement to set out a framework for assessing applications for food and drink and other non-retail uses within and outwith town centres, neighbourhood centres and other related developments. The majority of the provisions of this SG will be delivered through the Planning Authority's assessment and determination of planning applications in compliance with the development plan.

**9.2** However, that can only be a contributing factor in promoting and protecting town centres. The range and complexity of factors which influence the health of town centres also requires actions by many other public and private sector stakeholders through various economic and other levers.

### 10. Guidance on Topics

#### 10.1 Food and Drinks in Town Centres

**10.1.1** Food and drink uses, including hot food takeaways, and other class 3 uses generally positively contribute to the vitality and viability of town centres, adding to the vibrancy of these areas throughout the day and into the evening. Consequently there is a general presumption in favour of these operations being located within town centres. However, these types of uses can result in a number of undesirable impacts for neighbouring properties and the surrounding area in general. These problems can include increased noise levels, disturbance, smell, litter and traffic generation, particularly out with normal shopping hours. Specific requirements relating to food and drink operations are provided below:

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### Hot Food Takeaways

**10.1.2** Hot food takeaways will not be permitted in premises where there are residential properties on the floor or floors above or immediately on either side, and on the floors above such adjacent properties. The only exception to this is where it can be demonstrated that the hot food takeaway will have no adverse impact on neighbouring residential amenity.

**10.1.3** Consideration will be given to the cumulative effect of additional hot food takeaway establishments on the vitality and viability of the town centre. The dominance of any one use in town centres could have a detrimental impact on their health and character. Planning permission will not be granted if this is assessed to be seriously harmful to the surrounding town centre. Hot food takeaways in town centres will not be supported where 50% or greater of ground floor commercial units within 100 metres of the unit are in use as hot food takeaways. Applicants will be expected to provide details of the uses of all units within this catchment of the application site as a supporting statement submitted with their planning application (See Appendix 2 - Submission Requirements).

**10.1.4** Planning permission will also not be granted for hot food takeaways where these would cause significant harm to residential amenity or to the general environment of the area as a result of noise, disturbance or smell. A number of these issues can be mitigated to an extent, however careful consideration will be given to the location and the impact that the hot food takeaway use could have on the surroundings. Careful consideration needs to be given to the impact of litter in such proposals.

**10.1.5** Planning permission will not be supported where it would present a threat to road safety, for example by encouraging illegal or inconsiderate parking or on-street parking at a dangerous location. These types of uses can generate considerable levels of traffic and so road safety is a significant issue. It is likely that in town centres there will be sufficient on and off-street car parking nearby, particularly since the busiest times for such uses tend to be in the evenings when other businesses may be closed.

**10.1.6** Hot food takeaways are generally expected to open late into the evening and play a part in the mix of uses to support town centre vitality throughout the day and into the evening. In general terms, where hot food takeaways are considered acceptable they will be restricted to opening hours of no later than 10pm on Sundays and midnight on other days.

**10.1.7** Any external alterations for hot food takeaway shops, including any external flues or other ventilation equipment, must not be detrimental to the character and appearance of the building and the surrounding area (see section 10.1.13).

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### Hot Food Takeaways in Proximity to School Premises

**10.1.8** The Council is concerned that the proximity of hot food takeaways to secondary schools encourages school pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale, from shops, of unhealthy foods to school pupils. However, it is reasonable and appropriate for the Council to prevent provision of new premises (including temporary vehicles/structures) and the change of use of premises to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a primary or secondary school.

### Class 3 Uses (Restaurants, Café, Snack Bars, etc)

**10.1.9** Planning applications for class 3 uses, (food and drink as defined in the Town and Country Planning (Use Classes)(Scotland) Order 1997), for the consumption of food and drink on the premises will be considered on their individual merits, taking the following factors into account: the size of the proposed establishment; the relationship to adjoining uses particularly residential properties; its likely traffic generation and parking provision; and, its acceptability in terms of other relevant planning policies of the MLDP.

**10.1.10** In order to encourage vibrant town centres and encourage use by the public throughout the daytime and evenings, the opening hours of these uses can match those recommended for hot food takeaways, unless there are particular amenity reasons to restrict the hours (Refer to Appendix 2 for Submission Requirements for such applications).

**10.1.11** Conditions will be imposed, as appropriate, restricting the hours of opening of the premises; requiring the provision of adequate ventilation equipment; or otherwise as necessary to ensure that the use does not have an adverse environmental impact on its neighbourhood.

**10.1.12** Such proposals may include an element of takeaway trade provided that it remains clearly ancillary to the principal use of the premises for the consumption of food and drink on the premises. This is unless they fall within the 400m 'no hot food takeaway buffer' around primary and secondary schools or there are other material planning concerns which require there to be no takeaway element, such as road safety.

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### Guidance for all Food and Drink Uses

#### Ventilation

**10.1.13** An effective system for the extraction and disposal of cooking odours will be required for all such uses where the method of cooking is likely to cause smell or fumes. Details of the proposed system will be expected to be submitted with the planning application so that both its effectiveness and any external visual impact can be considered. Extract ventilation systems must:

- Be located in order to minimise the visual impact on the streetscene;
- Be of a colour, finish, design and material to be in keeping with the building it is attached to;
- Terminate at a level to permit the free disposal of exhaust fumes;
- Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open; and
- Prevent the emission of cooking odours likely to cause nuisance to neighbouring properties.

**10.1.14** Where ventilation systems are required, they will be implemented before the use commences on site. Particular consideration should be given to ventilation systems where the site is within a conservation area or comprises a listed building (refer to MLDP policies ENV19 and ENV22).

#### Noise

**10.1.15** Food and drink uses have the potential to create noise and disturbance in their immediate vicinity, either from equipment or hours of operation. Effective noise management must be undertaken to ensure these uses do not have a detrimental impact on the surrounding area (see MLDP policy ENV18), which will include the following:

- No amplified music or sound reproduction equipment used will be audible either within or at the boundary of any nearby residential or noise-sensitive properties, depending on the site;

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- The design and installation of any ventilation system, plant or equipment will be such that any associated noise complies with specified noise ratings as required for the individual site; and
- The design and installation of any ventilation system, plant or equipment will be such that there will be no structure borne vibration within any living apartment of adjoining property, depending on the site.

### Litter/Refuse

**10.1.16** Food provision uses, particularly hot food takeaways, can result in littering and issues over refuse storage. In order to ensure a satisfactory standard of amenity and to safeguard the appearance of the Town Centre, the Planning Authority may require the provision of a litter bin located at the front of any premises with a takeaway element. The applicant will be required to demonstrate through the submission of a litter management plan that negotiation has taken place with the Council regarding the positioning, maintenance and provision of a bin to the satisfaction of the Council for all food and drink premises hereby approved.

**10.1.17** Details of the location and type of refuse storage facilities are required to ensure there will not be a detrimental impact on the character or amenity of the area or neighbouring uses.

### Parking

**10.1.18** Food provision units must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where this would present a threat to road safety.

**10.1.19** Details of the submission requirements for Food and Drink Uses can be found in Appendix 2.

## 10.2 Other Non-Retail Uses in Town Centres

**10.2.1** It is clear that retail uses play an integral part of successful town centres. However, as shopping habits evolve the role of the town centre has also changed, as have people's expectations of their town centres. Town centres must now focus on a variety of uses and services, attracting footfall, in order to remain relevant.

**10.2.2** The town centre first principle encourages activities which attract significant numbers of people including shopping, commercial leisure uses, offices, community and cultural facilities. The promotion of residential properties in town centres can add to the variety which improves the vitality of the centres, including in the evenings. This combination of uses

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would attract and maintain visitors whilst complementing a constant retail element. Town centres should promote diversity through the range and quality of facilities provided, although a retail core should be retained.

**10.2.3** The Council seeks to maintain a sustainable level of retail within town centres whilst also supporting other appropriate uses in order to enhance the vitality of these areas. The change of use of shops to non-retail uses in town centres will be supported provided the proposal:

- demonstrates to the satisfaction of the Council that there is no realistic prospect of a site continuing in retail use (see Appendix 2 Submission Requirements);
- protects or enhances the level of footfall through the submission of information detailing the likely number of customers per day, such as through the submission of existing and projected footfall to the site;
- will lead to an improvement of the image and vitality of the town centre;
- will not result in 50% or greater of ground floor commercial units within 100 metres of the site being in low footfall level use; and,
- retains an active street frontage.

**10.2.4** The Council will generally expect a retail unit to have been vacant and marketed for no less than 12 months (or 18 months if the unit is a significant Class 1 unit, such as a large supermarket) before it can be demonstrated that there is no realistic prospect of it continuing in retail use and be considered for a low level footfall use. This level of information is not necessary where retail units are proposed to be changed to other high footfall uses.

**10.2.5** Acceptable high footfall uses in town centres could include: class 2 including financial, professional or other services which are provided principally to visiting members of the public; food and drink provision uses; pubs; hot food takeaways; hotels; non-residential institutions; leisure; and community uses. Where such change of uses are acceptable, the street frontage must remain active through the use of windows.

**10.2.6** Residential accommodation within town centres is also encouraged as this will help the vitality and viability throughout the day and into the evening. The Council welcomes residential properties above commercial units and within town centres, but not at the expense of commercial uses. The conversion of ground level retail space to residential uses will not be supported as this would detract from the range of services offered within the town centre. It is also the case that the Planning Authority will resist the change of use of high footfall commercial uses to residential at ground level unless it can be demonstrated that there will be no adverse impact on the vitality and viability of the town centre. Careful consideration

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must be given to the amenity of proposed occupants to ensure that this would not be detrimentally affected by neighbouring uses. The creation of flatted dwellings, in premises immediately adjacent to, but unrelated to, operational hot food takeaways are unlikely to be supported as these are likely to be detrimentally affected by smell, noise and disturbance from the established use. Applicants must demonstrate that upper floors or basements are not required for storage or offices in terms of retaining viable commercial operations in town centres.

**10.2.7** The impact that non-retail uses would have on the surrounding town centre must be assessed and considered to be acceptable otherwise such uses may not be supported. A number of specific uses are addressed elsewhere in this SG, however in general terms any proposed use will be required not to have a detrimental impact on the amenity or environment of surrounding properties and occupants in terms of noise, smell or disturbance. These uses must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where there would be a threat to road safety.

### 10.3 Changes of Use and Permitted Development Class 1 and 2

**10.3.1** The Town and Country Planning (Use Classes)(Scotland) Order 1997 allows for the change of specific uses to others without the requirement for planning consent, unless conditions restricting the change of use have been attached to any permission. Class 2 uses (e.g. banks, estate agents and beauty salons) and class 3 uses (e.g. cafes) can generally change to class 1 uses (retail) as permitted development. However, all other changes of uses generally require planning permission. The Council, as Planning Authority, is restricted in the control it can exercise over some operations, e.g. there is little that can be done by the planning authority where there is a perceived oversupply of one particular type of shop (such as charity shops) as these fall within the same planning use class as other retail operations.

**10.3.2** Over recent years, concerns have been expressed by the Scottish Government and the Council about the number of pay day lending and betting shops in town centres. The impact that these uses would have on the character and amenity of the town centres and the wellbeing of communities have been cited as the main reasons for concern.

**10.3.3** The Scottish Government amended the abovementioned Use Classes Order to remove betting shops and pay day lenders from Class 2 and created a new Class (13A) for these. Planning permission is now required for such change of use which allows the Council the opportunity to assess the impact these would have on the vitality and viability of town centres, as well as preventing clustering which may affect the range of services in the town centre.

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**10.3.4** Any applications will be assessed in accordance with the criteria previously stated, including: if the proposed use would significantly reduce the range of services offered in the town centre; would lead to the concentration of a particular use to the detriment of the town centre's vitality and viability; assess the contribution the proposed use would make to the vibrancy of the town centre by increasing footfall; and if the unit affected by the proposal has been vacant and suitably marketed for retail or other appropriate use. Details of marketing should be submitted in line with the details required in relation to Appendix 2 for 'Applications for the change of use from retail to other uses'.

### 10.4 Prevention of Overprovision and Clustering of Particular Uses in Town Centres

**10.4.1** Successful town centres are those which provide a variety of services and attract a high amount of footfall. A balance must be struck in order to ensure that a healthy mix of uses are provided rather than the over provision of particular services and the weakening of the town centre. It is important that the variety of uses provided within town centres does not detract from the primary retail function, the loss in shops to the detriment of local residents or the vitality or viability of town centres.

**10.4.2** Applications for hot food takeaway, betting shops and pay day lender uses will be refused where they would result in a significant over-concentration which would have a detrimental impact on the vitality and viability of town centres. Retail uses form part of healthy town centres and it is expected that there be one retail unit for every 100 metres of commercial units in a town centre area.

**10.4.3** As detailed in the previous section the Council, as Planning Authority, is restricted in the control it can exercise over some operations and the overprovision concerns these create. For example, there is little that can be done by the planning authority where there is a perceived oversupply of one particular type of shop, as these fall within the same planning class as other retail operations and do not require planning permission to change occupants provided these remain retail units.

### 10.5 Food and Drink Provision Outwith Town Centres

**10.5.1** Not all food and drink uses are provided within town centres. Some food and drink uses aim to serve more local communities. It is appropriate to locate some element of food and drink provision in local centres in the interests of sustainability and convenience and to encourage small scale business. Local centres form a legitimate part of the network of centres and, therefore, it is appropriate to site food and drink uses in these areas. However, food and drink uses will not be permitted outwith the areas identified in the local centres as defined in the MLDP unless it has been demonstrated that there will be no adverse impact on the viability of nearby town centres or where the development is required in order to support an existing business, e.g. a café supporting a farm shop or a tourist destination. Such applications should be accompanied by a Town Centre Impact Assessment. However, the local planning



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authority can exercise its discretion not to request such an assessment where an application is submitted for the change of use of a high footfall use to a food and drink use, where there is no reasonable prospect of the original use being retained.

**10.5.2** Despite there being general support for food and drink uses in local centres the Council is concerned that the overprovision of some uses will adversely affect the range of services in these areas and, in turn, also impact on their vitality. Therefore, development proposals will not be permitted for food and drink uses (including hot food takeaways) in local centres where they will result in 50% or more of the units in the local centre being in a food or drink use (including hot food takeaway). These uses will be permitted in local centres where the applicant provides details to show the change of use will not result in 50% or more of ground floor commercial units within 100 metres of the site being in food and drink use, as well as compliance with the above criteria.

**10.5.3** As with the section on hot food takeaways in town centres the Council is concerned that the proximity of hot food takeaways to secondary schools encourages pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale of unhealthy foods to school pupils from shops. However, it is reasonable for the Council to prevent the change of use of premises to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400metres of the curtilage of a primary or secondary school.

**10.5.4** Food provision units must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

**10.5.5** The Council does not support major retail development (e.g. proposals of more than 2,500 square metres gross floor area) anywhere other than in town centres, the Straiton commercial centre or the potential out of centre location on the A7 between Gorebridge and Newtongrange.

**10.5.6** Guidance for all food and drink uses can be found in sections 10.1.14 to 10.1.20 of this Supplementary Guidance and submission requirements in Appendix 2.

### 10.6 Drive-Through Units (Restaurants and Other Services)

**10.6.1** By their nature drive-through units are unlikely to be located within Midlothian's town centres, which are relatively small and intimate with little opportunity to accommodate the scale of these developments without significant land clearance and disruption. Town centre locations are unlikely to fit with the business models of drive-through unit operators, who seek to maximise on convenient accessibility for vehicles. Therefore, planning

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applications for drive-through units are likely to fail to satisfy the town centre first approach. Drive-through units represent a valid and important part of the provision of food and drink and other facilities in the contemporary landscape of our towns and cities.

**10.6.2** However, there is potential for drive-through units to have an adverse impact on other commercial units within nearby town centres. Planning applications must be accompanied by a sequential assessment in accordance with the 'town centre first approach' and information to demonstrate that proposed drive-through units will not undermine the vitality and viability of nearby town centres.

**10.6.3** Where drive-through units have been demonstrated to not undermine the vitality and viability of nearby town centres there will be scope to support their development in the built-up area adjacent to the strategic road network. Drive-through units will not be permitted on established or committed economic development land unless specifically supported by the policies of the MLDP.

**10.6.4** Proposed drive-through units must comply with the terms of policy ENV17 (Air Quality) of the MLDP, which states that further assessment to identify air quality impacts would be required where the Council's Environmental Health service and the Scottish Environment Protection Agency considers it requisite. The Council's statutory duties in relation to monitoring air quality are undertaken by the Council's Environmental Health service who would be consulted as part of any planning application for drive-through units.

**10.6.5** Planning applications for drive-through units must demonstrate that the matter of littering has been fully considered by the applicant. Planning permissions for these uses are likely to include a planning condition which will require details of the extent of the area around the site where litter is to be picked.

**10.6.6** Drive-through units must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where the development would present a threat to road safety. Submission requirements in connection with drive-through units can be found in Appendix 2.

### 10.7 Petrol Filling Stations

**10.7.1** Petrol filling stations could be acceptable depending on their location. Ancillary retail units may also be acceptable, however this would depend on the scale of the retail unit proposed. If these retail operations are large and not ancillary to the petrol filling station they are likely to have an adverse impact on nearby town centres. Therefore any retail units associated with proposed petrol stations must not have a gross floor area larger than 100 square metres. The Planning Authority would have to assess any larger shops to assess the impact of these and if this is considered detrimental to nearby town centres they will not be permitted.

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**10.7.2** Petrol filling stations, with an acceptable ancillary retail element, must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

### 10.8 Public Houses

**10.8.1** Public houses can have an important role to play in town centres and can positively contribute to the range of uses, including community space and generally contribute to a more vibrant evening economy.

**10.8.2** Applications for new public houses will only be permitted where it is demonstrated that these would not have a detrimental impact on the character or amenity of the surrounding area and residents, as per policy DEV2 of the MLDP. Particular care must be taken where there are residential properties in the surrounding area.

**10.8.3** Planning applications which would lead to the loss of a public house from a town centre must demonstrate that the premises are no longer viable as a public house and that the replacement use will either protect or enhance the vitality and viability of the town centre by providing a facility with similar opportunities for social interaction.

**10.8.4** Over recent years the Council has been asked to consider planning proposals which relate to the consumption of alcohol in industrial units, ancillary to established breweries. Whilst the breweries themselves are generally acceptable in industrial estates, the creation of public houses or events space in these areas raises a number of concerns, including the compatibility of an increased number of pedestrians and members of the public within active and successful industrial estates. In addition, the scale of some of these operations are such that they could undermine the viability of public houses within town centres and elsewhere. Development will not be permitted where it will have an adverse impact on town centres, or where there is a risk to pedestrian safety.

**10.8.5** Public houses must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

### 10.9 Concession Shops and Units

**10.9.1** The Council has previously supported concession stores selling non-garden related items within the grounds of garden centres. Future applications may be supported where evidence demonstrates they would not undermine the success and vitality of nearby town centres and the proposal is in compliance with policy TCR2 of MLDP. If these retail operations are large and not ancillary to the garden centre they are likely to have an adverse impact on nearby town centres. Therefore any concession shops and units associated with garden centres must not have a gross floor area larger than 100 square metres. Planning applications

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should be accompanied by: information to demonstrate that the applicant has investigated sites within town centres and why these have been discounted; information to demonstrate that the proposed use would not undermine the vitality and viability of nearby town centres; and details of parking provision and likely traffic generation.

**10.9.2** Concession units within large retail units, e.g. superstores, are becoming more common. These operations generally do not require planning permission, provided the units are ancillary to the store within which they are sited. The Council expects that these concessions will only be accessed from within the host store and will operate wholly within the larger store. Where planning permission is required, these should comply with policy TCR2 of MLDP.

### 10.10 Pod/Container Retail Units

**10.10.1** There has been a proliferation of applications across the country for individual pod/container retail units within retail parks or adjacent to superstores. These units are generally for class 1 uses, such as barbers, key cutters and watch and shoe repairs, and are essentially temporary structures or containers with improved finishing materials.

**10.10.2** These proposals are generally of a size which would be expected and appropriate within town centres and are therefore contrary to the town centre first approach. These also could have an adverse impact on the related retail park/unit.

**10.10.3** The Council considers concession stores units within larger retail units an appropriate alternative to the provision of standalone retail pods or containers. These would be within retail units which have been assessed in terms of related policy with the impact on town centres addressed.

**10.10.4** Any applications for pod or container retail units should be accompanied by a sequential test and details to demonstrate that all options within nearby town centres are exhausted before proposing such uses at Straiton Commercial Hub or superstores. A report must be submitted with applications to demonstrate there are no vacant or available commercial units of a size, or indeed other sizes, appropriate for the proposed retailer within nearby town centres. Any other supporting information will be considered, including the applicant's business strategy or operations. The cumulative impact of such proposals on retail parks or superstores will be assessed to ensure that there is no detrimental impact on these areas which are designated and defined to contain larger retail units or town centres.

**10.10.5** The Council also has concerns over the visual impact these units would have as these are generally structures which would not be acceptable on a long term basis. Where the principle of siting a pod/container is acceptable it is likely that the Council will restrict the approval of these pods/units for a period of three years in order to allow the applicant sufficient opportunity to prepare a more suitable permanent solution which respects the amenity and character of the surrounding area.

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### 10.11 Pop Up shops and other temporary commercial activities

**10.11.1** Pop up shops can be an effective way of bringing vacant units within town centres into use for short term periods. Such uses are becoming more common in town centres and are examples of how the role and function of these have changed, encouraging more flexibility for these areas as well as support for smaller businesses.

**10.11.2** Planning permission for these is not required where no change of use takes place. Where permission is required, these will generally be supported provided they are not to the detriment of other uses in town centres or are outwith town centres or undermine the town centre first approach. Although this will encourage flexibility of town centres, it should be ensured that these do not detrimentally affect the long term use of units which may improve the vitality and viability of the town centre.

### 10.12 Alfresco Eating

**10.12.1** Outdoor eating and drinking areas can create an active and lively atmosphere in town centres. Planning permission is not always required for such areas but there are occasions where developers will need to submit planning applications for change of use. Applications shall include details: of the extent of the outdoor eating area; any proposed furniture; any proposed barriers; the hours of operation; and confirmation if furniture and barriers are to be removed on a daily basis. The Council will support alfresco eating areas in the following circumstances:

- Where they are associated with, and immediately adjacent to, established food and drink premises;
- Where there will be no significant adverse impact on the amenity of neighbouring residents or businesses as a result of noise and disturbance; and
- The proposal does not impede disabled access or significantly reduce the capacity of pedestrian routes.

### 10.13 Farmers' Markets

**10.13.1** Open air markets are a popular way of diversifying town centres and creating a vibrant shopping experience. Proposals for open air markets and farmers' markets will be permitted provided that:

- They are located within a town centre;
- They contribute to the viability and vitality of the town centre;

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- The amenity of any property, especially dwellings, is not adversely affected to a significant degree; and
- The site can be easily accessed by both vehicles and pedestrians, and parking provision for traders and customers is adequate.

### 10.14 Mobile hot food takeaways

**10.14.1** The casual or temporary parking of a mobile hot food takeaway vehicle is not likely to be development and, as such, will unlikely require planning permission. Where a mobile unit becomes 'static' planning permission may be required and in these cases they will be subject to the same restrictions as other hot food takeaway proposals.

### 10.15 Community Projects, Stalled Spaces and Vacant Land

**10.15.1** The Council will encourage community projects in town centres. Town centres are generally easily accessible by different members of the community and are well placed to provide services and facilities to people in need.

**10.15.2** There are relatively few vacant spaces within Midlothian's town centres. However, the Council encourages the early development and use of these places in order that they contribute fully to the health and wellbeing of the towns. Such proposals would be considered on a case by case basis to assess the impact on town centres and compliance with policy.

### 10.16 Events and cultural activities

**10.16.1** The Council will encourage flexible spaces within town centres. These spaces could be utilised for different cultural events and exhibitions, thereby enhancing the vitality of Midlothian's towns. Such proposals would be considered on a case by case basis to assess the impact on town centres and compliance with policy.

### 10.17 Urban Realm

**10.17.1** While other Supplementary Guidance is focused on creating quality of place and good placemaking it is also relevant to provide some general guidance in this document regarding the Council's support for improvements of the urban realm of Midlothian's towns.

**10.17.2** Where opportunities arise, pavement areas within town centres should be widened in order to create safe and pleasant pedestrian areas. This will also allow flexibility with regards to the use of areas for different purposes in the interests of encouraging a vibrant atmosphere.

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**10.17.3** Signage, barriers and other street furniture can result in excessive clutter in town centres. They can impede pedestrian routes and restrict disabled access. The proliferation of street clutter does not contribute positively to the physical environment of town centres and the Council will support measures to reduce unnecessary street furniture.

**10.17.4** While some street furniture negatively impacts on the character and appearance of an area other features can be positive and encourage people to come to town centres. Features such as benches, street trees and planting contribute positively to the town centre environment.

**10.17.5** Scotland is expected to experience more extreme weather conditions as a result of global warming. It is important that town centres are welcoming places, serving the needs of their communities, whatever the weather conditions may be. There is scope for development proposals to incorporate features to accommodate different conditions, such as the installation of canopies, recessed doorways and surface water management.

**10.17.6** Roller shutters can create an unattractive and intimidating atmosphere in some commercial areas. The Council will not support the installation of external box-housed roller shutters within town centres or neighbourhood centres. If it has been demonstrated that roller shutters are essential these must be internally installed in a stretcher bond design, to allow some visibility through the shutter to maintain an active street frontage.

**10.17.7** Where there are numerous empty units within a town centre these can have a significant adverse impact on the character and appearance of an area. A common solution to this issue is to install temporary shopfronts within the premises. These temporary shopfronts can act as an advertisement, showing what businesses could achieve by moving in to the unit.

**10.17.8** In an effort to encourage people to come in to town centres and stay for a while, contributing the vibrancy of the area the Council will encourage the installation of town centre wifi.

## Food and Drink Supplementary Guidance

**Appendix 1 - MLDP Policies****Policy TCR 1****Town Centres**

Proposals for retail, commercial leisure development or other uses which will attract significant numbers of people, will be supported in Midlothian's town centres, provided their scale and function is consistent with the town centre's role, as set out in the network of centres and subject to the amenity of neighbouring uses being preserved.

Change of use from retail will only be permitted if the subsequent use is one which contributes positively to footfall in, and the vitality of, the town centre\* and subject to the Council being satisfied that the proposals are acceptable in terms of the amenity, environment, traffic and parking arrangements of the town centre, with reference to the relevant Supplementary Guidance (paragraph 4.6.4).

Conversion of ground level retail space to residential uses will not be permitted. The conversion of upper floors to housing and the formation of new residential space above ground-level structures in town centres is supported.

Proposals for open air markets will be supported in Midlothian's town centres provided the amenity of neighbouring uses and the functioning of the road network is not adversely affected.

\* Acceptable uses in this regard would be: financial, professional or other services which are provided principally to visiting members of the public; premises where food and drink is consumed; pubs; hot food takeaways; hotels; non-residential institutions; premises for assembly and leisure; or other 'one of a kind' uses which contribute to the objective.



## Food and Drink Supplementary Guidance

### Policy TCR 2

#### Location of New Retail and Commercial Leisure Facilities

The Council will apply the sequential approach set out in this policy with reference to the network of centres, as described in Table 4.1, insofar as it relates to locations within Midlothian and having regard to the expected catchment of the development.

#### Development in town centres

Proposals must accord with policy TCR1 above.

#### Development at Straiton Commercial Hub

Within Straiton Commercial Hub, as identified on the Proposals Map (and including site Ec3, where proposals are in accordance with a site masterplan to be agreed with the Council), proposals for new retail and commercial leisure development, or extensions to existing facilities, will be supported in principle provided that:

- A. there are no alternative sites in or on the edge of Edinburgh City Centre (where the proposed development has an anticipated catchment from across the city region); OR there are no alternative sites in, or on the edge of, Dalkeith town centre (where the proposed development has an anticipated catchment wholly or predominantly within Midlothian);
- B. they address a quantitative or qualitative deficiency within the catchment;
- C. they do not, either individually or cumulatively with other developments, undermine the vitality and viability of regional, strategic or other town centres, within the expected catchment of the proposed development; and
- D. they are accompanied by measures to improve the environmental quality of the commercial hub and its accessibility by public transport, walking or cycling.

#### Out of centre location for retail development

The Council will support retail development at an out of centre location in the corridor from Gorebridge/ Redheugh to Newtongrange as indicated on the settlement statement maps. This should be of a primarily convenience nature, and may be in the form of a new town centre for Redheugh. It should be demonstrated that any specific proposals do not (either individually or cumulatively with other developments) undermine the vitality and viability of town centres within the expected catchment of the proposed development.

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The Council does not support major retail development at any other out of centre locations.

### **Local centres and neighbourhoods**

Proposals to change the use or redevelop existing shopping facilities within local centres and neighbourhoods will only be supported where their loss can be justified. New shopping facilities (up to a scale of 1,000 square metres gross floor area) will be permitted within local centres, provided they do not undermine the vitality and viability of any of Midlothian's town centres. Elsewhere within the built-up area, such facilities will be supported where new housing developments are not adequately served by existing centres. Any such development should not have a negative effect on the amenity of the adjoining residential area, including traffic and parking considerations.

## **Policy DEV2**

### **Protecting Amenity within the Built-Up Area**

Development will be permitted within existing and future built-up areas, and in particular within residential areas, unless it is likely to detract materially from the existing character or amenity of the area.

## **Policy ENV18**

### **Noise**

The Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or require to be modified so that no unacceptable impact at sensitive receptors is generated. Applicants may be required to carry out a noise impact assessment either as part of an Environmental Impact Assessment or separately. Where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.

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### Appendix 2 - Submission Requirements

Applications for hot food takeaways should be accompanied by the following:

- Details of the proposed hours and days of operation;
- Details of the proposed ventilation system;
- A litter management plan, including details of areas of refuse storage;
- Details of the uses of all ground floor commercial units within 100 metres of the application site; and
- Confirmation if the applicant or their immediate family or an employee working at the proposed hot food takeaway owns and occupies any residential properties on the floor or floors above the application site, and on the floors above such adjacent properties.

Applications for Class 3 Uses should be accompanied by the following:

- Details of the proposed hours and days of operation;
- Details of any proposed ventilation system;
- Details of the types of foods to be sold from the unit;
- Details of the proposed cooking apparatus;
- If there is to be a takeaway element to the proposal;
- If so, details of the expected percentage of customers eating the unit and taking away food;
- A litter management plan, including details of areas of refuse storage; and
- Details of a litter bin to be positioned at the front of the site.

Applications for the change of use from retail to other uses should be accompanied by:

- Details of how long the unit has been vacant;
- Details of how this has been marketed, including signage, medium, frequency and if target marketing has taken place;
- Details if there have been interested parties and for what uses/purposes; and
- Details of the hours of operation for the proposed use.

Applications for drive-through units should be accompanied by:

- Information to demonstrate that sites within town centres have been investigated for the use and reasoning why these have been discounted;
- Information to demonstrate that the proposed use would not undermine the vitality and viability of nearby town centres;
- Details of parking provision and likely traffic generation, which may include a Transport Assessment; and
- Details of any proposed litter picking proposals.

## **Appendix 3 - Relevant Documents**

National Planning Framework 2014

Scottish Planning Policy 2014

The Town and Country Planning (Use Classes)(Scotland) Order 1997

The Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016

The Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (Amended 2014)

Adopted Midlothian Council Parking Standards



## COMMUNICATING CLEARLY

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如有需要我們樂意提供翻譯本，和其他版本的資訊與刊物，包括盲人點字、錄音帶或大字體。

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ਅਸੀਂ ਮੰਗ ਕਰਨ ਤੇ ਖੁਸ਼ੀ ਨਾਲ ਅਨੁਵਾਦ ਅਤੇ ਜਾਣਕਾਰੀ ਤੇ ਹੋਰ ਰੂਪਾਂ ਵਿੱਚ ਪ੍ਰਕਾਸ਼ਨ ਪ੍ਰਦਾਨ ਕਰਾਂਗੇ, ਜਿਨ੍ਹਾਂ ਵਿੱਚ ਬਰੇਲ, ਟੇਪ ਜਾਂ ਵੱਡੀ ਛਪਾਈ ਸ਼ਾਮਲ ਹਨ।

Körler için kabartma yazılar, kaset ve büyük nüshalar da dahil olmak üzere, istenilen bilgileri sağlamak ve tercüme etmekten memnuniyet duyarız.

اگر آپ چاہیں تو ہم خوشی سے آپ کو ترجمہ فراہم کر سکتے ہیں اور معلومات اور دستاویزات دیگر شکلوں میں مثلاً بریل (تایپا افراد کے لیے) بھرے ہوئے حروف کی لکھائی میں، ٹیپ پر یا بڑے حروف کی لکھائی میں فراہم کر سکتے ہیں۔