

NOTICE OF REVIEW

(LOCAL DEVELOPMENT – DECISION BY APPOINTED PERSON)

This Form is for a review by the West Lothian Council Local Review Body under Section 43A(8) of the Town and Country Planning (Scotland) Act 1997 in respect of decisions by the appointed person on local development applications.

The review will be conducted under the Town and Country Planning (Schemes of Delegation and local Review Procedure) (Scotland) Regulations 2008.

Please read and follow the accompanying West Lothian Council Local Review Body Guidance Notes when completing this form. Failure to supply all the relevant information or to lodge the form on time could invalidate your notice of review.

Use BLOCK CAPITALS if you are completing the form by hand.

PART A	APPLICANT'S DETAILS	Name <u>DONNYS CARPETS</u> Address <u>WHITBURN ROAD</u> <u>BATHGATE</u> Postcode <u>EH48 2HR</u> Telephone No. (1) <u>01506 885928</u> Telephone No. (2) _____ Fax : _____ E-mail : [REDACTED]
	REPRESENTATIVE (if any)	Name <u>DAN HENDERSON</u> <u>DEVELOPMENT & ENVIRONMENTAL SERVICES</u> <u>LIMITED</u> Address <u>HOLLY COTTAGE BRAEFACE ROAD</u> <u>BONNYBRIDGE</u> Postcode <u>FK4 1UE</u> Telephone No. (1) [REDACTED] Telephone No. (2) [REDACTED] Fax : [REDACTED] E-mail : [REDACTED]
Please tick this box if you wish all contact to be through your representative.		<input checked="" type="checkbox"/>
Do you agree to correspondence regarding your review being sent by e-mail? * YES/NO		

PART B	APPLICANT REF. NO.	<u>0281/FUL/18 (& 0282/A/18)</u>
	SITE ADDRESS	<u>DONNYS CARPETS, WHITBURN ROAD,</u> <u>BATHGATE, WEST LOTHIAN</u> <u>EH48 2HR</u>
	DESCRIPTION OF PROPOSED DEVELOPMENT	<u>CHANGE OF USE FROM INDUSTRIAL</u> <u>(CLASS 5) TO SHOP (CLASS 1)</u> <u>IN RETROSPECT</u>
	DATE OF APPLICATION	<u>30-03-2018 (VALID 6-04-2018)</u>
	DATE OF DECISION NOTICE (IF ANY)	<u>09-10-2018</u>

Note:- This notice must be served on the planning authority within three months beginning with the date of the decision notice or, if no decision notice was issued, from the date of expiry of the period allowed for determining the application.

Type of Application (please tick the appropriate box)

Application for planning permission (including householder application)	<input checked="" type="checkbox"/>
Application for planning permission in principle	<input type="checkbox"/>
Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)	<input type="checkbox"/>
Application for approval of matters specified in conditions	<input type="checkbox"/>

PART C	TYPE OF REVIEW CASE
Refusal of application by appointed officer	<input checked="" type="checkbox"/>
Failure by appointed officer to determine the application within the period allowed	<input type="checkbox"/>
Conditions imposed on consent by appointed officer	<input type="checkbox"/>

You must state, in full, the reasons for requiring a review of your case. You must also set out and include with your application all the matters you consider require to be taken into account and which you intend to raise in the review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

State here the reasons for requiring the review and all the matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. **You may also submit additional documentation with this form of which ten copies must be provided.**

PROVIDED IN FULL IN SEPARATE DOCUMENT

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

* ~~YES~~/NO

If yes, you should now explain why you are raising new material, why it was not raised with the appointed officer before, and why you consider it should now be considered in your review.

	<p><u>NOT APPLICABLE</u></p> <p><u>WHILST THE MATTERS RAISED ARE NOT</u></p> <p><u>NEW THEY ADDRESS MATTERS IN CONSIDERABLY</u></p> <p><u>MORE DETAIL BECAUSE THE HANDLING</u></p> <p><u>REPORT AND DECISION NOTICE ARE</u></p> <p><u>NOW AVAILABLE AND REVEAL</u></p> <p><u>FUNDAMENTAL SHORTCOMINGS IN HOW</u></p> <p><u>THE APPLICATION(S) HAS BEEN HANDLED</u></p>
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List of documents and evidence

Please provide a list of all documents, materials and evidence which you wish to submit and rely on in your review. **Ten (10)** copies of these documents, materials and evidence must be lodged with this notice. If necessary, this can be continued or provided in full in a separate document.

1.	NOTICE OF REVIEW STATEMENT WITH
2.	TIMELINE AND BACKGROUND PLANS/PAPERS
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	

PART D

REVIEW PROCEDURE

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process ask for further information or representations. The procedure adopted will be one or a combination of meetings; adjourned meetings; written submissions; hearing sessions and inspecting the land which is the subject of the review.

Please indicate what procedure (or combination of procedures) you think is most appropriate. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

Further written submissions

Hearing sessions(s)

Site inspection

Assessment of review documents only, with no further procedure

✓
✓
✓

If you have selected "further written submissions" or "hearing session(s)", please explain which of the matters you have included in your statement of reasons you believe ought to be subject of those procedures, and why.

THE APPLICATION HAS NOT BEEN PROGRESSED
EFFICIENTLY AND IN ACCORDANCE WITH
WLC POLICIES AND THE DECISION WILL
RESULT IN CLOSURE OF THE PREMISES
AND JOB LOSSES. IT IS IMPORTANT THAT
MATTERS ARE GIVEN THE FULLEST CONSIDERATION.

SITE INSPECTION

The Local Review Body may decide to inspect the land which is subject to the review.

Can the site be viewed entirely from public land?

* ~~YES~~/NO

Is it possible for the site to be accessed safely, and without barriers to entry?

* ~~YES~~/NO

If you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain why that may be the case.

THE PREMISES ARE LOCKED/SECURED WHEN
UNOCCUPIED AND THERE IS ALWAYS STAFF
ON SITE WHEN OCCUPIED/TRADING.

PART E

CHECKLIST

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review. Failure to supply all the relevant information or to lodge the form on time could invalidate your notice of review.

Full completion of all parts of this form

✓

Statement of your reasons for requiring a review and matters to be raised

✓

Statement of your preferred procedure

✓

All documents, materials and evidence INCLUDING LOCATION PLANS AND/OR DRAWINGS which you intend to rely on. Copies must accompany this notice.

✓

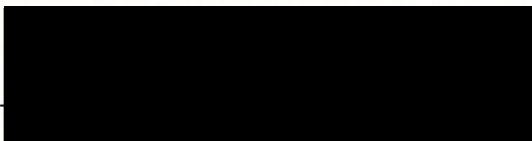
Where your case relates to another application (e.g. it is a renewal of planning permission or a modification, variation or removal of a planning condition, or an application for approval of matters specified in conditions), it is advisable to provide that other application reference number, approved plans and decision notice from that earlier consent.

*****DECLARATION*****

I, the applicant/agent*, hereby require West Lothian Council to review the case as set out in this form and in the supporting documents, materials and evidence lodged with it and which includes those plans/drawings that were used by the Appointed Person when determining the original planning application.

I have been provided with a copy of the West Lothian Council Local Review Body Guidance Notes before lodging this notice.

Signed



Date

20 December 2018

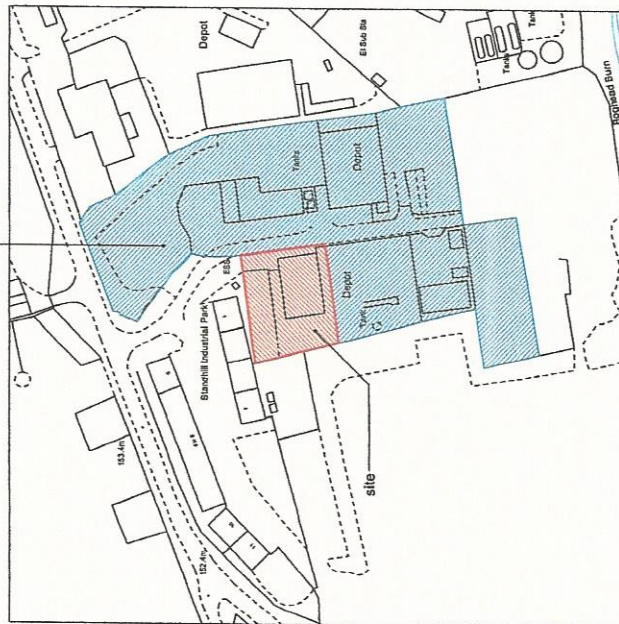
* Delete as appropriate

Please return this completed form to :-

Val Johnston
Committee Services
West Lothian Council
West Lothian Civic Centre
Howden South Road
Livingston
EH54 6FF

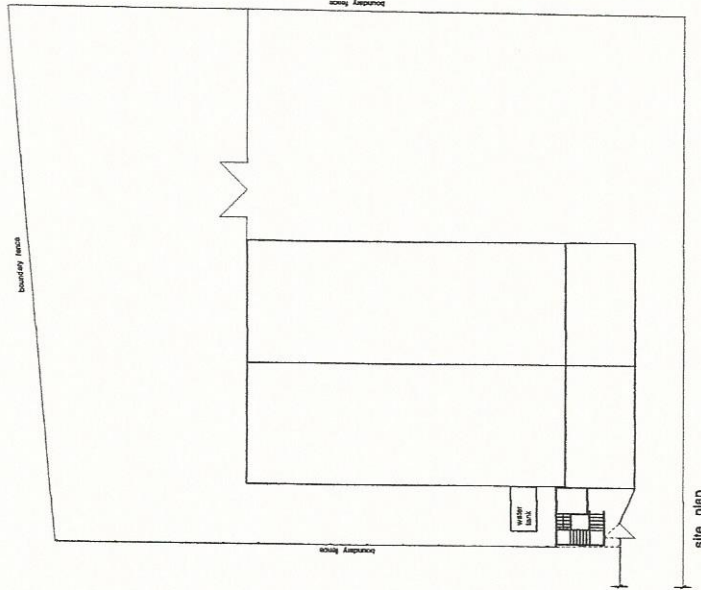


land owned
by applicant



Mapping courtesy of Crown copyright and database right, 2015 Ordnance Survey 100031297

site location



site plan

PLANS 1 of 3

REVISIONS

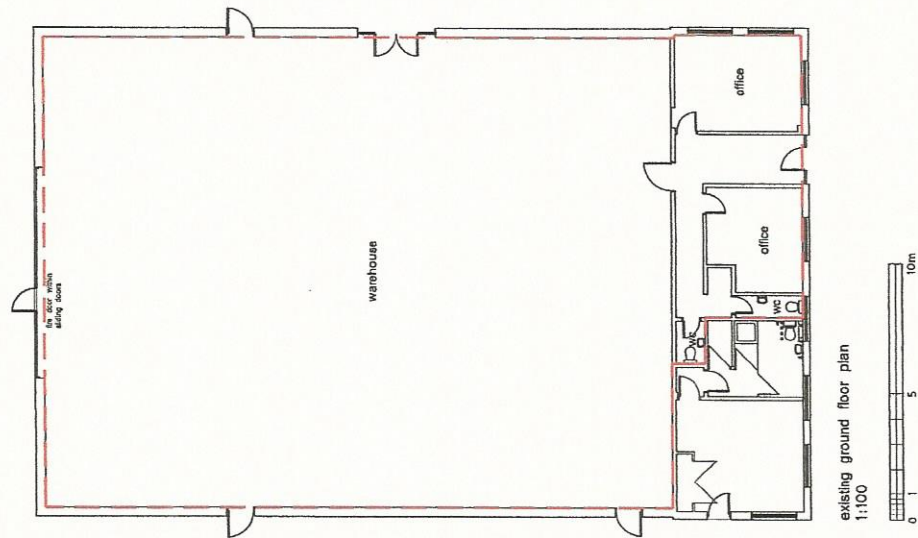
THIS TITLE SITE LOCATION PLAN AND SITE PLAN

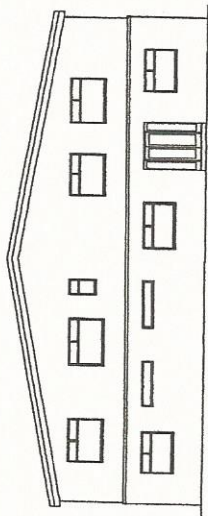
CHANGE OF USE IN RETROSPECT
FROM WAREHOUSE (CLASS 4, 5, 6)
TO CARPET SHOP (CLASS 1)
AT DONNY'S CARPETS
WHITEBURN ROAD, BATHGATE
WEST LOTHIAN

Scale: 1/200, 1/1250 28th March 2018
Drawing Number: WAC/AT/PF/01/22018

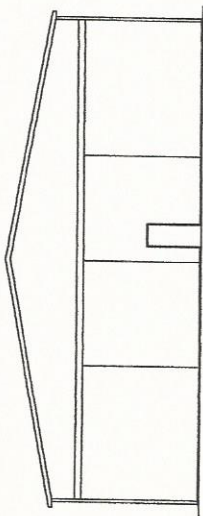
John Watson Architectural Consultants Ltd.
11 Market Street
Edinburgh
West Lothian
EH3 6AL
Phone: 01506 856228
E-mail: info.jwatson@gmail.com

John Watson Architectural Consultant Ltd.
11 Market Street
Midcalder
West Lothian
EH53 6AL
Phone: 01506 855928
E-mail: info.jwac@bt.com





existing front elevation



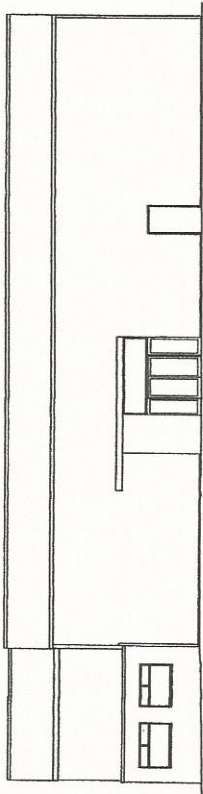
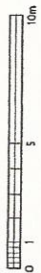
existing rear elevation
1:100



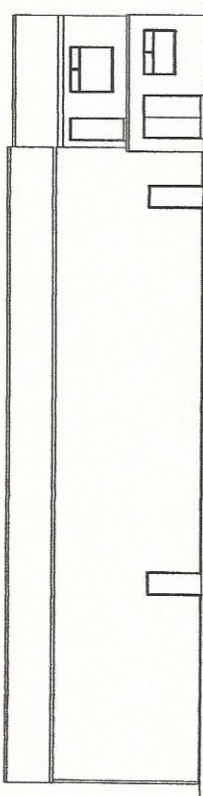
proposed front elevation



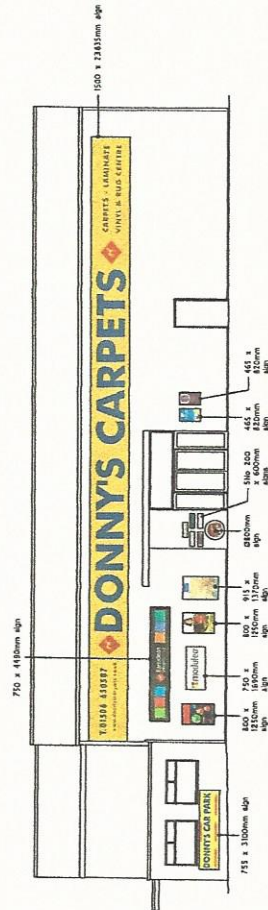
proposed rear elevation
1:100



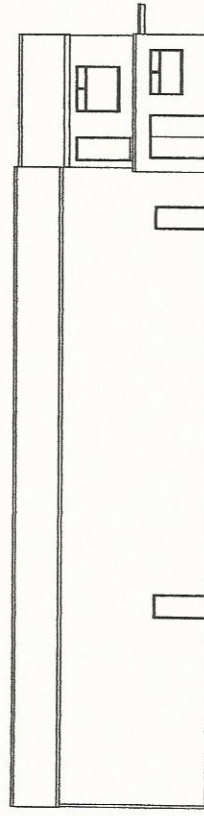
existing side elevation



existing side elevation



proposed side elevation



proposed side elevation

PLANS 3 of 3

REVISIONS

DATE

EXISTING AND PROPOSED ELEVATIONS
ERECTOR OF SIGNAGE IN RETROSPECT
AT DONNY'S CARPETS
WHITEBURN INDUSTRIAL ESTATE
WEST LOTHIAN

Scale 1/100 28th March 2018
Drawing Number - JWSG 02/19/2018

John Watson Architectural Consultants Ltd.
11 Market Street
Edinburgh
West Lothian
EH3 5AL
Phone: 01896 849293
Email: info@jwsa.co.uk



**CERTIFICATE OF INCORPORATION
OF A PRIVATE LIMITED COMPANY**

Company No. 338211

The Registrar of Companies for Scotland hereby certifies that

DONNY'S CARPETS LIMITED

is this day incorporated under the Companies Act 1985 as a private company and that the company is limited

Given at Companies House, Edinburgh, the 21st February 2008



NSC3382119



C O M P A N I E S H O U S E

J4W CARPETS IN RED
WITH "EMPLOYMENT AREA"
BROWN & LAKES IN
PURPLE

from LDP

from LID

from LDP

DONNY'S CARPETS
SITE IN RED
WITH "EMPLOYMENT
AREA" BOUNDARY
LINES IN PURPLE

Background
3 of 6



Background 4 of 6.



West Lothian
Council

Planning Enforcement

West Lothian Civic Centre
Howden South Road
Howden
Livingston
EH54 6FF

Tel: 01506 280000

Our Ref: ENF/0034/18
Email: planningenforcement@westlothian.gov.uk
Case Officer: Linda Christie

22 February 2018

FAO Addressee Only
Donny's Carpets
Whitburn Road
Bathgate
EH48 2HR

incorrect

NGR - relates to site

1.85km NE at 24d

Blue Sky Dental

*Whitburn Road
Bathgate*

Dear Sir/Madam,

Change of use from industrial to retail and erection of signage (Grid Ref: 297416,668675) at Donnys Carpets, Whitburn Road, Bathgate, West Lothian, EH48 2HR

It has been brought to the attention of the Development Management Service that change of use from an industrial unit to retail unit and erection of signage has taken place at the above property. A site visit confirmed that a change of use has taken place and therefore requires planning permission.


Having searched our files there is no record of an application being submitted and on this basis the change of use and signage is currently unauthorised. The options available to you to rectify the current breach of planning control are as follows:

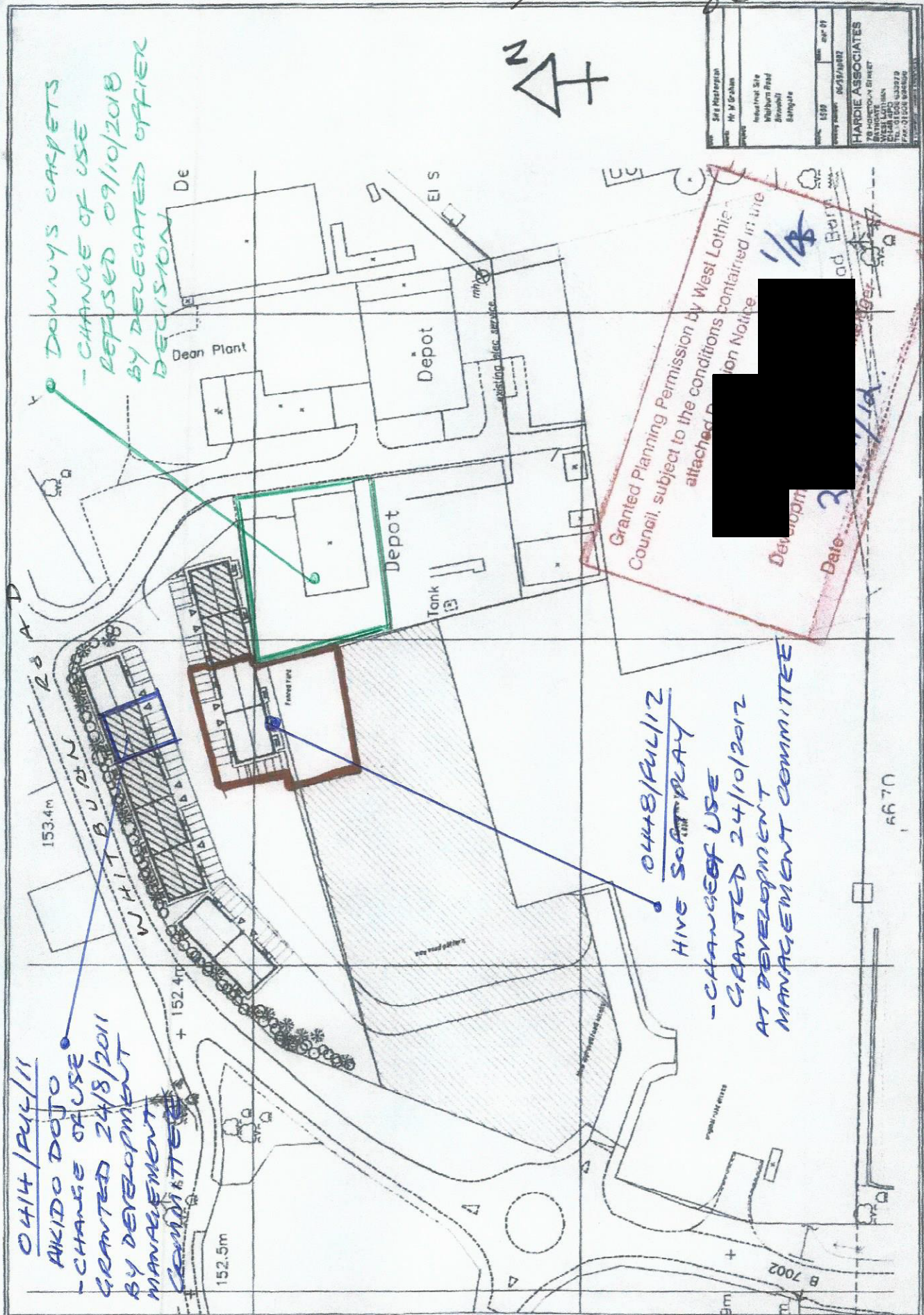
1. Submit a planning application in retrospect. This type of application carries a fee of £401.00. Application forms can be downloaded or obtained from the Scottish Government eplanning website (www.eplanning.scotland.gov.uk).
2. Submit advertisement consent in retrospect. This type of application carries a fee of £202.00. Application forms can be downloaded or obtained from the Scottish Government eplanning website (www.eplanning.scotland.gov.uk).

Please note that the applications should be submitted no later than 22 March 2018.

Please note all responses and queries must be submitted in writing to the above address or via the email address planningenforcement@westlothian.gov.uk

Yours faithfully


Linda Christie
Enforcement Assistant



the hive jun /2



**West Lothian
Council**

**DECISION NOTICE
GRANT PLANNING PERMISSION**

Town and Country Planning (Scotland) Act 1997, as amended

West Lothian Council, in exercise of its powers under the Town & Country Planning (Scotland) Act 1997 (as amended), **grants planning permission for the development described below**, and in the planning application and attached docquetted plan(s). This decision must be read in conjunction with any conditions set out on the following pages, the accompanying advice notes, and any guidance from the Coal Authority on ground stability

APPLICATION REFERENCE: 0448/FUL/12

PROPOSAL AND LOCATION: Change use from general industrial (Class 5) to soft play centre (Class 11) (Grid Ref. 296277 667202) at Units 3 & 4, Standhill Industrial Estate, Whitburn Road, Bathgate, EH48 2HR

APPLICANT: Sarah Russell
The Hive Soft Play LTD
45 Fitzallan Place
Bathgate
West Lothian
EH48 2UN

The above local application was decided by the West Lothian Council Development Management Committee. Please see the guidance notes for further information, including how to appeal any conditions.

Docquetted plans, relative to this decision, are identified in Annex 1, Schedule of Plans. Where relevant, this includes the identification of varied plans.

Dated: 23/11/2012

**Chris Norman
Development Management Manager
West Lothian Council
County Buildings
High Street
Linlithgow
EH49 7EZ**

Signature _____



NOTICE OF REVIEW – STATEMENT

PLANNING APPLICATION REF 0281/FUL/18 – CHANGE OF USE FROM INDUSTRIAL (CLASS 5) TO SHOP (CLASS 1) IN RETROSPECT AT DONNY'S CARPETS, WHITBURN ROAD, BATHGATE, EH48 2HR

INTRODUCTION

Application for Planning Permission 0281/FUL/18 was validated on 6 April 2018 and refused by an Officer on a delegated basis on 9 October 2018. The Decision Notice listed one reason for refusal namely; -

1. The proposal is unacceptable as it introduces a Class 1 use into an employment area that is not an ancillary part of a Class 4, 5 or 6 use. The proposed change of use has not been justified against policy EMP 1 (Safeguarding and Developing Existing Employment Land) and TCR 2 (Town Centres First Sequential Approach) of the West Lothian Local Development Plan 2018 and is therefore unacceptable.

BACKGROUND

Donny's Carpet's was established by Ian McGuire; Ewan McGuire and Donald (Donny) McInnes and started trading at Whitburn Road, Bathgate in January 2004 where it has traded continuously for more than 14 years. Donny's Carpets became Incorporated on 21 February 2008(see attachment) and has operated for 10 years and 9 months as a Limited Company.

At the outset the preference was to be located in the town centre area of Bathgate in order to maximise business from town centre shoppers, but premises of sufficient size and affordability could not be identified. Mr McGuire had purchased the wider(previously Pochin) site at Whitburn Road and had tried, without success, to secure industrial tenants and Donny's Carpets therefore remained at Whitburn Road and grew over the years.

The activities at the premises are; - storage/warehousing of bulk carpets, vinyls and laminate/timber flooring; taking bulk deliveries from manufacturers; showroom provision for the same goods; acting as a base for the measuring and estimating service; acting as a base for the carpet fitters and floor installers including storage of underlays, gripper rods and fixings; cutting of bulk carpets and vinyls for individual orders; distribution of carpets, vinyls, and laminate/timber floorings for installation at customers premises; wholesale supply to business customers; general administration and finance.

The current Bathgate workforce at Whitburn Road and "in the field" in the Bathgate area is 16.

REASONS FOR REVIEW

The delegated Decision to Refuse Planning Permission is likely to result in closure of the premises with the loss of up to 16 jobs including a loss of business for local sub-contractors/small businesses. The Handling Report and the previous abbreviated report, included on the weekly list of Delegated Decisions on 24 August 2018, were inadequate and failed to fully consider West Lothian Council Policies, failed to consider several Material Considerations and failed to explain the likely consequences of the delegated Decision. The delegated Decision is fundamentally flawed and is incorrect.

MATTERS FOR REVIEW

Reason for Refusal

The sole reason for refusal is that the proposal - "introduces a Class 1 use into an Employment Area that is not an ancillary part of a Class 4, 5 or 6 use. The proposed change of use has not been justified against policy EMP 1 (Safeguarding and Development of Existing Employment Land) and TCR

2 (Town Centres First Sequential Approach) of the West Lothian Local Development Plan 2018 and is therefore unacceptable”.

In the Handling Report at page 3 (Officer Assessment Section) the Planning Officer correctly describes the premises as a storage warehouse (which is Class 6) - and that has been, and continues to be, the main activity at the premises since Donny's Carpets began. Page 289 of the new Local Development Plan defines a **Retail Warehouse** as “a large single level store specialising in the sale of household goods such as carpets, furniture, electrical goods and DIY items catering mainly for car-borne customers and often in out-of-centre locations”. **The premises are, essentially, a Warehouse (Class 6), with Storage and Distribution activities; with an ancillary retail element and other associated activities** – as detailed within the Background section at page 1 of this report. The first page of the Handling Report has a section entitled – Site History – and it states, “None relevant”. This section of the Report should have contained information explaining the long-standing business activities dating back to 2004 and should have stated these business activities support 16 jobs.

The reason for refusal states the proposed change of use has not been justified against Policy EMP 1 and the Handling Report refers to both EMP 1 and EM 6 (of the previous West Lothian Local Plan) and states “the applicant has provided no evidence to show the building has been marketed for class 4,5 and 6 uses; and offered no justification to depart from the sequential approach set out in Policy TRC 2.

This is because NOBODY at West Lothian Council has raised these matters or requested such evidence or information. **If the matters had been raised either by the Enforcement Assistant; or by the Planning Case Officer prior to completion of the 24/8/2018 Weekly List Report** and thereafter the Handling Report, our response would have been as follows:-

Policy EMP 1 (page 12) makes provision for **Flexibility within Employment Areas**, acknowledges there is pressure for Class 1, 2 and 11 uses within existing Employment Areas **and states such alternative uses are acceptable in certain circumstances.**

EMP 1 also states that proposals for (new) development embracing the same use classes will be supported subject to criteria being satisfied namely – a) the proposal is compatible with neighbouring land uses; b) the proposal would not have a detrimental impact on the amenity of the area; c) transport implications are capable of being effectively managed; and d) any infrastructure deficiencies are capable of being remedied; e) the proposal must conform with any site specific requirements in Appendix 1 of the new LDP and other relevant requirements of the LDP.

There are no site-specific requirements in Appendix 1; no transport implications; no infrastructure deficiencies; the change of use does not have a detrimental impact on amenity; and is compatible with neighbouring land uses. **The proposal is therefore not contrary to EMP 1** – indeed the sole purpose of submitting the application was to regularise the alleged “planning breach” by acting on the instructions from WLC Planning Enforcement in order to safeguard existing jobs – rather than jeopardising them on the basis of an ill-informed delegated Decision. Similarly, the “Background” section of this document provides a historic explanation (from about 15 years ago) as to why the business is not located in Bathgate Town Centre (or Edge of Centre) and why it is reasonable for it to be “out of centre” and, on that basis, **the application is not contrary to Policy TCR 2.**

On 3/8/18 the Case Officer requested justification for location of the business within a predominantly industrial area. A reply was provided on the same day advising that the main activities are storage and distribution - and that is why the area is appropriate. The reply also provided examples of similar premises located within industrial areas including J&W Carpets at Houston Industrial Estate, Livingston – **which is located in exactly the same type of Employment Area as Donny's Carpets and offers almost exactly the same type of services.**(see attachment)

These points are Material Considerations but were completely omitted from the 24/8/2018 Weekly List Report and from the Handling Report.

Economic Development

The “first” page (page 4) of the new LDP2018 states that a key role of the LDP is to **“support economic activity and to promote West Lothian as a place to invest and do business”**; On Page 6 the Vision statement states a key aim is to **“Provide an adequate and diverse range and quality of employment land and maintain West Lothian’s attraction as an area which provides a range of choice for those wishing to invest and do business; another key objective is to “create local employment opportunities and help to address inequalities”**; page 10 advises WLC work with other councils to promote economic growth; and the West Lothian Economic Strategy and Action Plan **“aims to support and attract 3,000 ADDITIONAL JOBS across a range of sectors”**.

The importance of economic development and the creation of jobs within the WLC area could not be clearer within the new LDP. It is therefore surprising that both the very brief 24/08/2018 report and the Handling Report; - fails to reflect the very high importance given within the LDP to economic development and job creation; fails to point out Donny’s Carpets has traded successfully and continuously for 14 years and supports a workforce of 16 people; fails to include any consultation response from economic development staff; and **fails to consider the employment implications of refusing planning consent for a business which supports 16 jobs and has been established within Bathgate for more than 14 years.**

Economic Development and specifically the potential loss of jobs at Donny’s Carpets is a Material Consideration and it is astonishing that it has not been considered. The delegated Decision should not have been taken without full consideration of economic development issues including jobs.

Enforcement of Planning Policy

Enforcement activity was initiated in February 2018 at which time the new LDP had not been adopted. Provisions of the West Lothian Local Plan (WLLP) are therefore relevant. Policy IMP 16 relates to Enforcement of Planning Policy and it advises the Council is able to use discretion and states; - **1) Enforcement action will only be initiated where the breach of planning control results in unacceptable harm to amenity; 2) in many cases it will be possible for the council to remedy breaches of planning control through negotiation; and 3) the type of enforcement action will depend on the nature and seriousness of the breach and will be commensurate with the breach of planning control to which it relates.**

The Report on the 24/8/18 weekly list made no reference whatsoever to any harm to amenity and **nobody objected to the application** – including neighbours, the Roads & Transportation Department and Environmental Health. Further, the Handling Report does not highlight any unacceptable harm to amenity and confirms **there were no objections to the proposal.**

The owner of Donny’s Carpets states no officer from the Planning Service including any Enforcement Assistant or Enforcement Officer; and no Planning Case Officer or Officer from Development Management has visited AND spoken with the management of Donny’s Carpets at the Whitburn Road, Bathgate site and no negotiation of any type has taken place to try to remedy the alleged breach of planning control. He states that on 2/3/2018 he received a letter dated 22 February 2018(see attachment) from the Enforcement Assistant advising him to make retrospective planning applications by 22/03/2018; he instructed architectural consultants, and applications were submitted on 30/03/2018. Policy IMP 16 has not been complied with in that **no effort whatsoever was made to enter into negotiation**; and the action taken in making a delegated Decision to refuse the application for change of use and effectively close a successful business of 14 years standing and with a workforce of 16 **is not remotely commensurate with any perceived breach of planning control.**

The Employment Area

The Employment Area within which the premises is located is shown on “Map 4:Bathgate Area” of both the new LDP 2018(see attachment) and the WLLP 2009. There are several businesses within the area, with a very wide range of activities and uses some of which are NOT class 4, 5 or 6.

On 24/12/2012 the Development Management Committee agreed (contrary to Officer recommendation) to grant an application reference 0448/FUL/12 – for Change of Use from general industrial (Class 5) to soft play centre (Class 11) at Units 3 and 4 Standhill Industrial Estate – **a couple of metres from the Donny’s Carpets site.**(see attachment)

On 24/8/2011 the Development Management Committee agreed (contrary to Officer recommendation) an application – reference 0414/FUL/11 – for change of use from general industrial (Class 5) to martial arts centre (Class 11) at the nearby unit 6 Standhill Industrial Estate – **about 30m from Donny’s Carpets.**(see attachment)

These Decisions, taken at the Development Management Committee by Councillors, are Material Considerations in that they relate to a Use that is not identified for the Employment Area. We think it is likely that Councillors decided to approve these applications **because they recognised that they would deliver new jobs and benefits to the area.** When these Material Considerations are considered in the context of the reference at Policy EMP 1 to the need for FLEXIBILITY WITHIN EMPLOYMENT AREAS **it is extremely difficult to understand why Councillor Decisions approving Change of Use of Class 5 premises “next door” to Donny’s Carpets, and in the same Employment Area, were not mentioned in the 24/08/2018 report - or in the Handling Report; and why a delegated Decision was taken to refuse Change of Use – when Councillors had approved change of use for the premises next door.** At the very least the 0281/FUL/18 application should have been submitted to the Development Management Committee, particularly given the obvious adverse implications for local employment.

Furthermore, on the 3/8/2018 the Case Officer was advised that J&W Carpets were operating out of Houston Industrial Estate, Livingston – which is an Industrial Estate for Class 4,5 and 6 activities(see attachment) – **the point being that carpet and flooring warehouses (and other similar premises such as tile warehouses) operating from “mixed” industrial areas are not unusual; not generally contrary to planning policies; and provide valuable jobs and wider economic benefits within the West Lothian Council area.**

West Lothian Local Plan 2009

The WLLP 2009 preceded the new LDP 2018 and is a Material Consideration. On the matter of Employment Areas Policy EM 5 states that the expansion, conversion or redevelopment of premises within the Employment Areas WILL BE ENCOURAGED for uses fully within classes 4,5 and 6. Policy EM 6 makes provision for Planning Permission FOR USES OTHER THAN CLASSES 4, 5 and 6 within the Employment Areas where there is clear benefit to those working in that Employment Area and a) where retention of the site for class 4,5 and 6 use has been explored; b) where the use would not restrict other uses nearby; and c) where the proposed use would cause no traffic, amenity or environmental problems. Retail use would only be acceptable where ancillary to, a minor part of, the main class 4,5 and 6 use. Our view is that this criteria is met in that the retail element accounts for much less than 50%; and **the “clear benefit” to those working in the Employment Area will be retaining their jobs.** Further, when these provisions are considered along with the recognition within EMP 1 for the **Need for Flexibility** within Employment Areas **we believe the delegated Decision to refuse the change of use was wrong and the application should have been granted.**

Certificate of Lawfulness

Donny’s Carpets have been trading continuously for more than 14 years at Whitburn Road, Bathgate. If the Enforcement Assistant or the Case Officer had spoken with the business owners and gathered more information – and established the business had been in continuous operation at

Whitburn Road for more than 10 years – it is possible that an alternative course of action may have been taken; or different advice could have been given to Donny's Carpets, such as submitting an application for a Certificate of Lawfulness. Given all that has gone before it is considered, at this time, that Review by the Local Review Body is the best way forward.

SIGNAGE

The application for the erection of advertising signage reference 0282/A/18 was refused at the same time as 0281/FUL/18 and the information that we have provided in respect of 0281/FUL/18 is of relevance. The signage is similar to the signage displayed at other premises within West Lothian and other council areas and we will request approval of the 0282/A/18 application within a further Notice of Review which will be lodged very soon.

CONCLUSION

We believe that the delegated Decision **has been taken without officers establishing the Site History; without realising the consequences;** without full consideration of all pertinent West Lothian Council Policies and, without consideration of all Material Considerations.

When ALL Material Considerations are taken into account, the application is in accordance with planning policies and should be approved.

**TIMELINE RE PLANNING APPLICATIONS 0281/FUL/18 AND 0282/A/18 – DONNY'S CARPETS,
WHITBURN ROAD, BATHGATE EH48 2HR**

DATE	EVENT	COMMENT
15/02/2018	Complainant alleges/brings to the attention of Development Management - Change of Use from an Industrial Unit to a Retail Unit has taken place; and erection of signage has taken place	The Planning Enforcement Team have refused to provide identity of complainant.
Unknown - between 16 and 22/02/2018	Site Visit undertaken by officer – possibly L. Christie, Enforcement Assistant	Officer failed to speak with anyone during site visit.
02/03/2018	Letter dated 22/02/2018 received by Donny's Carpets advising; - Planning Permission Required for 1 a) Change of Use; b) Advertisement Consent. 2. Applications should be submitted by 22/03/2018. 3. Letter states all responses and queries must be in writing.	This was first contact with Donny's Carpets who knew nothing previously. The letter contains an incorrect grid reference "identifying" the site which actually relates to a site more than 1.5km away on Whitburn Road.
05/03/2018	Donny's Carpets instruct Agent to submit Planning applications.	
28/03/2018	Agent speaks with Enforcement Assistant to state Change of Use (if any) should be to Class 6 Warehousing and Distribution not to Class 1 and was told application for Class 1 use should be submitted.	We are unclear as to how the original decision was taken re the "Class" without discussing the activities with Donny's Carpet's. Following discussions Agent agreed to submit the 2 applications.
30/03/2018	Two Planning Applications submitted.	Applications validated 6/4/18
11/04/2018	Site Visit carried out by Case Officer (L. Young)	Officer failed to speak with anyone during site visit.
05/07/2018	Email Agent to Case Officer asking for update on applications – and stating 12 weeks since submitted and agent had heard nothing.	
03/08/2018	Email Case Officer to Agent advising report being written and requesting justification for location within predominantly industrial area.	

03/08/2018	Reply email – agent to Case Officer stating a) main activities are storage and distribution thus located in industrial estate; and b) providing examples of similar premises including J & W Carpets at Houston Industrial Estate.	The J&W Carpets premises are equivalent to Donnys and are in the same type of Employment Area.
24/08/2018	Both applications recommended for refusal within WLC Weekly List (pages 1 and 2 refer).	Agent was not aware of the recommendations or that the applications were being included in the weekly list.
01/09/2018	None of the applications "called in".	
06/09/2018	Email – agent to Case Officer requesting update.	No reply
13/09/2018	Email – agent to Case Officer requesting update on applications	No reply
19/09/2018	Email – agent to Case Officer requesting update on applications	
19/09/2018	Email – Planning Manager (WMcC) to agent advising Case Officer off sick and applications now passed to Case Officer 2.	
20/09/2018	Email – Agent to Planning Manager saying thanks (for reply/action taken).	
04/10/2018	Agent discovers both applications were recommended for refusal on 24/8/18.	Reports contained incorrect grid reference which were different to 22/2/18 letter – but still "well out".
09/10/2018	Email – Case Officer 2 to Agent with attachment containing Decision Notices refusing both applications.	
09/10/2018-25/10/2018	Several messages left on phone answer service of Case Officer 2.	No reply
25/10/2018	Email – Case Officer 2 to Agent - apologising; advising Handling Report now posted online and agreeing to respond to questions.	Some information which has been requested re this appeal has still not been provided. The Handling Report was not written until well after the Decision was made.