

Notice of meeting and agenda



Planning Committee

Venue: Council Chambers, Midlothian House, Dalkeith, EH22 1DN

Date: Tuesday, 31 May 2016

Time: 14:00

John Blair
Director, Resources

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Further Information:

This is a meeting which is open to members of the public.

Audio Recording Notice: Please note that this meeting will be recorded. The recording will be publicly available following the meeting, including publication via the internet. The Council will comply with its statutory obligations under the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

1 Welcome, Introductions and Apologies

2 Order of Business

Including notice of new business submitted as urgent for consideration at the end of the meeting.

3 Declarations of Interest

Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

4 Minutes of Previous Meeting

- | | | |
|------------|---|----------------|
| 4.1 | Minutes of Meeting held on 1 March 2016 - For Noting | 3 - 12 |
| 4.2 | Minutes of Meeting held on 19 April 2016 - For Approval | 13 - 22 |

5 Public Reports

- | | | |
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| 5.1 | Proposed Revision of the Councils' Scheme of Delegation for the Determination of Planning Applications | 23 - 30 |
| 5.2 | Major Developments Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage | 31 - 36 |
| 5.3 | Appeals and Local Review Body Decisions | 37 - 44 |
| 5.4 | Enforcement Report Formation of Dormers at 15 Dundas Street Bonnyrigg Combined | 45 - 50 |
| 5.5 | Pre-Application Consultation Proposed Residential Development at the Former Rosslynlee Hospital, Roslin (16/00266/PAC) and (16/00267/PAC) | 51 - 56 |
| 5.6 | Application for Planning Permission (15/00083/DPP) for the Erection of 33 Dwellinghouses and 12 Flatted Dwellings; Formation of Access Roads and Car Parking and Associated Works on Part of Site C and D, Land at Hopefield Farm, Bonnyrigg | 57 - 72 |

6 Private Reports

No private business to be discussed at this meeting.

Minute of Meeting



Planning Committee

Date	Time	Venue
1 March 2016	2.00pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Bryant (Chair)	Councillor Baxter
Councillor Beattie	Councillor Constable
Councillor Coventry	Councillor de Vink
Councillor Johnstone	Councillor Milligan
Councillor Montgomery	Councillor Muirhead
Councillor Parry	Councillor Pottinger
Councillor Rosie	Councillor Russell
Councillor Wallace	Councillor Young

1 Apologies

Apologies received from Councillors Bennett and Imrie

2 Order of Business

The order of business was confirmed as outlined in the agenda that had been circulated.

3 Declarations of interest

No declarations of interest were received.

4 Minutes of Previous Meetings

The Minutes of Meeting of 12 January 2016 were submitted and approved as a correct record.

Amended by the Planning Committee on 19 April 2016 (paragraph 4, page 4-338 refers) to include a fuller account of the discussions.

With regards to paragraph 1 of the Appendix to the Minutes, the Committee discussed the wording of the conditions attached to the consent issued for the grant of planning permission for the infilling of quarry at Middleton Limeworks, Gorebridge (15/00503/DPP), which had a number of variations to those agreed by the Committee at its previous meeting.

In response to a point regarding the restoration of the land after infilling had been completed, the Planning Manager advised that in land use planning terms there was no distinction made between the various agricultural land uses, consequently the correct terminology in terms of the Town and Country Planning Act was agriculture and that this definition included arable land. The Committee asked the Planning Manager to relay its preference for the site to be use as arable land to the applicant.

The removal of specific dates from Conditions 1 and 8 were also highlighted, it being explained that this had given rise to uncertainty in the community over the duration of the consent. The Head of Communities and Economy explained that what had been agreed with the applicant was a seven year programme of works to infill and restore the quarry and that this had not changed. However, as the original application report had been deferred for a cycle of meetings in November to allow a site visit to be undertaken, it was felt that, in order to accommodate the delay and additional pre-development activities, the wording of the conditions required to be adjusted accordingly; all of which had been discussed and agreed in consultation with the Chair.

This led into a discussion of the mechanism for agreeing such adjustments, it being suggested that in such instances consultation should also include all the local ward members and perhaps on occasion all members of the Committee.

The Head of Communities and Economy acknowledged Members concerns and agreed to take them on board in reviewing the means by which adjustments were agreed and notified to Members. He also went on to respond to questions regarding the Liaison Group, which the Committee had agreed to

request the applicant set up, to enable constructive dialogue to take place with local community representative, so that should any issues be identified they could hopefully be resolved at the earliest opportunity. It was acknowledged that this was not however, a condition on the grant of planning permission.

With respect to the number of lorry movements and the ability of the local road network to accommodate the extra traffic movements, the challenge was to balance the desire to infill the quarry as quickly as possible, whilst not allowing an unacceptable number of lorries on the highway at the same time. It was recognised that the process of loading and unloading of material into and out of the lorries would help manage the number of vehicles on site at any one time.

After further discussion, the Committee noted the Head of Communities and Economy's undertaking to (i) review the means by which any post Committee changes were agreed and notified to Members; (ii) convey to the applicant the Committee's preference, following restoration, for the land to be returned to an arable land use; and (iii) fulfil its part in ensuring that the Community Liaison Group was successfully set up and operated effectively.

(Action: Head of Communities and Economy)

5 Reports

Agenda No	Report Title	Presented by:
5.1	Midlothian Local Development Plan: Housing Land Supply Update	Peter Arnsdorf

Executive Summary of Report

With reference to paragraph 4 of the Minute of 12 January 2016, there was submitted report, dated 23 February 2016 by the Head of Communities and Economy, updating the Committee on the state of the housing land supply in Midlothian and highlighting the impact of the allocated housing sites in the Proposed Midlothian Local Development Plan (MLDP) would have on the established land supply.

Summary of Discussion

Having heard from the Planning Manager, the Committee discussed whether there were sufficient sites becoming available 'free from constraint' to develop. The consensus was that there was and that the real issue was the rate of house construction which was governed by the rate of build undertaken by the house building industry and the local housing market.

Decision

To note the report.

Agenda No	Report Title	Presented by:
5.2	Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 23 February 2016 by the Head of Communities and Economy, updating the Committee on 'major' planning applications, formal pre-application consultations by prospective applicants and the expected programme of applications due for reporting.

Decision

- (a) To note the current position in relation to major planning application proposals which were likely to be considered by the Committee in 2016; and
- (b) To note the updates for each of the applications.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.3	Appeal and Local Review Body Decisions	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 23 February 2016, by the Head of Communities and Economy, detailing the notices of review determined by the Local Review Body (LRB) at its meeting in January 2016, and advising that there were no appeals determined by Scottish Ministers to report.

Decision

To note the decisions made by the Local Review Body at its meeting on 19 January 2016.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.4	Pre-Application Consultation: Proposed Residential Development at Land between Deanburn and Mauricewood Road, Penicuik (15/00987/PAC)	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 29 February 2016, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed residential development at Land between Deanburn and Mauricewood Road, Penicuik (15/00987/PAC).

The report advised that in accordance with the pre application consultation procedures approved by the Committee at its meeting on 7 October 2014 (paragraph 3, Page 4-199 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.

Summary of Discussion

Having heard from the Planning Manager, the Committee discussed the report.

Decision

- (a) Noted the provisional planning position set out in the report; and
- (b) Noted that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.5	Application for Planning Permission in Principle (15/00364/PPP) for a Mixed Used Development Comprising; Film and TV Studio including Backlot Complex, Mixed Commercial Uses, Hotel, Gas and Heat Power Plant, Visitor Centre, Student Accommodation and Film School at Old Pentland, Loanhead.	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 23 February 2016, by the Head of Communities and Economy concerning the above application.

Summary of Discussion

The Committee, having heard from the Planning Manager, expressed support for such a development in Midlothian, but not on the current application site, which was not considered suitable for the reasons detailed in the report.

Decision

To recommend to the Scottish Ministers that the planning permission be refused and the submitted appeal dismissed for the following reasons:

1. The proposal does not provide sufficient safeguarding for the proposed A701 Relief Road and as such is contrary to the Edinburgh and South East Scotland Strategic Development Plan (SESplan) 2013 and proposed Midlothian Local Development Plan (MLDP). The A701 Relief Road is required to deliver the Spatial Strategy identified in SESplan, namely the A701 Corridor Strategic Development Area, and the major development strategy for the western part of Midlothian as set out in the Midlothian Local Development Plan (MLDP);
2. The failure to deliver the A701 Relief Road will undermine programmed and planned growth at the Midlothian Campus of the Edinburgh Science Triangle at the Bush Estate which has a significant national/international presence. Substantial committed and planned investment to expand the life, animal, agriculture and biosciences research, practice and development sectors at Easter Bush (as provided for in the existing and emerging statutory development plans), will be jeopardised if the proposed transportation connections are not improved as proposed in the proposed MLDP. This detrimental economic impact outweighs any potential economic advantages identified as part of the planning application;
3. The perceived economic benefits proposed by the applicants have not been substantiated and no substantive evidence of financial backing for the proposals has been demonstrated to the Council. Accordingly, the proposal does not constitute a sustainable economic development which can justify a significant departure from development plan policy;
4. The proposed development is considered to be premature in relation to the proposed A701 Relief Road identified in the MLDP which supports the A701 Strategic Development Area identified in SESplan. The proposed development does not identify sufficient or appropriate land to satisfy the Council that the route can be constructed through the application site. Consideration of this application in advance of the adoption of the MLDP would be so significant in relation to the Council's development strategy that it would undermine the development plan making process;

5. The proposed development is within the Green Belt, in a countryside location, where there is a presumption against inappropriate development. The proposed development is contrary to the following Midlothian Local Plan (2008) policies; RP1 Protection of the Countryside, RP2 Protection of the Green Belt, RP4 Prime Agricultural Land, RP5 Woodland, Trees and Hedges, RP6 Areas of Great Landscape Value (in relation to the Pentland Hills), RP7 Landscape Character, RP13 Species Protection, RP14 Habitat Protection outwith formally Designated Areas, RP16 Regional and Country Parks, RP21 Community Identity and Coalescence, RP24 Listed Buildings, ECON5 Industries with Potentially Damaging Impacts, ECON 6 Offices, ECON 7 Tourist Accommodation, DERL1 Treatment of Vacant or Derelict Land, DP1 Development in the Countryside and DP4 Pentland Hills Regional Park. This policy position is not outweighed by any material considerations presented as part of this application; and
6. A number of unresolved issues remain and as such the proposed development has a potential detrimental impact on nearby residential properties, other land users and on the local landscape and environment. The outstanding issues are in relation to:
 - a) Noise, in particular from the backlot areas;
 - b) External lighting and the additional impact this would have on the very large buildings and backlot areas on the site's landscape setting;
 - c) Insufficient survey work had been carried out in relation to protected species at the site; and
 - d) The submission of detailed plans showing the road layout on the site would have had some further impact on Cameron Wood and on Old Pentland Cemetery which is a listed building. Further investigation would have been requested on these matters had the appeal not been lodged.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.6	Application For Planning Permission (15/00884/DPP) for the Formation of a New Railway Depot; including Train Maintenance, Cleaning and Stabling, the Laying of New Railway Lines, the Erection of Associated Offices and Staff Welfare Blocks, the Formation of Car Parking and Associated Works at the Former Millerhill Marshalling Yards, Whitehill Road, Dalkeith	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 23 February 2016, by the Head of Communities and Economy concerning the above application.

Summary of Discussion

The Planning Manager advised the Committee that the proposed works were an amendment to the development approved in a previous grant of planning permission (paragraph 3 of the Appendix to the Minutes of 16 April 2013, pages 4-81 to 4-83 refers). The changes related to the configuration of the uses within the application site. The overall scale, form and design of buildings and structures was comparable to the previous grant of permission

Decision

That planning permission be granted for the following reason:

The site is an established industrial site and forms part of the Council's economic land supply. Furthermore, the built form of the currently proposed development can be satisfactorily integrated into the landscape and the presumption in favour of the development is not outweighed by any other material consideration. The proposed development complies with adopted Midlothian Local Plan Policies RP20 and COMD1.

subject to the following conditions:

1. The mature trees on the eastern boundary of the site; which trees are mostly poplar, shall be retained unless otherwise approved in writing by the planning authority and shall be protected during construction in accordance with the BS5837 2005 "Trees in Relation to Design, Demolition and Construction".

Reason: *The existing mature poplar trees demarcating the east boundary of the site will largely screen the operations on the site and will therefore mitigate the visual impact of the development, particularly in views from the (north and north-east of the site, including the A1.*

2. Notwithstanding that delineated on docketed drawings the hedge to be planted along the west side of the proposed palisade fence shall not be planted. Instead, within the planting season when the works commence on site; or if works commence out with the planting season, within the next planting season after works commence, a hedgerow shall be planted alongside to the west of the existing poplar trees growing along the full eastern boundary of the site. Details of the hedgerow shall be submitted for the prior written approved of the planning authority. The hedgerow shall be no less than 3 metres wide along its length. If within a period of 5 years from planting any part of the hedgerow dies, is diseased or is seriously damaged or removed, it shall be replaced in the next planning season with a hedge of the same species. There shall be no variation there from unless with the prior approval of the planning authority.

Reason: *The poplar trees have a limited life and will eventually have to be felled, which would expose the site to views from the east. A hedgerow is required along the east boundary of the site to satisfactorily mitigate the visual impact of the development when the poplar trees are eventually felled, in the interest of safeguarding the landscape character and amenity of the area.*

3. Prior to the commencement of any works on site, full details of the finalised SUDS scheme shall be submitted for the written approval of the planning authority, in consultation with SEPA, and all work shall be carried out in accordance with the approved scheme.

Reason: *to ensure adequate protection of the water environment from surface water run-off.*

4. Notwithstanding that delineated on docketed drawings/documents the external lighting installed within the site shall be designed to minimise light spill. They shall have luminaires that direct light downwards thus reducing upward illumination.

Reason: *To minimise light spill and upward illumination in the interests of safeguarding the amenity of the area, including the amenity of nearby residential properties.*

5. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policy RP20 of the Midlothian Local Plan and national planning guidance and advice.*

6. All of the recommendations made in the Phase 1 habitat survey report dated January 2013 and the Winter Bird Survey dated 12th December 2012 shall be carried out, including the recommended breeding bird survey, bird checking surveys and reptile surveys. A copy of the report on these surveys shall be submitted for the prior approval of the planning authority prior to works commencing on the site.

Reason: *In the interests of safeguarding protected species.*

7. Development shall not begin until a scheme to deal with ground conditions and contamination of the site has been submitted to and approved in writing by the planning authority. The scheme shall contain details of the proposals to deal with ground conditions and any contamination and include:

- i. the submission of a scheme of intrusive site investigation;

- ii. the submission of a report of findings arising from the intrusive site investigations, including identification of any required 'nobuild-zones' for the mine entries;
- iii. a detailed schedule of any remedial and/or protective measures including their programming;

Before any part of the site comes into use, the measures to mitigate ground conditions and decontaminate the site shall be fully implemented in accordance with the approved scheme approved by the planning authority.

Reason: *To ensure that ground conditions and any contamination on the site are adequately identified and that appropriate ground remediation measures and decontamination are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

Action
Head of Communities and Economy

The meeting terminated at 3.09pm.

Minute of Meeting



Planning Committee

Date	Time	Venue
19 April 2016	2.00pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Bryant (Chair)	Councillor Baxter
Councillor Beattie	Councillor Bennett
Councillor Coventry	Councillor de Vink
Councillor Johnstone	Councillor Milligan
Councillor Montgomery	Councillor Muirhead
Councillor Pottinger	Councillor Rosie
Councillor Russell	Councillor Wallace
Councillor Young	

1 Apologies

Apologies received from Councillors Constable, Imrie and Parry

2 Order of Business

The order of business was confirmed as outlined in the agenda that had been circulated.

3 Declarations of interest

No declarations of interest were received.

4 Minutes of Previous Meetings

The Minutes of Meeting of 1 March 2016 were submitted and approved as a correct record subject to the addition of a fuller account of the discussions regarding the wording of the conditions attached to the consent issued for the grant of planning permission for the infilling of quarry at Middleton Limeworks, Gorebridge (15/00503/DPP), which had a number of variations to those agreed by the Committee at its previous meeting on 12 January 2016.

(Action: Democratic and Document Services Manager)

5 Reports

Agenda No	Report Title	Presented by:
5.1	Development Plan Scheme for Midlothian Number 8	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 12 April 2016, by the Head of Communities and Economy, seeking approval for the Development Plan Scheme for Midlothian No.8 (DPSM 6), a copy of which was appended to the report.

The report explained that the preparation of a development plan scheme setting out the planning authority's intentions with respect to preparing, reviewing and consulting on the Strategic Development Plan (SDP) and the Local Development Plan (LDP) for its area was a statutory requirement.

Each Development Plan Scheme (DPS) was to incorporate a participation statement and was to be updated at least annually. After adopting a DPS, the planning authority was required to publish it, including electronically, place it on deposit in public libraries and send it to Scottish Ministers. Consultation on the DPS was not required and it did not require the approval of Scottish Ministers.

Decision

Having heard from the Planning Manager, the Committee agreed to:-

- (a) approve the Development Plan Scheme for Midlothian No.8 (DPSM 8); and
- (b) publish DPDM 8 and submit it to Scottish Ministers.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.2	Midlothian Local Development Plan: Proposed Plan	Ian Johnson

Executive Summary of Report

With reference to paragraph 3 of the Minutes of 17 November 2015, there was submitted report dated 12 April 2016, by the Head of Communities and Economy providing an update on current progress in the preparation of the Midlothian Local Development Plan (MLDP), and advising on the remaining stages to the point of final adoption by the Council.

The report explained that along with the Proposed Plan, the Council was required to send to Scottish Ministers copies of all unresolved objections together with the Council's written response, these being known as 'Schedule 4' documents; preparation of which was now at an advanced stage. It was intended to submit a report to the next Council meeting on 17 May 2016, seeking formal decisions on any modifications to be made to the Proposed Plan, the final content of the Proposed Plan for submission to Scottish Ministers, and the formal position of the Council in response to the representations/objections received to the Proposed Plan. If all these matters were agreed then the formal submissions would be made, with the Examination into the Plan being scheduled for later this year.

Summary of Discussion

Having heard from the Head of Communities and Economy, who responded to Members questions, the Committee discussed the consultation process, noting that the statutory procedures had been followed, and the potential implications of any delay to the adoption process. Consideration was also given to the need for further Member briefings.

Decision

- (a) To note the Midlothian Local Development Plan update; and
- (b) To agree to hold further briefings for elected Member prior to the May Council meeting.

Action

Head of Communities and Economy

Agenda No**Report Title****Presented by:**

5.3

Planning Performance Report

Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 12 April 2016, by the Head of Communities and Economy, updating the Committee on planning application, planning appeals and reviews, enforcement and planning customer service performance against key outcome indicators for the period 2015/16.

The report identified that overall performance continued to be maintained at a high level through 2015/16 with 78% of planning applications being determined within target. This compared to 84% in 2014/15 and 2013/14, 73% in 2012/13, 70% in 2011/12, 65% in 2010/11 and 55% in 2009/10. In addition to the handling of planning applications, the report also highlighted the work undertaken by the Planning team in relation to planning appeals/reviews, enforcement of planning control, the preparation of development/design briefs and responding to a wide range of associated enquiries giving planning advice to the public and others.

Summary of Discussion

Having heard from the Planning Manager, who responded to Members questions, the Committee discussed the report, giving particular consideration to the impact that the financial constraints faced by Local Government generally were having on the resources available to fulfil statutory functions such as Planning. It being noted that following a service review, the Development Management and Planning Policy and Environment teams had now been conjoined into a single Planning team. Consideration was also given to the current position on legacy cases, it being felt that it would be useful to include information on both matters in future annual Planning performance reports.

Decision

- (a) noted the contents of the report; and
- (b) agreed to continue to receive annual Planning performance reports.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.4	Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 12 April 2016 by the Head of Communities and Economy, updating the Committee on 'major' planning applications, formal pre-application consultations by prospective applicants and the expected programme of applications due for reporting.

Summary of Discussion

The Committee heard from the Planning Manager, who took on board a suggestion from the local Members encouraging additional dialogue with the local Community Council who had prepared an detailed submission regarding the proposed residential development at Land north of Oak Place, Mayfield (16/00134/DPP).

Decision

- (a) To note the current position in relation to major planning application proposals which were likely to be considered by the Committee in 2016; and
- (b) To note the updates for each of the applications.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.5	Appeal and Local Review Body Decisions	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 12 April 2016, by the Head of Communities and Economy, detailing the notices of review determined by the Local Review Body (LRB) at its meeting in January 2016, and advising of the outcome of an appeal determined by Scottish Ministers.

The report advised that the appeal by Dr J Cape was against refusal to issue a high hedge notice (15/00876/HH) concerning a hedge at 59 Carlops Road, Penicuik on the grounds that there was no adverse effect from the high hedge. The Scottish Ministers had dismissed the appeal and confirmed the Council's decision that there was no adverse effect from the high hedge.

Decision
(a) To note the decisions made by the Local Review Body at its meeting on 19 January 2016; and
(b) To note the outcome of the appeal determined by Scottish Ministers..
Action
Head of Communities and Economy

Sederunt
Councillor Beattie left the meeting at the conclusion of the foregoing item of business, at 2.40pm

Declaration of Interest
Councillor Muirhead, having declared a non-pecuniary interest in the following item of business on the grounds that his partner worked at the Bush, withdrew from the meeting for the duration of the following item of business, at 2.40pm

Agenda No	Report Title	Presented by:
5.6	Pre-Application Consultation: Proposed Large Animal Research and Imaging Facility at land 370m south east of Equine Hospital, Easter Bush Campus, Bush Farm Road, Roslin (16/00072/PAC) and at land at Easter Bush South, Easter Bush, Roslin (16/00179/PAC)	Peter Arnsdorf

Executive Summary of Report
<p>There was submitted report, dated 12 April 2016, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed Large Animal Research and Imaging Facility at land 370m south east of Equine Hospital, Easter Bush Campus, Bush Farm Road, Roslin (16/00072/PAC) and at land at Easter Bush South, Easter Bush, Roslin (16/00179/PAC). The 2 consultations related to alternative locations for the same facility.</p> <p>The report advised that in accordance with the pre application consultation procedures approved by the Committee at its meeting on 7 October 2014 (paragraph 3, Page 4-199 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.</p>

Decision

Having heard from the Planning Manager, the Committee:-

- (a) Noted the provisional planning position set out in the report; and
- (b) Noted that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Sederunt

Councillor Muirhead rejoined the meeting at the conclusion of the foregoing item of business, at 2.43pm

Agenda No	Report Title	Presented by:
5.7	Pre-Application Consultation: Proposed residential development at land north of Dalhousie Dairy, Bonnyrigg (16/00161/PAC and 16/00157/PAC)	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 12 April 2016, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding (i) a proposed planning application in principle for residential development at land north of Dalhousie Dairy, Bonnyrigg (16/00161/PAC); and, (ii) a proposed detailed planning application for a proposed residential development on part of the land north of Dalhousie Dairy, Bonnyrigg (16/00157/PAC). The site was identified as Site Hs10 Dalhousie Mains in the proposed Midlothian Local Development Plan (MLDP).

The report advised that in accordance with the pre application consultation procedures approved by the Committee at its meeting on 7 October 2014 (paragraph 3, Page 4-199 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.

Summary of Discussion

The Committee, having heard from the Planning Manager, discussed the ability of the area to sustain more development without investment in infrastructure, particularly schools (primary/secondary); GP practices; recreational facilities, and transportation. There were also issues raised regarding vehicular access to the site - rather than through the existing housing areas, it was felt that access should be taken off the B6392 - pedestrian/cyclist access into and through the site, and finally the supply of fibre optic broadband.

Decision

- (a) Noted the provisional planning position set out in the report; and
- (b) Noted that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Sederunt

Councillor Wallace left the meeting at the conclusion of the foregoing item of business, at 2.53pm

Agenda No	Report Title	Presented by:
5.8	Application For Planning Permission (15/00083/DPP) for the Erection of 33 Dwellinghouses and 12 Flatted Dwellings; Formation of Access Roads and Car Parking and Associated Works on Part of Site C and D, Land at Hopefield Farm, Bonnyrigg	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 12 April 2016, by the Head of Communities and Economy concerning the above application.

Summary of Discussion

Having heard from the Planning Manager, the Committee gave consideration to the application in the context of the overall development of the Hopefield site.

Concerns were expressed that changing economic and social circumstances meant that certain aspects such as the provision for social housing and infrastructure such as broadband had changed so much that ideally they needed to be revisited. There were also concerns that certain facilities provided as part of the Hopefield Masterplan were no longer considered fit for purpose, for example, it had not been possible to use the play area for some considerable time due to vandalism, also the standard of finishing of the kickabout area meant it was unsuitable for the purpose for which had been provided. Whilst acknowledging that many of these issues had already been raised with the developers, Members were of the view that such matters required to be resolved before further development took place.

Decision

To continue consideration of the application to allow for further discussions with the applicants

Action

Head of Communities and Economy

The meeting terminated at 3.19pm.



PROPOSED REVISION OF THE COUNCIL'S SCHEME OF DELEGATION FOR THE DETERMINATION OF PLANNING APPLICATIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report seeks Committee approval for an amended scheme of delegation for planning matters, under which specific types of planning applications are delegated to the appointed officer to determine.
- 1.2 Following a Planning Service Review the Development Management and Planning Policy and Environment teams have been conjoined into a single Planning team with a new structure being implemented from March 2016. As part of the new structure, roles and responsibilities and associated job titles have changed. As a consequence the approved scheme of delegation needs to be updated to identify the correct appointed officers who are delegated to determine applications.
- 1.3 The proposed updating of the scheme of delegation does not change which applications Elected Members delegate to officers to determine.

2 BACKGROUND

- 2.1 The current scheme of delegation for the determination of planning applications was agreed by the Council at its meeting of 24 September 2013 and referred to the Scottish Ministers' for approval. This approval was subsequently granted and is in accordance with The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. The 2013 regulations came into effect on 30 June 2013.

3 PROCEDURES

- 3.1 Prior to the adoption of an amended scheme, the scheme must be approved by the Scottish Ministers.
- 3.2 The proposed amendment to the scheme of delegation does not affect the procedure where a Member can 'call in' an application in their Ward to be determined by the Committee within a month of an application being validated or within 5 working days of an application being circulated prior to determination under the 'Information to Members' procedure outlined in Appendix 2 of the scheme.
- 3.3 The proposed revised scheme showing proposed amendments is attached as Appendix A. The changes are shown in Part B. If ultimately approved by the Scottish Ministers, there may need to be consequential amendments to

the Council's Standing Orders and Scheme of Administration for approval by Council.

4 RECOMMENDATION

4.1 It is recommended that Committee:

- i) approves the amended 'Revised Scheme of Delegation for the Determination of Planning Applications for Planning Permission' as set out at Appendix A of this report; and
- ii) agrees that this amended 'Revised Scheme' be formally submitted to Scottish Ministers for approval.

Ian Johnson
Head of Communities and Economy

Date: 24 May 2016
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

Background Papers: a) Planning Etc. (Scotland) Act 2006, and b) Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

Scheme of Delegation for the Determination of Applications for Planning Permission: Prepared in Accordance with the Provisions of the Planning Etc. (Scotland) Act 2006 and The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

Part A.

The following applications for planning permission shall be determined by the Planning Committee of the Council:

- i. any application for planning permission in principle (PPP) and for detailed planning permission (DPP) which comprises a 'National Development' or a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009;

A copy of the schedule in those Regulations which lists those developments which are classed as major comprises the Appendix to this scheme of delegation.

- ii. any application that the appointed officer is minded to approve under the terms of this scheme of delegation but which is the subject of an extant objection from a statutory consultee that would result in referral of the application to Scottish Ministers under the provisions of Circular 3/2009, Notification of Planning Applications;
- iii. any application that the appointed officer is minded to approve under the terms of this scheme of delegation but which would constitute a significant departure from the provision of the Council's Development Plan; and
- iv. any application which would normally be determined by the appointed officer under the terms of this scheme of delegation but which has been the subject of notification that it is to be determined by the Planning Committee of the Council: such notification to be made in writing within one month of the date of validation of the application (except where the provisions of Annex 2 apply) and to be known as 'Notification of Member Referral': such notification shall only be valid if submitted by a Member in whose Ward the application site lies in whole or in part, and includes a statement of the reasons in planning terms for the notification.

Part B.

The following applications for planning permission shall be delegated for determination by the appointed officer of the Council. The appointed officer of the Council is the officer appointed in terms of Section 17 of the Planning etc (Scotland) Act 2006 (Section 43A (1) of the Town and Country Planning (Scotland) Act 1997), as a person holding the position of Director Education, Communities and Economy, Head of [Communities & Economy, Planning and Development, Development Management Manager, Principal Planning Officer or Senior Planning Officer Planning Manager, Lead Officer Local Developments, Lead Officer Major Applications and Enforcement, Lead Officer Planning Obligations, Lead Officer Conservation and Environment and Lead Officer Development Plans.](#)

- i. any application which does not fall within any of the categories comprising Part A of this scheme of delegation;
- ii. any application for development defined as a 'Local Development' in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009;
- iii. any application to vary or amend a condition on an extant planning permission; and
- iv. any application to vary an extant planning permission.

SCHEDULE OF MAJOR DEVELOPMENTS

*Description of Development**Threshold or criterion***1. Schedule 1 development**

Development of a description mentioned in Schedule 1 to the Environmental Impact Assessment (Scotland) Regulations 1999 (3) (other than exempt development within the meaning of those Regulations).

All Development.

2. Housing

Construction of buildings, structures or erections for use as residential accommodation.

(a) The development comprises 50 or more dwellings; or
(b) The area of the site is or exceeds 2 hectares.

3. Business & General Industry, Storage and Distribution

Construction of a building, structure or other erection for use for any of the following purposes-

- (a) as an office;
- (b) for research and development of products or processes;
- (c) for any industrial process; or
- (d) for use for storage or as a distribution centre.

(a) The gross floor space of the building, structure or other erection is or exceeds 10,000 square metres; or

(b) The area of the site is or exceeds 2 hectares.

4. Electricity Generation

Construction of an electricity generating station.

The capacity of the generating station is or exceeds 20 megawatts.

5. Waste Management Facilities

Construction of facilities for use for the purpose of waste management or disposal.

The capacity of the facility is or exceeds 25,000 tonnes per annum.

In relation to facilities for use for the purpose of sludge treatment, a capacity to treat more than 50 tonnes (wet weight) per day of residual sludge.

6. Transport and Infrastructure Projects

Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines.

The length of the road, railway, tramway waterway, aqueduct or pipeline exceeds 8 kilometres.

7. Fish Farming

The placing or assembly of equipment for the purpose of fish farming within the meaning of section 26(6) of the Act.

The surface of water covered is or exceeds 2 hectares.

8. Minerals

Extraction of minerals

The area of the site is or exceeds 2 hectares

9. Other Developments

Any development not falling wholly within any single class of development described in paragraphs 1 to 8 above

(a) The gross floor space of any building, structure or erection constructed as a result of such development is or exceeds 5,000 square metres; or
(b) The area of the site is or exceeds 2 hectare

Annex 1: Decisions and Determinations on Other Matters

The Planning Committee shall be required to consider and determine:-

- i) the making of a Tree Preservation Order;
- ii) confirmation of a Provisional Tree Preservation Order; and
- iii) the formal reporting of planning enforcement matters to the Procurator Fiscal.

The following matters are delegated to the appointed officer:-

- i) the serving of a Provisional Tree Preservation Order;
- ii) the investigation of formal planning enforcement proceedings through the issuing of enforcement notices, stop notices, temporary stop notices, fixed penalty notices, planning contravention notices and Section 179 (amenity) notices;
- iii) Determination of any application for a certificate of lawful development;
- iv) Determination of any application for listed building consent;
- v) Determination of any application for conservation area consent;
- vi) Determination of any application for advertisement consent; and
- vii) Determination of any application to carry out works to trees.

Annex 2: Information to Members

Applications for planning permission which fall to be determined under Part B of the Scheme of Delegation (i.e. are delegated for determination by officers), and to which any of the following criteria are relevant will be drawn to the attention of Members:-

- i) the application has attracted ten or more written objections from individual households or other premises; or
- ii) the application is the subject of formal written objection from a community council within whose area the application site lies either in whole or in part; or
- iii) the application seeks to vary a planning permission originally granted by the Planning Committee; or
- iv) the application can only be approved subject to the requirement for a legal planning agreement.

Information will be provided to all Members no later than five working days prior to the date of formal determination, thereby providing the opportunity for a local Ward Member to consider submission of a formal 'Notification of Member Referral' in accordance with Part A vii) of the Scheme of Delegation. For the avoidance of doubt the time limit period for notification specified in Part A vii) will not apply in cases notified under the provisions of this Annex.

Local Ward Members will be informed of any formal planning enforcement proceedings which have been undertaken within their respective Wards: such proceedings being the issuing of an Enforcement Notice, a Stop Notice, a Temporary Stop Notice, a Breach of Condition Notice, a Fixed Penalty Notice or a Section 179 (amenity) Notice.

Unless otherwise specified all communications to Members under the terms of this Annex shall be by email.

Annex 3: Representations Received on Planning Applications

A representation on a planning application shall only be competent if it comprises a written submission in the form of either a letter or an e-mail. In the case of a letter the correspondent will require to include their name, full address and signature. In the case of an e-mail a name and full address will be required.

Any representations which may be received after the following dates will not be taken into account in the assessment and determination of planning applications:-

- i. In the case of planning applications which are to be reported to the Planning Committee, 5.00 p.m. on the Monday of the week preceding the meeting of the Committee; where that day is a public holiday then the deadline will be 5.00 p.m. on the immediate preceding working day. This deadline also applies where the Committee defers determination of an application to a later date.

In the case of applications due for approval under delegated powers subject to a legal agreement, the day that notice is given to Members advising that the application is to be approved subject to the signing of a legal agreement.



MAJOR DEVELOPMENTS: APPLICATIONS CURRENTLY BEING ASSESSED AND OTHER DEVELOPMENTS AT PRE-APPLICATION CONSULTATION STAGE

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report updates the Committee with regard to 'major' planning applications, formal pre-application consultations by prospective applicants, and the expected programme of applications due for reporting to the Committee.

2 BACKGROUND

- 2.1 At its meeting of 8 June 2010 the Planning Committee instructed that it be provided with updated information on the procedural progress of major applications on a regular basis.
- 2.2 The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants is outlined in Appendices A and B attached to this report.

3 PREMATURE APPLICATIONS

- 3.1 A consequence of the Midlothian Local Development Plan: Proposed Plan being at an advanced stage is premature planning applications being submitted by a number of applicants on a number of sites. These are identified in Appendix A by the statement "Subject to progress on Midlothian Local Development Plan" and relate to sites which are not currently allocated for development in the adopted 2008 Midlothian Local Plan but are proposed in the MLDP. These sites are subject to representations from local communities and interested parties and will be tested at examination by a Scottish Government Reporter (anticipated to be later in 2016).
- 3.2 In the interests of fairness and transparency it is proposed not normally to report these applications to Committee until the proposed MLDP has progressed through the examination process and the Council has adopted the plan, unless the Committee wish to consider an application in advance of the adoption of the MLDP or there are extenuating circumstances. At its meeting in January 2016 the Committee expressed a preference to determine those applications

where there is a risk that applicants may appeal against non determination, an option open to applicants if an application is not determined within the set timeframe (four months from the date of validation for a major application) or an agreed extended time period.

- 3.3 If an appeal against non determination is submitted it would be determined by Scottish Ministers after consideration of relevant planning policies and other material considerations. Paramount in the consideration would be the potential for an application to undermine the development plan process if considered in advance of the adoption of the MLDP and whether Midlothian has a sufficient housing land supply as defined in Scottish Government Planning Policy.

4 RECOMMENDATION

- 4.1 The Committee is recommended to note the major planning application proposals which are likely to be considered by the Committee in 2016 and the updates for each of the applications.

Ian Johnson
Head of Communities and Economy

Date: 24 May 2016
Contact Person: Peter Arnsdorf, Planning Manager
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Tel No: 0131 271 3310

Background Papers: Planning Committee Report entitled 'Major Developments: Applications currently being assessed and other developments at Pre-Application Consultation stage' 8 June 2010.

APPENDIX A

MAJOR APPLICATIONS CURRENTLY BEING ASSESSED

Ref	Location	Proposal	Expected date of reporting to Committee	Comment
06/00474/OUT	Land adjacent to Rullion Road, Penicuik	Application for Planning Permission in Principle for residential development	Dependant upon receipt of amended plans from the applicant	The applicant is currently engaged in a pre application consultation process (15/00987/PAC) and has advised that an amended planning application will be submitted in Summer 2016.
06/00475/FUL	Land between Deanburn and Mauricewood Road, Penicuik	Erection of 300 dwellinghouses	Dependant upon receipt of amended plans from the applicant	The applicant is currently engaged in a pre application consultation process (15/00987/PAC) and has advised that an amended planning application will be submitted in Summer 2016.
14/00910/PPP	Land at Cauldcoats, Dalkeith	Application for Planning Permission in Principle for residential development, erection of a primary school and mixed use developments.	Subject to progress on Midlothian Local Development Plan	Pre-Application Consultation (14/00553/PAC) carried out by the applicants in October/November 2014.
15/00364/PPP	Land adjacent Old Pentland Road, Loanhead	Mixed-use development comprising; film and TV studio and backlot complex; mixed commercial uses; hotel; and gas heat and power plant.	Subject to determination by the Scottish Ministers	Pre-Application Consultation (14/00729/PAC) carried out by the applicants in October/November 2014. The applicants have appealed non determination.
16/00134/DPP	Land north Of Oak Place, Mayfield	Erection of 169 dwellinghouses an 30 flatted dwellings and associated works	August 2016	Pre-Application Consultation (13/00522/PAC) carried out by the applicants in August/September 2013.

APPENDIX B

NOTICE OF PRE-APPLICATION CONSULTATIONS RECEIVED AND NO APPLICATION HAS BEEN SUBMITTED

Ref	Location	Proposal	Date of receipt of PAC	Earliest date for receipt of planning application and current position
13/00609/PAC	Housing Site B, land at Newbyres, River Gore Road, Gorebridge	Residential Development	19 August 2013	12/11/13 - no application yet received The applicants have started discussing possible layouts for this site and an application is anticipated in 2016.
14/00451/PAC	Land at Newton Farm and Wellington Farm, Old Craighall Road, Millerhill, Dalkeith	Residential development and associated developments	10 June 2014	03/09/14 - no application yet received The applicants have started discussing possible layouts for this site and an application is anticipated in 2016.
14/00833/PAC	Land at Salter's Park, Dalkeith	Mixed-use development comprising residential and employment uses	12 November 2014	05/02/15 - no application yet received A pre-application report was reported to the January 2015 meeting of the Committee. The applicant is reviewing their options.
15/00774/PAC	Site Hs14, Rosewell North, Rosewell	Residential development	22 September 2015	15/12/15 - no application yet received A pre-application report was reported to the November 2015 meeting of the Committee
15/00936/PAC	Land 470M West Of Corby Craig Terrace, Bilston	Residential development	25 November 2015	17/02/16 - no application yet received A pre-application report was reported to the January 2016 meeting of the Committee
15/00987/PAC	Land Between Deanburn And Mauricewood Road Penicuik	Residential development	17 December 2015	10/03/16 - no application yet received A pre-application report was reported to the March 2016 meeting of the Committee

16/00072/PAC	Land to the south east of the Equine Hospital, Easter Bush Campus, Roslin	Animal research and imaging facility	05 February 2016	29/04/16 - no application yet received A pre-application report was reported to the April 2016 meeting of the Committee
16/00157/PAC	Land north of Dalhousie Dairy, Bonnyrigg (Dalhousie Mains - MLDP site Hs10)	Residential development	04 March 2016	30/05/16 A pre-application report was reported to the April 2016 meeting of the Committee
16/00161/PAC	Land north of Dalhousie Dairy, Bonnyrigg (Dalhousie Mains - MLDP site Hs10)	Residential development	04 March 2016	30/05/16 A pre-application report was reported to the April 2016 meeting of the Committee
16/00179/PAC	Land at Easter Bush South, Easter Bush, Roslin	Animal research and imaging facility	10 March 2016	03/06/16 A pre-application report was reported to the April 2016 meeting of the Committee
16/00266/PAC	Land At Rosslynlee Hospital Roslin	Residential development	08 April 2016	04/07/16 This pre-application is reported to this meeting of the Committee.
16/00267/PAC	Land At Rosslynlee Hospital Roslin	Residential development - change of use, alterations, extensions and partial demolition of the former hospital, including new build development.	08 April 2016	04/07/16 This pre-application is reported to this meeting of the Committee.



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in April 2016; and an appeal decision received from Scottish Ministers.

2 BACKGROUND

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes a decision on an appeal which has been considered by Scottish Ministers.

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 26 April 2016 the LRB made the following decisions:

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
1	15/00158/DPP	Land at Shewington, Rosewell	Formation of a temporary test piling facility The LRB received an update report regarding requirements set by the LRB at its meeting in January 2016	The LRB reinforced its decision taken at its meeting in January 2016 and were minded to grant permission subject to appropriate conditions and a financial bond being secured before the grant of

				permission being issued.
2	15/00794/DPP	Land north of 22 Tipperwell Way, Howgate	Change of use of agricultural land to residential garden	Review upheld Permission granted
3	15/00948/DPP	Land adjacent Rosebank North Cottage, Roslin	Demolition of outbuilding and erection of new building	Review upheld Permission granted

4 APPEAL DECISIONS

- 4.1 An appeal against a refusal to grant planning permission (15/00737/DPP) for the formation of a hot food takeaway and installation of a flue at 5 Staiside Court, Bonnyrigg has been upheld. The application was refused on grounds of its impact on the vitality of the local centre, its impact on the amenity of nearby local residents and it being contrary to the Council's healthy eating objectives. The Scottish Government Reporter upheld the appeal on the basis that the proposed development did not have a detrimental impact on the vitality of the local centre or on local residents' amenity and that the Council's healthy eating objectives were not a material consideration in the assessment of a planning application. An application for costs, submitted by the applicant, was not awarded. A copy of the appeal decision accompanies this report.

5 RECOMMENDATION

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting on 26 April 2016.

Ian Johnson
Head of Communities and Economy

Date: 24 May 2016
Contact Person: Peter Arnsdorf, Planning Manager
 peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

Background Papers: LRB procedures agreed on the 26 November 2013.

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Don Rankin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2035
- Site address: 5 Staiside Court, Bonnyrigg, EH19 3PZ
- Appeal by Mr Ghulam Dean against the decision by Midlothian Council
- Application for planning permission 15/00737/DPP dated 2 September 2015 refused by notice dated 8 December 2015
- The development proposed: Formation of a hot food takeaway and installation of a flue
- Application drawings: 629/2, 629/3, 629/5, 629/6, 629/7
- Date of site visit by Reporter: 5 May 2016

Date of appeal decision: 23 May 2016

Decision

I allow the appeal and grant planning permission subject to the 6 conditions listed at the end of the decision notice. Attention is also drawn to the 3 advisory notes at the end of the notice. The appellant considers that the council has acted unreasonably in refusing permission. My conclusion on their claim for expenses is made in a separate letter.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are (1) whether the proposal is contrary to Midlothian Local Plan (MLP) Policies DP7, Shop 6 and Shop 7 with respect to maintaining the vitality of the local shopping centre; (2) whether the location of a hot food takeaway would be contrary to MLP Policies RP20 and DP7 with regard to residential amenity and (3) whether other material considerations warrant the grant or refusal of planning permission, in this case whether the proximity of the proposed hot food takeaway to the local Lasswade High School would have an adverse impact on local policies for healthy eating.

2. Looking firstly at the issue of maintaining the vitality of the shopping centre the original permission for the shopping development at Staiside Court, planning permission 13/00206/DPP, was conditioned to restrict the number of retail units to limit any adverse impact on the adjacent existing parade of shops. Retail was initially restricted to units 1 & 2 though unit 2 was subsequently given permission as a bookmakers, presumably as the council no longer considered retention as a retail unit necessary to retain vitality of the centre. The proposal is to utilise unit 5, one of those previously restricted by consent to financial, professional and other services and food and drink. The proposed use as a hot



food takeaway would not conflict with the planning restrictions imposed by condition on the original permission. It cannot therefore be considered to be restricting the availability of retail space to the detriment of the vitality of the centre. Indeed, the remainder of the local centre appears to be thriving, offering a variety of retail services. The only problem area appears to be the two vacant units at Staiside Court.

3. MLP Policies Shop 6 and Shop 7 relate to the location of minor retail facilities and the development of retail in new developments. The proposal is to utilise a shop in a recently completed shopping parade. The council's concerns about loss of centre vitality are not evidenced and the proposed location within an established shopping parade does not raise any significant new issues of vitality not already taken into consideration when planning permission 13/00206/DPP was granted. I find therefore that the proposal is not contrary to MLP Policies Shop 6 and Shop 7.

4. The proposal is to use a currently vacant shop unit, one of the two such vacant units, as a hot food takeaway. As noted in the council's submitted Report of Handling (para 7.3) the proposed hot food takeaway fulfils all of the locational requirements for a hot food takeaway specified in MLP Policy DP7, namely in a town centre, local or neighbourhood shopping centre or a predominately commercial or business area. There are no issues arising from the cumulative effects of additional hot food takeaways on the viability or vitality of the centre. Issues related to the generation of noise or litter within the centre can be controlled through the provision of litter bins and restrictions on opening hours. The location is not therefore inappropriate for a hot food takeaway and in this respect the proposal is not contrary to MLP Policy DP7.

5. Turning to the second reason for refusal, the impact on the living conditions for nearby residents, the building is a single storey custom built shopping parade. There are no residents living above or in the immediate vicinity. It occupies the site of a former public house where a degree of noise from evening and late night customers would have been normal. In any case a restriction on opening hours to prevent late night opening can control this potential adverse impact on local residential amenity.

6. The council notes that the closest residential property is only 10 metres from the site. There is no reason to assume that with appropriate restrictions on opening hours this would be a problem. I note the view of the environmental health services that the proposal would be acceptable both in terms of noise and, subject to appropriate emission control, free from unwanted smell. There are no local objections with respect to any adverse effect on amenity. There is therefore no clear evidence which would lead me other than to conclude that the proposal complies with the amenity requirements of MLP Policy DP7.

7. The shopping centre is already built. There are no compelling reasons with respect to locational criteria or amenity considerations against the location of a hot food takeaway in one of the vacant units. The proposal would be a natural part of the shopping centre and not therefore in my view adversely affect the character and appearance of the area. It would not therefore be contrary to MLP Policy RP20.

8. Turning to the last reason for refusal, the proximity of the Lasswade High School and the impact of a hot food takeaway on the implementation of the council's corporate objectives for healthy eating, the key issue is whether this is an appropriate material consideration. The promotion of healthy eating habits, particularly amongst the young, as

part of a programme to tackle obesity and generally improve health, is government policy. I accept that it also forms one of the council's corporate objectives. A material consideration as defined in planning regulations must however relate to the site and the specific impact of the development on planning related matters. In terms of the policies of the development plan there is no clearly established relationship between healthy eating and the location of hot food takeaways. In the absence of such criteria I cannot give weight to it as a material planning consideration. Similarly, in the absence of such criteria a restriction of opening hours to prevent use by lunchtime school students would not be reasonable under the requirements of Circular 4/1998 *The Use of Conditions in Planning Permissions*.

9. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission.

Don Rankin

Reporter

Conditions

1. Prior to the commencement of development, details of the extract ventilation system shown on drawing number 629/07 shall be submitted to and approved in writing by the planning authority. The ventilation system shall:

- a) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
- b) Prevent the emission of cooking odours likely to cause nuisance to neighbouring properties; and
- c) Terminate at sufficient chimney height to expelled with suitable upwards velocity to permit the free disposal of exhaust fumes.

The use hereby approved shall not begin until the approved ventilation system is installed and operational. The ventilation system shall thereafter remain operational, as approved, whilst the unit is used as a hot food takeaway.

(Reason: These details were not submitted with the original application and are required in order to ensure the proposed development does not have an adverse impact on the amenity of occupiers of nearby properties).

2. The extract ventilation system shall be designed to achieve 30 air charges per hour.

(Reason: To ensure a satisfactory standard of amenity.)

3. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when measured within any living accommodation and NR40 within any adjacent office accommodation.

4. All music shall be controlled to be inaudible within any neighbouring residence.

(Reason for conditions 3 and 4: To minimise the potential impact on the amenity of nearby residents from noise generated.)

5. A litterbin shall be provided at the front of the premises during the opening hours of the hot food takeaway. (Reason: To ensure a satisfactory standard of amenity and to safeguard the appearance of the neighbourhood shopping centre.)

6. The use hereby approved will not open to the public outwith the following hours:

Mondays – Saturdays inclusive: 11am to 12midnight,

Sundays: 11am to 11pm.

(Reason: To ensure a satisfactory standard of amenity in the neighbourhood shopping centre).

Advisory notes

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

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

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

Decision by Don Rankin, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-290-2035
- Site address: 5 Staiside Court, Bonnyrigg, EH19 3PZ
- Claim for expenses by Mr Ghulam Dean Appellant against Midlothian Council

Date of decision: 23 May 2016

Decision

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

Reasoning

1. The claim was made at the appropriate stage of the proceedings.
2. The appellant claims that the council's third reason for refusal is not based on any material planning consideration. It is in their view unreasonable and as such the matter should not have had to be referred to Scottish Ministers by appeal. Unreasonable actions by the council are defined in Circular 6/1990 where there are six tests of unreasonable behaviour.
3. The council had three reasons for refusing the application. The first two of these were firmly rooted in their interpretation of the policies of the Midlothian Local Plan (MLP). They firstly considered that the proposed change of use would affect the viability of the local shopping centre. This had clearly been an issue of concern when the mix of shop types was being considered with the planning application in 2013. That mix was subject to a complex planning condition to avoid damage to the retail element of the existing parade of shops adjacent. The council referred to Policies DP7 and Shop 6 and Shop 7 of the MLP and directly to compliance with the planning condition on the original permission for the shopping parade. They related their conclusion to the need for the continued vitality of the whole district shopping centre.
4. Despite the officers' report advising that the proposal was not in conflict with these policies, the council were at liberty to reach a different conclusion on those policies and their action was, with respect to the tests in Circular 6/1990, not unreasonable.
5. Secondly the council objected to the impact on amenity of the proposed hot food takeaway. Amenity issues with respect to this use are often contentious and open to

interpretation. The council referred to the criteria for hot food takeaways in MLP Policy DP7 and explained this further by reference to the proximity to nearby residential property. Neither the council planners, the environmental health services nor myself agreed with the council's conclusions with respect to MLP Policy DP7, but again they were entitled to reach a different conclusion based on their own local knowledge and experience. Their action was not therefore inherently unreasonable with respect to the tests in Circular 6/1990.

6. The council's third reason for refusal was not directly related to the policies of the development plan. Instead it relied on their corporate objective to improve healthy eating amongst the young to establish a material planning consideration which would add weight to their other conclusions with respect to the suitability of the hot food takeaway in the proposed location across the road from the Lasswade High School. This has clearly been a contentious local issue with objection from the local councillor leading to the transfer of the decision from the scheme of delegation to decision by committee.

7. The council's healthy eating objective does not form part of the development plan. It is not one of the criteria laid out in MLP Policy DP7 with respect to the location of hot food takeaways. The council were advised by their officers that this was not therefore a material planning consideration. Despite this no significant further evidence was provided either in explanation of the reason for refusal nor in submissions to this appeal to justify its inclusion as a material consideration other than its existence as a council corporate objective. In this respect the council's actions did not meet the criteria in Circular 6/1990 for reasonable behaviour.

8. I did not give weight to the case for healthy eating as material planning consideration and in consequence dismissed the third reason for refusal of permission. This was not however the sole reason for refusal. The main reasons (1 and 2) were firmly related to the policies of the development plan and clear reasons provided. I consider the relevance of the healthy eating issue to have been marginal to the planning case presented by the council and insufficient reason, on its own, for an award of expenses.

Don Rankin
Reporter



ENFORCEMENT REPORT – FORMATION OF DORMERS AT 15 DUNDAS STREET, BONNYRIGG

Report by Head of Communities and Economy

1 SUMMARY OF CASE

- 1.1 The breach of planning control relates to the formation of two dormer windows at 15 Dundas Street, Bonnyrigg without planning permission or listed building consent.**
- 1.2 Planning permission and listed building consent were granted in April 2009 for the erection of two dormer windows; however the windows as constructed are of a different design and are significantly larger than those that were granted consent. The applicant applied for planning permission (11/00677/DPP), retrospectively, for the dormers that have been erected on the site. The application was refused. The applicant sought a review of this refusal of planning permission in February 2012. The Local Review Body determined to dismiss the review and refuse planning permission.**
- 1.3 Following extensive attempts to negotiate the removal of the dormers or discuss alternative proposals, an enforcement notice was served on the owner of the property in April 2015. The notice required the removal of the unauthorised dormers, or, their replacement with or alteration to the dormer windows granted planning permission and listed building consent in 2009.**
- 1.4 The applicant appealed the Enforcement Notice and the Scottish Government Reporter dismissed the appeal and confirmed the enforcement notice and gave the applicant until 10 June 2016 to comply with the notices' requirements.**
- 1.5 The owners of 15 Dundas Street, Bonnyrigg have not as yet complied with the enforcement notice.**
- 1.6 This report seeks approval from the Committee to report the matter to the Procurator Fiscal as the next step in taking matters forward in relation to the breach if the unauthorised works are not removed by 10 June 2016.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is centrally located in Bonnyrigg, to the south east of Bonnyrigg Toll. The property is a mid- terraced two storey, stone-built, category C(s) listed building. The other three properties that form part of the same terrace (13, 17 and 19) are also C (s) listed buildings. The dwellinghouse at 15 Dundas Street fronts the road and the rear elevation faces onto the public parking area to the rear of the town centre.

3 BACKGROUND

- 3.1 Planning permission was granted by Midlothian Council on 2 April 2009 for the erection of two dormers on the rear elevation of 15 Dundas Street, Bonnyrigg (planning application 08/00623/FUL). Listed building consent was granted by the planning authority on the same date for the erection of the same dormers, rooflights and for internal alterations (listed building consent 08/00656/LBC).
- 3.2 As part of the appeal against the enforcement notice the applicant's agent advised that 'structural issues' came to light during the construction process which resulted in the formation of significantly larger dormers than those approved. The planning application case officer visited the site during construction and expressed concern regarding the scale of the partially built dormer windows. This concern was acknowledged by the applicants agent.
- 3.3 A retrospective planning application for the formation of both currently installed dormer windows was received by Midlothian Council on 5 October 2011 (planning application 11/00677/DPP). Planning permission was refused on 23 December 2011.
- 3.4 The applicant decided to exercise his right of review of that decision under the terms of S.43A of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc. (Scotland) Act 2006. A notice of review was received by Midlothian Council on 22 February 2012. The Council's Local Review Body (LRB) considered the review by way of written submissions. The review was dismissed and planning permission refused at its meeting of 17 April 2012.
- 3.5 Subsequent attempts by planning authority officials to set up a meeting with the then appellant's planning agent and his client to negotiate a reasonable timescale to either remove both unauthorised dormer windows or to discuss any alternative proposals they may have proved to be fruitless. Further attempts to achieve a satisfactory negotiated solution with a second planning agent resulted in the same outcome.
- 3.6 An Enforcement Notice was served on the applicant on 30 April 2015 under the terms of Section 127 of The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

- 3.7 At the same time that the Enforcement Notice was served the Planning Authority also served a Planning Contravention Notice on the applicant. This notice seeks the submission of information regarding the unauthorised development and presented the applicant with a formal opportunity to explain the events that lead to the breach of planning control. The applicant did not respond to the Planning Contravention Notice either within the required timescale or to date. This was despite the applicant being made formally aware that non provision of the required information would mean that he would be guilty of an offence.
- 3.8 The planning authority received notice on the 25 June 2015 that the applicant had appealed to the Scottish Ministers against the Enforcement notice. The appeal was dismissed on the 10 September 2015. The Enforcement notice dated 30 April 2015 was upheld subject to the variation of the terms of the notice in relation to the time period for compliance extending the time period from 3 to 9 calendar months. The enforcement notice gives the following 3 steps/options to be chosen to remedy the breach:
- The removal of both unauthorised dormer windows and remedial works to return the resultant open external parts of the same roof plane to its original enclosed condition; or
 - The removal of both unauthorised dormer windows and thereafter form both dormer windows subject of approved planning permission reference 08/00623/FUL; or
 - Carry out alteration works to both unauthorised dormer windows to form both dormer windows subject of approved planning permission reference 08/00623/FUL.
- 3.9 Non compliance with the enforcement notice will result in an offence being committed under the terms of Section.136 of the Town and Country Planning Scotland act 1997, as amended by the Planning etc (Scotland Act) 2006.
- 3.10 In addition, any person who executes - or causes to be executed - unauthorised works to a listed building is guilty of an offence under the terms of Section 8 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- 3.11 The applicant has until 10 June 2016 to comply with the Enforcement Notice. There is no evidence that work has, or is about to commence in relation to the dormer windows. As the next meeting of this Committee is not until August, and having regard to the need to move matters forward if the enforcement notice is not complied with, this report seeks approval of the action that should be taken in relation to this breach of planning control.

4 ENFORCEMENT CONSIDERATIONS

4.1 The main issue to be considered in relation to this matter is what action if any the Council chooses to take in relation to the outstanding breach of planning control. The Council has four options:

- Take direct action to make alterations to the dwellinghouse to comply with the requirements of the enforcement notice, recouping the cost of the works from the applicant/owner of the property.
- Take no action and allow the unauthorised dormers to remain in situ on the building, without the benefit of Planning Permission or Listed Building Consent.
- As non compliance with the enforcement notice is an offence under The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the works are an offence under the terms of Section 8 of The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; report the matter to the Procurator Fiscal.
- Give the applicant an extended period of time (3 months) to resolve the outstanding breach of planning control.

4.2 The first of these options, to take direct action, would involve the Council engaging contractors to remove the unauthorised dormer windows. The contractors would be carrying out work internally and externally to the dwellinghouse. The works are by their nature structural and any damage done to the building by contractors would make the Council potentially liable for their rectification. In addition the applicant is resident in the property and as such direct action is not considered to be a preferable option at this point. Furthermore, the costs of taking Direct Action could be substantial and recouping the costs may not be secured until such time that the property is sold.

4.3 The second option, to take no action, is a choice the Council can consider. However following this option the Council is exposing itself to allegations of undermining the planning system and bringing it into disrepute. It would bring into question the decisions of the Council including the decision of the Local Review Body on the planning applications. It would send out the message that if individuals do not like the decisions of the planning authority, they can build what they want, no sanction will be taken and there are no consequences.

4.4 The third option is to report the matter to the Procurator Fiscal with a view to prosecuting the applicant. The unauthorised formation of the dormer windows on the subject building (a listed building) is an offence. Non compliance with the requirements of an Enforcement Notice by 10 June 2016 would constitute a further offence. The matter has been fully examined and exhausted through the application

process, review and the appeal against the enforcement notice. If the applicant is prosecuted there is still the expectation that the unauthorised works are removed, with further prosecutions being instigated if the breach of planning control remains.

- 4.5 The final option is to give the owner of the property a further period of time, for example 3 months, to resolve the breach of planning control beyond the enforcement notice compliance date of 10 June 2016. However, as the applicant has not to date given any assurances of complying with the terms of the Enforcement Notice, it is doubtful that such extension of time will serve any useful purpose.

5 RECOMMENDATION

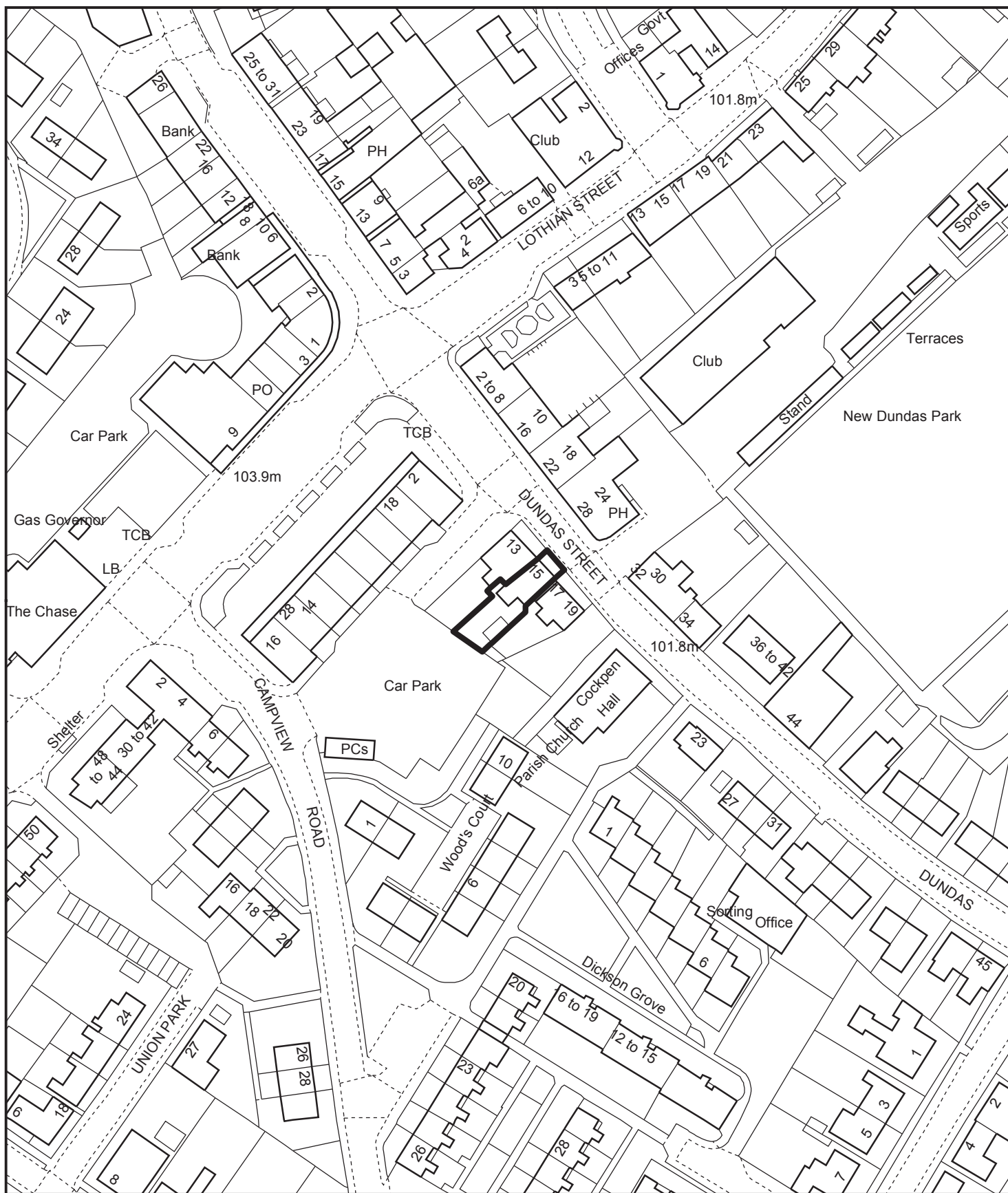
- 5.1 That in relation to the formation of two dormer windows in the rear elevation of the dwellinghouse at 15 Dundas Street, Bonnyrigg, without the benefit of Planning Permission or Listed Building Consent, the Planning Committee agree to report the matter to the Procurator Fiscal with a view to prosecuting the applicant.

Ian Johnson
Head of Communities and Economy

Date: 24 May 2016
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
0131 271 3310

Applicant: Mr Robertson
Agent: Mr McCaskey/Mr Bennie

Background Papers: The planning applications referenced in the report.



**Education, Economy
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Enforcement Report 15 Dundas Street, Bonnyrigg

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Scale: 1:1,250





PRE - APPLICATION REPORT REGARDING:

- I. A PROPOSED RESIDENTIAL DEVELOPMENT AND COMPLEMENTARY LAND USES AT LAND AT ROSSLYNLEE HOSPITAL, ROSLIN (16/00266/PAC); AND,**
- II. THE CHANGE OF USE, ALTERATIONS, EXTENSIONS AND PARTIAL DEMOLITION OF THE FORMER ROSSLYNLEE HOSPITAL AND ASSOCIATED NEW BUILD DEVELOPMENT WITH ASSOCIATED INFRASTRUCTURE AT LAND AT ROSSLYNLEE HOSPITAL, ROSLIN (16/00267/PAC).**

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of two pre application consultations submitted regarding: (i) a proposed residential development and complementary land uses at Rosslynlee Hospital, Roslin (16/00266/PAC); and, (ii) a proposed change of use, alterations, extensions and partial demolition of the former Rosslynlee Hospital and associated new build development with associated infrastructure (16/00267/PAC).
- 1.2 The pre application consultations are reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.

2 BACKGROUND

- 2.1 Guidance on the role of Councillors in the pre-application process, published by the Commissioner for Ethical Standards in Public Life in Scotland, was reported to the Committee at its meeting of 27 May 2014 and subsequent procedures were reported to the Committee at its meeting of 7 October 2014. The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 A pre application consultation for a proposed residential development and complementary land uses at Rosslynlee Hospital, Roslin and the separate pre application consultation for a proposed change of use, alterations,

extensions and partial demolition of the former Rosslynlee Hospital and associated new build development with associated infrastructure, at Rosslynlee Hospital, Roslin, were both submitted on the 8 April 2016.

- 2.3 As part of the pre application consultation process the applicants are to hold a public exhibition at Rosewell Parish Church Hall on Thursday 26 May 2016 (2pm - 8pm) and a private viewing for the following notified stakeholders on the same day (2pm - 3pm): (i) the Ward Members; (ii) Colin Beattie MSP; (iii) Rosewell & District Community Council; and, (iv) Rosewell Development Trust. On the conclusion of the public event the applicant could submit a planning application for the proposal. The applicant's agent has been advised to apply for detail planning permission. It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance) not offer views, as the forum for doing so will be at this meeting of the Planning Committee.
- 2.4 Copies of the pre application notices have been sent by the applicant to Rosewell & District Community Council and the Rosewell Development Trust.

3 PLANNING CONSIDERATIONS

- 3.1 The proposed development relates to the buildings and associated land including access road of the former Rosslynlee Hospital. The buildings include: (i) the Category C listed Rosslynlee Hospital, including gate lodge, gatepiers, railings, staff accommodation and staff cottages; and, (ii) a number of other buildings associated with the former hospital including a former managers house, former social club, former nurses homes and other staff accommodation. The land associated with the buildings comprises approximately 26.1 hectares.
- 3.2 In assessing any subsequent planning application the main planning issue to be considered in determining the application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise.
- 3.3 The adopted 2008 Midlothian Local Plan identifies the site as being in the countryside and any subsequent planning application will be subject to assessment against policies RP1: Protection of the Countryside and DP1: Development in the Countryside. Part 1.4 'Rural Buildings of Value' of Policy DP1 supports the principle of new development not normally supported in the countryside subject to six criteria. One of the criteria is that only new build necessary for the conversion/restoration of the listed building will be supported. Policy DP1 identifies Rosslynlee as a potential candidate for supporting such development. The new development must not detract from the character of Rosslynlee Hospital building and it must be of a scale and design to complement the original building.
- 3.5 At its meeting of 16 December 2014 the Council approved the Midlothian Local Development Plan Proposed Plan (MLDP). Although the proposed plan is subject to Local Plan Examination; which is anticipated to be in the

summer of 2016, the development strategy in the plan would be a material consideration which can be given weight. The proposed plan identifies the land of the former Rosslynlee Hospital as 'an additional development opportunity' for development of 'complementary' new build development to assist the funding of the conversion of the C listed Rosslynlee Hospital. The range in number of new-build houses supported at the site is between 40-200. The number of houses supported in terms of the proposed MLDP is dependent on the detailed proposals and the choice of access solution. The policy sets out to protect the redundant listed building and bring it back into use. Therefore, the Council would seek, in these circumstances, detailed costings set against the sale value of the properties at the site.

- 3.6 The proposed MLDP identifies the developer contributions that are expected to be provided in relation to this site, which includes affordable housing (at 25%). Any deviation from the provision of the developer contributions identified would require a viability case to be made including the detailed cost of development along with the projected and realistic income from the property sales at the site.
- 3.7 The site is subject to Midlothian Local Development Plan (Proposed Plan) representations from the local community and interested parties and will be tested at examination by a Scottish Government Reporter.

4.□ PROCEDURES

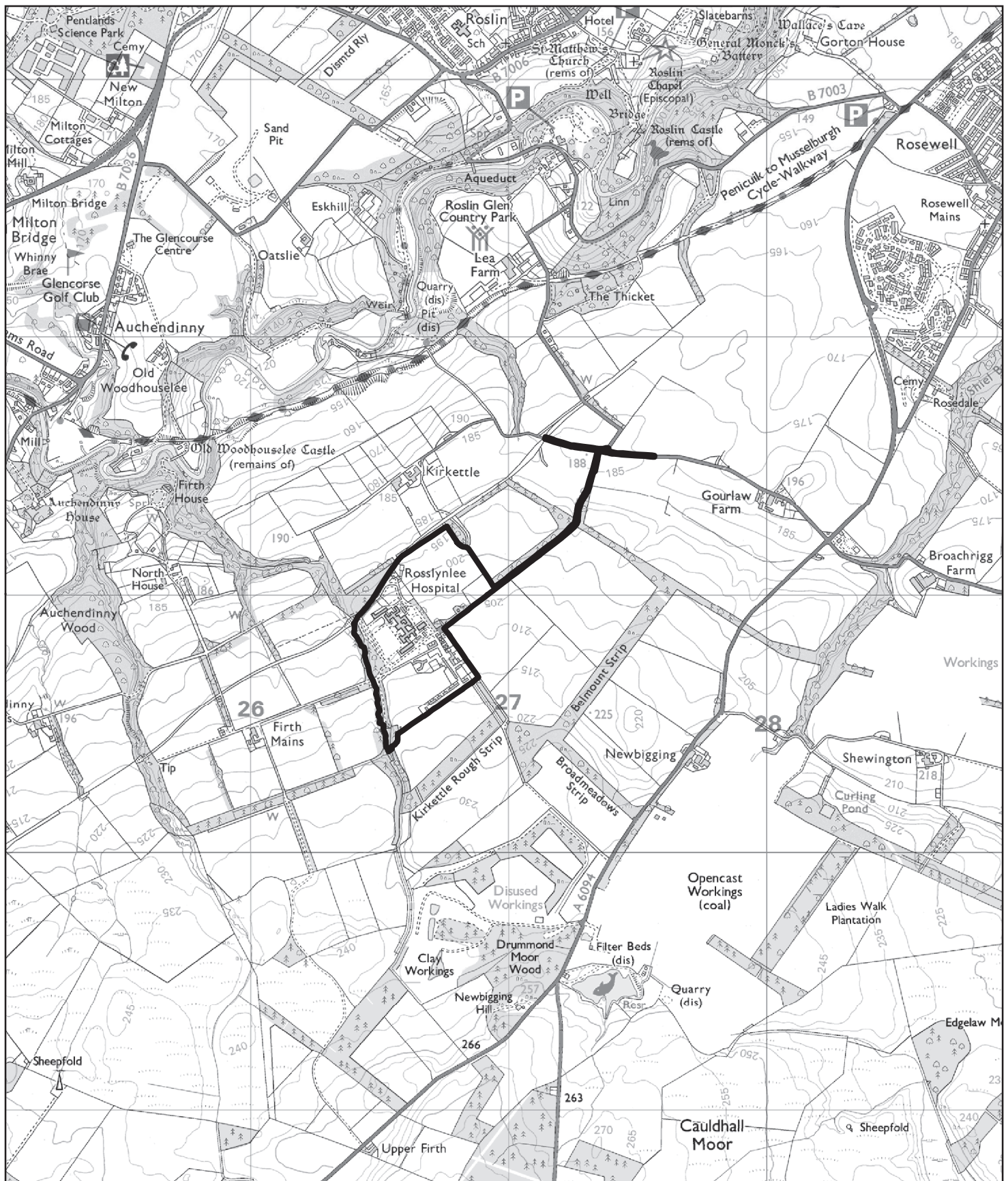
- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.
- 4.3 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures advises that Councillors are expected to approach their decision-making with an open mind in that they must have regard to all material considerations and be prepared to change their views which they are minded towards if persuaded that they should.

5 RECOMMENDATION

- 5.1 It is recommended that the Committee notes:
 - a) the provisional planning position set out in this report; and
 - b) that any comments made by Members will form part of the minute of the Committee meeting; and
 - c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application(s).

Ian Johnson
Head of Communities and Economy

Date: 24 May 2016
Contact Person: Peter Arnsdorf, Planning Manager
Tel No: 0131 271 3310



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
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Proposal of application notice for residential development
and complimentary land uses with associated landscaping
and infrastructure at Land at Roslynlee Hospital, Roslin

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Scale: 1:20,000





**APPLICATION FOR PLANNING PERMISSION (15/00083/DPP) FOR THE
ERECTION OF 33 DWELLINGHOUSES AND 12 FLATTED DWELLINGS;
FORMATION OF ACCESS ROADS AND CAR PARKING AND
ASSOCIATED WORKS ON PART OF SITE C AND D, LAND AT
HOPEFIELD FARM, BONNYRIGG**

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the erection of 33 dwellinghouses and 12 flatted dwellings; the formation of access roads and car parking and associated works on part of Site C and D, Land at Hopefield Farm, Bonnyrigg. There has been consultation responses received from the Council's Policy and Road Safety Manager and the Head of Education. There have been no representations. The relevant development plan policies are RP20, COMD1, IMP1, IMP2 and DP2 of the Midlothian Local Plan. The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The site forms part of the wider Hopefield development located to the south side of Bonnyrigg. The land is to the west side of the northernmost part of the Hopefield site and is bounded on its north side by the walkway which follows the route of a former railway. The Hopefield development comprises development plots A to Z. The application site relates to part of plots C and D. Plot O is the site of the new Burnbrae Primary School, plot Q is a mix of residential and commercial uses and plot Z is allocated for economic land uses. The remaining plots, including C and D, are proposed residential plots, the majority of which have been built or are under construction.

3 PROPOSAL

- 3.1** The proposal is for a medium density private housing development incorporating; 11 detached houses, 16 semi-detached houses, 6 terraced houses; and 12 flats.
- 3.2** There are 17 two bedroom units, 13 three bedroom units, 14 four bedroom units and 1 five bedroom unit.

- 3.3 The flatted block is three storeys high with four flats per floor. All other properties are two storeys.
- 3.4 Vehicular access to the site is from the west via the development site the subject of planning permission 13/00318/MSC (see paragraph 4.4).

4 BACKGROUND

- 4.1 At its meeting of 19 April 2016 the Planning Committee deferred consideration of the application. The Committee agreed to continue consideration of the application for one cycle to the Planning Committee on 31 May 2016, so that the applicant can progress a number of outstanding matters across the wider Hopefield development site. These matters include:
- Maintenance of the central open space;
 - The provision of a bridge/crossing connecting the cycle/footpaths in Saw Mill Path and South Chesters Gardens;
 - Clarification over the affordable housing provision;
 - The plans for the proposed neighbourhood centre which comprises retail and commercial facilities to be provided on part of Plot Q, south of the central open space, and in the short term the condition of the fencing/hoarding enclosing the site;
 - Broadband provision, in particular the upgrading of 'Cabinet 56'; and
 - The plans for the use and management of the open space opposite the Burnbrae Primary School.
- 4.2 An update on those matters identified above is provided in Section 8 of the report.
- 4.3 There have been a significant number of applications for the Hopefield development since approval of the outline planning application for the whole site in 2003. There have been over 30 subsequent applications for full planning permission/detail planning permission and reserved matters/matters specified in conditions across the Hopefield development area. Those most relevant to the current application are:
- 4.4 Application **01/00033/OUT** for outline planning permission for residential development with an associated industrial/business use, landscaping, open space and new distributor road was approved 6 August 2003 subject to conditions and the prior signing of a legal agreement. The legal agreement (and subsequent amendments) secured developer contributions towards education provision, infrastructure, sports facilities and the provision of affordable housing.
- 4.5 Application **04/00553/FUL** for a masterplan illustrating the proposed housing areas, landscaping and open space areas, roads, community facilities and employment and industrial land (part of the reserved matters required by outline planning permission 01/00033/OUT) was approved on 24 June 2005.

- 4.6 Application **13/00318/MSC** was for the erection of 97 dwellinghouses and 12 flatted dwellings; formation of access roads and car parking; and associated works (Application for Approval of Matters Specified in Condition 2 of Planning Permission 01/00033/OUT) on part of site C and D, approved 29 November 2013. The site the subject of planning permission 13/00318/MSC does not include the site the subject of the current planning application.
- 4.7 Applications **14/00263/PPP** and **14/00264/PPP** were for planning permission in principle for residential development on plots H and I and were approved on the 4 June 2015. These applications were approved subject to a legal agreement securing developer contributions towards education provision, Borders Rail and the provision of affordable housing. The legal agreement not only covered the sites identified in these applications but all remaining units above the initially anticipated 1,100 dwellings covered by the original outline planning permission. It is anticipated that approximately 1,300 units will be delivered across the whole Hopefield development.
- 4.8 Application **10/00571/DPP** for the erection of a three storey building containing 9 retail units, 9 office units and crèche facility and formation of associated footpaths and car parking at Plot Q was approved 18 October 2010. This permission was not implemented and has now lapsed.
- 4.9 The application has been called to Committee for consideration by Councillor Milligan.

5 CONSULTATIONS

- 5.1 The **Policy and Road Safety Manager** has no objection to the application.
- 5.2 The **Head of Education** has advised that a development of 45 dwellings would give rise to the following number of pupils:
- | | |
|------------------------------|----|
| Primary Non Denominational | 13 |
| Primary Denominational | 1 |
| Secondary Non Denominational | 9 |
| Secondary Denominational | 1 |
- 5.3 Primary Non Denominational provision will require additional capacity provision including the identification of a site on which the additional capacity can be provided, and accordingly, developer contributions will be required towards the consequential costs of this augmented capacity.
- 5.4 Primary Denominational provision will be at St Mary's RC Primary School which currently has sufficient capacity for this development.

- 5.5 Secondary Non-Denominational provision will require additional capacity provision and, accordingly, developer contributions will be required towards the consequential costs of this augmented capacity.
- 5.6 With regard to Secondary Denominational provision a contribution per house towards St David's High School is required.

6 REPRESENTATIONS

- 6.1 No representations have been received in connection with this application.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Plan, adopted in December 2008. The following policies are relevant to the proposal:
- 7.2 Midlothian Local Plan Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area;
- 7.3 **Midlothian Local Plan Policy COMD1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing. The application site forms part of committed site h28 (allocated in the 2003 Midlothian Local Plan).
- 7.4 Policy **IMP1 New Development** advises that planning conditions will be applied and, where appropriate, legal agreements sought to ensure that, where new development gives rise to a need, appropriate provision is made for necessary infrastructure and environmental improvements;
- 7.5 Policy **IMP2 Essential Infrastructure Required to Enable New Development to Take Place** aims to ensure that development does not proceed until provision has been made for essential infrastructure and environmental requirements, related to the scale and impact of the proposal. Planning conditions and legal agreements to secure the appropriate developer funding and the proper phasing of development. The policy identifies the required infrastructure requirements which will form the basis of securing a contribution;
- 7.6 Policy **DP2 Development Guidelines** which is a set of criteria covering design, sustainability, landscaping, open space provision, house layout, and parking.

National Policy

- 7.7 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.8 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposed development complies with development plan policies unless material planning considerations indicate otherwise. The planning history of the site, the Hopefield masterplan and the consultation responses received are material considerations.

The Principle of Development

- 8.2 The site is allocated for housing and is located within the built up area of Bonnyrigg where there is a presumption in favour of appropriate development. The principle of residential development on this site is established by its allocation for housing within the adopted Midlothian Local Plan 2003, with an indicative capacity of 1,100 units. This position was reaffirmed by the site's continued allocation in the Midlothian Local Plan 2008 (MLP) and by successive grants of planning permission across the site. Detailed planning permissions have been granted for all the housing development areas apart from plots B, L2 and the application site, part of C and D.
- 8.3 As the development at Hopefield has been built out in phases it has become apparent that the overall number of dwellinghouse on the site will exceed the original indicative 1,100 units and will be closer to 1,300 units. Once the detailed planning permissions for the first 1,100 houses had been approved an additional legal agreement was concluded to secure additional developer contributions for the extra units. In planning terms the 'extra' units, above the 1,100, are acceptable as long as the design and layout of the development is not detrimentally affected by the increase, the impact in terms of transportation and parking can be mitigated and the local schools can accommodate the anticipated increase in pupil numbers.

Layout and Form of the Development

- 8.4 The proposed layout and form of development adheres closely to the approved masterplan (application 04/00553/FUL) for this part of the Hopefield development. It comprises a medium density development which is compatible to the neighbouring development areas in terms of

its layout, street pattern and property sizes. The proposed flatted block is in the optimum landmark location at the head of a 'T' junction on the main Hopefield estate road. A strong street frontage is created to each of the boundaries, overlooking the estate road to the south and open space to the west. The north and east frontages adjoin houses already approved and under construction on the eastern part of plots C and D. Good pedestrian and cycle links have been created connecting to the existing and approved networks.

- 8.5 Plots C and D were expected to have approximately 111 units, the proposed layouts for these plots totals 154 units. Planning permission 13/00318/MSC granted permission for 109 units and the current application is for 45 units. However, the boundaries between the original plots have evolved since their original conception and as such plots C and D also incorporates a part of plot E. Despite this complication it is evident that the number of dwellings has increased beyond those originally envisaged. However, this has not been to the detriment of the layout or form of the development.

Design and Materials

- 8.6 The mix of house types and size of dwellings is acceptable. The architectural styles of the houses are traditional in form and complement the character and visual amenity of the area. In terms of the number of units, their size, massing and positioning on the site would not appear cramped or an unsympathetic development on the site. The predominant building elevation material will be render and brick. Roofing materials should be a mix of pantiles and high quality red and grey tiles to reflect the colours used in the already approved part of plot C and D which is under construction.
- 8.7 The road layout and car and cycle parking is acceptable in transportation terms.
- 8.8 SUDS drainage is already provided for by Hopefield wide treatment ponds, and the site will contain porous paving to reduce the pressure on these ponds.
- 8.9 The distances between the proposed houses are in accordance with adopted Policy DP2 standards, and there will be no significant adverse impact on existing houses in terms of daylighting or privacy. Garden sizes are in accordance with DP2 standards with the exception of a small number of units which fall marginally below the standard garden sizes; and this is regarded as acceptable in terms of overall layout and design.
- 8.10 There is a hedgerow consisting of mixed species growing along the north-western boundary where the site adjoins the railway walk; this provides containment of the site and should therefore be protected by fencing during the construction. Some proposed tree planting is shown

too close to the dwellings, there should be no plant nearer to a dwelling than 4.5m. Where trees are shown planted in hardstanding sufficient soil volume needs to be afforded each tree (target volume for a medium sized tree is 11.8 cubic metres). These controls can be secured by conditions imposed on a grant of planning permission. Subject to these conditions the proposed development is acceptable in landscape terms.

Open Space and Recreation.

- 8.11 Open space for sport, including playing fields has already been formed within the Hopefield development and is of a size such that no additional provision is required.
- 8.12 In terms of informal recreation and play for the north western part of the Hopefield development site the approved Hopefield Masterplan delineates a small urban park and also an area for public art on land immediately to the west and south west of the application site. In the masterplan the land is referred to as Landscape Zone 6: Western Finger. Illustrative plans show it as being a grassed recreational area comprising: (i) a central grassed open space; (ii) a local equipped area for children's play (LEAP) on its northern part; (iii) an area for public art (per cent for art) on the corner formed by two roads; (iv) lines of trees with formal hedging along edges, and, (v) formal shrub planting. In addition footpaths/cycleways are shown as traversing the urban park, connecting to existing footpaths/cycleways within Hopefield and the existing surrounding development, one of which is the safe route to the secondary school.
- 8.13 The approved phasing plan for the Hopefield development site; which forms part of the approved masterplan, identifies that that urban park and artwork be formed within development phase two. However, they have not yet been formed and some of the development plots within phase three of the development have already been built out. The urban park is part of the essential children's play and recreational open space requirement for the future occupants of the houses within the whole of the Hopefield development. Although there is now no requirement for a LEAP to be provided within the park owing to there being existing adequate equipped play facilities within the neighbourhood children's play area within the Hopefield development site, the grassed area is required for informal recreational activities, including for children's play. The future occupants of the houses and flats the subject of this planning application will benefit significantly by the timeous formation of the urban park owing to the close juxtaposition of them to it. The five houses on plots 67-71 front onto the urban park and the flatted block on plots 92-103 has an elevation that faces onto it. If the urban park is not formed prior to these specific dwellings being occupied then the undeveloped condition of the land would be a source of unsightliness to them and would detract from their residential amenity. As such the five houses on plots 67-71 and the 12 flats within

the flatted block on plots 92-103 shall not be occupied until the urban park is formed in its entirety and made available for use and the public art (percent for art) is in situ all in accordance with a detailed landscape scheme to be submitted for the prior written approval of the Planning Authority.

- 8.14 In response to the Committee raising concerns regarding the quality of the existing open space at its meeting in April the applicant has inspected the open space and can advise that in response it is their intention to:
- Carry out some maintenance works this summer to improve the quality of the grassed area in the central open space;
 - Carry out further landscaping works around the SUDs pond located to the north of the central open space;
 - Form a footpath to the north east of plots M and N to link to existing/proposed footpath networks (this footpath was identified in the approved Masterplan for Hopefield);
 - Consult with local residents, via the Residents Association, with regard the transfer of the pitches to the south west of the site (opposite the Burnbrae Primary School) to the Council. The applicants have offered to transfer the ownership of the pitches if the local residents agree, but not to provide any commuted sum for maintenance; and
 - Provide a piece of public art (to meet their % for art requirement), which will be located along the footpath to the north west connecting Hopefield to the established housing to the north.
- 8.15 In addition to the works identified in paragraph 8.14 above the applicants have committed to delivering a bridge/crossing over the Pittendrieck Burn linking the already established cycle/footpath on the south side (Saw Mill Path) to the north side (South Chesters Gardens). This link was identified in the approved Masterplan and is seen as an integral part of the cycle/pedestrian network across the Hopefield development site. The applicants have submitted some provisional plans to the planning authority for consideration. Detailed plans will be displayed at the meeting of this Committee.

Affordable Housing

- 8.16 With regards to affordable housing, the approved strategy for the Hopefield development was to allocated specific sites for affordable housing provision (E, I, and Q). This is the strategy that has been implemented. The delivery of additional housing beyond the originally anticipated 1,100 dwellings triggered a demand for further contribution towards the provision of affordable housing. The additional provision is made by way of commuted sum equal to 10% of the total number of residential units to be built. This is at the upper end of the 5% - 10% range set by MLP 2008 policy COMD1 which reaffirms the stated level

of affordable housing for those sites originally allocated in the 2003 MLP.

Developer Contributions

- 8.17 Primary Non Denominational and Secondary Non Denominational provision will require additional capacity provision and, accordingly, developer contributions will be required towards the consequential costs of this augmented capacity. These developer contributions have been secured by legal agreement in granting planning permission 14/00263/PPP and 14/00264/PPP (see paragraph 4.5). However, it would be appropriate to review the financial arrangements secured in the agreement to ensure the consequential educational impact of the proposed development is addressed to account for current circumstances. Accordingly any identified shortfall can be made good by a supplementary agreement. The agreement covered all those residential units above the originally anticipated 1,100 units.

Neighbourhood Centre

- 8.18 An approved planning application (10/00571/DPP) for a neighbourhood centre was not implemented and has since lapsed. The proposed scheme in terms of its scale, design and proposed uses was not viable. However, the applicant is committed to providing some neighbourhood facilities for local residents and has submitted some significantly revised provisional plans to the planning authority for consideration as a pre application enquiry.
- 8.19 In the meantime the applicants have made a commitment to improve the appearance of the undeveloped site by; removing the unsightly hoarding and replacing it with a 1.8m single boarded fence, repair the existing mesh fencing and remove the fly tipping. This will improve the appearance of the site in the short term whilst making the site safe.

Broadband

- 8.20 With regard broadband provision, in particular the upgrading of 'Cabinet 56', the applicants have agreed to fund the upgrading of the required infrastructure, Cabinet 56, and have been in liaison with the provider, BT Openreach, to programme the required work. This will enable access to 'high speed fibre broadband' for the wider development site. Those units proposed by the application subject to consideration are subject to a condition (Condition 7) to secure high speed fibre broadband if the Committee is minded to grant planning permission.

9 RECOMMENDATION

- 9.1 It is recommended that planning permission be granted for the following reason:

The proposed development site is identified as being part of the Council's safeguarded/committed housing land supply within the adopted Midlothian Local Plan 2008 and accords with development plan policies COMD1 and RP20. Furthermore, the development, subject to the recommended planning conditions, accords with good design principles and with Policies DP2, IMP1 and IMP2 of the adopted Midlothian Local Plan 2008. The presumption for development is not outweighed by any other material consideration

subject to the following conditions:

1. Development shall not begin until details of a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. The scheme shall also cover the proposed open space to the west of the site, referred to as Landscape Zone 6: Western Finger in the approved Masterplan. Details of the scheme shall include:
 - i existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii proposed new planting in communal areas, road verges and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
 - iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi programme for completion to a specified standard and subsequent maintenance of all soft and hard landscaping. The landscaping in the open space shall be completed prior to the houses on adjoining plots being occupied;
 - vii drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff;
 - viii proposed car park configuration and surfacing;
 - ix proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
 - x proposed cycle parking facilities;
 - xi details of existing and proposed services; water, gas, electric and telephone; and
 - xii proposed area of improved quality.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion to a specified standard and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Prior to this condition being discharged the finished standard of open space shall be inspected and approved in writing by the planning authority.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

2. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. An enhanced quality of materials shall be used in the area of improved quality. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

3. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii proposed vehicular, cycle and pedestrian access;
 - iii proposed roads (including turning facilities), footpaths and cycle ways;
 - iv proposed visibility splays, traffic calming measures, lighting and signage;
 - v proposed construction traffic access and haulage routes;
 - vi proposed car parking arrangements;
 - vii an internal road layout which facilitates service/emergency vehicles entering and leaving the site in a forward facing direction; and

- viii a programme for completion for the construction of access, roads, footpaths and cycle paths.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

4. Details of how the trees proposed in hardstanding areas are to be accommodated shall be submitted for the prior approval of the planning authority. The details shall include soil volume per tree of between 11.8 cubic metres and 30 cubic metres depending on the size of the trees.

Reason: *In order for the trees to be retained as tree roots will conflict with hard surfaces in which they will be located.*

5. Where trees are shown in close proximity to services, including between plots 110 and 111 a root barrier shall be deployed.

Reason: *In order for the trees to be retained and mitigate conflict with the proposed services.*

6. Development shall not begin until details, including a timetable of implementation, of 'Percent for Art' have been submitted to and approved in writing by the planning authority. The 'Percent for Art' shall be implemented as per the approved details.

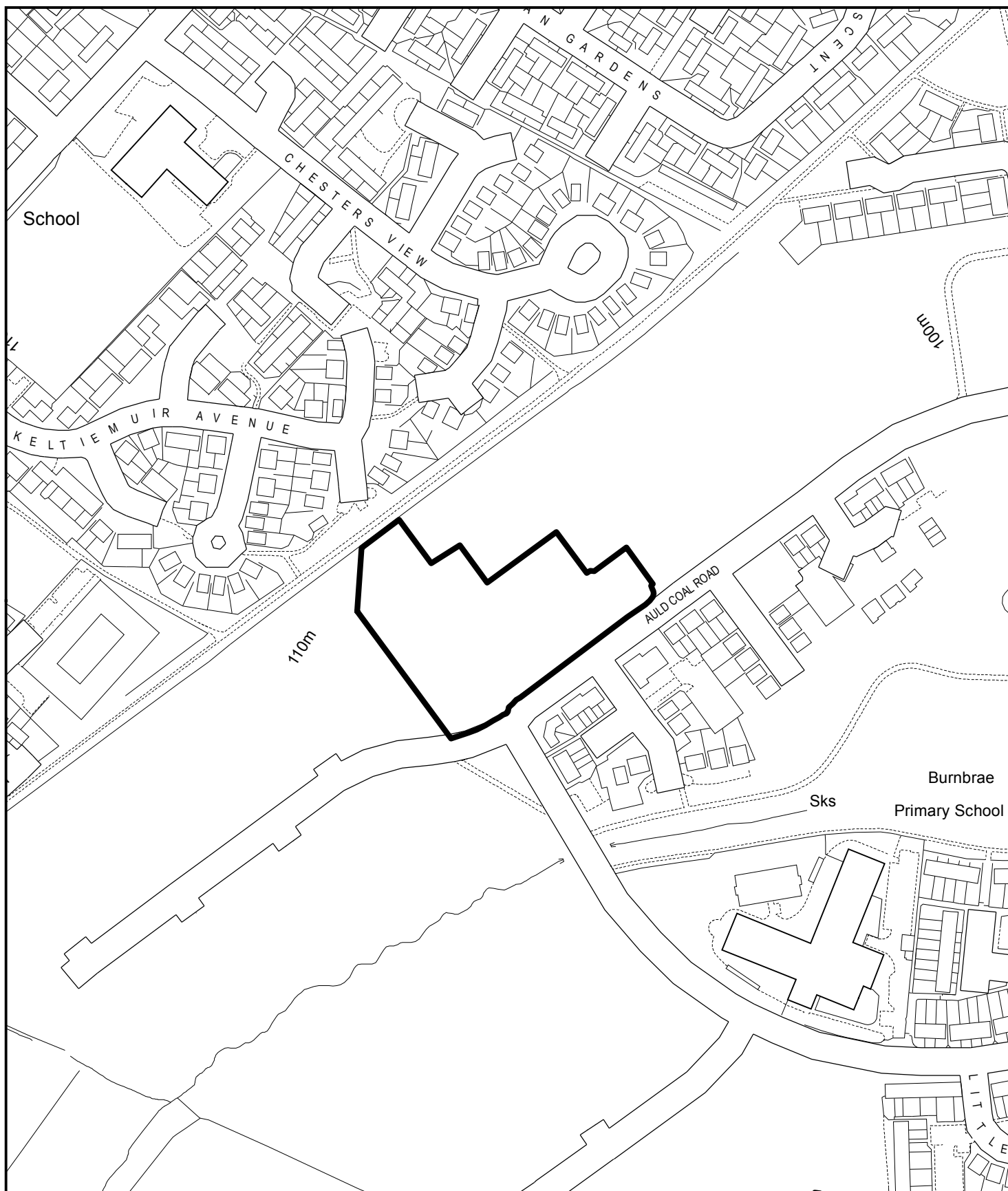
Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies IMP1 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

7. Development shall not begin until details, including a timetable of implementation, of high speed fibre broadband (or subsequent replacement internet connectivity technology) have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse. The delivery of high speed fibre broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

Ian Johnson
Head of Communities and Economy

Date: 24 May 2016
Application No: 15/00083/DPP
Applicant: Taylor Wimpey East Scotland
1 Masterton Park, Dunfermline, KY11 8NX
Validation Date: 25 February 2015
Contact Person: Adam Thomson
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Background Papers: 01/00033/OUT, 04/00553/FUL, 13/00318/MSC,
14/00263/PPP, 14/00264/PPP and 10/00571/DPP.



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Site C And D, Land at Hopefield Farm, Bonnyrigg

18th February 2016

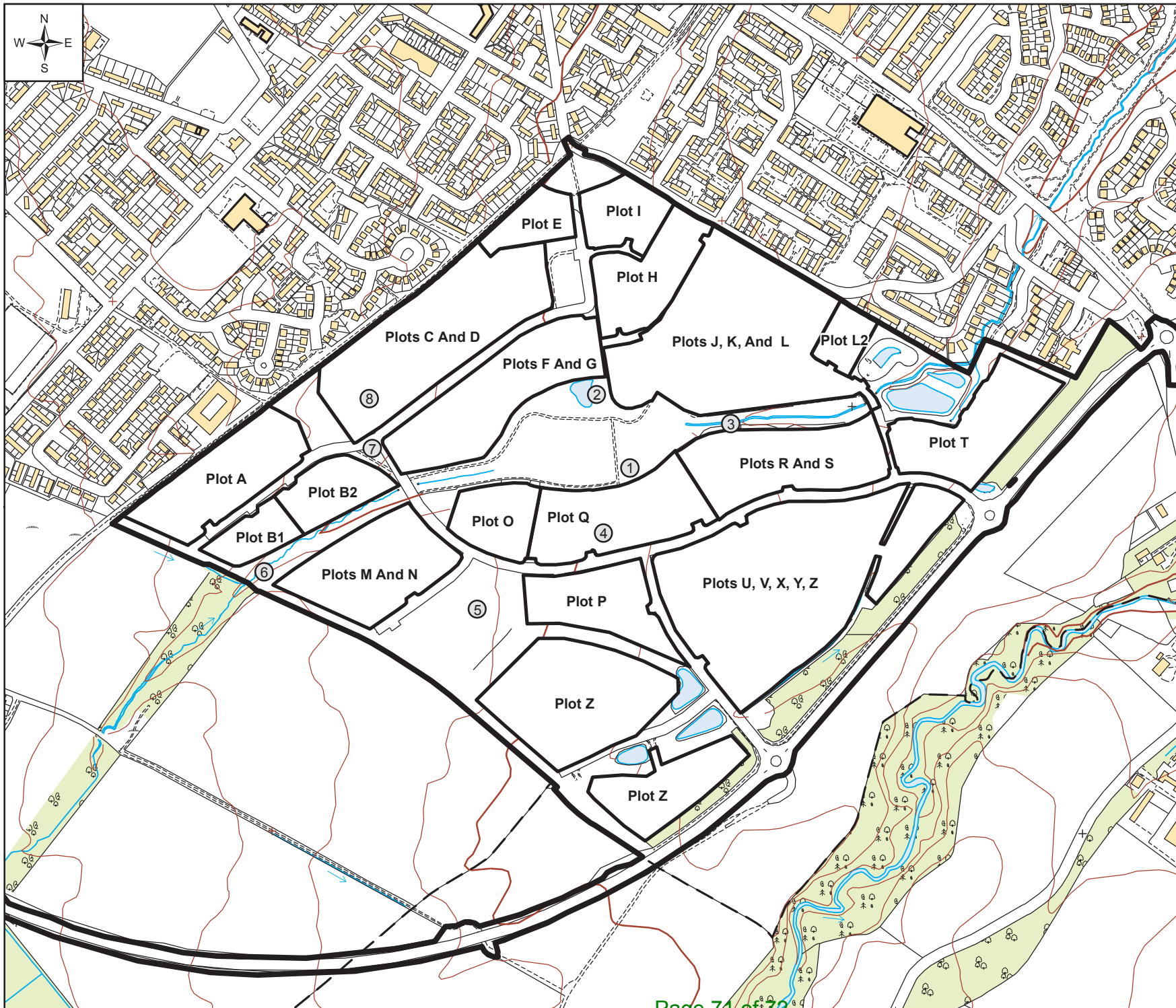
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Scale: 1:3,000





- 1, Central open space
- 2, SUDS
- 3, Crossing from Saw Mill Path to South Chesters Gardens
- 4, Neighbourhood centre
- 5, Sports pitches
- 6, Footpath
- 7, Public art
- 8, 15/00082/DPP Planning Application



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Hopefield Plots

Ref: N/A

Scale: 1:7,500 @A4

Drawn By: MM

Date: 23/05/16

