

Notice of meeting and agenda



Planning Committee

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

Date: Tuesday, 30 August 2016

Time: 14:00

John Blair
Director, Resources

Contact:

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Further Information:

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

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

1 Welcome, Introductions and Apologies

2 Order of Business

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

3 Declarations of Interest

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

4 Minutes of Previous Meeting

- | | | |
|------------|---|---------------|
| 4.1 | Minutes of Meeting held on 31 May 2016 - For Approval | 3 - 12 |
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5 Public Reports

- | | | |
|------------|--|----------------|
| 5.1 | Major Applications: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage – Report by Head of Communities and Economy | 13 - 18 |
| 5.2 | Appeals and Local Review Body Decisions - Report by Head of Communities and Economy | 19 - 28 |
| 5.3 | Planning Law Clarification Report - Report by Head of Communities and Economy | 29 - 32 |
| 5.4 | Application for Planning Permission for the Erection of 131 Dwellinghouses and Formation of Access and Associated Works (Approval of Matters specified in Conditions 2, 3, 6, 8, 10, 11 & 12 of Planning Permission 09/00056/OUT) at Cockpen Farm, Bonnyrigg (15/00968/MS) | 33 - 58 |
| 5.5 | Application to Discharge a Planning Obligation Associated with Planning Permission (656/89) to Convert a Stable Building into Ancillary Residential Accommodation at Firthwell, Old Woodhouselee Road, Firth Field, Roslin (16/00268/LA). | 59 - 68 |

6 Private Reports

No Private Reports to be discussed

Minute of Meeting



Planning Committee

Date	Time	Venue
31 May 2016	2.00pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

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

1 Apologies

Apologies received from Councillors Bennett, de Vink and Montgomery

2 Order of Business

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

3 Declarations of interest

No declarations of interest were received.

4 Minutes of Previous Meetings

The Minutes of Meeting of 1 March 2016 were submitted and noted and the Minutes of Meeting of 19 April 2016 were submitted and approved as a correct record.

5 Reports

Agenda No	Report Title	Presented by:
5.1	Proposed Revision of the Councils' Scheme of Delegation for the Determination of Planning Applications	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 24 May 2016, by the Head of Communities and Economy, seeking approval for an amended scheme of delegation for planning matters, under which specific types of planning applications were delegated to the appointed officer to determine.

The report explained that following a Planning Service Review the Development Management and Planning Policy and Environment teams had been conjoined into a single Planning team with a new structure being implemented from March 2016. As part of the new structure, roles and responsibilities and associated job titles had changed. As a consequence the approved scheme of delegation required to be updated to identify the correct appointed officers who were delegated to determine applications. The proposed updating of the scheme of delegation did not change which applications Elected Members delegate to officers to determine. Prior to the adoption of the amended scheme, the scheme required to be approved by the Scottish Ministers.

Decision

Having heard from the Planning Manager, the Committee agreed to refer the Scheme of Delegation to a Seminar of the Planning Committee.

Action

Head of Communities and Economy/Democratic and Document Services Manager

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

Executive Summary of Report

There was submitted report, dated 24 May 2016 by the Head of Communities and Economy, updating the Committee on 'major' planning applications, formal pre-application consultations by prospective applicants and the expected programme of applications due for reporting.

Decision

The Committee, having heard from the Planning Manager, agreed:-

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

Action

Head of Communities and Economy

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

Executive Summary of Report

There was submitted report, dated 24 May 2016, by the Head of Communities and Economy, detailing the notices of review determined by the Local Review Body (LRB) at its meeting in April 2016, and advising of the outcome of an appeal and claim for the award of expenses determined by Scottish Ministers.

The report advised that the appeal by Mr G Dean was against refusal of planning permission 15/00737/DPP (dated 2 September, refused by notice dated 8 December 2015) for the formation of a hot food takeaway and installation of a flue at 5 Staiside Court, Bonnyrigg. The Scottish Ministers had upheld the appeal and granted planning permission subject to conditions. A Claim for an Award of

Expenses was also submitted by Mr Dean in relation to the same planning application but this had been dismissed by the Scottish Ministers who had declined to make an award.

Summary of Discussion

Having heard from the Planning Manager who, along with the Head of Communities and Economy responded to Members questions, the Committee considered the potential implications of the Scottish Ministers decision in terms of the impact on the neighbouring Lasswade High School Centre, where the Council operated a policy promoting healthy life styles and healthy eating, in accordance with Scottish Ministers own policies on health living. Members also discussed whether local democracy was being undermined by such rulings and what additional actions could be taken to ensure corporate policy objectives were given appropriate weight when determining planning matters.

Decision

- (a) To note the decisions made by the Local Review Body at its meeting on 19 January 2016;
- (b) To note the outcome of the appeal determined by Scottish Ministers;
- (c) That the Head of Communities and Economy write to the Scottish Government's Chief Planner to seek advice on what further action could be taken by the Council to ensure that appropriate weight was given to corporate policies such as promoting healthy life styles and healthy eating when determining planning matters;
- (d) To explore further the introduction of Supplementary Guidance on hot food takeaways near to Schools;
- (e) To raise the matter with both COSLA and directly with the Scottish Ministers.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.4	Enforcement Report – Formation of Dormers at 15 Dundas Street, Bonnyrigg	Peter Arnsdorf

Executive Summary of Report

With reference to paragraph 6 of the Minutes of 17 November 2015, there was submitted report dated 24 May 2016, by the Head of Communities and Economy advising that the owners of 15 Dundas Street, having been issued with an

enforcement notice to secure the removal of two dormer windows which had been erected without the benefit of planning permission at that address, had appealed to Scottish Ministers. The Scottish Government Reporter had subsequently dismissed the appeal and as the works were retrospective the Reporter had given the applicant 9 months (until 10 June 2016) to remove them.

The report explained that the owners had not as yet complied with the enforcement notice and that approval was therefore sought to report the matter to the Procurator Fiscal as the next step in taking matters forward in relation to the breach in the event that the unauthorised works were not removed by the 10 June 2016 deadline.

Summary of Discussion

The Committee, having heard from the Planning Manager, who responded to Members questions, discussed the current position, noting that it was understood that a further application would be coming forward, although it was unclear at this stage if it was material different from that which had already be refused consent. Consideration was also given to the options detailed in the Head of Communities and Economy's report and the implications of reporting the matter to the Fiscal.

Thereafter, Councillor Johnstone, seconded by Councillor Coventry, moved that the owners had had sufficient time to comply with the enforcement order and that the matter should be reported to the Procurator Fiscal in line with the recommendation contained in the Head of Communities and Economy's report.

As an amendment, Councillor Young, seconded by Councillor Baxter, moved that the owners be given a further, and final, two months beyond the enforcement notice compliance date of 10 June 2016 to resolve the breach of planning control, after which, if they had still not complied, the matter be reported to the Fiscal in line with the recommendation contained in the Head of Communities and Economy's report.

As a second amendment, Councillor Milligan, seconded by Councillor Bryant, moved that consideration of the matter be continued in order to allow the further planning application to come forward and be considered.

In terms of Standing Order 11.3 (vii), the Chair directed that a first vote be taken for and against the second amendment to continue consideration of the matter and if this was carried that would be the end of the matter. If however it fell then a second vote be taken between the motion to report the matter to the Fiscal immediately following expiry of the compliance date and the first amendment to allow the owners a further two months before the matter was reported to the Fiscal.

Thereafter, on a first vote being taken, three Members voted for the second amendment and 12 against, which meant that the second amendment therefore fell.

On a second vote being taken, two Members voted for the motion and eleven for the amendment which accordingly became the decision of the meeting.

Decision

The Committee thereby agreed that the owners of 15 Dundas Street, Bonnyrigg be given a further, and final, two months beyond the enforcement notice compliance date of 10 June 2016 to resolve the breach of planning control, after which, if they had still failed to comply, the matter would be reported to the Procurator Fiscal in line with the recommendation contained in the Head of Communities and Economy's report.

Action

Head of Communities and Economy

Sederunt

Councillor Beattie left the meeting at the conclusion of the foregoing item of business, at 2.51pm

Agenda No	Report Title	Presented by:
5.6	Pre-Application Consultation: Proposed Residential Development at the former Rosslynlee Hospital, Roslin (16/00266/PAC) and (16/00267/PAC).	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 12 April 2016, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding (i) a proposed residential development and complementary land uses at Rosslynlee Hospital, Roslin (16/00266/PAC); and, (ii) a proposed change of use, alterations, extensions and partial demolition of the former Rosslynlee Hospital and associated new build development with associated infrastructure (16/00267/PAC).

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

Summary of Discussion

Having heard from the Planning Manager, the Committee in discussing the proposals, acknowledged comments made regarding the need for the proposed development to be sympathetic to the setting and location and have regard to what was considered an attractive existing building.

Decision

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

Action

Head of Communities and Economy

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

Executive Summary of Report

With reference to paragraph 5.8 of the Minutes of 19 April 2016, there was submitted report, dated 24 May 2016, by the Head of Communities and Economy concerning the above application.

Summary of Discussion

Having heard from the Planning Manager, the Committee welcomed the positive response from the developers to the concerns that had been expressed at the previous meeting, and felt that on balance although a number of issues still remained to be finalised it was sufficient to allow the current application to proceed. It was also suggested that it would be helpful to keep Poltonhall Community Council advised of progress as they had been instrumental in highlighting a number of the issues.

Decision

That planning permission be granted for the following reason:

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

subject to the following conditions:

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

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

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

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

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

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

3. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
- ii proposed vehicular, cycle and pedestrian access;
- iii proposed roads (including turning facilities), footpaths and cycle ways;
- iv proposed visibility splays, traffic calming measures, lighting and signage;
- v proposed construction traffic access and haulage routes;
- vi proposed car parking arrangements;
- vii an internal road layout which facilitates service/emergency vehicles entering and leaving the site in a forward facing direction; and
- viii a programme for completion for the construction of access, roads, footpaths and cycle paths.

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

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

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

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

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

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

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

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

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

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

Action
Head of Communities and Economy

The meeting terminated at 3.06pm.



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

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

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

2 BACKGROUND

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

3 PREMATURE APPLICATIONS

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

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

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

4 RECOMMENDATION

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

Ian Johnson
Head of Communities and Economy

Date: 23 August 2016
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

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

APPENDIX A

MAJOR APPLICATIONS CURRENTLY BEING ASSESSED

Ref	Location	Proposal	Expected date of reporting to Committee	Comment
06/00474/OUT	Land adjacent to Rullion Road, Penicuik	Application for Planning Permission in Principle for residential development	Dependant upon receipt of amended plans from the applicant	The applicant is currently engaged in a pre application consultation process (15/00987/PAC) and has advised that an amended planning application will be submitted in 2016.
06/00475/FUL	Land between Deanburn and Mauricewood Road, Penicuik	Erection of 300 dwellinghouses	Dependant upon receipt of amended plans from the applicant	The applicant is currently engaged in a pre application consultation process (15/00987/PAC) and has advised that an amended planning application will be submitted in 2016.
14/00910/PPP	Land at Cauldcoats, Dalkeith	Application for Planning Permission in Principle for residential development, erection of a primary school and mixed use developments.	Subject to progress on Midlothian Local Development Plan	Pre-Application Consultation (14/00553/PAC) carried out by the applicants in October/November 2014.
15/00364/PPP	Land adjacent Old Pentland Road, Loanhead	Mixed-use development comprising; film and TV studio and backlot complex; mixed commercial uses; hotel; and gas heat and power plant.	Subject to determination by the Scottish Ministers	Pre-Application Consultation (14/00729/PAC) carried out by the applicants in October/November 2014. The applicants have appealed non determination.
16/00134/DPP	Land north Of Oak Place, Mayfield	Erection of 169 dwellinghouses an 30 flatted dwellings and associated works	October 2016	Pre-Application Consultation (13/00522/PAC) carried out by the applicants in August/September 2013.
16/00472/DPP	Land at Easter Bush South, Easter Bush, Roslin	Erection of research and imaging facility and associated outbuilding, generator and sub-station; formation of service roads	October 2016	Pre-Application Consultation (16/00179/PAC) carried out by the applicants in March, April and May 2016.

APPENDIX B

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

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

16/00157/PAC	Land north of Dalhousie Dairy, Bonnyrigg (Dalhousie Mains - MLDP site Hs10)	Residential development	04 March 2016	30/05/16 - no application yet received A pre-application report was reported to the April 2016 meeting of the Committee
16/00161/PAC	Land north of Dalhousie Dairy, Bonnyrigg (Dalhousie Mains - MLDP site Hs10)	Residential development	04 March 2016	30/05/16 - no application yet received A pre-application report was reported to the April 2016 meeting of the Committee
16/00266/PAC	Land At Rosslynlee Hospital Roslin	Residential development	08 April 2016	04/07/16 - no application yet received A pre-application report was reported to the May 2016 meeting of the Committee
16/00267/PAC	Land At Rosslynlee Hospital Roslin	Residential development - change of use, alterations, extensions and partial demolition of the former hospital, including new build development.	08 April 2016	04/07/16 - no application yet received A pre-application report was reported to the May 2016 meeting of the Committee



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

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

2 BACKGROUND

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

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 7 June 2016 the LRB made the following decisions:

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
1	15/00939/DPP	Gourlaw Farm, Rosewell	Change of use of outbuildings to dog day centre	Review upheld. Permission granted
2	15/00994/DPP	Land west of Springfield House, Lasswade	Erection of 5 dwellinghouses	Review dismissed. Permission refused

3	15/00995/DPP	Cherrytrees, Fala, Pathhead	Erection of dwellinghouse	Review upheld. Permission granted
4	16/00044/DPP	1 Galadale Drive, Newtongrange	Erection of extension to dwellinghouse	Review upheld. Permission granted

4 APPEAL DECISIONS

- 4.1 An appeal against a refusal of a planning permission in principle application (15/00546/PPP) for residential development and associated infrastructure on land west of the Cottage, Hardengreen, Dalkeith has been dismissed. The application was refused by the Planning Committee at its meeting of 17 November 2015. The Scottish Government Reporter dismissed the appeal after considering the proposed development would be inappropriate in the green belt/countryside and would lead towards coalescence between settlements. A copy of the appeal decision accompanies this report.

5 RECOMMENDATION

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting on 7 June 2016.

Ian Johnson
Head of Communities and Economy

Date: 23 August 2016
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

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

Appeal Decision Notice

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



Decision by Padraic Thornton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2034
- Site address: Lands west of The Cottage, Hardengreen, Dalkeith. EH22 3LF
- Appeal by Avant Homes against the decision by Midlothian Council.
- Application for planning permission in principle 15/00546/PPP dated 26 June 2015 refused by notice dated 30 November 2015.
- The development proposed: Residential development and formation of access, SUDS, landscaping and associated works.
- Date of site visit by Reporter: 6 April 2016

Date of appeal decision: 8 August 2016

Decision

I dismiss the appeal and refuse planning permission in principle.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. The main issues in the appeal are the effective housing land supply available, the impact of the development on green belt and countryside provisions in the development plan and the availability of infrastructure. The relevance of the Scottish Planning Policy presumption in favour of development that contributes to sustainable development and the provisions of the proposed Midlothian Local Development Plan, including prematurity issues, must also be considered.

The site and proposed development:

3. The site of the proposed development has a stated area of 2.2 Ha. It is located at Hardengreen at the southern end of Eskbank. The site has frontage onto the B6392 which links from the A7 to the south to Eskbank to the north. The recently constructed Borders railway line runs along the western edge of the site and it is separated from the site by a post and wire fence. There is a laneway to the northeast which provides access to two residential properties. One of those called The Cottage is in part of the site of the proposed development. The other is called Long Croft and it is located to the north of The Cottage. The lane leads to a pedestrian/cycle way which crosses over the railway line and the A7. This provides access to Bonnyrigg and is part of the Penicuik-Musselburgh footpath and



cycleway. This is a designated Core Path and National Cycle Route. There is some open undeveloped land to the west of the railway line and to the east of the A7. The curtilage of a category 3 listed building known as Hardengreen House is located to the east of the lane which provides access to Long Croft and The Cottage. There are some unused buildings and little used lands within the curtilage.

4. The field which comprises the site of the proposed development dips down towards the location of the current access off the B6392. There is a dip towards this location from the south-west and north-east corners of the site. The site is currently in grassland having been restored from a temporary use as a compound associated with the construction of the railway line. There are some mature trees in lands to the south of the site near the junction of the A7 with the B6392. The railway line crosses over the roundabout at the junction. There are also some trees in the curtilage of The Cottage.

5. The application is for planning permission in principle but some indicative plans have been submitted. The Report of Handling refers to the masterplan indicating 47 units comprising of 25 detached houses, 10 semi-detached houses and 12 flats but reference is made in the documentation generally to approx. 40 housing units. The application is for permission in principle rather than full permission. 25% affordable housing is proposed. Houses would front onto an internal access road network and back onto the rail-line, the B6392 and the curtilage of Long Croft. A small area of open space is indicated at the northern end of the site with a larger open area more centrally located towards the southern end.

Housing land supply issue:

6. The draft Housing Land Audit for 2015 submitted by the planning authority indicates a total effective housing land supply for 9883 housing units on 31 March 2015. The 5 year programme of housing completions for 2015/16 to 2019/20 is stated to be 5205. The planning authority has calculated a 5 year effective supply requirement for this period of 4352 based on the Supplementary Guidance issued in 2014 in accordance with Policy 5 of SESPlan 2013. The appellant, whilst noting that the audit is a draft only, and likely to change to the detriment of the planning authority's argument following consultations, has submitted that the correct 5 year requirement is 5918 units which would leave a deficit of 713 units when compared to the planning authority's programme calculation of 5205. The difference in the figures arises from the appellant excluding the 734 house completions indicated in the 2009 year audit as those are not relevant to the SESplan 2009-2019 requirement and the appellant has also added a 882 unit requirement to take account of a one year allocation of the SESplan 2019-1024 requirement as the relevant 5 year period (2015-2020) includes part of this requirement. The planning authority's calculated surplus of 853 accordingly becomes a deficit of 713 allowing for the planning authority having incorrectly used a figure of 539 rather than 589 for completions for March 2015. If account is taken of the houses permitted under reference PPA-290-2030 and planning authority reference 14/00405/DPP, referred to by the appellant, the 713 figure would be reduced to about 537. (The appellant had calculated a deficit of 1285 houses in the 5 years effective supply on the basis of the 2014 audit. The planning authority had calculated a surplus of 853 houses on the basis of the 2015 draft audit)

7. I accept that the appellant's figures, which appear reasonable, indicate a deficit in the 5 year requirement when compared to the programmed 5 year delivery as calculated by the planning authority. I also accept that the figures may appear worse when the 2015 draft audit is finalised. The planning authority's calculation of the effective 5 year supply 2015-2020 compares the requirement as set out in the SESplan Supplementary Guidance on housing with the 5 year forward programming figure derived from the 2015 audit. This has become the accepted methodology and has been followed in the previous appeal decisions referred to by the appellant. On this basis and taking account of the amendments included in the appellant's response to the planning authority, which seem reasonable, there is a deficit in the 5 year effective land supply. Policy 6 of SESplan which requires the maintenance of a five year effective land supply to meet requirements is accordingly not being complied with. Policy 7 of the SESplan must accordingly be considered. This allows for granting permission for housing development on un-allocated sites, in such circumstances, subject to compliance with 3 criteria.

8. The planning authority has referred to total housing land availability being 9883 houses. In the report to the Planning Committee dated 1 March it is argued that the Reporter in case PPA-290-2030 took account only of the calculated 5 year programming as indicated in the 2014 Housing Audit Report. The planning authority has not however submitted evidence to the effect that some additional parts of this land are effective supply to meet the 5 year requirement as referred to in Policy 6 of the SESplan. I have no evidence to support an argument that land adequate to supply 9883 houses indicated as the total effective land supply in the draft 2015 Housing Audit is available and effective in the relevant 5 year period.

9. Policy 6 of the SESplan requires planning authorities to maintain an adequate 5 year effective housing land supply to meet the requirements set out in the Supplementary Guidance 2014 issued in accordance with Policy 5. The figures submitted indicate a deficit in the effective lands available to meet the calculated 5 year requirement. Policy 6 is accordingly not being complied with.

Policy 7 of SESplan 2013:

10. Policy 7 of the SESplan, on which the appellant relies to a considerable extent, allows for permission to be granted for housing development on green field sites within or outside the Strategic Development Areas in order to maintain a 5 year effective housing land supply subject to 3 specified criteria. The site is located in the A7/A68/Borders Rail Corridor SDA. I will now consider the application against the criteria set out in Policy 7.

11. The first criterion is that the development must be in keeping with the character of the settlement and local area. The local area in this case comprises undeveloped open agricultural lands forming part of the green belt at the outer edge of Eskbank. The settlement of Eskbank peters out as one travels southwards along the B6392. There is woodland along the south-east side of the road at this location and one has left the built up area. There is an open view across the site towards the top of the Pentland Hills, in the distance, from the B6392 at the location of the existing and proposed entrance. The site, with adjoining lands, forms an open space divide, together with the railway line and the A7, between Eskbank and Bonnyrigg. I do not consider that the development proposed, which would involve building up to the edge of the railway line, would be in keeping with the area

or the settlement of Eskbank. I consider that there are strong arguments to the effect that the soft edge to the settlement should be retained to protect the identity and character of Eskbank and prevent coalescence between settlements. The effect of the development in terms of coalescence would be clearly obvious to persons travelling along the B6392 and pedestrians and cyclists using the core path and cycleway to the east and north of the site. The nearest housing schemes in Eskbank are some distance away to the north and the site forms part of a relatively narrow green belt outer edge to the settlement. I consider that the development would not be in character with the local area or the settlement.

12. The second criterion is that the development should not undermine green belt objectives. The purposes of the green belt include maintaining the landscape setting and identity of settlements and preventing coalescence (policy 12 of SESplan). The lands in question here are currently included in the green belt as defined in the 2008 local development plan. The Proposed Midlothian Local Development Plan indicates the site remaining in the green belt which would be reduced in this area by the exclusion of lands west of the A7 in Bonnyrigg. I consider that the development proposed would occupy an important location in the green belt and it would significantly reduce the separation between the built up areas of Eskbank and Bonnyrigg. It would also act as a precedent for the development of the remaining open area at least up to the rail-line if not the A7. I do not consider that the A7, which is in a cutting to the west of the site and railway line, would form an effective visual separation between the settlements at this location. The separation between the settlements to the north where there is a hospital on the west side of the A7 and commercial development close up to the A7 on the east side is very small and I do not consider it an appropriate precedent to continue southwards. In views from the pedestrian/cycle path over the A7 the proposal would result in the developed area extending up to the Hardengreen Roundabout and the A7. The Bonnyrigg settlement to the west is clearly visible from this location and it will encroach closer, in the future, if the housing allocations in the proposed Midlothian Plan are approved. The development would also cut off the view to the Pentland Hills from the B6392. I consider that the development would undermine the objectives of the green belt and be contrary to green belt policy contained in the current and proposed local development plans.

13. The third criterion referred to in Policy 7 is that any additional infrastructure required is either committed or will be funded by the developer. The consultations and report of handling do not indicate any infrastructural deficiencies which cannot be overcome by way of legal agreement and contributions if required. There are some differences of opinion as to whether or not contributions are necessary or reasonable for upgrading denominational education facilities. I do not consider this a critical issue which needs to be resolved at this stage. I note that the drainage report and consultation recommended a Drainage Impact Assessment to ascertain if there is any deficiency in the drainage network. This has not been identified as a significant objection to the proposed development.

14. I consider that the proposed development would not satisfy the first two criteria referred to in Policy 7 of SESplan 2013. The development, accordingly, would not accord with the policy.

Green belt issues not discussed above:

15. Policy 12 of the SESplan is referred to in the first reason for refusal. This policy requires that local development plans should define and maintain green belt boundaries for various purposes including the maintenance of the landscape setting of settlements, preventing coalescence and providing opportunities to access open space and the countryside. This policy refers essentially to requirements to be contained in local development plans rather than being guidance for development management and so does not appear to me to be directly relevant to consideration of the application. I have referred to the purposes of the green belt as set out in Policy 12 in paragraph 12 above.

16. The Proposed Midlothian Local Development Plan would result in the site in question and adjoining lands remaining in the green belt. The proposed plan identifies as a key issue the coalescence of Bonnyrigg and Eskbank. It is stated in the proposed plan that it is important to ensure strict control over the remaining designated area. Paragraph 6.9 of the Main Issues Report, on which report considerable reliance is being placed by the appellant to justify a grant of planning permission, also recognised the danger of coalescence between Eskbank and Bonnyrigg. It refers to the narrow gap between the settlements that would result having regard to the proposed BG1 and BG2 housing allocations. (Hs 9 and Hs 10 indicated in the proposed plan). It proposed shifting the green belt's southern boundary northwards to the Eskbank Road (A6094), but stated that any remaining undeveloped land south of the new green belt boundary would be outside the urban boundary and would continue to be protected by the countryside policy. It appears that this policy was envisaged as protecting the open areas at the location of the proposed development. The site was not indicated for development in either the "preferred strategy" or the "alternative preferred strategy" in the Main Issues Report. The green belt designation for the lands to the east of the A7 and railway line has been retained in the Proposed Midlothian Local Plan. I consider that the proposed development would be in conflict with policy RP2 of the current local development plan (and Policy ENV1 of the proposed local development plan) relating to protection of the green belt because housing development as proposed would not be in accordance with the policy.

Protection of the countryside:

17. The site is located in an area where policy RP1 of the current Midlothian Local Plan relating to protection of the countryside currently applies. I consider that the development would be contrary to policy RP1 as the development does not come within the types specified as being permissible and there is no need for a countryside location for such a housing development. The Main Issues Report on the plan indicates that it was envisaged that this policy would continue to apply to the open lands in the area even if the lands were removed from the green belt. The proposed plan does not indicate any significant change to policy on development in the countryside.

Other issues:

18. The second reason for refusal refers to the land being prime agricultural land and the development accordingly being in conflict with the local development plan policy RP4. The appellant has submitted a detailed report to the effect that the site, which contained a

building compound in the recent past, should be classified as grade 3(2) rather than grade 3(1) and accordingly does not qualify as prime agricultural land. This argument has not been disputed by the planning authority. The site does not form part of any viable agricultural holding. In the circumstances I consider that the development would not be contrary to the policy.

19. The current Midlothian Local Development Plan dates from 2008 and so is over 5 years old. It has not been up dated to take account of the new strategic SESplan. As a 5 year effective land supply is not currently available the provisions in the plan relating to the supply of housing land are also considered not to be up-to-date by virtue of paragraph 125 of the Scottish Planning Policy. The provisions of paragraph 33 of the Scottish Planning Policy, accordingly, apply. The presumption in favour of development that contributes to sustainable development is a significant material consideration. Having considered the 13 principles set out in paragraph 29 of the policy document to determine if the development would contribute to sustainable development I am satisfied that the development would not avoid overdevelopment and protect the amenity of new and existing areas or support one of the qualities of successful places set out in the policy document. I consider that the quality of being distinctive and a place with a sense of identity would be weakened for the reasons referred to in paragraphs 11 and 12 above. I accordingly consider that the presumption does not apply in this case.

20. The presumption in favour of sustainable development does not change the statutory status of the development plan. I am not convinced that this would be the right development in the right place as required by SPP. I am also concerned that a grant of permission would prejudice the provisions of the emerging plan in spite of the relative small scale of the development proposed. Due to the location of the site, at the outer edge of Eskbank, where only a small area of open land remains separating the settlements of Eskbank and Bonnyrigg, I consider that a grant of permission would to some extent determine the future development of adjacent lands. A grant of permission in this case could be regarded as a precedent for the development of the lands to the east of the access lane to Long Croft and The Cottage and also the lands to the west of the railway line as it would extend the built up area of Eskbank up to the A7. A grant of planning permission would have a wider effect on the emerging local plan than merely determining the future use of the site of the proposed development. The future use of the site should be considered with that of the other adjacent open lands. I accordingly consider that even it were to be accepted that the development complies with the principles set out in paragraph 29 of the national planning policy the presumption in favour of sustainable development would not, in spite of it being a significant material consideration, outweigh the provisions of the development plan in this case.

21. The site has some characteristics to support its use for residential purposes. It is located in the A7/A68/Borders Rail Corridor Strategic Development Area and the strategic plan envisages development being focussed towards the 13 SDA's identified. The site has good accessibility being relatively close to the recently constructed rail station to the north and it also abuts the pedestrian path and cycleway. It is not, however, an ideal residential site free from any constraints. The noise assessment submitted concludes that existing noise levels are above those desirable in residential areas (WHO guidance values) and special mitigation measures would be required. Increased night time use of the railway line could also cause problems in the future. I do not consider that the Technical Note for the

Mains Issues Report on Development Sites Assessment, referred to and submitted by the appellant, is conclusive proof or evidence for the proposition that the site should be developed for housing purposes. Some positive points are referred to but so also, are some negative ones. I note that one of the conclusions from the workshops referred to is that a wider range of detailed technical and practical considerations need to be considered to inform the final strategy for the Bonnyrigg and Eskbank area. As referred to in paragraph 16 the site was not included in the identified “preferred strategy” or the “alternative preferred strategy”.

22. The appellant has referred to a number of previous appeal decisions which, it is submitted, set a precedent for granting planning permission in this case. Each application must be treated on its merits and sites at different locations are not comparable having regard to the range and type of issues to be considered.

23. Only one of the appeal decisions referred to is located in the Midlothian Council area. Different development plans and housing land considerations apply to the other areas. The Midlothian, and possibly most similar case, referenced is case reference PPA-290-2030. There are however significant differences in the locations of the sites in question. The lands referred to in PPA-290-2030 are some distance further north where the danger of coalescence with Bonnyrigg or Lasswade is not significant due to the location and the presence of open lands including golf courses on the west side of the A7. The lands to which PPA-290-2030 refers are indicated as being allocated for housing development in the proposed Midlothian Local Development Plan. The proposed plan, whilst not having the legal status of an approved development plan, is a material consideration. The Reporter in case PPA-290-2030 referred to the presence of existing housing developments in the vicinity of the development then proposed. He considered that the development would be a logical extension of Dalkeith/Eskbank. The site of the current proposal is an outlier one some distance removed from existing housing schemes. It is at a location on the outer edge of the settlement where there is currently no intensively built up development. I have already referred to the nature of the area and the absence of any significant development in paragraph 11. I consider that the circumstances are significantly different here from case PPA-290-2030.

24. Four of the cases referred to are located in the Edinburgh City Council area. (Cases PPA-230-3131, 2129, 2140 and 2152) The Reporters decisions and reports indicate a very significant deficit in the 5 years effective housing supply in this area. The report on 3131 indicates that the Reporter considered that the development complied with the 13 criteria for sustainable development set out in the SPP. He also considered that the development would regenerate a degraded site and return it to beneficial use. He considered that the development would consolidate the disparate urban form of the local area and that the impact on the green belt was acceptable. He considered that the development would ensure visual separation between the city and Danderhall. The report on 2129 concluded that the impact on the green belt, local landscape and setting of the relevant part of Edinburgh would be acceptable. The Reporter also considered that the development complied with the 13 criteria referred to in paragraph 29 of the SPP and the criteria set out in SESplan Policy 7. The report on case 2140 indicates similar findings, particularly in relation to the 3 criteria set out in SESplan Policy 7. The Reporter considered that the development would not undermine green belt objectives. In case reference PPA-230-2152 the Reporter concluded that overall the development complied with the criteria set out in

Policy 7 of the SESplan. He did note that the green belt would remain at a considerable width to the south-east of the site (between the site and the Edinburgh By-Pass). In all of these cases the Reporters held that there was a considerable deficit in the effective 5 year housing supply. I accept that there is also a deficit in the current case but to a lesser extent. I consider, however, that the cases referred to are not similar to the current case on which I have concluded in paragraphs 11, 12 and 19 above that the development would not accord with Policy 7 of the SESplan or all of the criteria for development that contribute to sustainable development as set out in paragraph 29 of the SPP.

25. Case PPA-210-2043 refers to a development in the jurisdiction of East Lothian Council. The development proposed would adjoin the existing village of Old Craighall. It would involve building up the existing frontage which was considered positive by the Reporter. The Reporter considered that the issue of coalescence did not arise due to the distance from other settlements and the visual compartmentalisation caused by the elevated A1 and Edinburgh By-Pass. The lands were also identified as a preferred site for development in the Main Issues Report on the East Lothian Local Development Plan although the Reporter did not give significant weight to this in his assessment. The circumstances are accordingly significantly different from the current case when my conclusions as set out above are taken in to account.

26. Case PPA-250-2232 refers to an appeal in the area of jurisdiction of Fife Council. The site proposed for development was not located in the green belt and so consideration under the second criterion of Policy 7 of the SESplan did not arise. The Reporter concluded, on balance, that the development would not be out of character and that there would be adequate separation distance remaining between Inverkeithing and Dalgety Bay. (Letham Hill Wood is located between the settlements). A previous application for a larger development had been refused. The report indicates a very significant deficit in the 5 year housing supply similar to the situation in the Edinburgh City cases. Having regard to my conclusions in relation to Policy 7 of the SESplan I do not consider the Fife case is comparable to the current one.

27. I conclude that there is a deficit in the 5 year effective housing land supply when the requirement is compared with programmed delivery. I consider, however, that the development does not accord with Policy 7 of the SESplan because the development would not be in keeping with the area or settlement and it would undermine green belt objectives. The proposed development would be in conflict with the current Midlothian Local Development Plan as the site is not allocated for housing in that plan and as it would be in conflict with policies RPI and RP2 relating to development in the countryside and in the green belt. Whilst the current local plan is out of date I do not consider that the presumption in favour of development that contributes to sustainable development applies in this case. I do not consider that there are any material considerations which outweigh the provisions of the current development plan and which would justify granting planning permission.

Padraic Thornton

Reporter



PLANNING LAW CLARIFICATION REPORT

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide advice to the Committee with regard a number of points of Planning Law which directly impact on the determination of planning applications and the consideration of 'Notices of Review' submitted to the Local Review Body (LRB) .

2 BACKGROUND

- 2.1 At its meeting of 26 April the LRB requested clarification on a number of points of Planning Law, in particular:
- a) Making a decision on a planning application;
 - b) Considering late representations - can you consider information submitted 'late' when determining a planning application or notice of review; and
 - c) Can you consider new material at the LRB.

3 MAKING A DECISION ON A PLANNING APPLICATION

- 3.1 Planning applications are determined in accordance with the Town and Country Planning (Scotland) Act 1997 as amended (*hereafter referred to as the Act*) and associated regulations and Scottish Government advice in particular the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (*hereafter referred to as the Regulations*).
- 3.2 In considering an application section 37 (2) of the Act states "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".
- 3.3 Section 37(4) of the Act with regard the determination of applications states that "the date of the grant or refusal" ... "shall be the date on which the planning authority's decision bears to have been signed on behalf of the authority". The issuing of the decision notice bears the signature of the authority.
- 3.4 The courts have held that a decision on a planning application is not deemed to have been formally made until the issue of a decision letter

Co-operative Retail Services Ltd v Taff-Ely BC (1978) and later *R v West Oxfordshire District council ex parte Pearce Homes Ltd (1985)*. Court judgements on points of principle and procedure transpose both Scottish and English planning systems.

- 3.5 As a Committee resolution to approve/refuse an application does not constitute a written decision notice, applications may be withdrawn, appealed against non determination or referred back to Committee for reconsideration before the issue of a decision notice.
- 3.6 In cases where an application is not subject to a legal agreement/developer contributions it is Midlothian's practice to issue the decision notice as soon as practicably possible after a Committee resolution (usually the following day). However there can be a significant period of time between a Committee resolution and the issuing of a decision notice in those cases which are subject to the conclusion of a legal agreement.
- 3.7 This issue has arisen because at its meeting of 19 January 2016 the LRB were minded to uphold a review and grant planning permission for a test piling facility at Shewington, subject to conditions and a bond/bank guarantee to secure a financial arrangement to protect local homes and businesses from any potential damage from the test piling operations and flooding (if the nearby dam was damaged). The LRB determined to consider the conditions and the details of the bond/bank guarantee prior to a decision being issued. In the subsequent negotiations between the applicant and officers the applicant advised that they were "not in a position to offer financial security" and as such on reporting back to the LRB at its meeting of 26 April 2016 the LRB were given the option of making a different resolution to the one taken at its meeting of 19 January 2016. The advisor to the LRB confirmed that this was within the scope of the LRB because the decision notice had not been issued.

4 CONSIDERING LATE REPRESENTATIONS

- 4.1 The assessment and determination of a planning application is subject to notification and consultation procedures as set out in the Act and the Regulations.
- 4.2 The Act requires the planning authority to "take into account any representations relating to that application which are received by them before the expiry of any period prescribed" by the Act and Regulations (21 days for notifications and 14 days for consultations). Furthermore, the Act states "no such application shall be determined until after the expiry of any period which may be so prescribed". (*The notification and consultation requirements vary for listed building consent applications, advertisement consent applications and applications to modify or discharge a planning obligation*).
- 4.3 It is Midlothian's practice to consider any representations received prior to the final drafting of an applications 'report of handling' which is either

the Committee report or the delegated officer's report which sets out the planning assessment of the application. This in effect means that representations received after the prescribed period are considered if the officer's assessment of the application has not been concluded. Representations received after the publication of the Committee agenda, but before the meeting of the Committee, are assessed and if appropriate the Committee are verbally updated at the meeting. The Committee (the decision maker) has the discretion to decide if they wish to consider 'late' representations received after the prescribed period. It is expected that it will wish to do so where the representation is material and could affect the planning assessment of the application. This would be consistent with the planning authority's statutory duty to take into account all considerations which are both material and relevant to the application known at the time. In exceptional circumstances, this may mean that officers recommend that an application be deferred to a future meeting pending further detailed assessment. If deadlines for the submission of late representations are strictly adhered to there is a risk that the planning authority would be failing in its duty to consider all relevant material considerations.

5 CONSIDERING NEW MATERIAL AT THE LRB

- 5.1 The Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2013 and Scottish Government guidance in Circular 7/2009: Schemes of Delegation and Local Reviews provides the legislative and regulatory framework for the relevant administrative procedures.
- 5.2 Section 9(4) of the LRB regulations state that "(a) all matters which the applicant intends to raise in the review must be set out in the notice of review or in the documents which accompany the notice of review; and (b) all documents, materials and evidence which the applicant intends to rely on in the review must accompany the notice of review". The consequence of the LRB regulations is that 'new' material can only be submitted as part of the review process if it forms part of the review submission. An exception can be made if the LRB request further information to assist them with their determination.
- 5.3 As part of the review process those parties who have made representations on the original application are notified of the review in accordance with the LRB regulations and any further submissions are considered by the LRB. The regulations do not state whether new representations received from parties who did not make comment on the original application shall or shall not be considered and as such it is for the decision maker to decide what weight is given to such representations.

6 RECOMMENDATION

- 6.1 It is recommended that the Committee:
- a) Notes the contents of the report; and
 - b) Refers the report onto the Local Review Body for noting.

Ian Johnson
Head of Communities and Economy

Date: 23 August 2016
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Background Papers:



APPLICATION FOR PLANNING PERMISSION 15/00968/MSC FOR THE ERECTION OF 131 DWELLINGHOUSES AND FORMATION OF ACCESS AND ASSOCIATED WORKS (APPROVAL OF MATTERS SPECIFIED IN CONDITIONS 2, 3, 6, 8, 10, 11 & 12 OF PLANNING PERMISSION 09/00056/OUT) AT COCKPEN FARM, BONNYRIGG

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the discharge of conditions (approval of matters specified in conditions 2, 3, 6, 8, 10, 11 and 12 of planning permission 09/00056/OUT) attached to a grant of planning permission relating to the erection of 131 dwellinghouses and formation of access and associated works on land at Cockpen Farm, Bonnyrigg. There have been 27 letters of representation and consultation responses from the Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH), Historic Environment Scotland (HES), the Council's Archaeological Advisor, Newtongrange Community Council and the Council's Policy and Road Safety Manager. The relevant development plan policies are RP5, RP7, RP8, RP9, RP13, RP14, RP20, RP24, RP27, RP28, COMD1, NRG3, DP2 and DP3 of the Midlothian Local Plan 2008. The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site is 18.4 hectares of land at Cockpen Farm to the west of Newtongrange and to the south of Cockpen crossroads. The site has a centrally located group of predominantly stone built, traditional farm buildings, each listed separately as being of special architectural or historic interest (Category C(S)). These comprise a farmhouse, a barn, a workers cottage, a byre, a threshing barn, a cattle shed and a granary. These listed buildings are the subject of a separate undetermined planning application (ref. 15/00969/MSC) and listed building consent application (ref. 15/00970/LBC) for their conversion to 8 dwellinghouses. In addition, the application site includes large areas of the woodland along its western edge and southern extremity known as Catholes Wood. These areas of woodland are on a steep sided slope leading down to the River South Esk and one of its tributaries the Cockpen Dean Burn.

- 2.2 The B704 abuts the south west boundary of the site. The existing Butlerfield housing development lies to the east.
- 2.3 A large part of the site, outside the wooded areas, has relatively gentle gradients. However, sections of the north east corner of the site have steep sided slopes. A few mature single trees are situated in the open fields. The category C(S) listed folly (tower) located in the northern section of the site is thought to be what remains of an old dovecot. Two water tanks also exist in the north field.
- 2.4 The western part and the southern extremity of the application site are located within the Dalhousie Castle Designed Landscape as identified in the Inventory of Designed Landscapes.

3 PROPOSAL

- 3.1 The application is to discharge conditions associated with the erection of 131 dwellinghouses and formation of access and associated works (approval of matters specified in conditions 2, 3, 6, 8, 10, 11 and 12 of planning permission 09/00056/OUT).
- 3.2 The proposed housing mix comprises:
- 8 terraced houses;
 - 6 semi-detached houses; and,
 - 117 detached houses.
- 3.3 The proposed development comprises 10 three bedroom units, 51 four bedroom units and 70 five bedroom houses. All of the houses are two-storey with conventional eaves height. No affordable houses are proposed on the site layout. A commuted sum for affordable housing was secured through a S75 Agreement associated with the original grant of planning permission 09/00056/OUT.
- 3.4 The proposed materials within the Area of Improved Quality (AIQ) around the steading buildings (19 units) include: painted wet dash render; natural red clay plain tiles with clipped eaves, buff coloured reconstituted stone for base courses, cills, lintels, and UPVC framed windows. The proposed materials within the Area of Improved Quality (AIQ) at the entrance (7 units) include: a common red brick, natural grey slate, buff coloured reconstituted stone for base courses, cills, lintels, and UPVC framed windows.
- 3.5 Out with the AIQ the applicant proposes a character area for the plots on the northern part of the site comprising 18 plots. Here the materials proposed are: Tuscan beige dash render; red coloured profiled concrete pan tile; buff coloured reconstituted stone for base courses, cills, lintels; and UPVC framed windows. On the other plots out with the AIQ, materials include: grey coloured concrete roof tile with a mock

bond; a combination of white stone chip on white backing dry dash render and tuscan beige stone chip on magnolia backing; buff coloured reconstituted stone base courses, cills and lintels; and, white UPVC framed windows. In addition, out with the AIQ the following materials are used: UPVC fascias, soffits and bargeboards, glass reinforced plastic door canopies; black UPVC guttering.

- 3.6 Residential vehicular access is from the existing spine road serving the existing Butlerfield housing development, with the spine road accessed from a roundabout off the A7.
- 3.7 Construction vehicle access is to be off the road serving Butlerfield Industrial Estate, which is accessed off the B704.
- 3.8 Internal roads within the proposed development are to be surfaced in a mixture of tarmac and dark grey coloured block pavements. Driveways are to be surfaced in brindle coloured block pavements
- 3.9 A SUDS dry basin is proposed on the north eastern extremity of the site.
- 3.10 The applicant has submitted in support of the application a design statement, construction phasing and traffic management plan, a tree survey and woodland management plan, an ecology report and a drainage statement.

4 BACKGROUND

- 4.1 In November 2012 Outline planning permission 09/00056/OUT was granted for: (a) the principle of the erection on the site of 131 dwellings; and, (b) the formation of vehicular access to the site from Butlerfield to the north via the existing spine road through the Butlerfield housing development. Outline planning permission 09/00056/OUT was granted subject to the following conditions:

- 1. The development hereby permitted shall be begun within seven years from the date of this permission, or within two years from the date of approval by the planning authority of the last application for matters specified in conditions to be approved. Application for approval of matters specified in conditions shall be made to the planning authority within five years from the date of this permission. Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing.

Reason: *To accord with Section 59 and 27A of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning*

etc (Scotland) Act 2006). The statutory three years has been extended because of the economic climate.

2. Details of the phasing of the development shall be submitted to the planning authority for approval, and no work shall begin until the phasing scheme has been approved in writing. Following approval, the development shall be implemented in accordance with the approved scheme. The phasing scheme shall identify the area of improved quality (added emphasis on quality design for approximately 20% of the residential units) and areas of formal open space.

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 an 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 for each individual phase of development shall include:

- i existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum and garden gradients not exceeding 1 in 8;
- ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
- iii proposed new planting in communal areas and open space, including trees, shrubs, hedging and grassed areas;
- iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses on adjoining plots are occupied;
- vii drainage details and sustainable urban drainage systems to manage water runoff;
- viii proposed car park configuration and surfacing;
- ix proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- x proposed play areas and equipment;
- xi proposed cycle parking facilities;
- xii proposed area of improved quality: and,

- xiii a woodland management plan for the woodland to the west of the site, out with the housing land allocation identified as h37 (previously Site T) by the Midlothian Local Plan.

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 (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan 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 residential units and other structures 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. These materials will also include those proposed in the area of improved quality. 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 RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

5. Development shall not begin on the conversion of Cockpen Farm until an application for approval of matters specified in conditions for the conversion of existing farmhouse and steading buildings (Cockpen Farm) has been submitted to and approved in writing by the planning authority. The application shall include details of any alterations required to convert the buildings and samples of materials to be used on the external surfaces of the conversion works. 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 RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.

6. Development shall not begin on an individual phase of development (identified in compliance with condition 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:
- i existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii proposed vehicular (via the Butlerfield Spine Road), cycle and pedestrian access;
 - iii proposed roads (including turning facilities), footpaths and cycle ways;
 - iv proposed visibility splays, traffic calming measures, lighting and signage;
 - v proposed construction traffic access and haulage routes;
 - vi a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
 - vii proposed car parking arrangements;
 - viii an internal road layout which facilitates buses entering and leaving the site in a forward facing direction; and,
 - ix 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 a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:, ,
- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
 - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for

- the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and,
 - iv. the condition of the site on completion of the specified decontamination measures. Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

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

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

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

- 9. Development shall not begin until a scheme of archaeological investigation has been undertaken in accordance with details submitted to and approved in writing by the planning authority. The investigation shall include an archive assessment and an evaluation of 10% of the total site.

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

- 10. Development shall not begin until a programme for the implementation of all of the otter, barn owl and bat mitigation recommended in the "Cockpen Farm Otter, Barn Owl and Bat Survey" report and all of the recommendations made within the "Badger Bait Marking Survey", the "Ecological Constraints Report" and the "Ecological Constraints Report Addendum" report docketed to this planning permission is submitted and approved in writing by the planning authority. The mitigation measures approved shall be carried out in accordance with an agreed timetable of implementation.

Reason: *In the interests of safeguarding otter, barn owl, badger and bats in accordance with Policy RP13 of the Adopted Midlothian Local Plan.*

11. Development shall not begin until an update report/investigation on badger, bat, barn owl and otter 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 update investigation shall be carried out within the 6 months prior to development commencing. ,

Reason: *In the interests of safeguarding otter, barn owl, badger and bats in accordance with Policy RP13 of the Adopted Midlothian Local Plan and to ensure that an up to date understanding of these species on the site is available prior to development commencing.*

12. The development hereby permitted shall be served by zero and/or low carbon equipment to achieve a reduction of 15% carbon dioxide emission below the 2007 building regulations carbon dioxide emissions standard, in accordance with Policy NRG3 of the adopted Midlothian Local Plan, unless otherwise agreed in writing by the Planning Authority following submission of appropriate SAP/SBEM calculations and a written justification of any alternative approach taken. The low and zero carbon equipment and/or other measures approved in terms of this condition shall be implemented at the site in full and an appropriate person approved by the Scottish Government's Building Standards Division regarding Design (Energy) shall certify that the zero and/or low carbon equipment and/ other measures approved in terms of this condition have been installed, prior to the host house being occupied.

Reason: *To ensure this development complies with the on-site carbon emission reduction targets and BREEAM requirements of Policy NRG3 in the Adopted Midlothian Local Plan.*

13. The details of the development delineated on drawing ref.MP 01 Revision C (illustrative layout plan) submitted with the application, are not approved.

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

14. Vehicular access to the site shall only be from 'Butlerfield' to the east, via the existing distributor road.

Reason: To safeguard the Cockpen Dean Burn woodland and its wildlife from any damaging effects of vehicle access to the site off the B704 Cockpen Road, in the interests of highway safety and to ensure a satisfactory relationship of the site with the existing build development in Newtongrange.

15. The existing farm house and steading buildings (Cockpen Farm) shall be retained for conversion unless otherwise agreed in writing by the planning authority.,

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

16. Prior to any dwelling being occupied the over-head power lines on the site shall be diverted or put underground in accordance with details to be approved in advance by the Planning Authority and 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 in accordance with Policy UTIL2 of the Midlothian Local Plan.*

- 4.2 There is presently before the planning authority a separate undetermined application for matters specified in condition 5 of planning application 15/00969/MS for the conversion and alteration of Cockpen Farm Steading to 8 houses. If that application is approved the requirements of condition 5 of outline planning permission 09/00056/OUT will have been met and that condition will be discharged. There is also an associated listed building consent application 15/00970/LBC for the proposed external alterations to the buildings.
- 4.3 The application has been called to Committee for consideration by Councillor Bryan Pottinger.

5 CONSULTATIONS

- 5.1 The **Scottish Environment Protection Agency (SEPA)** initially objected to the application on the grounds of lack of information relating to watercourse engineering as well as surface water drainage. On receipt of additional information from the applicant demonstrating that there is no watercourse present at this location, they subsequently withdrew their objection.

- 5.2 **Scottish Natural Heritage (SNH)** advised that: (i) a new badger survey be carried out; (ii) a badger protection plan is secured, including a 30m exclusion buffer around each badger sett to avoid disturbance; (iii) the applicant discuss the need for a species license with SNH's licensing department; and, (iv) the Council secure the requirement for a further badger survey at the pre-construction stage.
- 5.3 **Historic Environment Scotland (HES)** were consulted on the application owing to the fact that the site may affect the setting of the neighbouring Category A listed Dalhousie Castle and Dalhousie Castle Garden and Designed Landscape. HES confirm that they do not object to this application and they have no comments to make on the proposed development.
- 5.4 The **Council's Archaeological Advisor** confirms that the Written Scheme of Investigation submitted with the planning application is acceptable subject to its successful implementation.
- 5.5 **Newtongrange Community Council** raise no objection to the proposed development.
- 5.6 The **Council's Policy and Road Safety Manager** confirms the details submitted are acceptable and the proposed alternative construction vehicle access arrangements would be appropriate during the construction of the project.

6 REPRESENTATIONS

- 6.1 Twenty six representations have been received in relation to the application all objecting to the proposed development. The concerns raised are as follows:
- Notifiable neighbours have not been notified of the application;
 - The development would cause harm to wildlife and wildlife habitat;
 - Road and pedestrian safety concerns with access being taken through Butlerfield and the Orchard Grange housing estate and the existing spine road through Butlerfield is not of a standard to cope with the traffic generated by the development using it;
 - Harm to the character of the area;
 - Strain on existing local amenities which would not be able to cope with additional demand;
 - Concern about there being a possible future access to the site from the B704 and the resulting road safety implications of this;
 - Concern about the road safety implications of the construction access being through the existing Butlerfield spine road;
 - Concern that the A7 and other roads are not of a sufficient capacity to cope with the increase in traffic resulting from the development;
 - Existing local schools and doctors surgeries do not have the capacity to meet the demand resulting from the development;

- Loss of greenbelt;
- It has not been substantiated that there is a need or demand for the proposed development;
- Loss of view and outlook;
- A brownfield site should be developed instead of this green field site;
- Would result in the coalescence of Newtongrange and Bonnyrigg;
- Impact of development on market value of neighbouring properties;
- Concern about there being a delay in site works commencing as a result of the current economic climate and the implications of this for the maintenance of the site in the interim;
- Concern about a gas main/pipe being damaged during works to form the construction access and by the movement of construction vehicles.
- Concern about proximity of the site to the existing residential developments at Hopefield Meadows between Cockpen and Rosewell;
- Harm to setting of nearby Dalhousie Castle designed landscape;
- Loss of farmland;
- Insufficient bus service to serve the proposed development;
- Harmful to character of Newtongrange;
- Harmful impact on the surrounding area owing to dirt and waste generated by the development;
- The ground conditions may be such that the site is not suitable for development;
- Noise pollution and disruption during periods of construction;
- Over development of the site;
- Road safety implications of having an access from an extension to Butlerfield spine road;
- Inadequate open space provision within the site, including for children's play;
- There exists covenants upon the Butlerfield spine road which would prohibit it being extended to form an access into the site;
- Inadequate public transport system to serve the proposed development.
- Loss of trees and woodland;
- Loss of green space;
- Loss of light and privacy from high buildings erected on the site;
- Insufficient capacity at local schools to accommodate the demand for pupil spaces resulting from the development;
- Concern about the implications on community identity and cohesion as a result of any review of school catchment areas resulting from the proposed development;
- Loss of the field comprising the site would harm the open farmland setting of Dalhousie Castle and Old Cockpen Church;
- concern with there being an inadequate car park at Newtongrange Railway Station and the resulting problem of people utilising the

railway station parking on roads within the neighbouring Orchard Grange Estate causing parking congestion;

- Concern about detrimental impact on water course of the River South Esk;
- Concerns about the management of surface water run-off and site drainage and the impact on the surrounding area;
- Concern about the distances of new houses on the site to existing neighbouring houses;
- The development is cramped;
- Concerns about asbestos and pollution resulting from the demolition of the roofs of the farm buildings;
- Insufficient details of site drainage has been submitted with the application;
- Insufficient footpath links from the site to the existing neighbouring housing development of Orchard Grove;
- Loss of light to neighbouring houses;
- A noise impact assessment has not been submitted with the application;
- There should be no vehicular access off the B704 and no through road from the B704 through the site to the Orchard Grange Estate.
- Absence of a safe route to/from the site and Bonnyrigg school for pedestrians and cyclists;
- There are more appropriate sites within Midlothian for a development of the scale proposed;
- The application does not include proposals to upgrade the existing spine road through the Orchard Grange Estate;
- Concern about the site having ground stability issues and thus will require substantial remediation/stabilisation;
- Concern about where material imported to remediate ground conditions and where infill material for levelling will come from and the risk of the imported material polluting the water course;
- Concern about where excess soil on site will be deposited how this will affect the finishing levels of the site;
- Overdevelopment of the site;
- The archaeological significance of the existing upstanding buildings on the site has not been considered and potential below ground archaeology requires consideration;
- Access to the site should be via a roundabout off the B704 instead of via the Butlerfield spine road/the Orchard Grange Estate; and
- Concern about flooding of residents within the vicinity of the South Esk.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) and the Midlothian Local Plan (MLP), adopted in December 2008.

Midlothian Local Plan 2008

- 7.2 Policy **RP5: Woodland Trees and Hedges** does not permit development that would lead to the direct or indirect loss of woodland which has a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter;
- 7.3 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;
- 7.4 Midlothian Local Plan Policy **RP8: Water Environment** aims to prevent damage to water environment, including groundwater and requires compliance with SEPA's guidance on SUDs;
- 7.5 Policy **RP9: Protection of River Valleys** requires development within the river valley protection areas of the Rivers North Esk, South Esk and Tyne to have a specific locational need for the development, and where this is established, development must demonstrate that it will not have an adverse impact either on the landscape and conservation value of the valleys or impede potential public access opportunities;
- 7.6 Policy **RP13: Species Protection** requires that any development that would affect a species protected by law will require an appropriate level of environmental and biodiversity assessment. Where development is permitted, proposals will require: a) measures for mitigation; and b) measures for enhancement or sustainable habitat replacement, where appropriate;
- 7.7 Policy **RP14: Habitat Protection Outwith Formally Designated Areas** requires that where a development affects sites which contain habitat of some significance, effects on the habitat as well as mitigation measures will be taken into account;
- 7.8 Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area;
- 7.9 Policy **RP24: Listed Buildings** states that development will not be permitted where it would adversely affect the setting of a Listed Building;
- 7.10 The western edge and the southern extremity of the site is within Dalhousie Castle Designed landscape and is subject to **Policy RP25: Nationally Important Gardens and Designed Landscapes**, which presumes against development which may adversely affect the special characteristics of the designed landscape.

- 7.11 Policy **RP27: Other Important Archaeological or Historic Sites** states development will not be permitted if it adversely affects an identified important archaeological or historic site or its setting, unless there is appropriate mitigation and there is an overriding public interest;
- 7.12 Policy **RP28: Site Assessment, Evaluation and Recording** states that where any development proposal could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the impact of the proposal on the archaeological resource;
- 7.13 Policy **COMD1: Committed Development** continues the commitment to sites allocated for housing in the 2003 Local Plan, with an affordable housing requirement for the sites as set by Policy HOUS5 (Affordable and Special Needs Housing). The affordable housing requirement set in the 2003 Local Plan is in the range of 5% - 10% of the total number of units on site for developments comprising 50 or more units;
- 7.14 Policy **NRG3: Energy for Buildings (dwellings)** The Council will require predicted CO2 emissions associated with the life cycle of all new buildings and conversions to be minimised as far as is practicable. Proposals must compensate for any failure to optimise useful gains from passive solar energy by demonstrating achievement of a reduced level of CO2 emissions. Proposals with a total cumulative floorspace of 500 m², and windfall development of any size, should incorporate on-site zero and low carbon equipment contributing at least an extra 15% reduction in CO2 in terms of the 2007 building regulations carbon dioxide emissions standard;
- 7.15 Policy **DP2: Development Guidelines** sets out Development Guidelines for residential developments. The policy indicates the standards that should be applied when considering applications for dwellings;
- 7.16 Policy **DP3: Protection of the Water Environment** sets out development guidelines regarding flooding, treatment of water courses, drainage and Sustainable Urban Drainage Systems (SUDS);

Proposed Midlothian Local Development Plan (MLDP)

- 7.17 The proposed Midlothian Local Development Plan does not form part of the development plan for the Council's area, however it is a material consideration in relation to a planning application which carries more weight the closer it gets to being adopted, which is anticipated to be Spring 2017. The site is identified as housing site h37 (Cockpen Farm) in the Proposed Plan with an anticipated capacity of 137 units.

National Policy

- 7.18 The **Scottish Planning Policy (SPP)** in respect of housing is also a material consideration. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality.
- 7.19 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources;
- 7.20 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

7 PLANNING ISSUES

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

The Principle of Development

- 8.2 The principle of residential development on the site is established by its allocation within the 2003 Midlothian Local Plan (MLP). This allocation was then continued in the adopted 2008 MLP and in the Proposed Midlothian Local Development Plan (MLDP). Furthermore planning application 09/00056/OUT for residential development was granted in 2012. This application is regarding the discharging of the conditions associated with the application.

Traffic and Transportation Issues - Discharge of conditions 3(i), 3viii, 3ix, 3xi, 6i, 6ii, 6iii, 6iv, 6v, 6vii and 6viii

- 8.3 The application proposes that residential access be taken from the existing distributor road serving the Butlerfield housing development to the east. This satisfies the relevant provisions of the original Midlothian Local Plan 2003 and the requirements of the development brief. A traffic assessment submitted with the previous outline planning application concludes that the existing road network, including Butlerfield spine road, is of a standard which can accommodate the increase in use of it resulting from the development. No off site transportation infrastructure works are required to facilitate the development.
- 8.4 The existing access serving Cockpen Farm is not suitable for access for construction vehicles and the use of it would pose road safety hazards. Instead, construction access is to be via the existing access

road that serves Butlerfield Industrial Estate. The junction of the access road within Butlerfield Industrial Estate and the internal estate road is to be widened to facilitate HGV vehicle movements. The access is to be controlled with the following combination of measures: (i) a security barrier that is opened on entry/exit using a fob/swipe entry system and with telemetry to the site office; (ii) a lockable Heras type security barrier that would be locked outwith normal site working hours; (iii) road signage erected in the vicinity of the temporary access informing drivers of construction vehicles not to exit the site via the A7/Victoria Road roundabout; but instead, to exit through Butlerfield Industrial Estate; iv) road signage erected in the vicinity of the A7/Victoria Road roundabout informing the drivers of construction vehicles not to access the site via the distributor road serving Butlerfield Spine Road. The proposed access arrangements will be put in place prior to site works commencing. If the construction access was off the A7/Victoria Road roundabout construction vehicles would have to pass along the road in front of 17 houses. However, owing to the construction vehicle route being via Butlerfield Industrial Estate the number of houses that construction vehicles using it would pass in front of is reduced to 6. Those 6 houses are separated from the construction access road by a relatively wide grassed verge. Subject to the proposed construction access arrangements being put in place prior to construction works commencing, the level of disruption to existing neighbouring dwellings during periods of construction is considered not to be significantly detrimental to their residential amenity.

- 8.5 The internal roads and footways, parking, traffic calming and pedestrian and cycle routes within the residential site comply with Midlothian Council “Standards for Development Roads”. Sufficient car parking is provided in compliance with Midlothian Council’s “Standards for Development Roads”. The proposed development does not in itself justify improvements to be made to existing public transport services in the area, including the frequency of bus services. There is no requirement in transportation terms for the local bus service to be extended into the site, with frequent services being provided at Newtongrange and along the A7.
- 8.6 With regards to pedestrian and cycle routes the development brief states that: “New development should be planned to maximise existing routes and identify new paths. A 3 metre wide cycleway/footpath is to be formed from the site to the existing remote footpath along the western edge of the Butlerfield housing development. That cycleway/footway will provide a route through Butlerfield to local facilities in Newtongrange, the railway station and primary school. Adequate footpaths and cycleways are provided on the site that connect to the existing network.
- 8.7 In addition, the following are acceptable in transportation and pedestrian safety terms:

- The proposed footpath and cycle paths within and to/from the site;
- The layout of the proposed internal road;
- The proposed road lighting;
- The proposed programme for completion of construction of the access, road, footway and cycle path.

Design and Layout - Discharge of conditions 3iv, 3xi & 3xii

- 8.8 The design statement submitted in support of the application sufficiently details the applicant's approach to the site with regards to the issue of design, landscape and open space.
- 8.9 The proposed finished floor levels of the proposed houses and garages reflect the levels of the site and do not impact on existing residents and are therefore acceptable in planning terms. The siting, design and external finishing material of the buildings are in keeping with the character and amenity of the area and are therefore acceptable. The density of the development is appropriate to the location of the site on the edge of a settlement. The proposed development does not amount to an overdevelopment of the site.
- 8.10 The following proposals are in keeping with the character and amenity of the area and/or do not detract from the amenity of the area and are therefore acceptable in planning terms:
- The design and location of the proposed boundary walls and fences;
 - The programme for the completion and maintenance of the proposed hard and soft landscaping;
 - The proposed roads and footpaths configuration.
- 8.11 The proposed open space in the development is acceptable in terms of its location, size and layout. Adequate space for informal children's play is proposed in the development.
- 8.12 The arrangement of buildings, disposition of open space and scale and massing of the proposed development is acceptable. Front elevations of properties overlook the open spaces thus providing passive surveillance. New dwellings erected adjacent to the farm buildings are orientated to face onto them. The development has been designed to include streets and cul-de-sacs, some of which are laid out with shared surfaces of block paving.
- 8.13 With a few exceptions the distances between properties are in compliance with Policy DP2. The exceptions are not significantly below that set down in Policy DP2 and would not result in significant harm to the amenity of the future occupants of the houses. Forty seven houses on the site have rear gardens smaller than is needed to accord with Policy DP2. Some of these houses are terraced and all of them fall only marginally below the minimum size. The small size of the gardens

in these plots has to be balanced with the much larger gardens provided elsewhere on the site, a factor adding to the divergence of character between different parts of the site required to create an interesting place. Accordingly, reducing the number of houses in order to increase the unit size of gardens on these plots would not be justified. In terms of its scale and density the proposed development is appropriate for this edge of settlement site.

- 8.14 The future occupants of the houses will have adequate residential amenity. In terms of their sizes, heights and positions on the site the proposed buildings would not give rise to significant overlooking or overshadowing/loss of daylight or sunlight of any neighbouring properties or unduly impose themselves on them or appear obtrusive within the street scene.
- 8.15 The proposed development will not harm the character and amenity of the area including the setting of the neighbouring Category A listed Dalhousie Castle and Dalhousie Castle Garden and Designed Landscape.
- 8.16 It is not considered that the proposed development would result in the physical or visual coalescence of Newtongrange and Bonnyrigg.

Area of Improved Quality – Discharge of condition 3xii

- 8.17 MLP Policy DP2 requires that there be an added emphasis on the quality in design of a minimum of 20% of the dwellings on the site. This applies to individual buildings and the use of materials both in finishes and also in walls and ground surfaces. The Council expects such treatment be focused on prominent landmark groups or key individual buildings. The applicant proposes that such treatment be applied to plots at the entrance to the site and the plots around the listed steading building which include plots 1-5, 33 and 38, 58-85, 75 & 76 and 115-122. The style and appearance of the buildings on these plots are relatively traditional, which is in keeping with the established character and amenity of the area. Through negotiations with the applicant's agent the fenestration, materials and distribution of materials of the proposed building on these plots has been refined so that they are of an improved quality to the rest of the scheme. Elsewhere within the development, out with the aforesaid plots within the area of improved quality, the relatively traditional architectural style of the proposed houses is in keeping with or sympathetic to existing neighbouring buildings.
- 8.18 A simple palette of external finishing materials is proposed outwith the AIQ. Materials have been used to form definitive groupings, which includes a character zone in the northern part of the site. Samples of the external finishing materials have been submitted with the application and the majority of them are acceptable in planning terms. However, samples of some of the agreed materials have not been submitted for the prior approval of the Planning Authority and/or the

sample submitted is not acceptable. Therefore condition 4 of outline planning permission 09/00056/OUT, which requires the prior submission and written approval of all of the finishing material to be used in the development, cannot be discharged as part of this application. A separate matter specified in conditions application is required for the discharge of condition 4.

Open Space and Play Area - Discharge of conditions 3iii & 3x

- 8.19 The development incorporates a central landscaped open space which provides a key useable focal point in the development. The size of the open space meets the minimum size required by Policy DP2.
- 8.20 Four individual pieces of play equipment are proposed within the children's play area. In addition, a bench and steel litter bin is provided. In terms of their number, position, design and appearance the equipment is acceptable in planning terms.

Per Cent for Art - Discharge of condition 8

- 8.21 The proposed percent for art comprises artist blacksmith decorative metal railings around the equipped children's play area within the principal area of open space. Five decorative railings panels are proposed, each containing different elements, albeit they would be similar in feel to maintain coherency of design (i.e. other panels might feature 2 or 3 smaller fish, newts or trailing weed etc). In terms of their positioning, form, style and detailing the proposed percent for art is acceptable.

NRG3 - Discharge of condition 12

- 8.22 Policy NRG3 of the MLP requires on site zero and low carbon equipment contribution to provide at least an extra 15% reduction in CO2 in terms of the 2007 building regulations carbon dioxide standard. Building warrants have not yet been sought or obtained for the buildings. Future applications for building warrants stand to be determined against the 2011 Building Regulations. The 2011 Building Regulations require a CO2 reduction greater than 15%, which can be achieved with either low carbon equipment or improved thermal insulation in construction of the buildings or a combination of the two. Consequently it would not be reasonable for the Planning Authority to insist that the new buildings include low carbon equipment.

Sustainable Urban Drainage System (SUDS) - Discharge of condition 3vii

- 8.23 The proposed SUDS detention basin takes up part of the northern extremity of the site. The SUDS basin will appear as a natural feature in the landscape. The SUDS scheme will ensure that there will be no net detriment to the locality's drainage whilst providing a locally attractive space. There is a steep slope along the roadside edge. However, the distance between the roadway and the edge of the SUDS

feature is such that there is no requirement on safety grounds for a roadside safety barrier or bollards. SEPA raise no concerns over flooding.

Phasing - Discharge of conditions 2 & 6ix

- 8.24 A comprehensive phasing plan has been submitted with the application as required by condition 2 (Phasing) of outline planning permission 09/00056/OUT. The phasing plan submitted denotes the build phase and phasing of SUDS, structural landscaping and infrastructure, including footpaths. The structural landscaping is identified for implementation in phase 1 and therefore the landscaping will be established early. The phasing plan delineates the completion of the principal open space, including informal kick about pitch; the equipped children's play area and the percent for art prior to the houses fronting onto them being occupied. This means that open space is implemented at an early stage in the development, thus ensuring that the future occupants of the houses have access to open space for recreation and children's informal play space early on in the development, to the benefit of their amenity.
- 8.25 The phasing plan shows the listed steading buildings the subject of a separate planning application and listed building consent application to be converted to houses prior to the first occupation of the houses adjacent to it, which are within the AIQ. If the steading buildings were not converted prior to their occupation, owing to their dilapidated condition they would become a source of unsightliness, harmful to the residential amenity of the adjacent new build houses.

Landscaping - Discharge of condition 3ii, 3iii, 3v, 3vi & 3xiii

- 8.26 Planting is proposed along the eastern and south east boundaries where the site abuts the existing Butlerfield housing development. This makes good use of the steep ground in this location, mitigating the visual impact of the development and creating a good buffer zone. Elsewhere in the development the proposed hard and soft landscaping will enhance the development and integrate it into the area. The woodland management plan is acceptable and seeks to secure the woodland in the long term following good woodland management principles.
- 8.27 In places, the development is illustrated with rear gardens backing onto a footpath and thus not allowing for natural surveillance. Native, thorny shrubs are to be planting along the rear garden boundaries to deter unauthorised access to the gardens.
- 8.28 The two mature trees on the site; which have good amenity value, are to be retained.

Ground Conditions

- 8.29 A site investigation report on the ground conditions of the site has not been submitted with the planning application. It therefore remains to be demonstrated to the Planning Authority that any ground contamination/instability issues can be mitigated. Consequently, planning condition 7 (contamination and ground conditions) of outline planning permission 09/00056/OUT cannot be discharged as part of this planning application. A separate matter specified in conditions application is required for the discharge of condition 7.

Ecology - Discharge of conditions 10 & 11

Badgers

- 8.30 A report on a badger survey of the site; dated March 2016, informs that several badger setts exist in the woodland on the western edge of the site to the east of Cockpen Dean Burn and the River South Esk, which are as close as 10 metres from the proposed development. One of the setts has up to five entrances all which have signs of recent activity. Approximately 8 metres outside the development boundary is a two entrance sett which has signs of activity and occupation. There are numerous established runs and numerous snuffle holes within the woodland but no latrine. The report states that it is possible that badgers forage over the development land but no evidence was found of this form of use. It is possible badgers may be attracted into the new development but is it recognised there is extensive good quality forage within the vicinity of the land. The report concludes that it is not anticipated that there will be an adverse effect on badgers as a consequence of the development. One badger sett near to the northern end of the site is within 8 metres of the boundary with the proposed development and 20 metres from the nearest proposed building on the site. It is recommended in the report that it will be necessary to obtain a disturbance licence to accommodate construction of that house, but it is anticipated that there will only be temporary disturbance of the sett if the development is implemented as proposed. A licence application can only be submitted subsequent to a grant of planning permission. The licence application will need to contain measures for mitigating the impact on badgers which in this case is likely to include temporary closure of the sett. The measures required will be decided on completion of an occupation assessment of the sett.
- 8.31 A Badger Mitigation Addendum Report, dated June 2016, makes a number of recommendations to mitigate harm/disruption to badgers including: (i) the management of the open grassland to the north west of the site as badger forage land; (ii) the introduction of a grass mowing regime to the open spaces in the development to improve their value for badger foraging (iii) the application of fertiliser to open spaces within the development to improve the nutrient of the ground and thus increase the forage value of the land for badgers; (iv) the provision of

each new household in the development with a 'Badger Pack' when they move into their property, which details how to manage their coexistence both on their property and in the locality. Subject to the implementation of the recommended badger mitigation there would be no significant harm to the local badger population and there should be an adequate foraging resource to support a viable badger population. The applicant has confirmed in writing to the Planning Authority that the recommended badger mitigation shall be carried out prior to the first occupation of any house built on the site.

Bats

- 8.32 In June 2016 a bat survey was undertaken of the existing farm buildings on the site. No evidence was found of bats using the buildings and no bat activity was recorded. Therefore the proposed development would not have a detrimental impact on bats.

Barn Owls

- 8.33 In June 2016 a barn owl survey was undertaken of the existing farm buildings on the site. No evidence was found of barn owl activity. Therefore the proposed development would not have a detrimental impact on barn owls.
- 8.34 The Ecological Constraints Report submitted with the previous application recommended the implementation of mitigation measures to safeguard otter, barn owl and bats. The recommended mitigation included: (i) a walkover check survey by a suitably qualified ecologist for signs of otter presence/activity prior to works commencing; (ii) the adherence to best practice working guidelines for otter; (iii) a further dusk/dawn emergence/re-entry surveys to be undertaken of the farmhouse and outbuildings prior to works commencing, in accordance with Bat Conservation Trust (BCT) survey guidelines; (iv) the erection of bat boxes on mature trees surrounding the site; and, (v) measures to enhance the listed folly as barn owl habitat and the installation of bird boxes within Catholes Wood. All of this recommended mitigation was secured by planning conditions imposed on the previous planning permission. Subject to this mitigation being carried out, the other protected species within the area would not be harmed by the proposed development.

Archaeology

- 8.35 An on-site archaeological investigation has not yet been undertaken for this site. Thereby condition 9 of outline planning permission 09/00056/OUT cannot be discharged yet. A separate matter specified in conditions application is required for the discharge of condition 9.

Condition 1 of outline planning permission 09/00056/OUT

- 8.36 Given that conditions 4, 7 and 9 of outline planning permission 09/00056/OUT cannot be discharged as part of this current planning application, condition 1 of the outline planning permission; which requires further applicant(s) to be submitted for the discharge of conditions 4, 7 and 9, also cannot be discharged.
- 8.37 The development cannot commence on site unless and until application(s) for matters specified in conditions 1, 4, 7 & 9 of outline planning permission 09/00056/OUT have been submitted to and approved by the Planning Authority.

Developer Contributions

- 8.38 Developer contributions; including a contribution towards additional education capacity was secured through a Section 75 Legal Agreement signed prior to the grant of outline planning permission 09/00056/OUT. No additional developer contributions are required for this current application.

Other Issues - Representations

- 8.39 Issues raised by the representors have been largely addressed above. With regards to the matters raised in letters of objection and not addressed above:
- The application is sufficiently detailed to show the nature of the proposed development for which permission is sought.
 - The application is legally valid. The Planning Authority has not received any evidence to the contrary. The neighbour notification has been carried out in accordance with the requirements of planning legislation.
 - The site is not within the Green Belt and thus there would be no loss of Green Belt land.
 - The scale of the development is unlikely to generate undue harm to the amenity of neighbouring properties in terms of dirt and waste or noise nuisance. If a significant nuisance or public health issue were to arise during period of construction it could be controlled by environmental health legislation.
 - There is no legislative requirement for the applicants to have submitted a noise impact assessment with the application.
 - The matter raised by an objector concerning where material required to be imported to remediate ground conditions will come from and the potential for that imported material to pollute the water environment is a Building Standards/Environmental Health matter

and for consideration at the Building Warrant stage and in a future application for the discharge of condition 7 (ground conditions) of outline planning application 09/00056/OUT. Therefore, this is not a material consideration in the determination of this current planning application.

- The matter raised by an objector about whether excess soil on site will have to be deposited off site is not a material consideration in the determination of this planning application.
- The removal of/safe disposal of any existing building roofing material containing asbestos is controlled through legislation other than planning legislation and thus there is no requirement for the planning authority to impose conditions on a grant of planning permission to address this.
- Any potential damage caused to a gas main/pipe as a result of works to form the construction access and by the movements of construction vehicles is not a material planning consideration. Health and safety during construction works is controlled by legislation other than planning legislation.

8.40 In addition, the following matters raised in letters of representation are also not material considerations in the determination of this planning application:

1. Loss of view and outlook.
2. Title to and covenant over parts of the application site including whether there are covenants on Butlerfield spine road.
3. Any delay in the commencing of the development on site owing to the current/future economic climate and the implications of this on the maintenance of the site.
4. Whether there are existing problems of flooding of existing neighbouring properties.
5. Whether the existing doctor and dental surgery in the area have spare capacity to meet the demand that is likely to be generated by the proposed development – this is an issue addressed through the Council's development plan responsibilities.
6. The effect of the proposed development on the market value and saleability of existing neighbouring properties.
7. Whether there exist more appropriate sites in Midlothian for proposed residential development including brownfield sites.
8. Whether there is a need for the proposed development.
9. Whether the existing car park at Newtongrange railway station is adequate and existing problems of people utilising the railway station parking on roads within the neighbouring Orchard Grange Estate causing parking congestion.

9 RECOMMENDATION

- 9.1 It is recommended that planning permission be granted to discharge conditions 2, 3, 6, 8, 10, 11 and 12 of Outline Planning Permission 09/00056/OUT for the following reason:

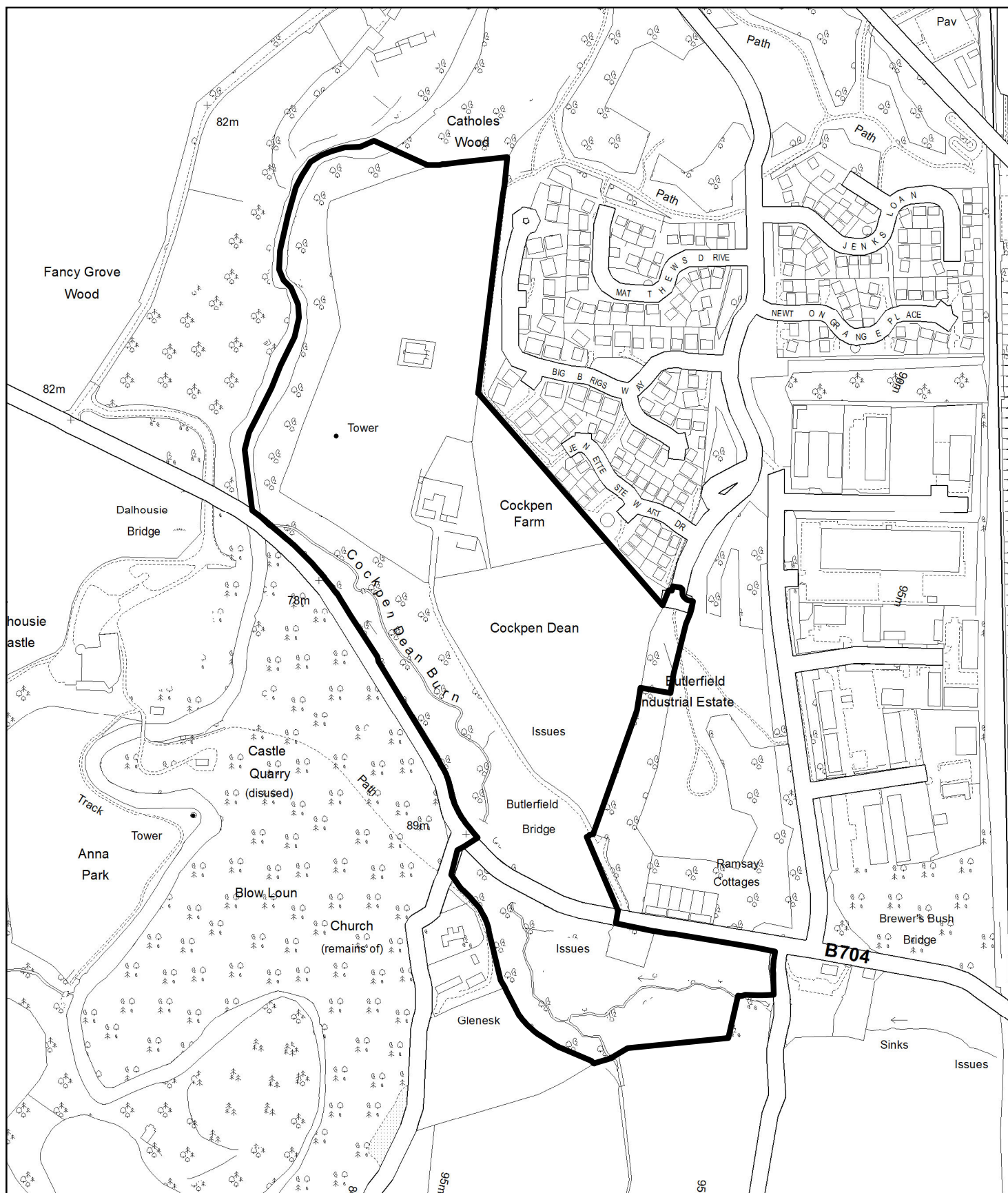
The principle of the development of the site has been established by the previous grant of planning permission and site's allocation in the Midlothian Local Plan 2008. The proposed detailed scheme of development is of good design in terms of its layout, form and landscaping and meets the requirements of conditions 2, 3, 6, 8, 10, 11 and 12 of Outline Planning Permission 09/00056/OUT. The detailed scheme complies with the adopted Midlothian Local Plan and the presumption for the development is not outweighed by any other material considerations.

Ian Johnson
Head of Communities and Economy

Date: 23 August 2016

Application No: 15/00968/MS (Available online)
Applicant: Omnivale Ltd & Miller Homes Ltd, Edinburgh Park,
Edinburgh, EH12 9DH
Agent: Yeoman McAllister, Yeoman McAllister Architects,
Waterside Studios, 64 Coltbridge Avenue,
Edinburgh, EH12 6AH

Validation Date: 14 December 2015
Contact Person: Adam Thomson
Tel No: 0131 271 3346
Background Papers: 09/00056/OUT



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Erection of 131 dwellinghouses and formation of access and associated works (approval of matters specified in conditions 2, 3, 6, 8, 10, 11 and 12 of planning permission 09/00056/OUT) at Cockpen Farm Cockpen Dean Bonnyrigg

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File No. 15/00968/MSC

Scale: 1:5,000





APPLICATION 16/00268/LA TO DISCHARGE A PLANNING OBLIGATION ASSOCIATED WITH PLANNING PERMISSION (656/89) TO CONVERT A STABLE BUILDING INTO ANCILLARY RESIDENTIAL ACCOMMODATION AT FIRTHWELL, OLD WOODHOUSELEE ROAD, FIRTH FIELD, ROSLIN.

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the discharge of a planning obligation associated with a grant of planning permission to convert a stable building into ancillary residential accommodation associated with Firthwell, Old Woodhouselee Road, Firth Field, Roslin. There have been three representations. The relevant policies are DP1 and RP1 of the Midlothian Local Plan. The recommendation is to discharge the planning obligation.**

2 LOCATION AND SITE DESCRIPTION

- 2.1** The site to which this application relates is at Firth Field which comprises a group of five dwellinghouses with a further dwelling in the advanced stages of construction. The site is located between Auchendinny and Loanstone and access is from the B7026. The application property is a two storey stable building with domestic storage at first floor level within a complex of single storey stable buildings, a yard and a gravel quadrangle for the exercising of horses. The building is separated from Firthwell, North House and Firth Mill House by a narrow private lane which provides access to the group of houses. Beyond the stable building and on the same side of the lane a new house is currently under construction. The site is within the countryside.

3 PROPOSAL

- 3.1** The application is to discharge a section 50 agreement (the predecessor to the current section 75 agreements) which relates to a planning permission dating from 1992. The effect of the agreement was that the building subject to the change of use application could not be sold separately from the rest of the planning unit and should only be used as temporary guest accommodation ancillary to the main house.

- 3.2 The applicants submitted a supporting statement which outlines the following:
- The legal agreement and the condition imposed in the 656/89 permission are an outdated planning requirement and would not be entered into today;
 - Removal of the agreement would remove a burden from the property but would not result in any material changes in the nature of the way that the building is used or its impacts on others;
 - An application for the ancillary building as a standalone unit would be likely supported if it were to come forward now without the need for a condition restricting its occupation, use or sale separately from the main house;
 - In respect of other similar planning decision elsewhere across Scotland, where there have been occupancy restrictions their removal has been supported.

Following the submission of representations from interested parties the applicant's agent has submitted an additional statement outlining the following:

- The building the subject of the application is a refurbishment rather than a new build;
- There is no intention by the applicants to sell the stable building and adjoining pasture – the applicants need to retain them in order to access the new house built under the 2011 permission (see paragraph 4.4);
- The applicants wish to sell the original host dwellinghouse which they currently reside in to their daughter and her fiancé. Under the provisions of the current obligation/condition they would also be required to part with the stable building which is tied to the host dwelling. The applicants themselves wish to occupy the new house being constructed under the 2011 permission, however to access this property it is necessary to do so through the stable yard and associated land, otherwise the new house would be landlocked as access from the private road would not be possible;
- The representors letter assumes that a legal obligation would be the pre requisite for a new dwellinghouse, yet the 2011 consented dwellinghouse was not subject to a planning obligation. Furthermore the representors reiterates that the variations sought are tantamount to erecting a new house which does not take cognisance of the nuances of policy in relation to new build and conversion;
- New building in the countryside is not the same as the conversion of an existing building and is assessed under different planning policy criteria;
- An additional benefit of having the applicant's daughter and fiancé in the ownership of Firthwell is that it would provide a net increase in the number of people contributing to the upkeep of the private road; and

- The provisions of Midlothian Local Plan 2008 Policy DP1 paragraph 1.3 – Redundant Farm Steadings and Other redundant Non residential, buildings in the Countryside are a consideration.

4 BACKGROUND

- 4.1 Planning application 656/89 for change of use of stable to form guest accommodation at Firthwell, Roslin was granted planning permission subject to a Section 50 agreement and a condition restricting the residential use of the stable to a private use, ancillary to Firthwell. The application subject to this report is to discharge the legal agreement. It is currently unclear whether this permission was implemented and it would be appropriate to request the applicant apply for a Certificate of Lawful Development if it is their intention to use the property for residential purposes.
- 4.2 Planning application 16/00101/S42 to remove the restrictive planning condition referenced above (in paragraph 4.1) was withdrawn.
- 4.3 Planning application 12/00821/DPP for the extension and alterations to the roof height of the stable building, the subject of the current application, was granted permission. This planning permission has been implemented.
- 4.4 Planning application 11/00581/PPP for planning permission in principle for the erection of a single dwellinghouse on the land adjoining the application site was granted permission. The associated Matters Specified by Conditions applications providing the detailed aspects of the dwellinghouse (application references 13/00697/MSD 14/00375/MSD) were approved in 2013 and 2014 respectively.
- 4.5 The application has been called to Committee for consideration by Councillor Parry.

5 CONSULTATIONS

- 5.1 All parties to the original Section 50 agreement were notified of the application as required by the legislation. No comments were received from the signatories of the original agreement.

6 REPRESENTATIONS

- 6.1 A letter of objection has been received from an agent acting on behalf of the proprietors of Firth Mill House and North House. The objection draws the Council's attention to what they consider to be relevant sections of the Planning Acts, relevant case law and relevant local plan policies in relation to the determination of the application. It is suggested that the practical effect of granting permission for the application would be that the guest accommodation may fall within Class 9 of the Town and Country Planning Use Classes Order, the

same class as a private dwelling house and therefore if unrestricted could be used marketed and sold as a standalone dwellinghouse separate to Firthwell. It is referenced that the provision of Policy DP1 of the Midlothian Local Plan 2008 and therefore in their view approving the application potentially provides for an additional dwelling in this location would be contrary to Policy DP1.

6.2 The details of the objection are as follows:

- Policy DP1 1.2(c) requires that new units are located close to local services and/or has access to a regular public transport service, but in this location that would not be the case and therefore the application are contrary to that requirement;
- Policy DP1 1.2(d) requires that new units fit the landscape and are of a character and scale appropriate to the existing units. However in this case the stables are designed primarily for use as an agricultural building not a dwellinghouse. An agricultural use places different requirements on a building that may not be consistent with those requirements for the permanent use as a dwellinghouse;
- Policy DP1 at 1.2 (g) requires that new units incorporate sustainable building design. The Planning Application is to remove a planning restriction and no works to the stable are proposed that would promote sustainable building design;
- Policy DP1 at 1.2 (h) requires new units to enhance the landscape and appearance of the existing group of buildings. No external works are proposed to achieve this ambition.

6.3 The proprietors of Firth Mill House and North House have also written individually. The main thrust of those representations being that the removal of the obligation would potentially provide for an additional dwelling which would be contrary to Midlothian Local Plan Policy.

7 PLANNING POLICY

7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Plan, adopted in December 2008. The following policies are relevant to the proposal:

Midlothian Local Plan (MLP)

7.2 **Policy RP1:** Protection of the countryside, states that development in the countryside will only be permitted if it is required for the furtherance of a countryside activity or it accords with policy DP1.

7.3 **Policy DP1** is divided into sections entitled New Housing, Design of New Housing, House Extensions, Replacement Houses and Appearance of all Buildings. The section on New Housing is divided into four subsections: Single Houses (not related to Housing Groups/Farm Steadings); Housing Groups; Redundant Farm Steading's and Other Redundant Non-Residential Buildings in the Countryside; and Rural

Buildings of Value. These sections give guidance on acceptable housing proposals in the countryside.

- 7.4 The section on Housing Groups states that where there are clearly identifiable groupings of five or more houses in close proximity, already located in the countryside and outwith village envelopes, it may be possible to supplement these with a limited number of additional dwellings subject to the following criteria:
- the location is outwith the Green Belt;
 - the new units are restricted to a maximum of 1 new unit per 5 existing units within the Local Plan period;
 - the location is close to local services (schools, shops) and/or has access to a regular public transport service giving access to such facilities;
 - the new units fit in the landscape and are of a character and scale appropriate to the existing units;
 - the new units are capable of being served by an adequate and appropriate access;
 - the new units are capable of being provided with drainage and a public water supply at reasonable cost, or an alternative private water supply, and avoid unacceptable discharge to water courses;
 - the new units incorporate sustainable building design;
 - the new units enhance the landscape and appearance of the existing group of buildings; and
 - the new units will not result in ribbon development and the plot size/width should be similar to other units within the group.
- 7.5 Supplementary Planning Guidance (SPG) 'Development in the Countryside: Policy DP1, Section 1.2 Housing Groups' was adopted on 6 October 2009. This SPG allows some flexibility for policy DP1 to enable limited growth within housing groups whilst ensuring that any development as a result of this be of an appropriate scale to the locality, cause minimal adverse impact to the landscape and character of the area and has appropriate access to public transport and/or local facilities. This guidance states that gap sites within the group will generally take precedence over other locations, such as sites which adjoin the group and have a physical or visual feature which provides containment. Where there are no gap sites at present, sites which adjoin the group are preferable. Normally a site will be preferred if at least two sides adjoin the boundaries of existing properties. In addition, all proposals which adjoin a group should meet the following standards: there is an existing physical or visual feature which provides containment of the group or there is potential for such a feature to be provided so long as it is in character with the scale and appearance of the group. Proposals in open fields adjoining a group, which have no physical features to provide containment, will not be acceptable.
- 7.6 The housing group at Firth Field has been identified as consisting of 5 dwellings and as such one additional unit is potentially acceptable, if

the proposals comply with the criteria detailed in policy DP1 section 1.2. The SPG gives advice on acceptable plots for new houses within groups. This guidance states that gap sites within the group will generally take precedence over other locations, such as sites which adjoin the group, and have a physical or visual feature which provides containment.

National Planning Policy

- 7.7 Current **Scottish Government Policy** is contained within the **Scottish Planning Policy (SPP)**. The SPP states:

The character of rural areas and the challenges they face vary greatly across the country, from remote and sparsely populated regions to pressurised areas of countryside around town and cities.

Development plans should support more opportunities for small scale housing development in all rural areas, including new clusters and groups, extensions to existing clusters and groups, replacement housing, plots on which to build individually designed houses, holiday homes and new build or conversion housing which is linked to rural businesses or would support the formation of new businesses by providing funding.

- 7.8 Circular **03/2012 (Planning Obligations and Good Neighbour Agreements)** sets out six tests which planning obligations must comply with, these are:

- Necessary to make the proposed development acceptable in planning terms;
- Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of the development in the area;
- Fairly and reasonably relate in scale and kind to the proposed development; and
- Be reasonable in all other respects.

- 7.9 The necessity test states that planning conditions are generally preferable to a planning or legal obligation. The circular states: *Imposing restrictions on use are rarely appropriate and so should generally be avoided. They can be intrusive, resource-intensive, difficult to monitor and enforce and can introduce unnecessary burdens or constraints. In determining an application, it may be appropriate for the planning authority to consider the need for the development in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification against potential impacts, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. Where the authority is satisfied that an*

adequate case has been made, it should not be necessary to use a planning obligation as a formal mechanism to restrict occupancy or use.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the planning obligation attached to planning permission 656/89 still meets the five tests of Ministerial Circular 03/2012 as set out in paragraph 7.8 of this report.
- 8.2 In granting planning permission (656/89) in 1992 for the charge of use of the stable building to a residential use the Council imposed both a planning condition and a planning obligation to restrict the use of the premises to prevent an additional independent dwelling in this countryside location. The partially converted stable building was to remain as ancillary accommodation to the main house.
- 8.3 Since the grant of planning permission (656/89) Scottish Government guidance has changed by way of Circular 03/2012 and as a consequence it is considered no longer necessary to have both a planning obligation and a planning condition to regulate the occupation of the partially converted stable (if planning permission 656/89 was implemented). General practice in Midlothian and across Scotland is to now regulate the occupation of ancillary residential units by condition, if regulation is required.
- 8.4 The objections relate to the concern that if the planning obligation is discharged it will give rise to an additional dwellinghouse contrary to the Midlothian Local Plan. An additional dwellinghouse could be a potential consequence had both the application the subject to this report (16/00268/LA) and the withdrawn application to remove the condition regulating the occupation of the stable building (16/00101/S42) as originally submitted been approved by the Council. An additional dwelling in this location would be contrary to local development plan policies. However, this is not the assessment. The assessment is whether the planning obligation still meets the tests of Circular 03/2012, in particular, is it necessary – it is considered that the planning obligation does not meet the tests of Circular 03/2012 and is not necessary.

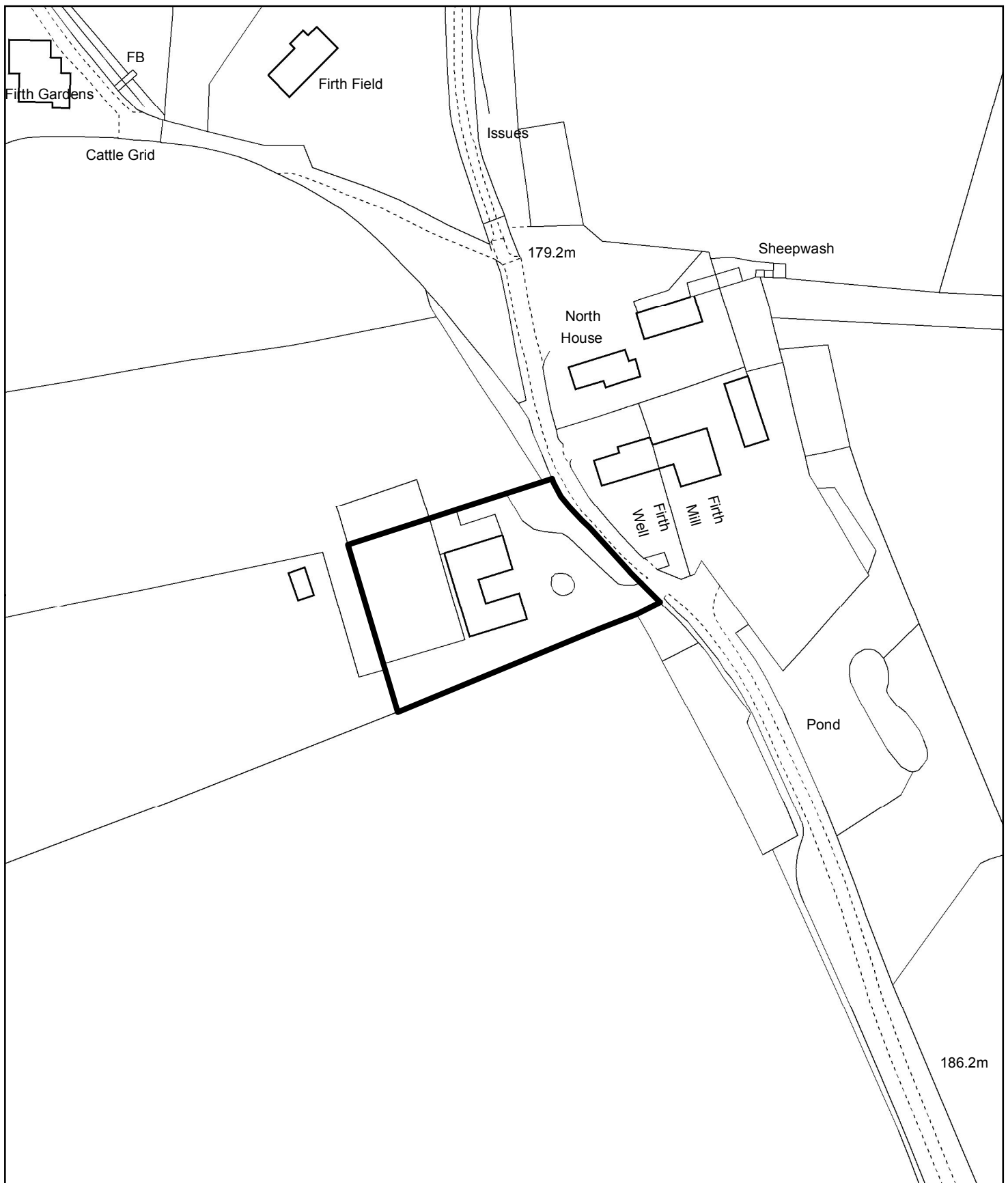
9 RECOMMENDATION

- 9.1 It is recommended that the Planning Obligation be discharged for the following reason:

The Planning Obligation does not meet the tests of necessity and reasonableness as required by Circular 03/2012 and its discharge accords with Policies DP1 and RP1 of the Midlothian Local Plan 2008.

Ian Johnson
Head of Communities and Economy

Date: 23 August 2016
Application No: 16/00268/LA
Applicant: Mr Martin Kubala
Firthwell
Old Woodhouselee Road
Auchendinny
Penicuik
Validation Date: 11 April 2016
Contact Person: Matthew Atkins
matthew.atkins@midlothian.gov.uk
Tel No: 0131 271 3027
Background Papers: 16/00268/LA



**Education, Economy
& Communities**
Midlothian Council
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Application to discharge a planning obligation within a legal agreement (associated with planning permission 656/89) at Firthwell, Roslin

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