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**APPLICATION FOR PLANNING PERMISSION (17/00219/DPP) FOR THE PARTIAL CHANGE OF USE OF LAND AND BUILDINGS FOR WEDDING EVENTS (PART RETROSPECTIVE) AT 32A DAMHEAD, LOTHIANBURN**

Report by Head of Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1** The application is for the partial change of use of an existing horticultural business at the Secret Herb Garden, 32A Damhead for wedding ceremonies and associated receptions. There have been sixteen letters of representation and consultation responses from the Council's Policy and Road Safety Manager, the Council's Environmental Health Manager, the Scottish Environment Protection Agency (SEPA) and the Damhead and District Community Council. The relevant development plan policies are RP1, RP2, RP4, RP7, RP8, ECON8 and DP3 of the Midlothian Local Plan 2008 (MLP). Policies ENV1, ENV4, ENV7, ENV10 and ENV18 of the Proposed Midlothian Local Development Plan 2014 (MLDP) are material considerations. The recommendation is to refuse planning permission.

**2 LOCATION AND SITE DESCRIPTION**

- 2.1** The site is within the grounds of the Secret Herb Garden (SHG), an established horticulture business including a plant nursery and ancillary cafe and retail outlet. The site area measures 0.91 hectares and is relatively flat, with the land to the west gradually sloping up towards the site's boundary.
- 2.2** There are a number of buildings within the application site including a glasshouse, shed, barn, residential caravan and office. The site also includes an area of open space which is used to grow plants.
- 2.3** Areas to the north and south of the site are under the control of the SHG and form part of the planning unit of the wider site. The area to the north comprises grassed open space, a yurt (portable round tent structure) and converted railway carriage, used as a bee observatory. The area to the south comprises the site's car park and a dwellinghouse related to the SHG business.

- 2.4 The site is located within the countryside and green belt, with a number of dwellinghouses to the north-east and south-east. The site is accessed via Pentland Road.

### **3 PROPOSAL**

- 3.1 It is proposed to partially change the use of the site to host wedding ceremonies and associated receptions, alongside the existing horticulture use. The events will take place between May and September. Seventeen weddings have been booked for 2017, with 15 events being on Saturdays, one on a Friday and one on a Thursday. This overall figure may change with the potential for additional bookings if planning permission is granted. Wedding events have been taking place on site since 2014. There were 11 weddings in 2016.
- 3.2 The hours of operation are 4pm until midnight. The ceremonies take place within the glasshouse or on the two areas of open space to the west. The venue can accommodate up to 100 guests. The reception area and temporary bar are located within the glasshouse. An alcohol consumption area is restricted (by licence) to an area around the glasshouse.
- 3.3 Live bands/amplified music will be housed in a barn situated within the eastern part of the site, the barn can hold up to 55 people. An acoustic report has been submitted which includes mitigation measures to limit the noise. The live/amplified music will cease by 11pm, with background music playing until 11.45pm.
- 3.4 A new septic tank is proposed as a medium to long term solution to the increased demand. In the short term, a temporary interim arrangement including the provision and use of portable toilets and a restriction on access to the existing toilets is proposed.
- 3.5 On site staff will; supervise vehicles entering and leaving the site, encourage customers to consume alcohol only within the allocated locations and monitor the use and volume of live/amplified music.
- 3.6 The application form states that the wedding event use has not begun. However the associated planning statement states the weddings began in June 2014, which correlates with correspondence between the Planning Authority, the applicant and local residents. The application submission includes financial information relating to the SHG business.

### **4 BACKGROUND**

- 4.1 The site is a smallholding which has an established horticultural use.
- 4.2 Planning application 580/89 for the change of use of existing building to provide a retail shop and the erection of a temporary building to provide

coffee shop and offices was approved in 1989. This was a temporary permission until the end of 1992.

- 4.3 Planning application 02/00110/FUL for the demolition of the existing shop, the change of use and extension and alteration of packing shed to retail unit (part retrospective) was approved in 2003. Conditions were attached restricting the sales area and the goods to be sold and requiring the demolition of the temporary existing shop (approved under application 580/89) and container before the new shop was brought into use.
- 4.4 Planning application 07/00072/FUL for the relocation of retail unit and change of use of the retail unit approved in planning permission 02/00110/FUL to farm office and storage was approved retrospectively in 2007. Conditions were attached restricting the area to be used for retail sales, the goods to be on sale and the use of the building to administrative or storage purposes related to the farm/smallholding.
- 4.5 Planning application 05/00340/FUL for the change of use of the site to a children's play area with miniature railway, was refused in 2005 for the following reasons: potential to intensify the use of a substandard access onto a road with a 60mph speed limit, to the detriment of road safety within the area; the area is not served by public transport and there is a lack of walking and cycling links to the site, therefore it is considered unwise to support a proposal which could encourage the movement of children to and from this site, with its inherently unsatisfactory access onto a narrow, winding rural road.
- 4.6 Planning application 06/00139/OUT for the erection of a dwellinghouse was refused in 2007 as: it was not demonstrated that it was essential for the furtherance of the established horticultural business; the size of the proposed house plot far exceeds what would be considered an appropriate size for ancillary residential accommodation for overseeing the business operation; it would result in the loss of prime agricultural land, be highly visible and result in the coalescence of the farm development with the group of houses to the rear; and the applicant has failed to supply sufficient evidence of the quality of the outflow of water from the private waste treatment plant into the adjacent watercourse.
- 4.7 Planning application 07/00074/FUL for the temporary siting of static caravan for residential accommodation was approved in 2007. Conditions attached stated the caravan was only to be located in the position shown on the approved plans, be permitted for a temporary period of two years, be removed within one month of the expiry of the permission with the site made good. The caravan was to be occupied only by staff essential to the agricultural operation of the organic farm.
- 4.8 Planning application 12/00771/DPP (part retrospective) for the temporary siting of two static caravans to be used as a single

residential unit was approved in 2013 subject to conditions. The caravans were to be on site for a temporary period of three years, be removed within two months of the expiry of the temporary period and be linked and used as a single residential unit by the operator (and their dependents) of the horticultural business on the associated land at 32A Damhead.

- 4.9 Planning application 12/00780/PPP for the erection of a dwellinghouse was withdrawn in 2013.
- 4.10 Planning application 13/00398/DPP for the change of use from shop to cafe and shop, erection of extension to building and formation of new door opening was approved in 2013. This granted approval for the current layout of the site. Conditions were attached, including restricting the goods to be sold from the shop and the installation of a waste water treatment plant. The treatment plant has not been installed.
- 4.11 Planning application 13/00597/DPP for the erection of dwellinghouse and garage was approved in 2013. It was demonstrated the dwellinghouse was required for the furtherance of the established business. An occupancy condition restricts the house to be occupied only by the immediate family of a person employed in the fulltime operation and running of the SHG and at no time to be used as the main place of residence for any other person or persons.
- 4.12 An advert consent application 14/00724/ADV (retrospective) for signage at the site was approved in 2015.
- 4.13 Planning application 16/00045/DPP (retrospective) for additional car parking was approved at the site in 2016.
- 4.14 Two retrospective applications were submitted in 2016 to regularise unauthorised development at the SHG. The first of these applications 16/00636/DPP (retrospective) was for the retention of residential static caravan for a further temporary period (one of the caravans approved under 12/00771/DPP had not been removed within the time period prescribed). This was subject to five objections and an objection from the Damhead and District Community Council. The application was withdrawn before a decision was issued.
- 4.15 The second planning application 16/00637/DPP (retrospective) for the partial change of use of land and buildings as an events venue, incorporating weddings and private functions was submitted after the Planning team received complaints from local residents regarding events taking place at the SHG without planning permission. The application was subject to five objections, two letters of support and an objection from the Damhead and District Community Council. The application was withdrawn before a decision was issued.

- 4.16 Planning application 17/00180/DPP (retrospective) to retain the caravan for a temporary period was approved in May 2017. It is conditioned that the caravan be removed from the SHG and the site made good by the end of September 2017. A condition also restricts occupation of the caravan to an employee of the SHG.
- 4.17 Planning application 17/00205/DPP (retrospective) for the partial change of use of glasshouse building to incorporate evening dining events was submitted in March 2017. This, along with the current application for weddings, appears to separate the events applied for in application 16/00637/DPP. This was subject to seven objections, two letters of support and an objection from the Damhead and District Community Council. The application was withdrawn in April before a decision was issued.
- 4.18 The application has been called to Committee for determination by Councillor Parry as the use of land as a wedding venue will support economic development in the local area.

## 5 CONSULTATIONS

- 5.1 The Council's **Policy and Road Safety Manager** has no objection and is not aware of any road safety or transportation issues arising from the events which have taken place to date. The use of the site as a wedding events venue for a 5 month period does not raise any major transportation issues.
- 5.2 The Council's **Environmental Health Manager** has received complaints over the events taking place at the site. Given the proximity to neighbouring residents, it is considered the site is unsuitable for wedding events with amplified music within marquees. Environmental Health officers carried out an exercise in 2016 to assess the impact of amplified music played within the barn on the neighbouring properties. A reasonable sound level should be achievable within the barn without causing undue disturbance to neighbours, provided suitable noise mitigation measures are undertaken. The noise report submitted with the application assessed the structure of the barn and reported on any potential improvements to sound insulation. The Environmental Health Manager notes that workmanship and attention to detail in the execution of improvements to sound insulation are crucial in achieving the theoretical improvements in practice. If suitable works are undertaken and the management of the SHG can demonstrate that events can take place in the barn with an appropriate internal noise level to make wedding events viable without causing disturbance within neighbouring residential properties, the Environmental Health Manager has no objection to the wedding events provided the following conditions be attached to any consent: no marquees shall be erected on site to be used as part of weddings without prior written approval; the sound insulation measures shall be approved and installed before

live/amplified music is played in the barn; and any amplified music must take place within the barn and be controlled to an agreed level.

- 5.3 The **Scottish Environment Protection Agency** initially objected to the proposal on the grounds of lack of information in respect of foul drainage and the potential impact on the water environment. However the applicant has submitted additional information addressing their concerns. SEPA have subsequently withdrawn their objection.
- 5.4 **Damhead Community Council (DCC)** object to the application. They cannot support the proposal for an unspecified number of wedding events. They object to the open ended nature of the application as the term 'occasional use' can have many interpretations. DCC raise concerns over noise, light pollution, traffic given the potential numbers of guests, loss of amenity and the effect on neighbouring properties.
- 5.5 DCC consider the existing cafe on site for daytime visitors is reasonable, but full scale evening catering has a greater impact at a time when local residents are entitled to a good level of amenity. Wedding events generally involve loud music and physical activity and movement within areas not designed for this purpose with potential for accidents when compared to the dining functions.
- 5.6 DCC also raise concerns over the long term sewage/foul water management, as per SEPA's comments on the existing facilities. The existing septic tank was never designed for this level of use along with the additional waste water from the preparation of meals and washing up.

## **6 REPRESENTATIONS**

- 6.1 Sixteen representations have been received in connection with this application.
- 6.2 Nine letters of support have been submitted on the following grounds:
- The objections on the ground of light and noise pollution are from people who do not live nearby. The closest neighbours have never experienced significant noise or traffic issues;
  - The applicants are actively addressing concerns over noise and light;
  - The approved landfill in the area causes more noise and traffic issues than the wedding events;
  - The SHG is an environmentally sensitive business in the countryside which has improved a neglected piece of land;
  - Concern that the objection from the Damhead and District Community Council's comments are not representative of the course of action agreed at their recent meeting;
  - The SHG is one of the best visitor destinations in Scotland and there would be job losses without the weddings events. The business is successful and warrants support to allow it to thrive

within the boundaries of planning policy and neighbourly cooperation. The applicants have diversified their business in order to succeed in today's climate to provide unique wedding opportunities. It is the most positive development to happen in Damhead for many years;

- If refused it would send a damaging message to the local community about the sort of place the Council would like Damhead to be; and
- Some objections are from an ex-employee which raises the question if this is a personal objection.

6.3 Seven letters of objection have been submitted on the following grounds:

- There is support for the horticultural business at the site but not the wedding events;
- The cafe is ancillary to the horticulture use, however the wedding events operate outwith the legitimate opening hours. It is unjustifiable to state that the wedding events would be ancillary to the horticultural business as this is a significant departure from planning policy;
- The proposal will significantly alter the character of the area and is out of character and scale with the surrounding landscape;
- There is no detail over the number, type or frequency of wedding events, or if the events would be held within the existing buildings or involve the use of outdoor drinking and seating areas;
- The number of quoted attendees does not include staff employed at the wedding events;
- The number of people employed at the site relating to the horticultural business is likely to be lower than those employed in relation to the wedding events and therefore have a reduced impact on local amenity;
- The wedding events would introduce excessive noise, light and traffic pollution into an otherwise quiet setting as this is an isolated business surrounded by rural properties, not conducive to loud, late night light and noise pollution;
- There should be no amplified music at the site. Consideration should be given to the noise and disturbance generated by people attending the wedding events and socialising as well the disturbance from the amplified music;
- The claim that the wedding events has been operating for two years without complaint is untrue as there have been a number of complaints including police incidents;
- Support for the Environmental Health Manager's recommendations;
- The sound test referred to in the acoustic report was purely noise created by a live band, which is not representative of a typical wedding event;
- It is not clear from the noise report if the assessment was with the barn doors open or closed;
- Impact on the privacy of nearby residents;

- Traffic and road safety concerns due to the increased traffic levels and proximity to two blind bends. A survey by the Transportation Department of the Council should be undertaken to assess whether any improvements are required and permission should only be granted if the entrance is deemed sufficient for current/proposed traffic levels. The volume of traffic using Old Pentland Road has increased since previous applications were approved;
- Further parking may be required due to the size of wedding events, which would result in the loss of good quality farm soil and undermine any future occupier carrying out horticultural works;
- The site plan indicates more parking spaces than previously approved;
- It may be necessary for a legal agreement to secure a contributions towards necessary road improvements to make the access safe for patrons;
- The commencement of the wedding events was done covertly without proper processes;
- The existing foul water system has not been upgraded as required by SEPA and there are insufficient toilet facilities provided. The septic tank cannot handle a greater volume of usage and there has already been a noticeable impact on the local burn after events;
- The poor sanitary facilities have been a feature of the site for three years and a permanent solution should be required immediately;
- How can it be ensured that there will be no breaches of foul drainage and who would monitor and enforce this;
- Lack of stewarding despite alcohol being consumed on site. There is an acknowledgement of the stewarding information submitted with the application but it is not clear how this will be carried out, enforced, monitored or the ratio between staff and guests;
- The proposal is contrary to the adopted Midlothian Local Plan and the proposed development plan policies RP1, RP2, RP4, RP7, ECON8 and ENV4, ENV7 ENV18;
- Should permission be granted, it is likely that the business will develop further, more extravagantly with irrevocable impacts;
- It is frustrating that time, effort and resources are spent researching the applications and submitting comments only for these to be withdrawn;
- The multiple applications for individual elements of the business do not clearly demonstrate all events taking place on site or give an accurate reflection of the overall changes to the smallholding. The application should not be considered individually but combined with application 17/00205/DPP;
- The application, along with withdrawn application 17/00205/DPP, appears a mix of application 16/00637/DPP which was withdrawn after being recommended for refusal. Little has changed between the previous and current application;
- The current application and application 17/00205/DPP should be withdrawn and resubmitted as one application in order to accurately assess and demonstrate the events venue;

- The application may be more likely to be supported if it were located on grounds away from residences with good communication and transport links with a fully planned and custom built facility designed to cater for a specific market and clientele;
- It is misleading to state that there would be no loss of agricultural land, with queries over the amount of car parking at the site that has resulted in the loss of prime agricultural land contrary to policy RP4;
- Damage done by guests to a fence on land which does not belong to the applicant;
- The application was submitted as a result of enforcement action which demonstrates a disregard of policy and procedure;
- There is a concern over the difficulty of enforcing planning conditions as there are a number of outstanding breaches of conditions and consents, including the retention of the caravan, conditions relating to 13/00398/DPP, relating to the approved house, retrospective applications applied for the car park and adverts;
- Permission should be refused on the grounds of consistent breaches and disregard for permissions and licences as well as irresponsible behaviour regarding public health and safety and nuisance and impact on neighbours and the area;
- A request for a review of the currently held permissions given the number of breaches and inconsistencies;
- The SHG was put up for sale with the house separate to the business, contrary to conditions attached to the permission for the house;
- A building warrant remains outstanding and consideration must be given to this before the planning application is determined;
- There are a number of other events taking place at the site, including gigs, corporate events, tasting sessions, exhibitions, parties and music nights, as well as full and new moon dinners;
- The application would set a precedent and allow similar schemes, with operating hours in excess of other business in the rural area;
- The value of nearby properties could be affected;
- The site is close to biodiversity assets of Damhead and increased night/evening traffic could lead to an increased level of road kill;
- The proposal does not align with the Damhead and District Neighbourhood Plan 2015-2030 nor enhance the community;
- Should permission be granted, the number of wedding events should be limited to ensure no further incremental growth of this development occurs without the necessary planning procedures being followed;
- Suggestions for conditions, should permission be granted include: to restrict live or amplified music within the acoustically treated barn which should be carried out before any wedding events take place; ensure the barn door be closed when live/amplified music is playing; the number of wedding events be limited to 10 per year as stated by the applicant at a recent Community Council meeting; the numbers of guests limited to 55 to protect the amenity of the area

and prevent further incremental growth of the business; impose noise limits; require compliance monitoring at the nearest noise sensitive properties; prohibit the erection of marquees; restrict operating hours to 11pm to protect residential amenity; restrict guest access to only the areas identified on the site plan during operating hours; require the applicant to make quarterly reports to Midlothian Council detailing all events on site, the nature of the event, number of persons attending, parts of the site used, date and operating hours;

- In times of high wind the glasshouse has been forced to close. It is unlikely that a wedding event would be cancelled if bad weather were to occur. It is imperative there is a building capable of accommodating all guests, therefore the maximum capacity of people attending a wedding should be the capacity of the barn;
- Comments about the licence application which should be considered a material matter if planning permission is granted as well as comments on the building warrant;
- The glasshouse is a safety hazard and queries if a health and safety assessment has been completed;
- If the previous application was refused, then so should the current application;
- It should be queried how successful the events aspect of the business can be if it is operating without a licence, planning permission or building warrants;
- The purpose of planning is not to prop up failing businesses but to determine if the site is appropriate for such a development;
- The claim that the garden centre has been unsuccessful in its traditional form may be because there are two garden centres within a mile of the site;
- The site was never vacant land but was a smallholding;
- The application form is misleading in its description of the size of the smallholding as the majority of the site is now developed which has resulted in the loss of agricultural land;
- Non-compliance with European Convention on Human Rights relating to the human right to the peaceful enjoyment of one's own home and property;
- This is a bad neighbour development;
- No permission has been granted for the yurt, shed or potting shed and these do not appear on the licence plan;
- Query over neighbour notification; and
- The route of the A701 relief road has not yet been decided.

6.4 A number of objections covered both the current application 17/00219/DPP and the withdrawn application 17/00205/DPP. The comments relevant to this application have been referenced in the report.

## 7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Plan, adopted in December 2008. The Proposed Midlothian Local Development Plan 2014 has been submitted to the Scottish Ministers and is subject to an examination which is likely to be concluded in summer 2017. As this plan is at an advanced stage of preparation and represents the settled view of the Council it is a material consideration of significant weight in the assessment of the application. The following policies are relevant to the proposal:

### South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 Policy **12: Green Belts** require Local Development Plans to define and maintain Green Belts around Edinburgh whilst ensuring that the strategic growth requirements of the Strategic Development Plan can be accommodated. This will direct planned growth to the most appropriate locations and support regeneration. Local Development Plans should define the types of development appropriate within Green Belts.

### The Midlothian Local Plan 2008 (MLP)

- 7.3 Policy **RP1: Protection of 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, tourism, or waste disposal (where this is shown to be essential as a method of site restoration); it is within a designated non-conforming use in the Green Belt; or it accords with policy DP1;
- 7.4 Policy **RP2: Protection of the Green Belt** advises that Development will not be permitted in the Green Belt except for proposals that;
- A. are necessary to agriculture, horticulture or forestry; or
  - B. are for opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
  - C. are related to other uses appropriate to the rural character of the area; or
  - D. are in accord with policy RP3, ECON1, ECON7 or are permitted through policy DP1.
- Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt;
- 7.5 Policy **RP4: Prime Agricultural Land** states that development will not be permitted which leads to the permanent loss of prime agricultural land unless particular criteria are met;

- 7.6 Policy **RP7: Landscape Character** which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required;
- 7.7 Policy **RP8: Water Environment** aims to prevent damage to water environment, including groundwater and requires compliance with SEPA's guidance on SUDs;
- 7.8 Policy **ECON8: Rural Development** permits proposals that will enhance rural economic development opportunities provided they accord with all relevant Local Plan policies and meet the following criteria: the proposal is located adjacent to a smaller settlement unless there is a locational requirement for it to be in the countryside; the proposal is well located in terms of the strategic road network and access to a regular public transport service; the proposal is of a character and scale in keeping with the rural setting; the proposal will not introduce unacceptable levels of noise, light or traffic into quiet and undisturbed localities nor cause a nuisance to neighbouring residents; the proposal has adequate and appropriate access; it is capable of being provided with drainage and a public water supply, and avoids unacceptable discharge to watercourses; and it is not primarily of a retail nature; and
- 7.9 Policy **DP3: Protection of the Water Environment** sets out development guidelines regarding flooding, treatment of water courses, drainage and Sustainable Urban Drainage Systems (SUDS).

#### Midlothian Local Development Plan (MLDP)

- 7.10 The MLDP is at Examination and it is anticipated that it will be adopted in 2017.
- 7.11 Policy **ENV1: Protection of the Green Belt** advises that Development will not be permitted in the Green Belt except for proposals that;
- A. are necessary to agriculture, horticulture or forestry; or
  - B. provide opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
  - C. are related to other uses appropriate to the rural character of the area; or
  - D. provide for essential infrastructure; or
  - E. form development that meets a national requirement or established need if no other site is viable.
- Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt, which is to maintain the identity and landscape setting of the City and Midlothian towns by clearly identifying their physical boundaries and preventing coalescence;

- 7.12 Policy **ENV4: Prime Agricultural Land** states that development will not be permitted which leads to the permanent loss of prime agricultural land unless particular criteria are met;
- 7.13 Policy **ENV7: Landscape Character** advises that development will not be permitted where it may significantly and adversely affect the local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New developments will normally be required to incorporate proposals to maintain the diversity and distinctiveness of local landscapes and to enhance the landscape characteristics where they have been weakened;
- 7.14 Policy **ENV10: Water Environment** states there is a presumption against development which may cause a deterioration in water quality;
- 7.15 Policy **ENV18: Noise** states that the Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or require to be modified so that no unacceptable impact at sensitive receptors is generated; and
- 7.16 Policy **IMP3: Water and Drainage** states that development involving private sewerage systems will only be permitted where there is no public system in the locality and where the Council is satisfied that the proposal is acceptable in terms of the environment and public health.

#### National Policy

- 7.17 **Scottish Planning Policy** sets out the Scottish Government's policies in respect to a number of planning related matters. This states that the planning system should encourage rural development that support prosperous and sustainable communities and businesses while protecting and enhancing environmental quality.

## **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 representations and consultation responses received are material considerations.

## The Principle of Development

- 8.2 Damhead traditionally comprises of small cottages on crofting plots/small holdings. Some of the properties have diversified to incorporate other land uses/business. Acceptable businesses are those which do not adversely affect the character of the area or amenity of nearby residents. The relevant development plan policies seek to ensure that new operations and activities in the countryside do not introduce additional unacceptable noise and disturbance into inherently quiet areas to the detriment of the amenity of the area and nearby residents.
- 8.3 MLP policy RP1 states that development in the countryside will only be permitted if it is for the furtherance of agriculture, horticulture, forestry, countryside recreation, tourism or waste disposal. The consented use of the site as a plant nursery/horticultural business complies with the development plan and application 13/00398/DPP considered the cafe and retail outlet ancillary to the horticulture use, as well as complying with MLP policy ECON8 in support of tourism. The consented uses do not have an adverse impact on the character of the area or the amenity of nearby residents.
- 8.4 The development plan contains restrictive policies relating to proposals for new development within the countryside and green belt. These policies aim to prevent creeping suburbanisation and development in such areas which are under significant pressure due to the convenient commuting distance to Edinburgh, as well as protecting the character of the area. The plan also contains some enabling policies which supports some commercial developments within these areas in some specific circumstances.
- 8.5 MLP policy RP1 sets out the terms for acceptable forms of development in the countryside and aims to restrict development to that required for the furtherance of an established, and acceptable, countryside activity or business. MLP policy RP2 seeks to protect the green belt from development unless it is necessary for an acceptable countryside use or provides for opportunities to access the countryside for sport or recreation. Developments for other uses may be considered acceptable where they are appropriate to the rural character of the area.
- 8.6 The application proposes to retain the plant nursery, cafe and retail unit as well as hold wedding ceremonies and associated receptions. The wedding events began in 2014, and are not ancillary to the horticultural use. There is also a private dining events element to the SHG business which does not form part of this application. The Planning Authority considers both these elements to be new primary uses, not ancillary to the existing horticultural business. These uses both require planning permission. Application 16/00637/DPP covered both these

events, providing clarity over what activities take place at the SHG. This application was withdrawn before it was determined.

- 8.7 The Planning Authority would have preferred that the current application cover both the wedding and private dining events, to provide clarity over what operations currently take place on site and allow an overall accurate assessment of the impact that the events have on the surrounding area, which currently take place without the benefit of planning permission. However, the two elements were submitted as two separate applications and must be assessed as such; although one has subsequently been withdrawn. The Planning Authority is aware of the dining events element and is actively seeking an application related to this use to enable an assessment of its suitability for this location.
- 8.8 The applicant considers the wedding events use ancillary to the horticulture use and requested the description be 'occasional use of land and buildings for wedding events (part retrospective) ancillary to the principle horticultural use'. The Planning Authority has consistently maintained that the wedding events are not ancillary to but are a primary use alongside the horticulture use, therefore requiring a separate planning permission. The wedding events result in a significantly greater impact on the surrounding area than could reasonably be expected from the original use, therefore this cannot be considered ancillary. The wedding events have resulted in a number of complaints from residents in regards noise and disturbance.
- 8.9 The wedding events are to take place yearly between May and September. Details have been provided of the dates of the seventeen weddings booked for 2017 which are mainly on Saturdays but with one on a Friday and one on a Thursday. No details of the maximum numbers of weddings per year have been submitted. The site plan details the buildings and areas of site to be used in connection with the wedding events.
- 8.10 MLP policies RP1 and RP2 allow for some businesses in the countryside provided these meet particular criteria, including the furtherance of a horticulture business. The agent has submitted supporting information stating that the existing horticultural business is not viable and that the proposed wedding events use is required to support the horticultural use of the land. The supporting statement does reference the wedding events use and dining events as supporting the horticultural use. However, it is worth noting that in 2013 planning permission was granted for a dwellinghouse on the site after the owner demonstrated that the horticultural business was viable and not dependant on alternative uses for the site. Furthermore, the applicants submission of turnover for the 12 month period up to September 2016 suggests the wedding event business accounts for approximately 10% of the businesses turnover.

- 8.11 The applicant's statement suggests the horticultural business has been making increasing losses between 2013 to 2015 and that it is only in 2016 that the business overall made a profit, which is attributed to the wedding and dining events. Without the revenue generated from the events element, profitable trading solely from the horticultural business, cafe and shop will be difficult to achieve. The statement notes that the revenue and profit from the wedding events was more than twice that of the dining events. The applicant is willing to consider reducing the number of weddings and increase the numbers of dining events to attempt to limit the impact on residential properties whilst maintaining sufficient revenue to support the horticultural business. However they give no details of the number of weddings required to support the horticultural business.
- 8.12 The Planning Authority is sympathetic to the applicant's view that the horticulture business needs additional diversification but is not convinced the horticultural business will cease trading if the wedding events stop. In addition to the business arguments, the proposal must comply with other criteria of MLP policy RP1, including that the development must be of a scale and character appropriate to the rural area.

#### Impact on Rural Character of the Area

- 8.13 The Planning Authority must assess the impact the proposal would have on the character and amenity of the surrounding area. A balance must be found between the prospect of the continuation of the SHG operating as proposed and the impact that this would have on the character and amenity of the surrounding area and residents. The argument that the existing business requires additional income to continue operating does not mean that any diversification, at any cost, would be automatically supported.
- 8.14 Acceptable businesses in Damhead are those which do not adversely affect the character of the area or amenity of nearby residents. The use of the site for wedding events has the potential to cause significant disturbance to the surrounding area in terms of traffic and noise, and has done so to date when considering the comments made by objectors.
- 8.15 The wedding events can accommodate up to 100 people between 4pm and midnight. This is a significant amount of people within a quiet rural area with residential properties in close proximity. The site plan identifies a large central area for informal recreation, with an area around the glasshouse and nearby buildings designated as an alcohol consumption area. This means that there should be no alcohol outwith this central area. However, the guests using the area for informal recreation during wedding events are likely to generate noise disturbance. The general nature of weddings is for guests to relax and enjoy themselves within the confines of the venue, which in this case

would include the whole site. The buildings on site have not been designed to accommodate the type of use proposed to ensure that noise is contained. Whilst the Environmental Health Manager considers that it is possible to contain noise by adapting the barn where there will be amplified/live music, the general level of disturbance caused by large groups of people using the site as a whole is likely to, and has, caused undue disturbance to the local area.

- 8.16 Guests leaving the site at the end of events are likely to add to the noise nuisance. Given the rural location, it is likely that the number of vehicles would be sizable thereby creating more noise and disturbance. Although there is an existing business operating at the site, this has more 'standard' day time business operating hours which are acceptable in this area and do not result in large numbers of people accessing/leaving the site late at night. Use of the site for events would also result in additional lighting in terms of hours of illumination and the area of illumination which is likely to cause further disturbance to local residents. The lighting will arise from inside the buildings, external safety lighting and lights from associated vehicles.
- 8.17 It is worth noting that while there will be no more than 100 people in attendance at wedding events, this does not include the 38 employees as stated in the applicants submission. It is likely that the staff members will leave the site later than the guests, meaning that it is likely that the noise and disturbance in the area will continue after midnight when the guests have left.
- 8.18 The applicant has suggested they introduce mitigation measures to try to control the noise, such as acoustic fencing and bunds. The applicants would also accept a permission on a trial basis to try to address the concerns raised by objectors. However, the Planning Authority does not consider the mitigation measures to be appropriate in regards the impact these may have on the character or appearance of the surrounding countryside, or would be sufficient to address the general ambient noise which would arise from such wedding events. Since the use has been implemented in 2014 it has generated numerous complaints from local residents; it is not clear how any trial period would be appropriate or suitable. Had the use not been implemented previously, there may be some merit to granting a temporary permission to assess the impact the use may have, however it is clear that its impact to date has been detrimental to local amenity.

#### Transportation Issue

- 8.19 The proposal is not located adjacent to a smaller settlement. There is no locational requirement for it to be in the countryside. The site does not benefit from access to a regular public transport service. The proposed use of the site is not of a character or scale in keeping with the landscape of the area and does not enhance the rural environment.

- 8.20 The Council's Policy and Road Safety Manager has not raised any road safety concerns, despite the intensification of the vehicular access and the objections of local residents. They have stated that they are not aware of any road safety or transportation issues relating to previous events. There would be no requirement for a transportation assessment for the proposal. Should additional parking be required, this would be subject to a further application for assessment. The submitted site plan shows more parking spaces than approved in application 16/00045/DPP; however these do not appear to have been formed on site. The formation of new parking spaces does not form part of this application.

#### Drainage/Water Treatment

- 8.21 As detailed above, the Scottish Environment Protection Agency (SEPA) initially objected to the application on the grounds of lack of information regarding the foul drainage arrangements and potential impact on the water environment. SEPA were consulted as the application site falls within a waste water drainage consultation zone, which they have identified as having a proliferation of private waste water arrangements that is currently causing environmental problems.
- 8.22 SEPA had no objection to application 13/00398/DPP and granted a Water Environment (Controlled Activities)(Scotland) Regulations 2011 (CAR) licence related to the approved uses. Such licences are regulatory controls over activities which may affect Scotland's water environment. The CAR agreed an upgrade from the existing septic tank to a new secondary treatment system which would have a significant improvement to the quality of treated effluent being discharged from the site. A planning condition required the installation of the treatment plant before the cafe opened to the public. On the basis of the CAR being granted, SEPA recommended the two existing registrations for the existing septic tank be withdrawn as all foul flows on site would be treated by the new secondary treatment plant. These have not been withdrawn, but the new treatment plant has not been installed.
- 8.23 SEPA then objected to planning application 16/00637/DPP for the same reason as the initial objection to the current application. The new treatment plant has not been installed and no information was submitted to demonstrate the existing septic tank is appropriately sized to deal with the increased loading from the wedding events in addition to the horticultural, cafe and shop uses. They were also concerned over the proliferation of private discharges into a catchment of small watercourses in the area. SEPA confirmed they had received a complaint relating to foul drainage arrangements at the site.
- 8.24 Since application 16/00637/DPP was withdrawn and the current application submitted, the applicant and SEPA have been in discussions regarding the installation of the new treatment plant, which they estimated would not be installed until May 2017 at the earliest.

The applicants have stated the implementation of the treatment plant depends on planning permission being granted for the wedding events. An interim solution has been proposed which includes the provision of portable toilets to be used by the wedding guests, with the existing toilets for staff members only. The waste from the portable toilets would be disposed of off-site. Should the wedding events application be granted planning permission, the interim arrangements would remain in place until such time as funds/arrangements can be made to install the new treatment plant. This interim solution would also ensure there is no detriment to the receiving watercourse.

- 8.25 SEPA supported the principle of the interim solution before the current application was submitted, provided that consideration was given to the siting of the portable toilets to ensure if they leak there would be limited scope for impact on nearby watercourses. SEPA confirmed to the applicant that they would not regulate the portable toilets.
- 8.26 The applicant has submitted further details of the proposed interim arrangements, including a plan showing the position of the portable toilets and details of the longer term provision of the treatment plant. After considering this information, SEPA subsequently withdrew their objection. Should permission be granted, conditions would be required to secure the timely installation of the new treatment plant.
- 8.27 Although SEPA have withdrawn their objection, it should be noted that the new treatment plant required providing adequate drainage and facilities to the additional customers for the cafe and retail use has not yet been installed. This means that there is insufficient drainage provision for the customers of the cafe and retail unit, before even considering the additional people attending and working at the wedding events.
- 8.28 Also SEPA's acceptance of the interim solution was on the basis that the siting of the portable toilets ensured any leakage would have limited impact on nearby watercourses. Objectors have stated that this is not the case as they have been positioned closer to watercourses than as stated on the submitted plan. Breaches of foul drainage would be enforced by SEPA or the Council's Building Standards team and breaches of a condition relating to the installation of the treatment plant as part of any planning approval would be enforced by the Council as Planning Authority.

#### Other Matters

- 8.29 The neighbour notification procedures as defined by the regulations were correctly carried out by the Council. The application was also advertised in the local press for the purposes of neighbour notification and as a potential bad neighbour development.
- 8.30 The frustration of the objectors relating to the numerous applications submitted and withdrawn by the applicant is noted. However it is in the

applicants control to withdraw their applications if they feel it appropriate to do so. Any outstanding alleged breaches of planning control will be investigated and resolved.

- 8.31 A building warrant application is under consideration to alter and convert the glasshouse, barn and a number of other buildings from agricultural to commercial premises. This will consider the drainage proposals and ensure that the buildings are fit for their proposed uses. There is no requirement to delay determination of the planning application until the building warrant is determined.
- 8.32 A number of comments were made in relation to the licence application, highlighting a number of differences between the two applications. The Planning Authority can only assess the merits of the planning application. However, the Planning Authority has provided comments with regard which works/uses require the benefit of planning permission, to the licensing process.
- 8.33 Non-compliance with the Damhead and District Neighbourhood Plan 2015-2030 is not a material planning consideration.
- 8.34 Planning permission 16/00045/DPP for the formation of a car park, increasing the parking provision within the SHG to 45 spaces was approved. This application was advertised in the local press and was subject to the Council's neighbour notification procedures.
- 8.35 The Planning Authority is aware all buildings on the site, with the exception of the yurt and shed, have been there for some time and therefore are immune from enforcement action. The yurt (portable round tent structure) does not require planning permission.
- 8.36 The issue of damage to fences is not a planning consideration but a private legal matter between the parties involved.
- 8.37 The impact of the wedding events on the value of nearby properties is not a material planning consideration.
- 8.38 The Planning Authority is actively communicating with the applicant and their agent to address all unauthorised works at the SHG. The current application cannot be refused due to alleged breaches of conditions or alleged irresponsible behaviour regarding public health and safety.
- 8.39 The Planning Authority is aware that the SHG site was previously marketed for sale and that the particulars did not include the associated house. The dwellinghouse is no longer listed as being for sale.

## **9 RECOMMENDATION**

- 9.1 That planning permission be refused for the following reasons:

- 1. The proposed development is located within the countryside and green belt and, as such, is contrary to policies RP1 and RP2 of the adopted Midlothian Local Plan 2008.*
- 2. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed change of use would not have a significant adverse impact on the amenity of the neighbouring dwellinghouses due to the use bringing unacceptable levels of noise, traffic and light into an inherently quiet area and is therefore contrary to policy ECON8 of the adopted Midlothian Local Plan 2008 which seeks to support rural development where it does not introduce unacceptable levels of noise nor cause a nuisance to residents in the vicinity of the site.*

**Ian Johnson**  
**Head of Communities and Economy**

**Date:** 23 May 2017

**Application No:** 17/00219/DPP (Available online)

**Applicant:** Mr Hamish Martin, Secret Herb Garden, 32A  
Damhead, Lothianburn

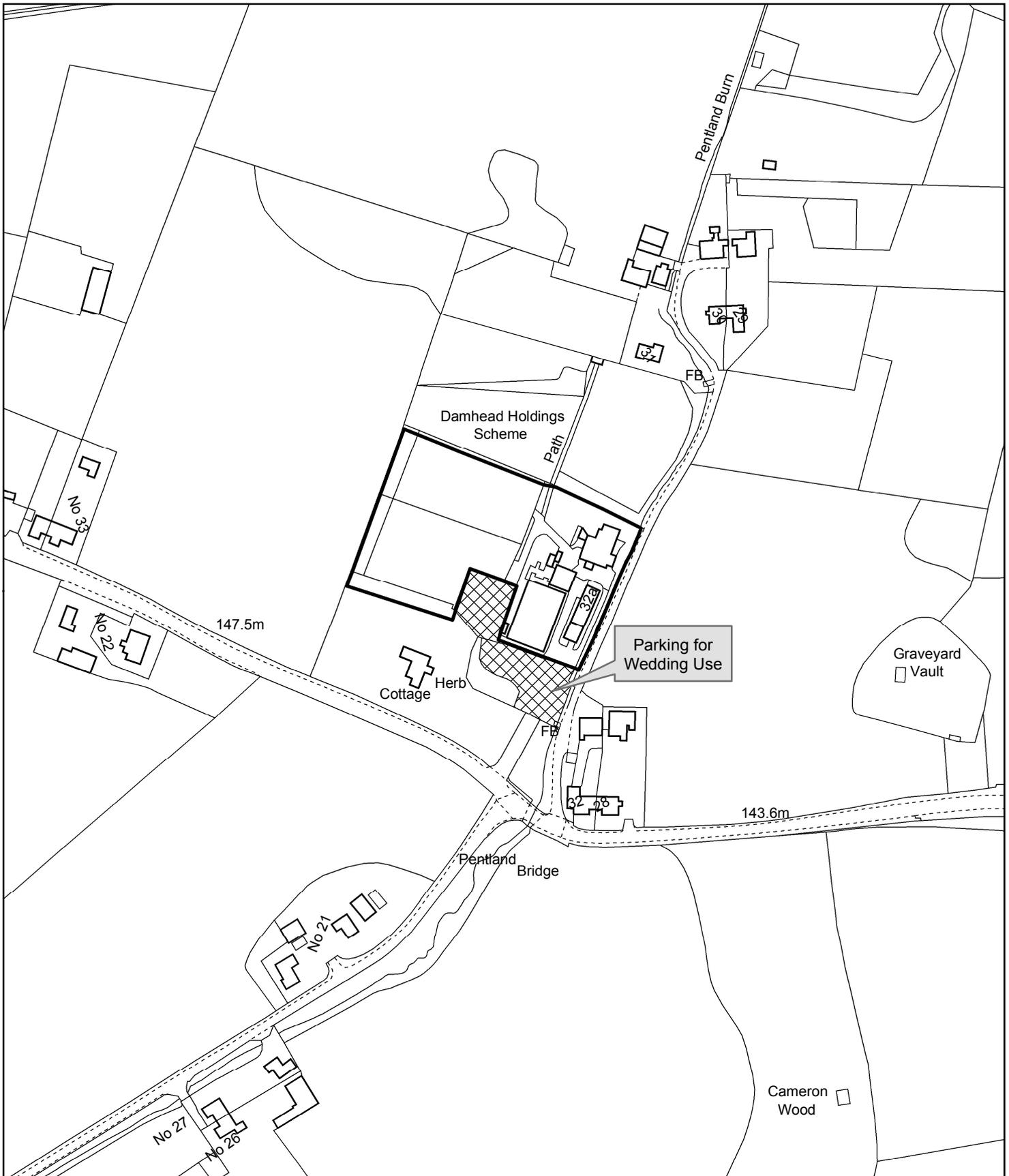
**Agent:** Albert Muckley, Ironside Farrar Ltd, 111 McDonald  
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**Validation Date:** 29 March 2017

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**Background Papers:**



Parking for  
Wedding Use



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