

Notice of Meeting and Agenda



Planning Committee

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

Date: Tuesday, 10 January 2023

Time: 13:00

Executive Director : Place

Contact:

Clerk Name: Democratic Services
Clerk Telephone:
Clerk Email: democratic.services@midlothian.gov.uk

Further Information:

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

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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 Declaration 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 Minute of Previous Meeting

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| 4.1 | Minute of meeting of 22 November 2022 submitted for approval | 3 - 12 |
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5 Public Reports

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| 5.1 | Pre-Application Report - Middleton Lower Quarry, Gorebridge (22.00856.PAC) | 13 - 18 |
| 5.2 | Section 42 Application - Middleton Limeworks, Gorebridge (22.00546.S42) | 19 - 34 |
| 5.3 | Section 42 Application - Land South West of Newtonloan Toll, Gorebridge (22.00588.S42) | 35 - 54 |

6 Private Reports

- | | |
|------------|---|
| 6.1 | Tree Preservation Order - Cousland <ul style="list-style-type: none">• 13. Information which, if disclosed to the public, would reveal that the authority proposes—(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment. |
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7 Date of Next Meeting

The next meeting will be held on Tuesday 28 February 2023

Minute of Meeting

Planning Committee
Tuesday 10 January 2023
Item No: 4.1



Planning Committee

Date	Time	Venue
Tuesday 22 November 2022	1.00 pm	Council Chambers

Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Bowen	Councillor Cassidy
Councillor Drummond	Councillor McCall
Councillor McKenzie	Councillor McManus
Councillor Milligan	Councillor Parry
Councillor Russell	Councillor Scott
Councillor Smail	Councillor Virgo
Councillor Winchester	

In Attendance:

Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
Janet Ritchie	Democratic Services Officer
Andrew Henderson	Democratic Services Officer

1. Apologies

Apologies for absence were received from Councillor Curran, Councillor McEwan and Councillor Pottinger

2. Order of Business

The order of business was as set out in the Agenda.

3. Declarations of interest

Councillor Scott declared an interest with regards to item 5.3 advising that she had knowledge of the person and would take no part in the discussion also declared an interest with regards to 5.4 that she had objected to a similar application in 2017 therefore would take no part in this discussion and would leave the meeting for both these items..

Councillor Smaill also declared an interest with regards to Item 5.3 as he knew the Owner and would not take part in this discussion.

Councillor McCall required clarification if she could take part in the Item 5.4 which had been continued from the last meeting as she had not been present at that meeting. It was confirmed that there was no reason she could not take part as further information had been included and this Item was being considered again today.

4. Minutes of Previous Meetings

The minute of the meeting of 11 October 2022 was submitted and approved as a correct record subject to the following amendments:

With regards to Item 5.3 Councillor Scott highlighted that Gorebridge Community Council raised serious concerns that the Reporter's decision highlighted education infrastructure as a barrier to house building and that education capacity constraints are presented as insurmountable constraint to any further housing developments in Gorebridge.

With regards to Item 5.4 Councillor Smaill highlighted with this report being continued to the next meeting of the Planning Committee, the Developer would have a right to Appeal to the Reporter on the grounds of non-determination.

5. Reports

Agenda No	Report Title	Submitted by:
5.1	Housing Land Audit 2022	Chief Officer Place
Outline of report and summary of discussion		
The purpose of this report is to present the 2022 Housing Land Audit (HLA) and to update the Committee on the state of the housing land supply in Midlothian.		

A copy of the 2022 HLA is attached as Appendix A. Its 'Summary' schedule identifies a remaining established supply of 11,966 units as of 31 March 2022. This is the sum of the remaining capacity of all sites known to Midlothian Council, whether allocated through development plans or granted planning permission. Of these, 11,276 units are effective and 690 are constrained. Further commentary on the general status of the housing land supply is provided in the Audit's 'Housing Supply Summary' section and plans showing the sites is attached as Appendix B.

The Planning, Sustainable Growth and Investment Manager in responding to various questions regarding reviewing some of the sites allocated in older plans confirmed that when the Council prepare the next local development plan the Council will have the opportunity to re-allocate sites but highlighted this does not apply to sites which have planning permission and also provided clarity on the sites with planning permission and the time period for implementation. He also confirmed he would circulate a list of sites which did not have planning permission to Elected Members.

In response to further questions Officers provided clarity on technology and lighting within developments and advised that within the constraints of legislations this will be restrictive but will be addressed when preparing the next Local Development Plan.

During further discussion the Planning, Sustainable Growth and Investment Manager and the Chair provided clarity with regards to site allocations and housing targets, infrastructure and developer's contributions and the factors considered when building houses.

Following a comment the Planning Sustainable Growth and Investment Manager confirmed that for future reports he would ensure better clarity with regards to the figures contained within the report.

Decision

The Planning Committee:

- a) Noted the 2022 Housing Land Audit for Midlothian and agreed to its publication; and
- b) Instructed the Planning, Sustainable Growth and Investment Manager to provide a further update when NPF4 is adopted and new housing targets are set for Midlothian.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.2	Non Compliance with Section 179 Notice at Land 25m West of Lugton Brae	Chief Officer Place
Outline of report and summary of discussion		
<p>This report relates to the non-compliance with the requirements of a notice served by the Council under Section 179 (land adversely affecting amenity of a neighbourhood) of the Town and Country Planning (Scotland) Act 1997 as amended, on land 25m west of Lugton Brae (the former Lugton Inn site), Old Dalkeith Road, Dalkeith. The Section 179 (S179) notice required the owner of the land to remove waste and debris and to remove, replace and reinstate both collapsed and damaged sections of heras fencing at the site. The notice was served on 31 March 2022 and has not been the subject of an appeal, nor has it been complied with.</p> <p>This report recommends that the Committee provides authorisation to take 'Direct Action' to remedy the noncompliance with the S179 notice requirements. This is namely; to engage contractors to clear the deposited waste and debris and to reinstate the heras fencing and then charge the owner of the land the costs and expenses for doing so.</p> <p>Councillors welcomed this paper and commented that this was a long standing issue and following various questions the Planning, Sustainable Growth and Investment Manager confirmed the next steps if the owner failed to comply with the S179 notice.</p>		
Decision		
<p>The Planning Committee:</p> <ul style="list-style-type: none"> a) Noted the contents of this report; and b) Instructed Council Officers to take Direct Action to remedy the outstanding S179 notice requirements and recover the associated costs (an estimated £3,000). 		
Action		
The Planning, Sustainable Growth and Investment Manager		

Councillor Smaill having declared a non-pecuniary interest in the following item of business left the meeting at 1.37 pm.

Councillor Scott having declared a non-pecuniary interest in the following two items of business left the meeting at 1.37 pm

Agenda No	Report Title	Submitted by:
5.3	Enforcement Notice Appeal Decision with regard to the change of use of vacant land to Builders' Yard North of 6 Ashbank, Gorebridge	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this report was to advise the Committee of an enforcement notice appeal decision with regard the change of use of vacant land to a builders' yard (sui generis); siting of shipping containers and associated engineering operations to form a hardstanding at land north of 6 Ashbank, Gorebridge.</p> <p>A retrospective planning application for the change of use of vacant land to a builders' yard (sui generis) at land north of 6 Ashbank, Gorebridge was refused 19 October 2021 and a subsequent notice of review was dismissed by the Local Review Body (LRB) at its meeting of 21 March 2022.</p> <p>Despite the refusal of planning permission and the LRB decision to dismiss the review the site operator (and owner) continued to operate and as such an enforcement notice was issued 30 June 2022, with a take effect date of 31 July 2022 and a three month compliance period. The site operator appealed the enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the enforcement notice. As a consequence of the appeal the compliance period is extended to 7 January 2023 (three months after the appeal decision).</p>		
Decision		
The Planning Committee noted the enforcement notice appeal decision with regard the change of use of vacant land to a builders' yard (sui generis); siting of shipping containers and associated engineering operations to form a hardstanding at land north of 6 Ashbank, Gorebridge.		
Action		
The Planning, Sustainable Growth and Investment Manager		

Councillor Smaill re-joined the meeting at the conclusion of the above item

Agenda No	Report Title	Submitted by:
5.4	Application for Planning Permission for the erection of 96 dwellings and associated works on land at Newbyres Site B, River Gorebridge	Chief Officer Place
Outline of report and summary of discussion		
The application was for the erection of 96 dwellings, the formation of access road, car parking, sustainable urban drainage system (SUDS), landscaping and associated works on land at Newbyres Site B, River Gore Road, Gorebridge.		

There had been 71 representations (69 objections and two in support) and consultation responses from the Coal Authority, the Scottish Environment Protection Agency (SEPA), Scottish Water, Network Rail, the Council's Archaeological Advisor, the Council's Ecological Advisor (TWIC), the Council's Policy and Road Safety Manager, the Council's Flooding Officer, the Council's Education Resource Manager, the Council's Land Resources Manager and the Council's Senior Manager Protective Services.

At its meeting of 11 October 2022 the Committee deferred consideration of the application to enable additional clarity to be provided on education matters – additional information is provided in the Education comments set out in paragraphs 5.9 – 5.12 of the report. In response to the deferral the applicant has provided a benefits statement reaffirming their commitment to the site and highlighting the employment opportunities the site offers locally, a copy of the statement is set out in paragraph 3.6 of the report.

The Planning, Sustainable Growth and Investment Manager's in presenting this report advised that following the publication of the Agenda SEEPA has withdrawn their holding objection therefore point b. of the recommendations is no longer required, he also highlighted that an objection had been received from Gorebridge Community Council and that this was circulated to the committee prior to this meeting.

Thereafter the Planning and Sustainable Growth and Investment Manager responded to questions and comments from Elected Members in particular regarding the access road and the Education provision. He also provided clarity on the timeline for this development and that he could see no other alternative access to this site. He confirmed that he would take away the concerns regarding construction vehicles and the safety of children and residents and also that with regards to HGVs that there is appropriate access. He further advised that if this is approved with regards to condition 15 this can be worded appropriately to address all the concerns raised.

It was noted there should be a pre-inspection and a post-inspection to ensure all issues are addressed appropriately.

Following further discussion and comments regarding the letter of objection received from Gorebridge Community Council, issues were raised regarding Developer's not providing access within suitable timescales and the Planning, Sustainable Growth and Investment Manager confirmed that the Council in managing the development, in particular this site they can proactively monitor the conditions to make sure any issues are picked up.

It was also highlighted that most of the objections had been addressed by the Planning, Sustainable Growth and Investment Manager and among other reasons this site was in good proximity to public transport and it would not be in the Council's best interest to turn this application down.

Councillor McCall, seconded by Councillor Drummond moved to reject the application on the grounds of over development and the lack of infrastructure.

Councillor Virgo, seconded by Councillor Winchester moved the report with the amendments to the conditions as discussed.

The Chair advised with the amendments discussed and this being part of the local plan he approved the development and thereafter a vote was taken 5 voted for the motion to reject the application and 8 voted for the report as amended this then became the decision of the Committee.

Decision

The Planning Committee agreed to grant planning permission for the following reasons:

The proposed development site is allocated for housing in the Midlothian Local Development Plan 2017. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions. The presumption for development is not outweighed by any other material considerations.

Subject to the conditions as set out in the report with Condition 15 amended to reflect the discussion and concerns raised at this meeting.

Action

The Planning, Sustainable Growth and Investment Manager

Councillor Scott re-joined the meeting at the conclusion of the above items

Agenda No	Report Title	Submitted by:
5.5	Application for Planning Permission for erection of foodstore (Class 1) and associated works18-20 Edinburgh Road, Penicuik(22/002736/DPP)	Chief Officer Place
Outline of report and summary of discussion		
<p>The application was for the erection of a retail foodstore (class 1), fencing, electric vehicle charging points, bin shelter and trolley bays; formation of access, car parking and associated works at the site of a former car salesroom at 18-20 Edinburgh Road, Penicuik which was subject to a site visit on Monday 21 November 2022.</p> <p>There have been three representations (all supporting) and consultation responses from Scottish Water, the Council's Senior Manager Neighbourhood Services (Roads), the Council's Flooding Officer and the Council's Senior Manager Protective Services.</p>		

The Planning, Sustainable Growth and Investment Manager presented this report highlighting the main sections contained within the Report.

The Chair highlighted as this was subject to a call-in by Councillor McCall invited Councillor McCall to speak. In response to Councillor McCall's questions regarding the reason this application did not impact on the Town Centre and also concerns regarding road safety, the Planning, Sustainable Growth and Investment Manager provided clarity on the previous applications which had been refused and that they were for smaller mixed units which could be accommodated in the Town Centre whereas this was different in terms of the size and could not be accommodated in the Town Centre. Also with regards to road safety he highlighted that as the site used to be a car showroom and with other businesses in this area there was local awareness of trade vehicles. Following further concerns raised regarding the access and exit from the site he provided clarity on measures which could be put in place to alleviate some of the concerns and also provided the agreed times when deliveries would take place and the stores opening times.

Councillor McCall, seconded by Councillor McManus moved to grant planning permission and with no objections received this became the decision of the Committee.

Decision

The Planning Committee agreed to grant planning permission for the following reason:

The proposed development site is allocated for housing in the Midlothian Local Development Plan 2017. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions. The presumption for development is not outweighed by any other material considerations.

Subject to the conditions as set out in the report.

Action

The Planning, Sustainable Growth and Investment Manager

Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Committee agreed that the public be excluded from the meeting during discussion of the undernoted item, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraph 13 of Part I of Schedule 7A to the Local Government (Scotland) Act 1973:-

Agenda No	Report Title	Submitted by:
6.1	Tree Preservation Order (TPO) - Bilston	Chief Officer Place
Decision		
The Committee agreed the recommendations as detailed in the Report.		
Action		
The Planning, Sustainable Growth and Investment Manager/Democratic Services		

6. Date of Next Meeting

The next meeting will be held on Tuesday 10 January 2023 at 1.00pm

The meeting terminated at 2.29 pm



PRE - APPLICATION REPORT REGARDING PROPOSED CHANGE OF USE OF LAND TO A RECYCLING FACILITY AND THE CONTINUATION OF LANDFILL OPERATIONS AT MIDDLETON LOWER QUARRY, GOREBRIDGE (22/00856/PAC)

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre application consultation for the proposed change of use of land to a recycling facility and the continuation of landfill operations at Middleton Lower Quarry (Middleton Limeworks), Gorebridge.
- 1.2 The pre-application consultation is 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 30 August 2022. 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 the proposed change of use of land to a recycling facility and the continuation of landfill operations at Middleton Lower Quarry (Middleton Limeworks), Gorebridge was submitted on 29 November 2022. The applicant is seeking to undertake recycling operations at the site whilst continuing to re-work, infill and restore the land over a 15 year period.
- 2.3 As part of the pre-application consultation, two public events are scheduled at North Middleton Village Hall, the first on Tuesday 24 January 2023 at 7pm and the second on Thursday 16 February 2023 at 7pm; these meetings will be advertised within the Midlothian Advertiser at least 7 days prior to each event. It is also noted that the

agent will carry out a letter drop to local residents within the immediate vicinity of the application site to inform them of the meetings. Upon the conclusion of the public events the applicant could submit a planning application for the proposal.

- 2.4 An applicant must wait 12 weeks from the date of submission of a PAN before submitting a planning application. The earliest date that the planning application for this proposal could be submitted is 22 February 2023. The subsequent planning application must be accompanied by a Pre Application Consultation Report detailing the consultation undertaken, a summary of written responses and views expressed at the public events, and explanation of how the applicant took account of the views expressed and an explanation of how members of the public were given feedback on the applicant's consideration of their views.
- 2.5 Copies of the pre application notice have been sent by the prospective applicant to the local elected members in ward 6 (Midlothian South) along with Moorfoot Community Council and Gorebridge Community Council.
- 2.6 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 reported to the Committee at its meeting in August 2022) not offer views, as the forum for doing so will be at meetings of the Planning Committee.

3 PLANNING CONSIDERATIONS

- 3.1 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.
- 3.2 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (at the time of drafting the report).
- 3.3 SESplan June 2013 is older than five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within a National Planning Framework 4 (NPF4) to be prepared by Scottish Ministers. Once approved, NPF4 will form part of the development plan alongside local development plans. Until NPF4 is approved, SESplan remains part of the development plan albeit increasing out of date and of diminishing weight in the assessment of planning applications.
- 3.4 On 8 November 2022 a Revised Draft NPF4, along with an explanatory report that outlines the changes from the original draft NPF4, was laid before the Scottish Parliament for a six week period of final scrutiny with an expectation that it will be adopted in late 2022 or January 2023.

The Planning Act requires that NPF4 must be approved by the Scottish Parliament before it can be adopted by Scottish Ministers. On adoption the provisions in the Planning Act will make NPF4 part of the statutory development plan (SESplan will become superseded policy at this point). The existing National Planning Framework 3 and Scottish Planning Policy remain in place until NPF4 has been adopted by Scottish Ministers, but don't have the status of being part of the development plan which NPF4 will. As the Revised Draft NPF4 is at an advanced stage and represents the settled view of the Scottish Government in terms of its planning policy it is a material consideration of significant weight in the assessment of the application.

- 3.5 The application site relates to the lower quarry also known as Quarry 1; the quarry is a former limestone quarry, located in the countryside in close proximity to the south of North Middleton. The site measures approximately 10.8 hectares and comprises the quarry void with quarry faces, soil storage bunds on the periphery of the void and areas of quarry spoil within the void. The quarry has been partially filled. The quarry is accessed from a point off an unclassified road that runs in an east to west orientation and which bounds the site to the north. The unclassified road is accessed off Guildiehowes Road, which in turn is accessed off the A7 which is located nearby to the north of the site.
- 3.6 The relevant development plan policies are policy 14 (waste management and disposal) of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies RD1 (development in the countryside), ENV7 (landscape character), ENV15 (species and habitat protection and enhancement), ENV17 (air quality), ENV18 (noise), and WAST3 (landfill) of the Midlothian Local Development Plan 2017. Policy 12 (zero waste) of the draft National Planning Framework 4 (NPF4) is also a material consideration.
- 3.7 The views of consultees and representors will be material considerations in the assessment of an application for the proposed development.
- 3.8 If a planning application is submitted, there is a presumption against the change of use of land to a recycling facility and the continuation of landfill operations for another 15 years. Recycling facilities are best placed within established economic development sites/industrial estates that are allocated for business, general industrial, or for storage and distribution uses. The application site is located within the countryside where there is no policy support for this type of use. However, the historic use and current use of the application site is a material planning consideration that should be taken into consideration in the assessment of any proposals. Other considerations include the developments impact on the landscape, biodiversity, trees, noise, dust, residential amenity, ground contamination and road safety.

4 PROCEDURES

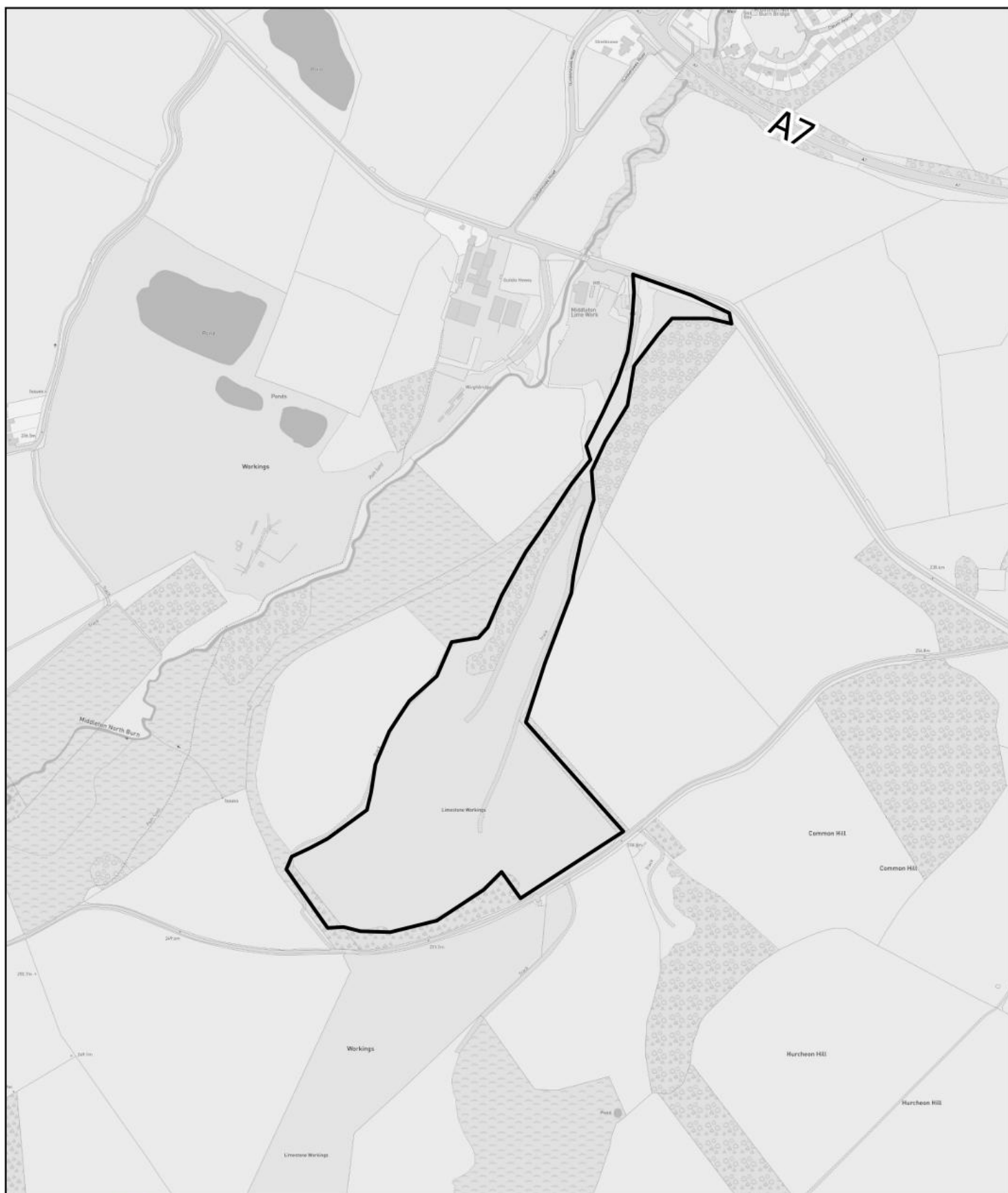
- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' 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;
 - 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.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 December 2022
Application No: 22/00856/PAC
Applicant: The NWH Group
Agent: Willie Booth - Dalgleish Associates Limited
Validation Date: 29 November 2022
Contact Person: Whitney Lindsay
Email: Whitney.Lindsay@midlothian.gov.uk



**Planning Service
Place Directorate**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Proposal of application notice for recycling facility and landfill operations at Middleton Lower Quarry, Gorebridge,

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SECTION 42 APPLICATION 22/00546/S42 TO AMEND CONDITION 1 OF PLANNING PERMISSION 15/00503/DPP (INFILLING OF QUARRY) TO CONFIRM THE DURATION OF THE TEMPORARY PERMISSION AND CONDITION 3 TO ALLOW THE ACCEPTANCE OF NON-HAZARDOUS WASTE AT MIDDLETON LIMeworks, GOREBRIDGE

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** At its meeting on 17 November 2015 the Committee granted planning permission for the infilling and restoration of the former Middleton Limeworks Quarry. This section 42 application seeks to amend the wording of conditions 1 and 3 attached to the grant of planning permission (15/00503/DPP) to confirm the duration of the temporary planning permission and to allow the acceptance of non-hazardous waste as an infill material.
- 1.2** There has been one representation and consultation responses from the Scottish Environment Protection Agency (SEPA), Transport Scotland, Moorfoot Community Council, the Council's Senior Manager Neighbourhood Services (Roads) and the Council's Senior Manager Protective Services.
- 1.3** The relevant development plan policies are policy 14 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies RD1, ENV7, ENV10, ENV15 and WAST3 of the Midlothian Local Development Plan 2017. Policy 12 of the draft National Planning Framework 4 (NPF4) is also a material consideration.
- 1.4** The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site relates to the lower quarry also known as quarry 1; the quarry is a former Limestone Quarry, located in the countryside in close proximity to the south of North Middleton.
- 2.2** The site measures approximately 7.7 hectares with the proposed infill area being approximately 5.15 hectares. The site comprises the quarry

void with quarry faces, soil storage bunds on the periphery of the void and areas of quarry spoil within the void. The quarry has been partially filled.

- 2.3 The quarry is accessed from a point off an unclassified road that runs in an east to west orientation and which bounds the site to the north. The unclassified road is accessed off Guildiehowes Road, which in turn is accessed off the A7 which is located nearby to the north of the site.

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 (hereafter referred to as the Act), seeks to amend two conditions attached to the grant of planning permission for the infilling of a disused quarry.
- 3.2 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 which will supersede the original permission(s) if implemented. Therefore if planning permission is granted for this application it will replace planning consent 15/00503/DPP.
- 3.3 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 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.
- 3.4 Condition 1 of planning permission 15/00503/DPP states:
- Planning permission for the infilling of the quarry with inert material and restoration of the site is granted for a limited period of seven years from the date when operations commence on the site (such date to be advised by the applicant or their successors).
- Reason:** *To make clear the extent and specifications of the development for which planning permission is granted, and to ensure the full implementation of all the identified measures for mitigating its environmental impact.*
- 3.5 Condition 3 of planning permission 15/00503/DPP states:
- Only truly inert material, as specified in the table at Schedule 2, Paragraph 4 of the Landfill (Scotland) Regulations 2004, shall be used

for infilling purposes and the material shall arrive at the site in a condition suitable for purpose.

Reason: *To ensure that only appropriate materials are used for infilling and to ensure adequate protection of the water environment.*

- 3.6 The applicant is seeking to amend condition 1 to set a clear end date to the operations of 31 March 2024 and to provide clarity on the infill materials that can be used.
- 3.7 With regard condition 3 the applicant is seeking to allow non-hazardous waste in accordance with code 19 12 09 (minerals including sand and stone) and code 19 12 12 (crushed bricks, tiles, concrete and ceramics, including a mixture of these materials) as defined by the Landfill (Scotland) Regulations 2003 as amended, to be added to the existing list of materials that are acceptable for the infilling of the quarry and would be in addition to the existing inert waste.

4 BACKGROUND

- 4.1 In March 1982 planning permission ref.198/81 was granted for the extraction and working of limestone on both Middleton Quarry No.1 (the lower quarry) and No.2 (the upper quarry). Planning permission 198/81 was implemented.
- 4.2 In December 2012 a Breach of Condition Notice was served on Leiths (Scotland) Limited; who were the operator of the Middleton Quarry. The notice required them to take action in relation to conditions attached to planning permission 198/81, in particular those conditions requiring the infilling of the quarry and its restoration to an agricultural use by the 19 December 2016. The Breach of Condition Notice only required the reinstatement of No.2 quarry. No.2 quarry (also known as the upper quarry) is presently being infilled in compliance with the Breach of Condition Notice.
- 4.3 Planning permission 15/00503/DPP for the infilling of quarry 1 (the lower quarry) was granted subject to conditions (this application was accompanied by an environmental statement prepared under the environmental impact assessment (Scotland) Regulations 2011). The consent was subject to a time limitation condition which required the works to be completed within seven years of commencement.

5 CONSULTATIONS

- 5.1 The **Scottish Environment Protection Agency (SEPA)** does not object to the application and confirmed that the applicant currently has a Pollution Prevention and Control (PPC) Permit for the landfilling of inert waste at the site and this process is being regulated by SEPA. The site is classified as an 'inert' site, in accordance with the provisions of the Landfill (Scotland) Regulations 2003 as amended. Currently,

only the restricted inert waste types set out in Schedule 2 of those regulations and included in a condition of the current permit can be accepted. SEPA confirmed that the current permit does not currently allow general 'non-hazardous' wastes to be accepted at the site, however the applicant may be able to vary the permit to allow specific non-hazardous waste types to be accepted, provided those wastes fall within the definition of 'inert' waste. The applicant would be required to demonstrate those wastes fully meet the inert Waste Acceptance Criteria before acceptance at the site. SEPA also advised that landfill sites that are classified as non-hazardous and permitted to accept all such wastes must comply with specific engineering and environmental requirements as set out in the Landfill (Scotland) Regulations 2003 as amended. The requirements for each classification of landfill, as specified in these regulations, and the standards relating to inert, non-hazardous and hazardous classified landfills are significantly different in order to ensure the correct level of protection of soil and the water environment is in place from the wastes being landfilled. The requirements for inert sites being less onerous than the requirements for non-hazardous sites.

5.2 **Transport Scotland** does not object to the application.

5.3 **Moorfoot Community Council (MCC)** objects to the planning application for the following reasons:

- Lack of consultation/discussion between the applicant and MCC and the Midlothian Federation of Community Councils;
- There has been an adverse impact from the development carried out to date - this will be amplified further by the proposed extension of time and the acceptance of additional waste products without any form of Environmental Impact Assessment, in particular no form of hydrological risk assessment;
- The vehicle access arrangements are not appropriate for the significant amount of HGV traffic (50-60 round trips a day rather than the original 33) which operates from 7am to 6pm, 6 days a week;
- The number of accidents that have nearly occurred at the junction as HGVs join or leave the A7;
- Mud and dust on the local roads, particularly the A7 and Guildiehowes Road generated by HGV site traffic;
- Potholes and other forms of damage to the roads which have not been fully repaired by Midlothian's Roads department;
- No hydrological risk assessment relating to the infill of the quarry with inert materials;
- No landscaping schedule has been initiated to restore the site as originally intended once the project has been complete;
- There is no complete record of the volume of material deposited in the quarry and therefore no monitoring of the composition of the infill to ensure it is what it is meant to be;

- The prominent visibility of the rubble from ground level - this raises concerns over the site exceeding the original infill capacity stated within the previous application submission;
- The application to extend the timeframe of development, as well as expand the capacity of the site to accept non-hazardous waste, only confirms the original intentions of the applicant;
- Acceptance of non-hazardous waste as infill material at the quarry does not address SEPA's original objection to planning application 15/00503/DPP (this was later withdrawn);
- There are no records of site inspections having taken place since planning application 15/00503/DPP was granted. It is therefore impossible to know whether these conditions have been met and whether the material used for infill at the quarry has been fully inert;
- There are no mitigation measures to limit the risk of pollution and excess surface water in the area close to the site, apart from mud bars and a wheel wash having been installed in 2016;
- Sets an unfortunate precedent providing unregulated disposal of a wide range of materials; and
- The original plans for restoration of the site have been delayed.

5.4 The **Senior Manager Neighbourhood Services (Roads)** does not object to the application.

5.5 The **Senior Manager Protective Services** does not object to the application. In reviewing the supporting information submitted with the application, in terms of the infill materials currently used at the site and the additional non-hazardous infill materials proposed, it is considered the current landfill site has a geological liner that is inspected by an independent Construction Quality Assurance Engineer and that regular environmental monitoring is undertaken (as part of the SEPA licensing regime). The following points should be considered if a new grant of planning permission is issued:

- 1) *Protective Services would recommend that the amended Condition 3 is specific about the waste types that can be accepted and that no other waste can be disposed of without the written authorisation of the planning authority.*
- 2) *Additionally, it is recommended that the applicant undertake regular sampling and analysis of the filter cake to ensure that it meets the requirements of the required waste codes on an ongoing basis.*

5.6 The consultation responses are available to view in full on the online planning application case file.

6 REPRESENTATIONS

6.1 One representation has been received objecting to the planning application. The representation raises concerns which mirror those presented by the MCC as noted in section 5.3 on the report. The

objection representation is available to view in full on the online planning application case file.

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 Development Plan 2017 (at the time of drafting the report).
- 7.2 SESplan June 2013 is older than five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within a National Planning Framework 4 (NPF4) to be prepared by Scottish Ministers. Once approved, NPF4 will form part of the development plan alongside local development plans. Until NPF4 is approved, SESplan remains part of the development plan albeit increasing out of date and of diminishing weight in the assessment of planning applications.
- 7.3 On 8 November 2022 a Revised Draft NPF4, along with an Explanatory Report that outlines the changes from the original draft NPF4, was laid before the Scottish Parliament for a six week period of final scrutiny with an expectation that it will be adopted in late 2022 or January 2023. The Planning Act requires that NPF4 must be approved by the Scottish Parliament before it can be adopted by Scottish Ministers. On adoption the provisions in the Planning Act will make NPF4 part of the statutory development plan (SESplan will become superseded policy at this point). The existing National Planning Framework 3 and Scottish Planning Policy remain in place until NPF4 has been adopted by Scottish Ministers, but don't have the status of being part of the development plan which NPF4 will. As the Revised Draft NPF4 is at an advanced stage and represents the settled view of the Scottish Government in terms of its planning policy it is a material consideration of significant weight in the assessment of the application.
- 7.4 The following policies are relevant to the proposal:
- Edinburgh South East Scotland Strategic Development Plan 2013 (SESPlan)
- 7.5 Policy **14: Waste Management and Disposal** states that Local Development Plans will consider proposals for landfill development where the need for the facility is supported after taking into account relevant economic, social, environmental and transport considerations.
- Midlothian Local Development Plan 2017 (MLDP)
- 7.7 Policy **RD1: Development in the Countryside** states that development in the countryside will only be permitted if it is required

for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; it accords with policies RD2 (low density rural housing), MIN1 (mineral extraction), NRG1 (renewable and low carbon energy projects) or NRG2 (wind energy); or it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*. For housing, this is limited to homes required to support an established countryside activity.

With regard to business in the countryside policy **RD1** states that development opportunities that will enhance rural economic development opportunities will be permitted if:

- They are of a scale and character appropriate to the rural area and well integrated into the rural landscape; and
- They are capable of being serviced with an adequate and appropriate access; and
- They are capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, unacceptable discharge to watercourses; and
- They are accessible by public transport and services (where appropriate); and
- They are not primarily of a retail nature; and
- They do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.

7.8 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.

7.9 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.

7.10 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.

7.11 Policy **WAST3 (Landfill)** presumes against new landfill development other than as part of a site restoration project. Proposals will only be allowed if there are no significant negative environmental impacts, including from traffic movements. A buffer of 250 metres will be required between a landfill site and any sensitive receptors primarily

residential properties). Applicants will be required to submit proposals for site restoration and aftercare and demonstrate that robust financial arrangements are in place to ensure site restoration.

National Policy

- 7.9 The **SPP (Scottish Planning Policy)** sets out Government guidance for waste management including landfill. SPP states that restoration should be designed and implemented to the highest standards and that planning authorities should ensure that consents are associated with an appropriate financial bond unless the operator can satisfactorily demonstrate that their programme of restoration, including the necessary financing phasing and aftercare of the sites, is sufficient.
- 7.10 Policy **12 of the NPF4 (Revised Draft)** seeks to encourage, promote and facilitate development that is consistent with the waste hierarchy. In particular Policy 12 Part e) is relevant to the application as it states that *development proposals for new or extended landfill sites will only be supported if:*
- i. *there is demonstrable need for additional landfill capacity taking into account Scottish Government objectives on waste management; and*
 - ii. *waste heat and/or electricity generation is included. Where this is considered impractical, evidence and justification will require to be provided.*
- 7.11 Also material to the consideration of the application is **Scottish Government's Planning Advice Note 64: Reclamation of Surface Mineral Workings**. Pan 64 also states that the then Scottish Executive (now Scottish Government) considered that financial guarantees are an appropriate means of reassuring local communities of operators' commitment and ability to meet their restoration and aftercare obligations.
- 7.12 Scottish Government advice **Circular 4/1998 (The use of conditions in planning permissions)** sets out six tests which planning conditions must comply with:
- Necessary;
 - Relevant to planning;
 - Relevant to the development to be permitted;
 - Enforceable;
 - Precise; and
 - Reasonable in all other respects.

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 representation and consultation responses received are material considerations.

The Principle of Development

- 8.2 As the proposal is a 'Section 42' application the principle of development is not subject to consideration as set out in paragraph 3.3 of the report. The land is allocated as 'countryside' within the MLDP under Policy RD1 - Development in the Countryside. Proposals for landfill (including restoration) within the site are not specifically contemplated by Policy RD1 as the proposed development is not located within an area of search for surface mineral extraction. The principle of development for infilling and restoration of the former quarry is established by the previous grant of planning permission for material extraction, landfilling and restoration of the site under planning permission 15/00503/DPP.

Conditions 1 and 3 of Planning Permission 15/00503/DPP

- 8.3 Planning condition 1 of planning permission 15/00503/DPP states that *'Planning permission for the infilling of the quarry with inert material and restoration of the site is granted for a limited period of seven years from the date when operations commence on the site (such date to be advised by the applicant or their successors).'*
- 8.4 The applicant is seeking to amend condition 1 to set a clear end date to the operations and to provide clarity on the infill materials that can be used. The acceptability of the infilling of the quarry has already been established for a limited time period (seven years from the commencement of operations). The applicant is not seeking to extend the time period of the planning permission, but wants clarity on end date of operations and the use of the word 'inert' in the original condition. Inert waste is that which does not undergo any significant physical, chemical or biological transformation and is unlikely to adversely affect other matter with which it comes into contact, whereas non-hazardous waste is material that can contain a limited concentration of harmful substances such as heavy metals or chemicals. Any non-hazardous material needs to be disposed of in a site that has a specific landfill cell that prevents contact with the natural ground and pollution of groundwater – a list of exact items/materials is more appropriately set by the SEPA licensing regime than a grant of planning permission.
- 8.5 Works associated with planning permission 15/00503/DPP commenced on site in March 2017. Furthermore, it is noted that a bond to ensure that there is sufficient funds for the restoration of the quarry expires on the 31 March 2024, aligning with the seven year period set by condition 1. Therefore, for the sake of clarification, it would be prudent to amend condition 1 to set an expiry date of 31 March 2024 for the infilling and restoration of the site.

- 8.6 Planning condition 3 of planning permission 15/00503/DPP states that *'Only truly inert material, as specified in the table at Schedule 2, Paragraph 4 of the Landfill (Scotland) Regulations 2004, shall be used for infilling purposes and the material shall arrive at the site in a condition suitable for purpose.'*
- 8.7 The applicant is also seeking to amend condition 3 of planning permission 15/00503/DPP to allow non-hazardous waste in accordance with codes 19 12 09 and 19 12 12 as defined by the Landfill (Scotland) Regulations 2003 as amended, to be added to the list of materials that are acceptable for the infilling of the quarry.
- 8.8 In terms of acceptable materials for infilling, SEPA and the Council's Senior Manager Protective Services have not objected to the inclusion of non-hazardous waste codes 19 12 09 and 19 12 12 to the list of acceptable materials that can be used for infilling of the quarry. The inclusion of the non-hazardous waste codes 19 12 09 and 19 12 12 does not raise any issues in land use planning terms and is commensurate to inert material, but does enable the Council's and SEPA's regulatory regimes to align. Therefore, condition 3 will be amended so as to include all acceptable infill materials covered by the stated codes.

Other Conditions

- 8.9 Conditions 4 (implementation of a SUDS strategy), 6 (details of the site layout) and 15 (implementation of bat protection measures) attached to planning permission 15/00503/DPP were pre-commencement conditions which have been complied with and therefore there is no requirement to re-attach these conditions to this application if approved.
- 8.10 The remaining conditions relate to; the approved environmental statement, restoration material details and plan, securing a bond for site restoration, transportation assessment, road maintenance and hours of operation, dust management and noise mitigation. These conditions are still relevant and it is proposed to attach them to the new permission if granted. However, some of the conditions are required to be modified to ensure they are relevant to the current permission.

Other Matters

- 8.11 No road safety concerns as a consequence of the proposed revised conditions, or from the existing development have been identified by Transport Scotland or the Council's Senior Manager Neighbourhood Services (Roads). Although the MCC and one representor have expressed concerns in this regard, it is considered that the level of transportation movements is acceptable without detriment to highway safety – based on the upper volume/worst case scenario of vehicular

movements set out by the MCC (60) it is estimated that there is less than one round trip every 10 minutes Monday to Friday, this volume of traffic can be absorbed into the existing flows of traffic on the network.

- 8.12 With regards to the concerns raised by the representor and MCC, it is noted that the applicant provided a supporting statement on 21 October 2022 to address the concerns raised. All material planning considerations, relevant to the current application, raised within the representation and the consultations received have been addressed. Concerns raised with regard the principle of development are not material in this assessment, which is primarily about 1) clarifying the end date of operations (not extending them); and 2) seeking clarification with regard what material can be deposited in relation to 'inert' non-hazardous material.
- 8.13 With regards to concerns relating to the lack of engagement between the applicant and Moorfoot Community Council, it is noted that this is not a material consideration in the assessment of the current planning application.

9 RECOMMENDATION

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

The proposed amendments to conditions does not fundamentally change the development which is being implemented under a previous grant of planning permission. The proposed development does not have adverse environmental impacts subject to detailed/technical matters being agreed/secured by condition. This presumption in favour of development is not outweighed by any other material considerations. The proposed development accords with the Midlothian Local Development Plan (2017).

Subject to the following conditions:

1. Planning permission for the infilling of the quarry with the materials stated within condition 3 of planning permission 22/00546/S42 and the restoration of the site shall be completed by 31 March 2024. This planning permission expires on the 31 March 2024.
2. Except as subsequently amended, or as otherwise required by the terms of this permission, the development hereby approved shall be carried out in accordance with the application plans, and the details contained in the accompanying Environmental Statement, dated June 2015, including the implementation of all the measures contained in that document for the mitigation of the environmental impact of the operations.

Reason: for conditions 1 & 2: To make clear the extent and specifications of the development for which planning permission is granted, and to ensure the full implementation of all the identified measures for mitigating its environmental impact.

3. Only inert material, as specified in the table at Schedule 2, Paragraph 4 of the Landfill (Scotland) Regulations 2003 and non-hazardous waste codes 19 12 09 and 19 12 12 as defined by the Landfill (Scotland) Regulations 2003, shall be used for infilling purposes and the material shall arrive at the site in a condition suitable for purpose.

Reason: To ensure that only appropriate materials are used for infilling and to ensure adequate protection of the water environment.

4. At the end of the month during which infilling commences and at the end of each month thereafter until the site is fully restored, the developer shall send to the planning authority a written record of where each load of material being used to infill the site has come from, the type of material and the tonnage.

Reason: To ensure that only appropriate materials are used for infilling and to ensure adequate protection of the water environment and so that the planning authority can monitor progress with the infilling.

5. Within one month from the date of this planning permission, the applicants or their successors shall submit for the approval of the planning authority a detailed restoration plan for the whole site, including the haul road, showing the final contours to be achieved in the restoration and the location of any hedges, fences, gates, walls and access points on the restored site, together with a written specification where such details are not shown on the plan; the plan shall also include proposals for the removal or other treatment of areas of hardstanding, areas occupied by plant or buildings, and the full length of the haul road, together with detailed landscaping proposals for the whole site, including the haul road, indicating the numbers, sizes, species, positions and planting densities of all trees and shrubs to be planted. If the restoration plan is not approved in writing by the planning authority within two months from the date of this planning permission all works and operations on site shall cease.
6. Notwithstanding the information contained within the Environmental Statement the restoration and landscaping of the site shall be completed in accordance with the restoration; including levels, approved under the terms of condition 7 of planning permission 15/00503/DPP, prior to the expiration of this consent as detailed in condition 1 of planning permission 22/00546/S42. The approved

landscaping shall be maintained to the satisfaction of the planning authority for a period of five years after 31 March 2024 (31 March 2029). Maintenance shall include the replacement of any trees, shrubs or hedgerow plants which die, are removed, become seriously diseased or are severely damaged within that period, by others of a similar size and species to those originally required to be planted.

Reason for conditions 5 and 6: *To ensure that all restored land is properly managed for a sufficient period to ensure its effective return to permanent agricultural/forestry use.*

7. The developer shall ensure that the approved bond or other financial provision associated with planning permission 15/00503/DPP is maintained through the duration of, and linked to, this planning permission. A copy of the bond/financial provision securing the restoration of the site shall be submitted to planning authority within three months of this grant of planning permission. The bond will only be considered acceptable if approved in writing by the planning authority. Development shall cease within 6 months of this grant of planning permission if the bond/financial provision securing the restoration of the site is not approved in writing by the planning authority.

Reason: *To ensure that there are sufficient funds available throughout the life of the development to carry out the full restoration of the site.*

8. Notwithstanding that specified in the transportation assessment (TA), the first 40 metres (not 20 metres as stated in the TA) of private access road into the site; measured back from the site access, shall be surfaced in non-loose material within three months of this grant of planning permission.

Reason: *To ensure that the public roads including the access road leading to the quarry and the A7 are kept free from loose material being deposited from vehicles entering or exiting the site in the interest of road safety.*

9. Any identified damage to the highway during infilling and restoration works shall be repaired within three months of the operator being notified of the required works.

Reasons: *Various sections of the road carriageway / verge have suffered damage over the years and they require to be repaired prior to the intensification of the use of the road in the interests of road and pedestrian safety.*

10. The access and egress of vehicles into and out of the site shall only take place during the hours of 08.00 to 19.00 Mondays to Fridays

and 08.00 to 12.00 Saturdays with no working on Sunday. In addition, no work, no work on the construction of the access road, or site preparation works, shall take place out with the hours of 08.00 to 19.00 Mondays to Fridays and 08.00 to 12.00 Saturdays inclusive. There shall be no variation there from unless with the prior written approval of the planning authority.

Reason: *In the interests of safeguarding the amenity of nearby noise sensitive properties and the character and amenity of the countryside.*

11. The approved Dust Management Plan that was approved in writing by the planning authority under condition 13 of planning permission 15/00503/DPP shall be adhered to. Additionally, following any substantiated complaints about dust, or where visual inspection indicates significant dust emissions or dust tracked out of the site onto public roads, a programme of monitoring at the sensitive receptor(s) shall be undertaken by the operator over a period of time agreed in writing by the planning authority and steps taken, as agreed with the planning authority, to clean the public highway, reduce dust emissions and any other steps to mitigate the impact from dust.

Reason: *To mitigate the potential impact of the development on air quality in the interest of safeguarding the amenity of neighbouring properties and the amenity of the area.*

12. A daytime limit of 55 dB LAeq, 1 h (free field) shall be met at noise sensitive properties, with the exception of Halkerston Cottages where a daytime limit of 45 dB LAeq, 1 h (free field) shall be met.

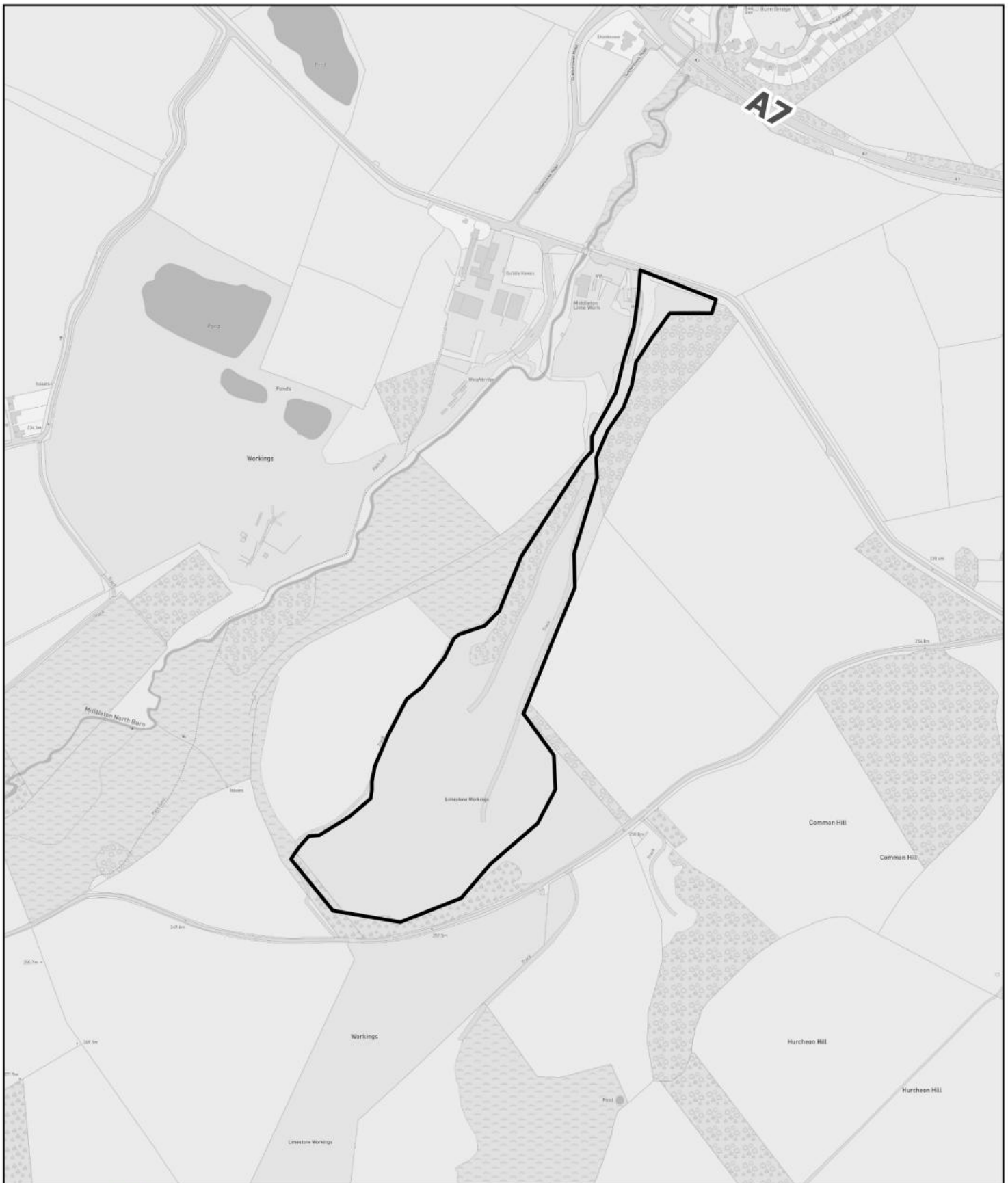
Reason: *To mitigate the potential noise impact of the development in the interest of safeguarding the amenity of neighbouring noise sensitive properties.*

13. No mud, soil or debris shall be deposited on the public highway by vehicles entering or leaving the site. Any mud, soil or debris deposited on the public highway shall be removed and the highway cleaned. The applicant shall retain an operational road sweeper on site whilst infilling operations and restoration works are taking place to ensure the highway is cleaned within one hour of the operator being notified by the local authority, the Police or any other Government Agency or Public Body.

Reason: *In the interests of highway safety.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 December 2022
Application No: 22/00546/S42
Applicant: The NWH Group
Agent: William Booth, Dalgleish Associates Ltd.
Validation Date: 14 July 2022
Contact Person: Whitney Lindsay
Email: Whitney.Lindsay@midlothian.gov.uk
Background Papers: Planning Application 15/00503/DPP



**Planning Service
Place Directorate**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Section 42 Application to amend condition 1 of planning permission 15/00503/DPP (infilling of quarry) to confirm the duration of temporary permission and condition 3 to allow the acceptance of non-hazardous waste; Middleton Limeworks, Gorebridge

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File No. 22/00546/S42

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SECTION 42 APPLICATION 22/00588/S42 TO AMEND CONDITIONS 4.VIII, 5.I, 5.III, 5.IV, 7 AND 9 OF PLANNING PERMISSION 17/00559/S42 (BUSINESS AND GENERAL INDUSTRIAL DEVELOPMENT) REGARDING ACCESS ARRANGMENTS, THE PROVISION OF HIGH SPEED FIBRE BROADBAND AND ELECTRIC VEHICLE CHARGING STATIONS AT LAND SOUTH WEST OF NEWTONLOAN TOLL, GOREBRIDGE

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 In November 2012 planning permission in principle (07/00556/OUT) was granted for Class 4 (business) and Class 5 (general industrial) uses on land to the south west of Newtonloan Toll, Gorebridge. In December 2019 a new planning permission in principle (17/00559/S42) was granted for the development without compliance with condition 8 (provision of zero and/or low carbon equipment) of the original grant of planning permission. The current planning application seeks to amended conditions; 4.viii (pedestrian/cycling links), 5.i (vehicular and pedestrian access), 5.iii (proposed signalised junction access layout), 5.iv (existing traffic lights at Newtonloan Toll), 7 (high speed fibre broadband) and 9 (electric vehicle charging stations).
- 1.2 There have been no representations received and consultation responses from the Council's Ecological Advisor (TWIC) and the Council's Senior Manager Neighbourhood Services (Roads).
- 1.3 The relevant development plan policies are policy 2 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT1, DEV2, DEV5, DEV6, ECON1, TRAN1, TRAN5, IT1, IMP1 and IMP2 of the Midlothian Local Development Plan 2017. Policies 13, 14, 15, 18, and 24 of the draft National Planning Framework 4 (NPF4) are also material considerations.
- 1.4 The recommendation is to grant planning permission subject to conditions and the applicant entering into a planning obligation to secure contributions towards necessary infrastructure.

2 LOCATION AND SITE DESCRIPTION

- 2.1 The 9.7 hectare site lies immediately to the south west of Newtonloan Toll, Gorebridge. It is bounded to the north by the B704, Cockpen Road, to the east by the A7 with housing beyond, to the south by the access road from the A7 to Redheugh Farm with agricultural land beyond and to the west by the Borders Railway with agricultural land beyond. The surrounding agricultural land is the site for the new Redheugh/Prestonholm community (housing site h50 in the Midlothian Local Development Plan 2017) for which planning permission in principle 15/00045/PPP was granted on 17 November 2017.
- 2.2 The application site itself remains largely agricultural land, with some woodland in the north-west part of the site alongside the B704 and the railway.

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 (hereafter referred to as the Act), seeks to amend conditions attached to a grant of planning permission in principle for Class 4 (business) and Class 5 (general industrial) uses.
- 3.2 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 which will supersede the original permission if implemented. Therefore if planning permission is granted for this application it will replace planning consent 17/00559/S42 (which, in itself, superseded application 07/00556/OUT) if implemented. It will therefore be a planning permission in principle for Class 4 (business) and Class 5 (general industrial) uses.
- 3.3 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. However, as a new planning application it shall be subject to a new/amended legal agreement to secure developer contributions.
- 3.4 Condition 4.viii of planning permission 17/00559/S42 states:
- Development shall not begin on an individual phase of development (identified in compliance with condition 1) until an application for approval of matters specified in conditions for site access, roads,

footpaths, cycle ways and transportation movements for the corresponding phase of development has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- viii. details of a 3 metre wide pedestrian/cycling link to be provided to the southern edge of the site to link to the bus based park and ride to be provided within the housing site at Redheugh; and

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.

- 3.5 It is proposed that condition 4.viii be modified as follows:

- viii. details of a 3 metre wide pedestrian/cycling link to be provided to the southern edge of the site; and

- 3.6 Condition 5.i, 5.iii, and 5.iv of planning permission 17/00559/S42 states:

Development shall not begin until an application for approval of matters specified in conditions for works to the A7 has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i. details of the proposed vehicular and pedestrian access from the A7 (including a 2 metre wide footpath along the site frontage with the A7, proposed visibility splays, traffic calming measures, lighting and signage);
- iii. details of the proposed signalised junction access layout (as shown on drawing 0429_SK-031 rev B) together with further details of the traffic control system onto the A7;
- iv. details of upgrading works to the existing traffic lights at Newtonloan Toll to provide a pedestrian crossing facility on all four arms; and

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.

3.7 It is proposed that condition 5.i be modified as follows:

- i details of the proposed signalised junction access layout (as shown on drawing 0429-SK-031 rev B) together with further details of the traffic control system onto the A7;

3.8 It is proposed that conditions 5.iii and 5.iv be deleted.

3.9 Condition 7 of planning permission 17/00559/S42 states:

Development shall not begin until an application for approval of matters specified in conditions setting out details, including a timetable of implementation, of high speed fibre broadband has 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 commercial building. 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.*

3.10 It is proposed that condition 7 be modified as follows:

Development shall not begin on an individual phase of development until an application for approval of matters specified in conditions setting out details, including a timetable of implementation of high-speed fibre broadband for that corresponding phase of development has been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to occupation of each commercial building within the individual phase of development being proposed. The delivery of high speed fibre broadband shall be implemented as per the approved details.

3.11 Condition 9 of planning permission 17/00559/S42 states:

“Development shall not begin until an application for approval of matters specified in conditions for the provision and use of electric vehicle charging stations throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.*

- 3.12 It is proposed that condition 9 be modified as follows:

Development shall not begin on an individual phase of development until an application for approval of matters specified in conditions for the provision and use of electric vehicle charging stations for that corresponding phase has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority,

4 BACKGROUND

- 4.1 Planning permission in principle 07/00556/OUT for Class 4 (business) and Class 5 (general industrial) uses was granted planning permission in November 2012 subject to conditions and a planning obligation securing developer contributions towards the Borders Railway.
- 4.2 Application 07/00556/OUT was accompanied by an indicative master plan for the site showing how the proposed development included 18 light industrial units varying from 465 to 2323 square metres with a total floorspace of 19,741 square metres on the northern part of the site, and 15 office units varying from 929 to 2090 square metres with a total floorspace of 34,373 square metres on the southern part of the site. It also shows an access from the A7 at a point approximately midway along the eastern boundary of the site, the retention of the existing woodland along the northern edge of the site and planting of a tree belt along the eastern and western boundaries of the site.
- 4.3 A section 42 application was subsequently submitted and approved (17/00559/S42) which sought to delete condition 8 (provision of zero and/or low carbon equipment). A new planning obligation was agreed as part of this permission.

5 CONSULTATIONS

- 5.1 The **Council's Ecological Advisor - The Wildlife Information Centre (TWIC)** does not object to the application, but advised that given the age of the earlier permissions the planning application should be subject to a further ecological assessment.
- 5.2 The **Council's Policy and Road Safety Manager** does not object to the application, but notes that there is an assumption that the proposed internal road network would connect both the northern and southern sites.

6 REPRESENTATIONS

- 6.1 There have been no representations received.

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 Development Plan 2017 (at the time of drafting the report).
- 7.2 SESplan June 2013 is older than five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within a National Planning Framework 4 (NPF4) to be prepared by Scottish Ministers. Once approved, NPF4 will form part of the development plan alongside local development plans. Until NPF4 is approved, SESplan remains part of the development plan albeit increasing out of date and of diminishing weight in the assessment of planning applications.
- 7.3 On 8 November 2022 a Revised Draft NPF4, along with an Explanatory Report that outlines the changes from the original draft NPF4, was laid before the Scottish Parliament for a six week period of final scrutiny with an expectation that it will be adopted in late 2022 or January 2023. The Planning Act requires that NPF4 must be approved by the Scottish Parliament before it can be adopted by Scottish Ministers. On adoption the provisions in the Planning Act will make NPF4 part of the statutory development plan (SESplan will become superseded policy at this point). The existing National Planning Framework 3 and Scottish Planning Policy remain in place until NPF4 has been adopted by Scottish Ministers, but don't have the status of being part of the development plan which NPF4 will. As the Revised Draft NPF4 is at an advanced stage and represents the settled view of the Scottish Government in terms of its planning policy it is a material consideration of significant weight in the assessment of the application.
- 7.4 The following policies are relevant to the proposal:
- Edinburgh South East Scotland Strategic Development Plan 2013 (SESPlan)
- 7.5 **Policy 2 (Supply and Location of Employment Land)** states that the strategic development plan supports the development of a range of marketable sites of the size and quality to meet the requirements of business and industry within the SESplan area. Local development plans will support the delivery of the quantity of the established strategic employment land supply as identified. Local development plans should also ensure they provide a range and choice of marketable sites to meet anticipated requirements.

Midlothian Local Development Plan 2017 (MLDP)

- 7.6 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, including sites in the established economic land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP.
- 7.7 Policy **DEV 2: Development within the Built-up Area** states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.
- 7.8 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.9 Policy **DEV6: Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.10 Policy **ECON1: Existing Employment Locations** seeks to safeguard those sites allocated for economic land uses against loss to non-business or industrial uses. Alternative uses for such sites will only be permitted if there is no net detriment to the overall supply of economic land.
- 7.11 **Policy TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.12 Policy **TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.13 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals.
- 7.14 Policy **IMP1: New Development**. This policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are, transport infrastructure; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural interests affected; archaeological provision and 'percent for art' provision.

- 7.15 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.

National Planning Policy

- 7.16 The **SPP (Scottish Planning Policy)** sets out Government guidance in relation to creating a successful sustainable place, supporting economic growth, regeneration and the creating of well-designed places.
- 7.17 In relation to supporting business and employment the planning system should:
- promote business and industrial development that increases economic activity while safeguarding and enhancing the natural and built environments as national assets;
 - allocate sites that meet the diverse needs of the different sectors and sizes of business which are important to the plan area in a way which is flexible enough to accommodate changing circumstances and allow the realisation of new opportunities; and
 - give due weight to net economic benefit of proposed development.
- 7.18 Plans should align with relevant local economic strategies to meet the needs and opportunities of indigenous firms and inward investors, recognising the potential of key sectors for Scotland with particular opportunities for growth, including:
- energy;
 - life sciences, universities and the creative industries;
 - tourism and the food and drink sector; and
 - financial and business services.
- 7.19 SPP introduces a presumption in favour of development that contributes to sustainable development, but states: *The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.*

- 7.20 The **National Planning Framework 4 Revised Draft** (08 November 2022) is a material consideration – the policies relevant to the application are:
- 7.21 Policy **13 – Sustainable Transport** sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.22 Policy **14 - Design, quality and place** sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 7.23 Policy **15 - Local Living and 20 minute neighbourhood** sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.
- 7.24 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.
- 7.25 Policy **24- Digital Infrastructure** sets out to encourage, promote and facilitate the roll- out of digital infrastructure across Scotland to unlock the potential of all our places and the economy.

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.

The Principle of Development

- 8.2 As the proposal is a 'Section 42' application the principle of development is not subject to consideration as set out in paragraph 3.3 of the report. The site was allocated for Class 4 (business) and Class 5 (general industrial) uses in the Midlothian Local Plan 2008 as part of the Redheugh/Prestonholm new community. A subsequent grant of planning permission in principle (07/00556/OUT) for Class 4 and Class 5 uses was granted in November 2012 reaffirming the principle of development across the application site. The MLDP continues the commitment to the economic uses.

Amendment to Condition 4.viii

- 8.3 Condition 4 viii requires the developer to deliver a 3m wide cycle/pedestrian path in the southern part of the site to link to an anticipated (in 2012) bus based park and ride, to be provided within the adjacent residential allocation of Redheugh. Subsequent to the 07/00556/OUT permission the bus based park and ride was replaced with a *potential* rail halt which was safeguarded as part of the neighbouring residential scheme which was approved in principle under ref: 15/00045/PPP.
- 8.4 It is further identified that the adjacent site is under the control of a different land owner and as such the ability of the applicant (the owner of the economic development site) to deliver this path on land not within their control is limited. As such, the proposal to provide the 3m wide route to the limits of the site under the applicant's control is considered appropriate and equally connections from the neighbouring residential development will be secured through the appropriate permissions.

Amendment of Condition 5.i

- 8.5 The masterplan submitted with the original planning application (07/00556/OUT) and the subsequent section 42 application (17/00559/S42) referred to a singular vehicular access off the A7. The proposed development would seek to deliver two vehicular access points from the A7, connected by an internal road loop. However, it should be noted that the indicative site plan submitted with the current application would not be approved and the details of such a proposal would be subject to a separate application and assessment. That said, the submitted plans have been reviewed and the Council's Senior Manager Neighbourhood Services (Roads) raises no objection to the proposed reference to two access points and that the proposed wording, with slight amendments, would comply with MLDP policy DEV6 and TRAN1.

Deletion of Conditions 5.iii and 5.iv

- 8.6 The deletion of condition 5.iii is logical following the acceptance of changes to condition 5.i which reference access details proposed on plan ref: WSP-XX-XX-SK-A-001 rev B and WSP-XX-XX-SK-A-002 rev B. The reference to older plans would not be necessary.
- 8.7 The proposal to have condition 5.vi deleted has been sought due to the requirement of the condition being delivered by other means since the approval of application 17/00559/S42.

Amendment to Condition 7

- 8.8 The proposed amendment seeks to secure high speed fibre broadband on a phased basis as the development will be delivered in a number of phases, rather than securing details for the whole site prior to the first phase commencing on site – this makes sense and can enable each phase to reflect the most up to date broadband position as the site progresses. The proposed re-wording of the condition would require that prior to the commencement of each phase (that would be identified in discharging Condition 2) the necessary timetable and details of the high speed fibre broadband be provided. The proposals would still comply with policy IT1 of the local development plan. In updating the condition the term 'high speed fibre broadband' is replaced by superfast broadband.

Amendment to Condition 9

- 8.9 Similarly to condition 7 above, the proposed changes to condition 9 would require details of electric vehicle charging/parking to be provided prior to the commencement of each individual phase of development rather than for the entire site in one submission. The proposed amendment, with minor adjustments, would be appropriate and still comply with TRAN5 of the local development plan. This phase by phase approach means that a higher level of provision can be secured as part of the later phases of development when it is anticipated the levels of electric car ownership would be at a higher level than they are at present.

Requirement for a new Planning Obligation

- 8.10 The 17/00559/S42 grant of planning permission was subject to a Section 75 legal agreement to secure developer contributions towards the Borders Railway. It is proposed to require an amended legal agreement to ensure the agreed financial position is protected.
- 8.11 Although the application is a 'Section 42 application' it is a planning application which has to be assessed in accordance with Section 37(2) of the Town and Country Planning (Scotland) Act (1997), which states *"in dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations"*.
- 8.12 The appropriate procedural requirements are set out in Circular 3/2013: Development Management Procedures which confirms that a Section 42 is a new permission and that if permission is granted it should be subject to the conclusion of any appropriate planning obligation to secure developer contributions.

Other Conditions

- 8.13 Condition 12 of the 17/00559/S42 permission sought to clarify that the original indicative site plan submitted under the 07/00556/OUT application was not approved. Considering that a further indicative site plan has been submitted as part of the current planning application, it is prudent to update that condition confirming that the more recent masterplan is also not approved under any grant of planning permission. The detailed layout of the site will be subject to separate applications.
- 8.14 Following the requirement to impose a duration of planning permission condition (as reported to the Committee at its meeting of October 2022) the comparable condition number of the conditions amended as set out above, may not align with the new conditions proposed below.

9 RECOMMENDATION

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

The proposed development site is identified as being part of the Council's safeguarded/committed economic land supply within the Midlothian Local Development Plan 2017 and as such there is a presumption in favour of the proposed development. This presumption in favour of development is not outweighed by any other material considerations or the proposed amendment of conditions.

Subject to:

- i. the prior signing of a legal agreement to secure contributions towards public transport. The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused; and
- ii. the following conditions:
 1. The development to which this permission relates shall commence not later than the expiration of five years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 59(2) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. Details of the phasing of the development shall be submitted to the planning authority for approval, and no work shall commence on site until the phasing scheme has been approved in writing. Following approval, the development shall be implemented in accordance with the approved scheme.

Reason: To ensure the development is phased to mitigate the impact of construction on future users of the buildings, existing local residents and those visiting the development site.

3. Development shall not begin on any individual phase of development (identified in compliance with condition 2) until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works for the corresponding phase of development has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- a. existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
 - b. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - c. proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
 - d. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - e. schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - f. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the buildings on adjoining plots being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
 - g. drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff;
 - h. proposed car park configuration and surfacing;
 - i. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
 - j. proposed cycle parking facilities;
 - k. proposed woodland management plan for any existing, to be retained, and proposed woodland; and,
 - l. details of existing and proposed services, including water, gas, electric, telephone and community heating.

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 and subsequent maintenance (part f). 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 policies DEV2, DEV5, DEV6 and DEV7 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

4. Development shall not begin on an individual phase of development (identified in compliance with condition 2) until an application for approval of matters specified in conditions for the siting, design and external appearance of all buildings and other structures, including electricity substations, for the corresponding phase of development has been submitted to and approved in writing by the planning authority. 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. 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 quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

5. Development shall not begin on an individual phase of development (identified in compliance with condition 2) until an application for approval of matters specified in conditions for site access, roads, footpaths, cycle ways and transportation movements for the corresponding phase of development has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - a. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - b. proposed roads (including turning facilities), footpaths and cycle ways;
 - c. proposed visibility splays, traffic calming measures, lighting and signage;
 - d. proposed construction traffic access and haulage routes;
 - e. a green transport plan designed to minimise the use of private transport and to promote walking, cycling and the use of public transport;
 - f. proposed car parking and vehicle charging arrangements;
 - g. an internal road layout which facilitates buses entering and leaving the site in a forward facing direction;
 - h. details of a 3 metre wide pedestrian/cycling link to be provided to the southern edge of the site to allow for future connectivity to adjacent residential development; and,
 - i. 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.*

6. Development shall not begin until an application for approval of matters specified in conditions for works to the A7 has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - a. details of the two proposed vehicular and pedestrian accesses from the A7 (as shown on drawing nos. XX-XX-SK-A-001 Rev.B, XX-XX-SK-A-002 Rev B and XX-XX-VIS-A-001 Rev A) or such alternatives as may be agreed in writing with the planning authority, including a 2 metre wide footpath along the site frontage with the A7, traffic calming measures, lighting and signage;
 - b. details of the provision of two new bus stops and shelters provided at suitable points on the site frontage with the A7;
 - c. 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 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:
 - a. the nature, extent and types of contamination and/or previous mineral workings on the site;
 - b. 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;

- c. measures to deal with contamination and/or previous mineral workings encountered during construction work; and,
- d. the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied, 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 on an individual phase of development as identified through condition 2 until an application for approval of matters specified in conditions setting out details, including a timetable of implementation of superfast broadband for that corresponding phase of development has been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast broadband prior to occupation of each commercial building within the individual phase of development being proposed. The delivery of superfast 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.*

- 9. Development shall not begin until an application for approval of matters specified in conditions for a scheme of sustainability/biodiversity for the site, including the provision of bricks and boxes for bats and swifts throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan 2017.*

- 10. Development shall not begin on an individual phase of development as identified through condition 1 until an application for approval of matters specified in conditions for the provision and use of electric vehicle charging stations for that corresponding phase has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such

alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.*

11. Development shall not begin until an application for approval of matters specified in conditions for a scheme setting out the scope and feasibility of a community heating scheme for the development hereby approved and; if practicable, other neighbouring developments/sites, in accordance with policy NRG6 of the Midlothian Local Development Plan, shall be submitted for the prior written approval of the planning authority.
12. No commercial building on the site shall be occupied until a community heating scheme for the site and; if practicable, other neighbouring developments/sites, is approved in writing by the planning authority. The approved scheme shall be implemented in accordance with a phasing scheme also to be agreed in writing in advance by the Planning Authority. There shall be no variation therefrom unless with the prior written approval of the planning authority.

Reason for conditions 11 and 12: *To ensure the provision of a community heating system for the site to accord with the requirements of policy NRG6 of Midlothian Local Development Plan 2017 and in order to promote sustainable development.*

13. The details of the development delineated on the indicative plan, dated May 2007, originally submitted with planning application 07/00556/OUT, or 22/00559/S42 (Indicative Schematic Masterplan - ref: (2-) 001) are not approved.

Reason: *The planning permission is in principle only and the details shown on the layout plan are for illustrative purposes only and do not form part of the planning permission in principle.*

14. No overhead wires, cables or telecommunication masts shall be introduced onto the site without the prior written approval of the planning authority.

Reason: *To ensure that the appearance of the development is not spoiled by over-head power lines, wires and telecommunication masts.*

15. The use of the buildings erected on the site shall be for uses within Class 4 (Business) and Class 5 (General Industrial) of the Town and Country Planning (Use Classes) (Scotland) Order 1997

or equivalent in any subsequent amendment or replacement order, unless otherwise approved by the planning authority.

Reason: *To ensure that the uses of the buildings are for the purposes applied for in order to meet economic land requirements.*

16. There shall be no external storage of equipment, packaging, waste or other items on the site and no industrial process or work shall be undertaken out with the buildings unless approved by the planning authority.

Reason: *In the interest of visual amenity.*

17. Development shall not begin until an investigation on badger and bat activity/presence is undertaken by a qualified ecologist and any mitigation measures identified implemented in accordance with details to be submitted and approved in writing by the planning authority. The investigation shall be carried out within the six months prior to development commencing.

Reason: *In the interests of safeguarding badgers and bats and to ensure that an up to date understanding of these species on the site is available prior to development commencing.*

18. Development shall not begin on an individual phase of development (identified in compliance with condition 2) until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:

- a. Details of a separate construction access;
- b. signage for construction traffic, pedestrians and other users of the site;
- c. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
- d. details of piling methods (if employed);
- e. details of any earthworks;
- f. control of emissions strategy;
- g. a dust management plan strategy;
- h. waste management and disposal of material strategy;
- i. temporary construction drainage details / SUDS;
- j. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
- k. prevention of mud/debris being deposited on the public highway;

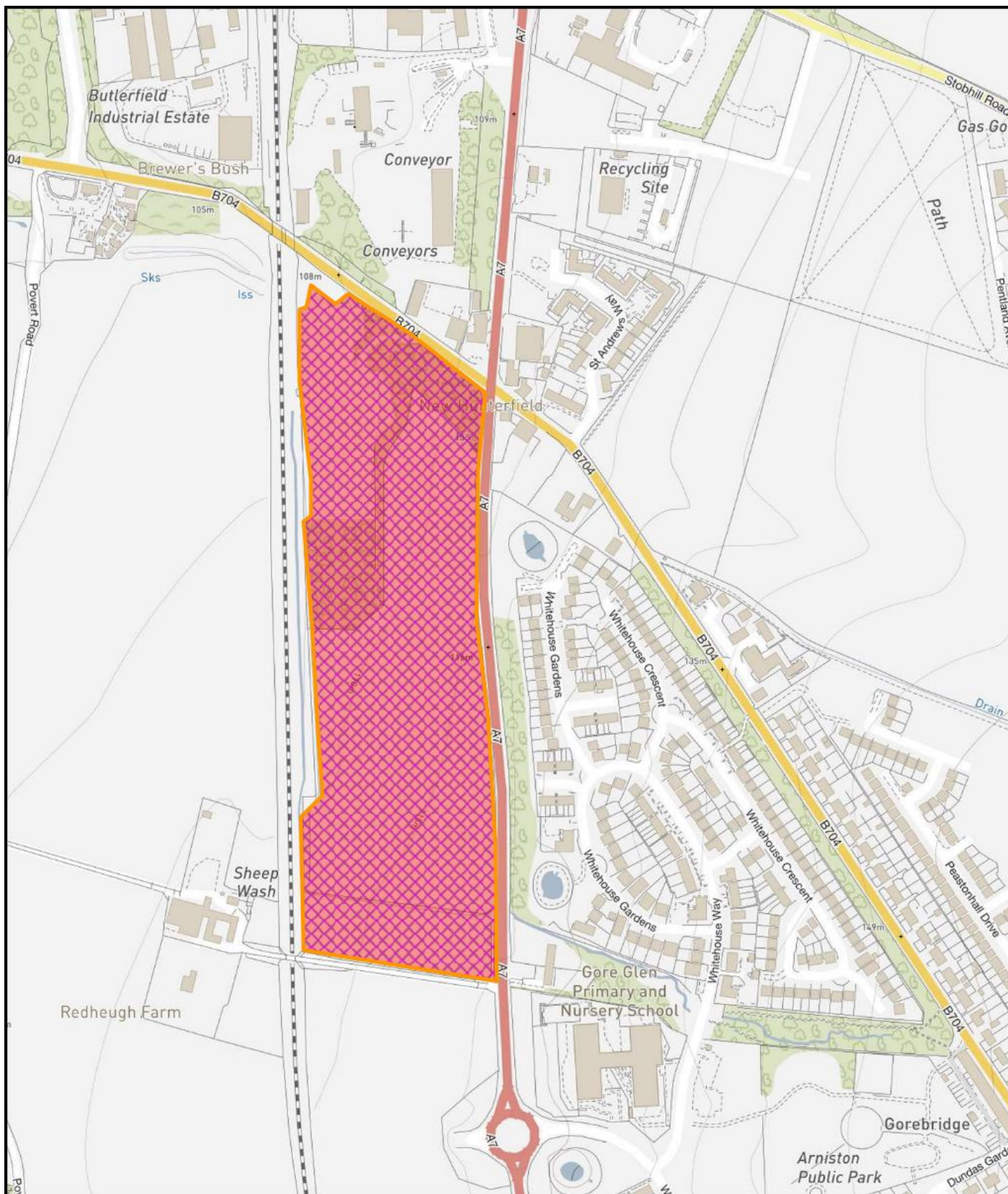
- l. material and hazardous material storage and removal; and
- m. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

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

Reason: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date:	20 December 2022
Application No:	22/00559/S42
Applicant:	Omnivale Ltd
Agent:	Andrew McCafferty Associates
Validation Date:	02/08/2022
Contact Person:	Hugh Shepherd
Email:	hugh.shepherd@midlothian.gov.uk
Background Papers:	Planning application 07/00556/OUT and 17/00559/S42 and 15/00045/PPP



**Education, Economy
& Communities**
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Amend Conditions of 17/00559/S42 Land South West of Newtonloan Toll, Gorebridge

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Scale: 1:5,000

