



SECTION 42 APPLICATION 23/00465/S42 TO AMEND CONDITIONS 9, 10 AND 12 (ACCESS ARRANGMENTS) IMPOSED ON A GRANT OF PLANNING PERMISSION 18/00528/S42 (ITSELF A S42 AMENDMENT OF 15/00113/PPP) FOR THE DEMOLITION OF EXISTING DWELLINGHOUSE, ERECTION OF HOTEL, ERECTION OF REPLACEMENT HOUSE PLOT, FORMATION OF THREE HOUSE PLOTS, FORMATION OF ACCESS ROADS, CAR PARKING AND ASSOCIATED WORKS AT LAND AT CALDERSTONES, BIGGAR ROAD, HILLEND

The application is accompanied by an Environmental Impact Assessment report prepared in terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** At its meeting of August 2015 the Committee granted planning permission for the demolition of the existing dwellinghouse, erection of hotel and residential development, formation of access roads, car parking and associated works at land at Calderstones, Biggar Road, Hillend (15/00113/PPP). Subsequently, at its meeting of June 2020 the Committee granted planning permission for an amendment to that permission under Section 42 (18/00528/S42) to vary conditions relating to phasing, landscaping, design of buildings, site access roads, approval of the junction to A702 and the timings of its provision and closure of the existing access to the Midlothian Snowsports Centre.
- 1.2** The current application proposes an amendment to Conditions 9, 10 and 12 of 18/00528/S42. The proposed amendments seek to update the planning permission in principle for development of Calderstones to reflect the approved access strategy for the Midlothian Snowsports Centre. This approved access strategy is to be shared with the developers of Calderstones. The applicant proposes to remove reference to alternative access and public transport arrangements in order to ensure the conditions remain precise and enforceable, in accord with NPF4 Policy 18.

- 1.3 **There have been no representations and there have been consultation responses from Transport Scotland and the Senior Manager Neighbourhood Services (Roads).**
- 1.4 **The relevant development plan policies are policies 1, 2, 3, 6, 13, 18 and 23 of the National Planning Framework Policy 4 (NPF4) and policies VIS3 and ENV6 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.5 **The recommendation is to grant planning permission subject to conditions.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site is 4.95 hectares of a private dwellinghouse set within extensive landscaped grounds. The site is bound on the east by the A702 Biggar Road (trunk road); on the north by the entrance to Midlothian Snow Sports Centre; on the west by landscaped grounds within the applicant's ownership; and, on the south by open countryside. The site is located on the lower part of the northern slope of the Pentland Hills and within the boundary of the Pentland Hills Regional Park.
- 2.2 The Pentland Hills are a designated Special Landscape Area according to the Midlothian Local Development Plan 2017 (MLDP). The site is also located within the Edinburgh Green Belt. The Edinburgh City Bypass is located a short distance to the north. The nearest settlement is Loanhead c.2km to the east, although the Hillend/ Damhead area is home to number of smaller hamlets and individual residential properties.

3 PROPOSAL

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019) (hereafter referred to as the Act), is to amend the wording of conditions 9, 10 and 12 of planning permission 18/00518/S42, itself a variation of the original planning permission in principle 15/00113/PPP.
- 3.2 Condition 9 as currently drafted is set out below with the proposed deletions shown as a strike through and the proposed additions in bold.

Development shall not commence on the site until an application for matters specified in condition has been submitted to and approved by the Planning Authority in consultation with Transport Scotland (as Trunk Roads Authority), for:

- i. **The means of access to the access onto the A702 via the improved access to the Snowsports Centre illustrated on**

~~drawing no 65200581/SK/005 Revision O to a priority layout standard, compliant with DMRB CD 123 or other means of access to a layout standard compliant with DMRB as may be approved under conditions 10 and 11 of separate planning approval 19/01018/PPP;~~

- ~~ii. The means of closure of the existing vehicular access to the Midlothian Snowsports Centre, the relocation of parking and details of a footway to be provided across the existing access as appropriate in terms of 9 i;~~
- iii. The means of closure of the existing access to Calderstones to vehicular traffic; and,
- iv. The provision of a 2m wide footway formed adjacent to the Trunk Road, or other alignment connecting the new footway across the existing Midlothian Snowsports Centre access other existing Calderstones access as appropriate in terms of 9 i. The footway shall be constructed to adoptable standard.

- 3.3 Condition 10 as currently drafted is set out below with the proposed deletions shown as a strike through and the proposed addition in bold.

No part of the development shall be implemented unless or until:

- i. The new access has been provided on the site in accordance with the approved matters specified in condition ~~s or separate planning permission as detailed in condition 9 i. and is available for use by the Midlothian Snowsports Centre and the Calderstones development;~~ and,
- ii. The existing accesses ~~have been~~ **has** permanently closed, as appropriate, in terms of condition ~~9 ii and 9 iii.~~

- 3.4 Condition 12 as currently drafted is set out below with the proposed deletions shown as a strike through.

~~Prior to any alterations to the trunk road to create the development junction, a detailed annotated drawing of a revised junction layout, which shall delineate/ demonstrate the existing bus turning circle unaltered and continuing to operate in a satisfactory and safe, manner, shall be submitted to and approved in writing by the Planning Authority in consultation with the bus operators using the existing bus turning area.~~

- 3.5 The application is supported by a Planning Statement (Scott Hobbs Planning Ltd), a Transport Statement (Sweco Ltd), an updated Preliminary Ecological Appraisal (Acorna Ecology Ltd) and an Environmental Impact Assessment (EIA) Review.

- 3.6 The applicant sets out the reasons for, and effects of, the proposed changes to the stated conditions. The three conditions relate to the means of access to the Calderstones site. Condition 9 provides the developer with options to access the site from the A702 Trunk Road. Condition 10 is a restrictive condition relating back to Condition 9 and Condition 12 relates to the protection of the bus turning circle.
- 3.7 The applicant notes the change in circumstances in the eight years since planning permission in principle was first granted. The Council's own proposals for the Midlothian Snowsports Centre have been formed and approved through the planning process (see planning history below). The applicant considers it appropriate to amend the planning permission in principle for Calderstones to reflect this updated position, to give clarity to the local community and potential investors. The applicant argues that the effect of this amendment is positive. The consolidated access arrangements would deliver Trunk Road safety improvements and a reduced environmental impact.
- 3.8 The amended conditions would also bring them in to line with the six tests of a valid condition. These tests are set out in NPF4 Policy 18: Infrastructure First. These tests require a condition to be: necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects.
- 3.9 The Transport Statement sets out the technical evolution of access arrangements along this stretch of the A702. It notes the approvals of Drawing No: DMHC-PEV-XX-B1_DR-CE-0703 by Midlothian Council and Transport Scotland as a condition of 22/00169/DPP. The approved arrangement is a signalised junction with pedestrian crossing. The modelling work to assess the impact of these arrangements included potential trips generated by the Calderstones development.
- 3.10 The applicant also provided an updated Preliminary Ecological Appraisal which reviewed the natural assets of the site and the potential effects development could have on these interests. Further surveys of specific interests are noted. A Bat Roost Survey of the existing dwellinghouse is also provided.
- 3.11 Finally, the applicant has submitted a review of the previous EIA Reports. This is a requirement of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 relating to multi-stage consents. It concludes that the amendment to the conditions of the outline consent do not result in any additional likely significant effects on the environment that have not previously been considered.
- 3.12 The proposed development will not result in the closure, or part closure, of any local roads in addition to those ongoing approved works taking place at the entrance to the Midlothian Snowsports Centre.

- 3.13 A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission. Granting of the current application would grant planning permission for the temporary use for a further 5 years.
- 3.14 Although a Section 42 application is a new planning application in law the Act states *“on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*. The principle, layout and form of development are not subject to assessment. Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply.

4 BACKGROUND

- 4.1 Planning permission 15/00113/PPP for the demolition of existing dwellinghouse, erection of hotel, erection of replacement house plot, formation of three house plots, formation of access roads, car parking and associated works (EIA Development) was granted with conditions in August 2015. The conditions were never discharged by a further application(s).
- 4.2 The original proposed site access was to connect into the east boundary of the site with the A702 at a point roughly 100m to the south of the existing access to the Midlothian Snowsports Centre. It was then to curve around back out of the north boundary of the site to link in with the existing access road. This is described in the Jacobs Figure 2.3 of the Environmental Statement and Transport Assessment submitted in support of 15/00113/PPP. Although this drawing was not approved as part of 15/00113/PPP, the conditions of the consent relating to access appear to be derived from a broad acceptable of these general arrangements.
- 4.3 Planning permission 18/00528/S42 application to amend Conditions 3 (phasing), 4 (landscaping), 5 (detail of buildings), 6 (roads, access, transportation) and 10 (scheme of lighting) of 15/00113/PPP was granted in July 2020.
- 4.4 Application 18/00528/S42 proposed an amendment to the general access arrangements and shifted the access point at its junction with the A702 further north at the north east corner of the site. This prompted a revision to Conditions 9 and 10 which updates relevant standards for junctions to Trunk Roads and references to specific drawings. Unlike the previous application, 18/00528/S42 included drawing no 65200581/SK/005 as an approved drawing with conditions referring specifically to it.

- 4.5 Application 23/00460/MSC for the erection of a hotel and associated suites (approval of matters specified in conditions 3, 4, 5, 6, 7, 8, 9 and 13 of 18/00528/S42 (EIA Development) is live and pending consideration.
- 4.6 Planning application 18/00628/S42 to amend conditions 4 (landscaping) and 5 (details of buildings) of 15/00113/PPP was granted in October 2019 but has now lapsed.
- 4.7 20/00441/MSC for the demolition of existing dwellinghouse, erection of hotel, erection of replacement house plot, formation of three self-catering units, formation of access roads, car parking and associated works (approval of matters specified in condition 3 of planning permission 18/00628/S42 relating to the phasing of development). This application has been withdrawn.
- 4.8 Application 20/00466/MSC for the demolition of existing dwellinghouse, erection of hotel, erection of replacement house plot, formation of three self-catering units, formation of access roads, car parking and associated works (approval of matters specified in condition 5 of planning permission 18/00628/S42 relating to the siting, design and layout of the proposed replacement house (Phase 1) was granted in November 2021 but has not yet been implemented.
Midlothian Snowsports Centre
- 4.9 The neighbouring land is the subject of a major development - planning permission in principle 19/01018/PPP for redevelopment of existing Midlothian Snowsports Centre to include additional leisure facilities, tourist accommodation, hotel, function suite, ancillary retail and restaurant, formation of access road and car parking (EIA Development) was granted in February 2022.
- 4.10 Application 21/00912/MSC was submitted for matters specified in conditions 4, 6, 9, 10, 21, 28, 30, 32 and 33 (relating to The redevelopment of existing centre to include additional leisure facilities, tourist accommodation, hotel, function suite, ancillary retail and restaurant, formation of access road and car parking) of 19/01018/PPP. These conditions were discharged in August 2022.
- 4.11 Planning application 22/00169/DPP for alterations to existing junction, bus turning area and car park; resurfacing and associated works was a detailed stand-alone application for the works to the site junction with the A702 trunk road which was granted in August 2022 and work has commenced.
- 4.12 The developer has submitted two applications under Section 42 of the planning act to vary the conditions of 19/01018/PPP and 22/00169/DPP. These two applications propose amendments to the timing of works to the site access relative to the wider project. These

applications are registered under reference numbers 23/00532/S42 and 23/00531/S42 respectively and are both currently pending consideration.

5 CONSULTATIONS

- 5.1 **Transport Scotland** does not object to the application/amendments.
- 5.2 The **Council's Senior Manager Neighbourhood Services (Roads)** does not object to the application and makes no comment.

6 REPRESENTATIONS

- 6.1 No representations have been received.

7 PLANNING POLICY

- 7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.

- 7.2 The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

- 7.3 Policy **1 Tackling the climate and nature crisis**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.
- 7.4 Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.
- 7.5 Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 7.6 Policy **6 Forestry, woodland and trees**; provides protection to trees and aims to facilitate the expansion of forests and woodland.
- 7.7 Policy **13 Sustainable Transport** supports development that prioritises walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.8 Policy **18: Infrastructure First** sets out to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.
- 7.9 Policy **23 Health and Safety** sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.

Midlothian Local Development Plan 2017 (MLDP)

- 7.10 Policy **VIS3: Midlothian Snowsports Centre** supports the upgrade and enhancement of the Midlothian Snowsports Centre and ancillary facilities to secure its future as a centre of excellence for artificial skiing and snowboarding.
- 7.11 Policy **ENV6: Special Landscape Areas** requires new development to incorporate high standards of siting and design to mitigate any impact on the special landscape qualities of the area. The site is within the Pentland Hills Special Landscape Area.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The consultation responses received are material considerations.
- 8.2 The applicant proposes to amend the conditions principally on the basis that the access strategy for the collection of developments in the area has changed. The developer of the Midlothian Snowsports Centre has gained approval for a consolidated access by way of alterations to the existing junction onto the A702. This includes capacity analysis incorporating trips generated by the development of Calderstones, amongst others. It would then be for the developer of Calderstones to propose a suitable connection to the existing access road from the north boundary of the site. This would be a technical matter for a detailed application and any other permission, consents or agreements regarding right of access over neighbouring land.
- 8.3 In terms of the tests promoted by NPF4 Policy 18, a further application for details of the access from the site to the public road network is necessary, it serves a planning purpose, it relates to the development and is reasonable in all other respects. The existing conditions around site access would be enforceable in the event of a breach, as are the proposed amendments. The last test is precision. The circumstances of the site have overtaken the original proposal. So it is accepted that, in the interests of maintaining precise conditions over the planning in principle permission, the amendment is acceptable.
- 8.4 The proposed amendment maintains the sequence of development delivery as previously approved, which is to ensure the access arrangements are in place prior to the occupation of the development. This infrastructure first approach is supported by NPF4 Policy 18 a). It is also important to maintain this sequence to ensure construction traffic does not use the existing site access direct from the A702.

- 8.5 NPF4 Policy 13 b) vi. requires development proposals to be designed to incorporate safety measures including safe crossings for walking and wheeling. Similarly, Policy 23 intends to ensure developments protect people and places from environmental harm.
- 8.6 Transport Scotland have reviewed the application and are satisfied the approved arrangements described in 22/00168/DPP offer the optimal solution in terms of road safety for all users. As the access strategy for development at Calderstones is aligned with that for the redevelopment of Midlothian Snowsports Centre, Transport Scotland are happy with the amendment to Condition 9 and Condition 10. It is also accepted that Condition 12 is no longer relevant and can be removed.
- 8.7 On this basis, the proposed amendment to conditions of the planning permission in principle for Calderstones reflects an improved position from a road safety perspective. The proposed amendment therefore accords with Policy 23 from a safety perspective and Policy 13 from a design perspective. The amendment does not inhibit the detail of development in Calderstones from meeting the wider objectives of Policy 13 in relation to sustainable modes of transport.
- 8.8 NPF4 Policy 6 is part of a set of policies which protect existing environmental assets in the interests of climate change adaption and reversing biodiversity loss. Policy 6 is concerned with trees, forestry and woodland and presumes against loss. The tree cover on the site contributes positively to the wider area as landscape elements within the Pentland Hills Special Landscape Area. Tree cover is at its most dense at the site edges.
- 8.9 The original approved access arrangements for development of Calderstones proposed two insertion points, one on the east boundary and one on the north. The approved junction to the Midlothian Snowsports Centre which also supports development at Calderstones removes the need for an insertion on the east boundary. This is considered a significant benefit to the tree cover on the site and in accord with NPF4 Policy 6's intent to protect and expand forests, woodland and trees. The proposed amendment also represents a betterment in terms of landscape impacts from development in accord with Midlothian Local Development Plan Policy ENV6.
- 8.10 In general terms, the amendment to the development ensures the planning permission for the development of this site remains live and is more clearly defined for interested parties. The presence of a live application for detailed matters under 23/00460/MS is noted. Furthermore, it would be for any future developer to provide the detail of site access, amongst other considerations, under this new planning permission in principle. The details of access would also need to be extended to provide connections to the public road network as these are not detailed in the drawings approved under 22/00169/DPP.

- 8.11 During the determination of this application, the developer of the Midlothian Snowsports Centre submitted S42 applications to vary conditions relating to the shared access. Given the potential change to the specific reference to the planning permission of this development, it is prudent to add in to Condition 9 reference to subsequent developments related to 19/01018/PPP in case this is superseded.
- 8.12 On the basis of the above, the proposed amendment to Conditions 9 and 10, alongside the removal of Condition 12 is accepted. The new wording of these conditions are given below for clarity:

9. Development shall not commence on the site until an application for matters specified in conditions has been submitted to and approved by the Planning Authority in consultation with Transport Scotland (as Trunk Roads Authority), for:

- i. The means of access to the A702 via the improved access to the Snowsports Centre approved under Conditions 10 and 11 of separate planning approval 19/01018/PPP or related consents approved by the planning authority;
- ii. The means of closure of the exiting access to Calderstones to vehicular traffic; and
- iii. The provision of a 2m wide footway formed adjacent to the Trunk Road, or other alignment connecting the new footway across the existing Midlothian Snowsports Centre access to the existing Calderstones access as appropriate in terms of 9 i. The footway shall be constructed to adoptable standard.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished. In addition to ensure appropriate footpath access and parking is provided. Further to ensure appropriate means of closure of existing access at or adjacent to the site.

10. No part of the development shall be implemented unless or until:
- i. The new access has been provided on the site in accordance with the approved matters specified in condition 9 i; and,
 - ii. The existing access has been permanently closed, as appropriate in terms of condition 9 ii.

Reason: To ensure that the new access to the site is implemented within an appropriate phase of the development, use of the existing access is discontinued and the safety of traffic on the trunk road is improved.

- 8.13 The removal of some conditions necessitates a re-numbering of the conditions of the planning permission in principle.

9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

The proposed amendment to the conditions of 18/00528/S42 bring the planning permission in principle up-to-date with neighbouring developments and approved shared transport infrastructure. This amendment would deliver a reduced environmental impact and an overall improvement in the quality of development outcomes in the area. The proposed amendments accord with the development plan and there are no material considerations which justify an alternative conclusion.

Subject to the following conditions:

1. The illustrative site layout plan and prospective images submitted with the application are not approved.

Reason: *The application is for planning permission in principle only and the details delineated within the illustrative site layout plan prospective images are for illustrative purposes only.*

2. Notwithstanding that delineated on application drawings/stated in documents submitted with the application the three new 'house' plots are not approved; but instead, each of these three plots shall only contain a building occupied solely as self-catering tourist accommodation ancillary to the principal hotel use on the site; or alternatively, as staff accommodation incidental to the operation of, the hotel.

Reason: *In the interests of safeguarding the character and amenity of the green belt as new private dwellings erected on the site would be contrary to Policy RP2 of the Midlothian Local Development Plan.*

3. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of the hotel and the replacement dwelling and the three plots to accommodate three self-catering units, the provision, of landscaping, SUDS provision and transportation infrastructure. Development shall thereafter be carried out in accordance with the, approved phasing unless agreed in writing with the planning authority.

Reason: *To ensure the development is implemented in a manner which mitigates the impact of the development process on existing land users and the future occupants of the development and in the interest of safeguarding the character and amenity of the area.*

4. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority for that phase. Details of the scheme shall include:

- i existing and finished ground levels and floor levels for all, buildings 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 and open space, including trees, shrubs, hedging 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 and subsequent maintenance of all soft and hard landscaping;
- vii drainage details 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); and,
- x proposed cycle parking facilities.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority and the programme for completion 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.

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

5. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an application for approval of matters specified in conditions for the siting, design and external appearance of all buildings and other structures has been submitted to and approved in writing by the planning authority for that phase. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. No building shall have an under-building that

exceeds 0.5 metres in height above ground level. 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 the Midlothian Local Plan and national planning guidance and advice.*

6. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an application for approval of matters specified in conditions for 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, footways and cycle ways in relation to a fixed datum;
- ii the proposed vehicular, cycle and pedestrian accesses into the site;
- iii the proposed roads (including turning facilities), footpaths and, cycle ways including suitable walking and cycling routes linking the development with the local public transportation network;
- iv proposed visibility splays, traffic calming measures, lighting and signage;
- v proposed construction traffic access and haulage routes;
- vi proposed car parking arrangements; and
- vii 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.*

7. Development shall not begin until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;

- ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and,
- iv. the condition of the site on completion of the specified, decontamination measures.

Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

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

- 8. Development shall not begin until an application for approval of matters specified in conditions for proposed lighting within the site including of the car parking areas, service areas, roads and footpaths have been submitted to and approved in writing by the, planning authority in consultation with Transport Scotland, as Trunk Roads Authority. The scheme shall be designed to minimise the spread of light in the night sky. Development shall therefore be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To reduce light pollution to the night sky and to ensure that there will be no distraction or dazzle to drivers on the trunk road and that the safety of the traffic on the trunk road will not be diminished.*

- 9. Development shall not commence on the site until an application for matters specified in conditions has been submitted to and approved by the Planning Authority in consultation with Transport Scotland (as Trunk Roads Authority), for:
 - i. The means of access to the A702 via the improved access to the Snowsports Centre approved under Conditions 10 and 11 of separate planning approval 19/01018/PPP or related consents approved by the planning authority;
 - ii. The means of closure of the exiting access to Calderstones to vehicular traffic; and
 - iii. The provision of a 2m wide footway formed adjacent to the Trunk Road, or other alignment connecting the new footway across the existing Midlothian Snowsports Centre access to

the existing Calderstones access as appropriate in terms of
9 i. The footway shall be constructed to adoptable standard.

Reason: *To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished. In addition to ensure appropriate footpath access and parking is provided. Further to ensure appropriate means of closure of existing access at or adjacent to the site.*

10. No part of the development shall be implemented unless or until:

- i. The new access has been provided on the site in accordance with the approved matters specified in condition 9 i; and
- ii. The existing access has been permanently closed, as appropriate in terms of condition 9 ii.

Reason: *To ensure that the new access to the site is implemented within an appropriate phase of the development, use of the existing access is discontinued and the safety of traffic on the trunk road is improved.*

11. The fences erected on the site; the details of which are required by condition 4(iv), shall include a stock proof anti-climb fence provided and maintained by the developer along the boundary of the site with the trunk road. The type and position of this fence shall be approved by the planning authority in consultation with Transport Scotland, as Trunk Roads Authority. The approved fence shall be erected in its entirety prior to the new access off the trunk first coming into use

Reason: *To minimise the risk of pedestrians and animals gaining uncontrolled access to the trunk road with the consequential risk of accidents.*

12. Development shall not begin until an application for approval of matters specified in conditions for a programme of archaeological works (Evaluation) of no less than 5% of the total site area focussing on those areas unaffected by woodland and existing buildings, has been submitted to and approved in writing in by the planning authority. The approved programme of works shall be carried out by a professional archaeologist prior to any construction works, demolition or pre commencement ground works take place unless otherwise agreed in writing by the planning authority.

Reason: *To ensure this development does not result in the unnecessary loss of buried archaeological material in accordance with Policy RP28 of the Midlothian Local Development Plan.*

13. The recommended mitigation contained within the specific Environmental Management Plan (EMP) detailed in Section 7.0, (Ecology & Habitats) of the Environmental Impact Assessment Report shall be carried out in full.

Reason: *In the interests of safeguarding bats, badgers and breeding birds.*

14. Prior to the commencement of the development, other than the replacement dwellinghouse or the demolition of the existing dwellinghouse, either the widened footway along the frontage of the site or the new remote footway shall be constructed at the site, and shall be available for use. The widened or remote footway shall accord with the details approved in terms of the matters approved in terms of condition 9.iii) above and it shall be constructed to adoptable standard.

Reason: *The applicant has referred to the improvement of the path along the frontage of the site with the A702. There is concern that works to this footpath will adversely impact on the trees along the frontage of the site and therefore it may be appropriate to form a, new remote footpath through the site to link the existing public footway with the new development and the new access to the site. The condition allows the replacement dwelling house to be built and the existing dwellinghouse to be demolished prior the construction and availability of the widened or new footpath at the site.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: **20 October 2023**

Application No: 23/00465/S42
Applicant: Mr and Mrs Omar Almubarak, c/o agent
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Validation Date: 18 July 2023
Contact Person: Martin Patrick
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Background Papers: 15/00113/PPP; 18/00528/S42



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**Section 42 Application to amend conditions 9, 10 and 12 of
18/00528/S42 at Land At Calderstone, Biggar Road,
Edinburgh**

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