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## APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

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### 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 November 2015; and four appeal decisions 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 decisions on appeals which have been considered by Scottish Ministers.

### 3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 24 November 2015 the LRB made the following decision:

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
1	15/00592/DPP	Whitehill, Nine Mile Burn, Penicuik	Erection of dwellinghouse	Review upheld. Permission granted.

### 4 APPEAL DECISIONS

- 4.1 An appeal against a refusal to grant planning permission (15/00029/DPP) for the erection of 13 flatted dwellings and 5 dwellinghouses, formation of car parking and access road and

associated works on land at the junction of Bryans Road and Morris Road, Newtongrange has been dismissed. The application was refused on the adequacy of car parking and the impact on road safety, design appearance and layout including adequacy of garden space and the effect upon residential amenity. The Scottish Government Reporter dismissed the appeal on the adequacy of car parking provision. A copy of the appeal decision accompanies this report.

- 4.2 An appeal against a refusal to grant planning permission (14/00044/DPP) for the erection of 9 wind turbines and associated infrastructure on land at Mount Lothian Moss, Penicuik has been dismissed. The application was refused on landscape and visual amenity grounds. The Scottish Government Reporter dismissed the appeal on both these grounds. A copy of the appeal decision accompanies this report.
- 4.3 An appeal against a refusal to grant planning permission (15/00365/DPP) for the erection of wind turbines and associated infrastructure on land at Springfield Farm, Penicuik has been upheld. The application was refused on landscape and visual amenity grounds. The Scottish Government Reporter upheld the appeal after considering the proposed development will not be significantly detrimental to the landscape. A copy of the appeal decision accompanies this report.
- 4.4 An appeal against non determination of a planning permission in principle application (14/00420/PPP) for residential development and associated infrastructure on land north and south of Lasswade Road, Eskbank has been upheld. The application was not determined by the Council because of the status of the proposed Midlothian Local Development Plan (MLDP), the application being considered to be premature. The Scottish Government Reporter upheld the appeal after considering the proposed development accords with the provisions of the development plan on the basis that Midlothian Council does not have an effective five year land supply. This was based on the Council's 2014 Housing Land Audit. A copy of the appeal decision accompanies this report.
- 4.5 Since the appeal a draft 2015 Housing Land Audit has been prepared which demonstrates that the Council has an effective housing land supply. The land supply is dependant on the house building industry building houses on the sites granted planning permission or allocated in the adopted 2008 Midlothian Plan. The sites in the proposed MLDP will also be included once the plan is adopted.

## **5 RECOMMENDATION**

- 5.1 The Committee is recommended to note the decision made by the Local Review Body at its meeting on 24 November 2015 and the four reported Scottish Ministers' appeal decisions.

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

**Date:** 5 January 2016

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## Appeal Decision Notice

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Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2029
- Site address: land at junction of Bryans Road and Morris Road, Newtongrange
- Appeal by T & V Builders Ltd. against the decision by Midlothian Council
- Application for planning permission 15/00029/DPP dated 13 January 2015 refused by notice dated 04 June 2015
- The development proposed: erection of 13 flatted dwellings and 5 dwellinghouses, formation of car parking and access road, and associated works
- Date of site visit by Reporter: 07 October 2015

Date of appeal decision: 17 November 2015

### Decision

I dismiss the appeal and refuse planning permission.

My decision on the appellant's claim for expenses is set out in a separate notice.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are (1) the adequacy of car parking and impact on road safety; (2) the design, appearance and layout of the development including adequacy of garden space; and (3) the development's effect upon residential amenity.

#### *The adequacy of car parking and impact on road safety:*

2. The land to which this appeal relates is a brownfield windfall site. Policy HOUS 3 of the adopted Midlothian Local Plan 2008 supports housing developments in such locations, subject to proposals meeting a range of criteria, one of which is that traffic and parking requirements are met. The policy does not specify these parking requirements, and nor do they appear elsewhere in the local plan. The council has adopted local parking standards which are outwith the statutory development plan, but which assist in applying the policy and so are capable of being a material consideration.

3. A total of eighteen dwellings are proposed. In response to previous unsuccessful attempts to obtain planning permission for residential development on this site, the council produced an informal site brief to guide applicants on the likely planning requirements. I



accept that this brief was essentially pre-application advice. The site brief was not adopted or statutory guidance and therefore did not prejudice the determination of any subsequent planning application. The weight this advice can be afforded as a material consideration is therefore negligible, although I recognise that there would have been a reasonable expectation from the applicant that this advice would reflect development plan requirements. I requested further information from the council in relation to how the adequacy of the car parking provision was assessed for this proposal. In response, the council has explained that the application was determined having regard to parking standards adopted in 2003 ('Standards for Development Roads'), and that only subsequent to this did the council begin applying revised, newly adopted parking standards (entitled 'Midlothian Council Parking Standards' (2014)) in the assessment of planning applications. Whilst there is not an explicit conflict between the site brief and local plan policy HOUS 3, the brief's requirement for 150% car parking provision does not appear to correlate with the council's adopted or superseded parking standards.

4. Notwithstanding that the fourth reason for refusal related to inadequate parking provision (reflecting concerns raised by numerous third parties), the council has stated that the proposal did accord with the 2003 parking standards. The council has not explained how this conclusion was reached and neither the council nor the appellant has set out calculations to demonstrate this. In the absence of this and applying the standards to the proposal myself, I found that some ambiguity is presented by calculations being founded on the number of rooms in a dwelling, rather than the number of bedrooms (which tend to more accurately reflect likely demand for car parking). The standards exclude bathrooms, WCs and separate kitchens from the calculation, but my interpretation is that 'open plan' dining-kitchens (as proposed for the five houses) should be counted as a room. Using this approach, my calculations state that 30.75 spaces would be needed for this development. As 27 spaces are proposed this would be a modest shortfall against the requirements of those standards.

5. It is unclear to me why the revised 2014 standards were not used by the council when determining the planning application. As previously noted, the council has stated that the 2014 standards have only been used in relation to assessing planning applications since May 2015. As the decision notice is dated June 2015 however, it appears that the revised standards should have formed part of the council's assessment. In any case, there is no dispute that the revised standards are now adopted (at the point of my determination) and have superseded the 2003 standards. I therefore attach greater weight to the council's 2014 parking standards in my assessment. These updated parking standards recommend significantly increased parking requirements for proposals of this nature. I consider that they provide a more rational means of calculating parking requirements (based on bedroom numbers and therefore the likely numbers of occupants). Applying these updated standards, 43 spaces should be provided for this development. The proposed parking would be deficient by 16 spaces, representing a shortfall of approximately 37%.

6. I find that the impact of such a considerable deficiency in car parking provision would be highly likely to lead to on-street car parking in the immediate vicinity. During my accompanied site inspection I noted that whilst car parking is not expressly forbidden or restricted on Morris Road (from where the proposed properties would be accessed), it would certainly be undesirable for cars to overspill from the site and be parked on the carriageway, due to the nuisance this would cause to other road users. I observed Morris

Road to be a well-used route which also acts as the main approach to Newbattle Community High School. Whilst I note that the council's policy and road safety team did not object to the development, I nevertheless consider that on-street car parking in this location has the potential to compromise road safety, due to there being access and egress points on both sides of the road and any parked cars would potentially restrict visibility both from and of these. Any cars parking near to the junction of Morris Road and Bryans Road / Suttieslea Road would also reduce visibility for pedestrians attempting to cross the road, in the context again that this road acts as the main access to a school. I have noted that a traffic signal-controlled junction with an improved crossing is planned (entirely separate from this appeal proposal). This would make crossing the road safer, but it would be likely to further reduce the opportunity for acceptable on-street parking.

7. Many of the third party representations have raised wider road safety concerns regarding the adequacy of the site's proposed access and egress including its unsuitability for refuse collection vehicles. I do not share these particular concerns. The site access would be adequate for the relatively modest number of vehicular movements it would need to accommodate, and it is common for refuse collection vehicles to need to temporarily obstruct the road outside residential properties. This would typically only occur once every one or two weeks, and the obstruction would be for a matter of moments whilst bins were emptied into the vehicle. These matters would not warrant the refusal of planning permission. Numerous third parties have also stated that visibility for vehicles turning onto Bryans Road / Suttieslea Road from Morris Road would be restricted by the proposed building. During my site inspection it was evident to me that this would not be the case.

8. I nevertheless conclude that the development's car parking provision would be unacceptably deficient for the number and size of dwellings proposed. Whilst the shortfall appears to have been exacerbated somewhat by the council's adoption of revised parking standards, car parking remains inadequate when assessed against the previous more lenient (and arguably less realistic) standards. The appellant has not submitted any evidence to suggest that a relaxation of the parking standards should be acceptable in this location. In any case, whilst I note that the site is adjacent to a bus route and, for many, within a reasonable walking distance from the centre of Newtongrange, I do not consider these benefits to be sufficient to justify such a significant shortfall in parking provision. As such, the development would be contrary to the relevant provisions of local plan policy HOUS 3.

#### *Design, appearance and layout including adequacy of garden space*

9. Local plan policy RP 20 resists development in built-up areas, and in particular in residential areas, where it would detract from the existing character or amenity of the area. Policy HOUS 3 supports development where it has regard to the character of the area in terms of scale, form, design and materials. Policy DP2 meanwhile contains quite extensive, specific guidelines applicable to all developments. These include requirements for good design both in terms of layout and architectural quality, sets minimum standards for private open space provision and specifies minimum separation distances between dwellings.

10. The overall design, appearance and size of the flatted residential block (but not the houses) has given rise to numerous third party objections and has also formed the basis of two of the council's reasons for refusal. The use of a flat roof has been specifically referred

to as inappropriate. During my site inspection I found that there was no particular or dominant architectural style in the locality. The appellant has drawn attention to the presence of other flat-roofed buildings in the vicinity, and I also noted that both the adjacent police station and residential properties on Morris Road utilise flat roofs on parts of these buildings. As such, I do not see that a flat-roofed building on the appeal site should in itself be seen as detrimental to the character and appearance of the area.

11. Perception of design is always subjective to a degree, but good design generally demonstrates a positive or sympathetic response to the site's features and context. The absence of any particular architectural vernacular in this locality gives a considerable degree of design freedom and whilst there may be scope for the design to be improved further, I do not consider the overall architectural merits of the proposal to be unacceptable. The use of three storeys would inevitably increase the dominance of the building but the combination of the site's levels relative to the adjacent roads, the flat roof (which minimises the overall height and massing), and its position set back from the corner of Morris Road and Bryans Road / Suttieslea Road would avoid the development becoming unduly dominant or overbearing in the wider streetscape. The choice of materials are appropriate, reflecting those commonly used in the area.

12. The proposed gardens for the five houses and the communal private open space for the flats all fall below the sizes required by policy DP2 but they are not deficient to such an extent to lead me to a clear finding that the development would be contrary to policy DP2. That said, this matter does tend to strengthen my earlier conclusion, in regard to parking provision, that the scale of proposed development exceeds the capacity of the site to satisfactorily accommodate it.

*Effect upon residential amenity:*

13. Local plan policy DP2 sets out required separation distances between houses. There are no other policies which explicitly relate to residential amenity matters, but it is nevertheless a well-established planning principle to safeguard residential amenity, and I attach significant weight to this material consideration in this appeal. During my site inspection I viewed the appeal site from the garden of Bryans Farmhouse. Its owner-occupiers, together with a number of third parties, have raised concerns that the development would have an unacceptable impact upon residential amenity at this property. I observed that the areas of domestic curtilage and also the ground floor windows (including a conservatory which was not shown on the submitted plans) on the south-east side of the house are almost entirely screened from views from outside of the site by the walls, fencing and outbuilding surrounding it. The 'back to back' separation distances required by policy DP2 (to safeguard privacy) would not be achieved between the southeast elevation of Bryans Farmhouse and the northwest elevation of the flats. I find however that the absence of any windows on the westernmost part of the proposed building on this elevation, together with the proposed use of obscure-glazing on other specified windows, would effectively prevent any overlooking.

14. I am satisfied that the proposed layout of the development and separation distances avoid any overbearing impact or overshadowing of Bryans Farmhouse. This conclusion is supported by the vertical sky component test and 'sun on ground indicators' used by the council. I recognise that the solar panels fitted to the south-east facing roof slope of an

outbuilding would have reduced periods of direct sunlight which would reduce their efficiency, but I do not attach sufficient weight to this material consideration for it to be pivotal to my decision.

15. I understand that the owners of Bryans Farmhouse run a child-minding business from the property, and it has been intimated in representations that this increases the need for privacy. The council has confirmed that planning permission has not been granted for a child-minding business and so it is assumed to be of a scale and nature that is ancillary to the house. In any event, I do not see why a child-minding business would reasonably require a greater level of privacy than a house, and no evidence has been provided by any parties to suggest otherwise.

16. To conclude, I am satisfied that this development would not result in a significant or unacceptable loss of residential amenity at Bryans Farmhouse. Whilst the separation distances specified by policy DP2 would not be fully achieved, overlooking would not result so I accept that a minor departure from the policy on this matter would be acceptable in this instance. No other adjacent residential properties (on Reed Drive) would be significantly affected by the development.

*Other matters:*

17. The appellant has stated that the mature deciduous trees along the northwest site boundary (beyond which are the rear gardens of properties on Reed Drive) would be retained where possible. The submitted plans however do not show these trees. During my site inspection I found that the trunks of some of these trees would obstruct the proposed access to the houses' rear gardens. I consider that these trees have considerable amenity value and their protection would be desirable. Had I been minded to allow the appeal I would have required more information from both the appellant and council on this issue, with the aim of adequately safeguarding against their loss or damage where appropriate.

18. The need for surveys in relation to former coal mining activity and archaeology could be satisfactorily dealt with by condition. The appellant has stated that they are agreeable to the use of a Section 75 agreement to secure education and affordable housing contributions from the development, as required by the local plan. Third party concerns in relation to whether plans would be complied with, the effect on the structural integrity of the outbuilding at Bryans Farmhouse and the longevity of flat roofs are not material planning considerations and so have not influenced my decision.

19. The appellant has intimated that a reduction in the density of development would be unviable. No evidence has been provided to support this argument but, in any event, this would not justify allowing a development that would be unacceptable in other respects.

*Conclusions:*

20. The proposed car parking to serve the development is deficient to an unacceptable degree. This would result in both residents and visitors to the properties being forced to find alternative locations to park, and this would most likely result in on-street parking on Morris Road which would have an adverse impact upon road safety and impede traffic flow.



I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would justify granting planning permission.

*Christopher Warren*  
Reporter

## Appeal Decision Notice

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Decision by Dan Jackman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2025
- Site address: Mount Lothian Moss, Penicuik, Midlothian
- Appeal by Wind Prospect Developments Limited against the failure of Midlothian Council to issue a decision within the prescribed period
- Application for planning permission 14/00044/DPP dated 21 January 2014
- The development proposed: 9 wind turbines (102 metres to tip) and associated infrastructure
- Date of Hearings: 12 and 13 May 2015
- Date of site visits by Reporter: Accompanied 14 May 2015, unaccompanied 23 October 2014, 1 May 2015 and 11 May 2015.

Date of appeal decision: 26 November 2015

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### Decision

I dismiss the appeal and refuse planning permission.

### Preliminary matter

1. On behalf of a local resident, a legal submission was made on the 12<sup>th</sup> September 2014 which argued that Scottish Ministers should decline to determine this appeal and issue a direction made under Section 48(7) of the Town and Country Planning (Scotland) Act 1997.
2. On 10<sup>th</sup> December 2014, after considering submissions from the other main parties, Scottish Ministers declined to exercise their discretion under Section 48(7) of the Act and indicated that they wished me to determine the appeal.
3. It was put to me that the reasons given by Scottish Ministers were inadequate and I should address this matter in my decision. However, I have no authority to act on Scottish Ministers behalf in relation to a direction under Section 48(7).
4. I found no difficulty in reaching a decision in the absence of site specific wind speed data. I note that Midlothian Council also felt able to establish a position on the planning merits of the case without such data. I am aware of no policy requirement for a minimum average on site wind speed or any particular electricity output figure. It is established that the commercial viability of any proposal is not a relevant matter to be assessed in deciding whether to grant planning permission.



5. The appellants now have access to over a year's site specific wind speed data and dispute that any conclusions can be safely drawn from average wind speeds from a variety of other sites in the general locality. I can conceive of no reasonable scenario where a project involving £24.8 million of capital expenditure would be built if such a project was not commercially viable. It is safe to assume that the benefits from the wind farm would be at least those normally considered to apply to any commercially viable wind farm with a capacity of 20.7 megawatts.

6. It is commonplace in any planning decision to have to balance predicted positive and negative impacts. There is always a degree of uncertainty in any planning decision and this uncertainty has to be resolved by exercising reasonable planning judgement.

## Reasoning

7. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.

## Development Plan

8. The development plan consists of the South East Scotland Strategic Development Plan approved on 27<sup>th</sup> June 2013 and the Midlothian Local Plan adopted in December 2008. The strategic development plan sets the strategic planning context for South East Scotland in order to inform the detailed policies in the local development plans. It includes policies relating to the protection of the environment and the provision of renewable energy. However, it was agreed at the hearing that these general policies did not assist in the detailed assessment of any individual wind farm proposal.

9. As is often the case, the Midlothian Local Plan includes policies that apply to a particular development type, such as a wind farm and general policies that would apply to any proposal, including a wind farm. Policy NRG 1 relates to renewable energy projects and states that proposals will be permitted provided that 9 criteria can be met. These criteria relate to a range of matters including impact on designated sites, residential amenity, landscape and visual impact and the impact on a variety of nature conservation interests. There was agreement that this approach was consistent with the overall objective of the development plan which was to ensure that development took place in an environmentally acceptable manner.

10. Criterion G of Policy NRG 1 states that a proposal should also comply with any other relevant policies of the local plan. There are a wide range of potentially relevant policies. However, the most directly relevant policies referred by the main parties were Policies RP 6 and RP 7 (landscape matters), RP 10 – 13 (nature conservation matters) and RP 24 (listed buildings).

11. The submissions to the council and those made during the appeal process have raised a broad range of concerns. However, it seems to me from the submissions and discussion at the hearing sessions that the determining issues in dispute relate to landscape and visual impact, impact on residential amenity, impact on nature conservation interests and impact on listed buildings. I shall consider each of these issues in turn.

### Landscape and visual impact

#### *Methodology*

12. The submitted environmental statement contains a landscape and visual impact assessment prepared using a widely recognised methodology. Penicuik Environment Protection Association (PEPA) had a number of criticisms of the landscape and visual impact assessment, including that viewpoints were not representative, views are not experienced in isolation and that turbine blades move and therefore draw the eye.

13. My understanding is that the viewpoints were agreed with the council. I note that the addendum has an extended number of viewpoints. It is important to recognise that viewpoints are intended to be representative and obviously cannot include every position where the wind farm might be seen. The landscape and visual impact assessment included a variety of written and illustrative material. All the submitted material has to be properly interpreted and assessed in the field. This includes making allowance for the fact that turbine blades will rotate. I am satisfied that the submitted landscape and visual impact assessment contains sufficient information upon which to make a decision.

#### *Landscape impact*

14. Landscape effects relate to the changes to the physical characteristics and the perceptions of the landscape. In brief summary, the landscape and visual impact assessment concluded that the proposal would be read as consistent with the scale, pattern and character of the host environment. The turbines would not overwhelm or dominate. Significant impacts would be localised, which would be expected from any reasonable scale commercial wind farm development.

15. These conclusions were disputed by Midlothian Council, PEPA and those local residents who attended the hearing sessions. There were also a variety of concerns expressed by Scottish Natural Heritage, Scottish Borders Council (the neighbouring planning authority) and other local objectors in their written responses.

16. The main reason for the difference in opinion appears to me to relate to the considered scale of the landscape and the proposal. The scale of a landscape does not relate to any particular dimension. It is a descriptive term regarding the perception of relative size. Scale is important because viewers will use other landscape features as scale indicators to gauge the perceived size of a wind farm development. A proposal that is judged to be out of scale may appear visually dominant and excessively prominent.

17. Based on my own accompanied and unaccompanied site visits, I consider that defining the scale of the landscape in this instance is not a simple matter. I accept that within the general locality of the proposal there are landscape elements which are

frequently considered as attributes of a large scale landscape. However, there are also blocks of forestry and woodland that act as scale indicators. In addition, there is the important role played by both the Pentland Hills and Moorfoot Hills. These hill ranges can act as scale indicators in some views. I also agree with those who argued that where the wind farm is seen against the hills, the hill range's vertical scale is diminished. I consider that the 2007 and 2014 landscape capacity studies are correct to identify the two hill ranges as being important to the overall perception of the moorland fringes landscape character type and to highlight their importance as a factor to be satisfactorily addressed by a successful design. That does not mean that I consider that either landscape capacity study is definitive in defining an acceptable height or number of turbines.

18. In my judgement, the scale of a proposed wind farm is not just determined by the height to the tip of the turbines. It is also determined by the number of turbines and the turbine layout. Depending on the angle of the view, frequently the two lines of turbines are actually seen in the landscape as one single spread of turbines.

19. I consider that the combination of height, number and layout means that the proposal would be perceived as out of scale with the moorland fringes landscape character type. I consider that the landscape effect extends at least as far as is generally indicated by the applicant in CD 6.14. I believe it would be possible to perceive a new landscape character sub type, dominated by the wind farm, not only within this broad area but from the higher level viewpoints when looking down into the landscape, for example, viewpoints 12 and 15. This change does not respect the local landscape character and in my opinion would adversely and unacceptably affect the quality of the local landscape.

20. In the current local plan there is an Area of Great Landscape Value identified. This is shown in figure 6.1.25 of the environmental statement. It was explained to me that the council had reviewed its landscape designations and intended to replace the Area of Great Landscape Value with Special Landscape Areas, although in the vicinity of the site the actual changes to the extent of the designations are limited.

21. There is no direct landscape effect on the Area of Great Landscape Value (and the corresponding Special Landscape Area). There would be indirect effects. In particular, as stated above, the extent of the new landscape character sub type would be readily appreciated. However, I do not believe that the extent of the landscape impact upon either the Area of Great Landscape Value or the Gladhouse and Moorfoot Scarp Special Landscape Area is sufficient to amount to a significant adverse effect on these areas overall.

22. Also I cannot agree with those who argued that there would be a significant landscape impact on the Pentland Hills themselves, (as opposed to impacting on views of the Pentland Hills from the host landscape). Although the wind farm can be seen and I believe the landscape change detected from parts of the Pentland Hill ridge, I do not believe that it can be reasonably argued that this would have any significant effect on the defining characteristics of the Pentland Hills overall.

23. I accept that the site is not in a location where any wind farm would be unacceptable in principle. I accept that any wind farm would introduce tall vertical structures and therefore be noticeable in the landscape. I agree that the council's draft spatial framework

does identify the area as a possible location for a wind farm. However, this is caveated by the comments made in the Draft Supplementary Guidance – Wind Energy Development in Midlothian 2014. The draft supplementary guidance actually states, “*Very limited potential for turbines 50 m – 80 m but towards the lower end up to 6 turbines.*” This does not indicate to me that the council considers 6 x 80 metre turbines to be acceptable or that it accepts that the landscape can automatically absorb 80 metre turbines.

24. Overall, the design choices of the proposal in terms of height, number of turbines and layout have not minimised the landscape impact and I consider that it is out of scale with the receiving landscape. In my opinion, many of the criticisms of the design of the proposal regarding its dominance expressed by Midlothian Council, PEPA, local residents, Scottish Borders Council and Scottish Natural Heritage are well founded. In my judgement, the overall landscape impacts of the proposed wind farm are unacceptable.

### *Visual Impact*

25. The visual impacts of the proposal are closely related to the proposal’s effects on landscape character. My assessment of the representative viewpoints illustrates my concerns over the landscape impacts.

26. I believe that the view from viewpoints 1, 2, 4, 5 and 10 show a wind farm that by virtue of its height and spread, relative to the scale indicators of trees and the surrounding hill ranges would be perceived as out of scale and excessively prominent. Even the viewpoints at a greater distance such as viewpoints 12, 15, 16 and 17 (12 and 17 being representative of views from the Pentland ridge), in my opinion illustrate a wind farm that is excessively dominant. From these viewpoints I could not reconcile what I perceived from the submitted material with the descriptive words used on behalf of the appellant, such as “inferior” and “subservient”.

27. I note from Scottish Natural Heritage’s guidelines that careful attention should be paid to the impact on nearby residents, as they will experience a wind farm from different locations, at different times of the day, for longer periods and in different seasons. There are some 34 properties within 2 kilometres of the site. A wind farm that over dominated the landscape would be experienced in many cases from these properties and in all cases as they travelled about the locality. I consider this to be visually unfortunate.

28. Although figure 6.1.14 shows that visibility exists for the majority of the area within 10 kilometres of the site, I agree with the appellant that the actual extent of visibility on the ground is less. Actual visibility from settlements and the main road network is less than implied by figure 6.1.14 and would be intermittent in nature. However, I think it is important to understand how a tall structure is appreciated in the landscape. I also agree with PEPA, that a tall vertical structure is not just perceived from any one viewpoint in isolation. A wind farm does not have to be constantly in view for people to be aware of its presence.

29. Anyone travelling around the local road network surrounding the site (including local residents), those walking along the Pentland Hill ridge, and those seeing the wind farm from those locations represented by viewpoints 13, 15, 16 and 22, would see what I have identified as an out of scale wind farm. Even from viewpoint 19, which I accept in isolation

is not of itself significant, would nonetheless mean that many road users would be aware of the presence of the proposal.

30. I therefore consider that many people would be aware of the presence of a wind farm that I find to be out of scale. This would be visually unfortunate to the point where I consider the impacts are unacceptable.

### *Cumulative impact*

31. Based on my accompanied and unaccompanied site visits, I cannot agree with those who argued that there would be unacceptable cumulative landscape and visual impacts. The existing Bowbeat wind farm is approximately 8 kilometres from the proposal. At this distance I believe that the two wind farms would be clearly read as separate. Any difference in height between the two proposals would also be imperceptible at such a distance.

32. Cloich Forest and Hag Law wind farms are current proposals. I accept that if these were consented then from certain locations viewers would be aware of the presence of more wind farms. However, I agree with the appellants that the dominate impact is that of the Mount Lothian proposal itself. Whilst I have found that the landscape and visual impact of the proposal itself to be unacceptable, I consider that it is an exaggerated concern that the proposal, with or without Cloich Forest and Hags Law would create a wind farm landscape over an extended area of Midlothian/Scottish Borders.

33. The proposals for Cauldhall opencast coal mine seem uncertain. Planning permission has not been issued and at the hearing the council informed me that the developer was reviewing whether to proceed or not. In any event, the landscape and visual impacts from an opencast coal mine are of a completely different nature than from a wind farm. I accept that if both proposals were constructed or operated at the same time, careful consideration would be necessary in relation to certain cumulative impacts, for example lorry movements. However, the council would be in a position to manage these impacts through appropriate planning conditions. I find no reason why the development of a consented open cast coal mine, subject to appropriate conditions, should automatically preclude any environmentally acceptable wind farm proposal.

### *Conclusion*

34. For the reasons set out above, I find that the combination of height, number and layout results in a wind farm design that is out of scale with the receiving landscape. I consider that this results in a visually unfortunate proposal which would be perceived by many people. I conclude that the proposal would have an unacceptable effect on the wider environment by reason of its landscape and visual impacts, which would be contrary to criterion C of Policy NRG 1. For the same reasons, I believe the proposal would adversely affect the quality of the local landscape and would be contrary to Policy RP 7.

### Residential amenity

35. My understanding of criterion B of Policy NGR 1, following the discussion at the hearing session, is that a distinction should be made between the general landscape and

visual impacts that nearby residents might experience and the particular impacts on the amenity of an individual property, which may include residential visual amenity.

36. In terms of noise and shadow flicker, these matters were assessed in the submitted environmental statement. Subject to appropriate conditions I find that there is no reasonable basis for assuming that these impacts would be unacceptable.

37. I am aware that PEPA had concerns as to the accuracy of the noise predictions in the environmental statement and the possible adverse health consequences for nearby residents. The Assessment and Rating of Noise from Wind Farms (ETSU-R-97) is the framework that the Scottish Government expects wind farm designers and councils to follow. I am aware that not everyone agrees with ETSU-R-97. My understanding is that the noise limits set in ETSU-R-97 are not intended to make a wind farm inaudible. The limits are considered to be acceptable. Concerns over health effects in relation to noise from wind farms are in my experience frequently raised. Due to this frequency over many years I must assume that Scottish Ministers are also aware of such concerns. Nonetheless, Scottish Ministers have chosen to continue to recommend that ETSU-R-97 is the appropriate framework to follow.

38. I can understand the concerns expressed to me at the hearing and in the written representations from local residents regarding the changes to the outlook from their residential properties. However, it is an inevitable consequence of the Scottish Government's energy policy that in a relatively densely populated country, some residential properties are likely to be close to a wind farm.

39. A local resident does not have a right to a view. The concern over changes to property values is not of itself a relevant planning consideration. I agree with the appellant that for the impact of a wind farm development on the residential visual amenities of any one property (as opposed to the general landscape and visual impacts) to be sufficiently harmful to justify refusal, the impact must be unpleasantly overwhelming.

40. On my accompanied site visit I visited some of the closest properties to the wind farm. In my assessment, whilst visual impacts were clearly significant, I found none that could be described as unpleasantly overwhelming. I therefore find that the conclusions of the appellant's own study, that there would be significant effects for 23 out of the 34 properties within 2 kilometres but that none would be excessively dominating to be fair. Therefore, whilst I find that the general landscape and visual impacts are unacceptable and obviously these will be experienced by the local residents, I do not find any overwhelming impacts on the residential amenity of any individual property. I therefore conclude that the proposal would comply with criterion B of Policy NRG 1.

#### Nature conservation matters

41. PEPA, the council and some other representations considered that because of inadequacies in the various surveys the conclusions drawn in the environmental statement regarding potential impacts upon geese, osprey, bats and some other protected species could not be relied upon.



42. Some of these concerns over the methodologies used for some of the surveys were shared by Scottish Natural Heritage, Royal Society for the Protection of Birds and Scottish Wildlife Trust. However, the final response from Scottish Natural Heritage dated 28<sup>th</sup> March 2014 stated that the information was sufficient upon which to base a decision. Overall, and subject to appropriate conditions, which would include mitigation measures, the various potential impacts on nature conservation matters were not considered to be unacceptable. None of the above organisations with a special interest in nature conservation maintained an on-going objection in principle or elected to take part in the hearings. I note that the council chose not to exercise its power to request further information between the receipt of Scottish Natural Heritage's consultation reply in March and the appellant's decision to appeal against non determination in August 2014.

43. Therefore, on the basis of all the evidence before me, I cannot agree with those parties who argued that there would be a breach of criterion A (in relation to international, national or regional designations) or criterion I (flight paths of migratory birds) of Policy NGR 1. It therefore also follows that I find no breach of Policies RP 10 -13.

#### Listed buildings

44. On behalf of the occupier of Toxside, a grade B listed building, it was argued that the proposal would be detrimental to the setting of the listed building. I visited Toxside. I consider that the setting of the building mainly relates to the immediate surroundings of the existing curtilage. I do not consider that the setting extends to the wind farm site which is some 1.6 kilometres away.

45. I note that neither the council nor Historic Scotland found any unacceptable adverse impact on any heritage assets including listed buildings. I conclude that there is no breach of criterion A of Policy NRG 1 or Policy RP 24.

#### Other matters

46. Policy NRG 1 refers to a range of other matters including archaeology, tourism, grid connection, driver distraction and aviation. However, these matters have all been assessed in the submitted environmental statement and taken into account in the design of the proposal. I find that in relation to these other matters, there would either be no impacts, or subject to appropriate conditions, no unacceptable impacts.

#### Development plan conclusions

47. Overall, I conclude that the combination of height, number and layout of the turbines of the proposed wind farm results in a proposal that is out of scale and would produce unacceptable landscape impacts which would be experienced by many people. I find that this would be contrary to the objectives and policies of the development plan which seek to ensure environmentally acceptable renewable energy developments.

## Material Considerations

### Scottish Planning Policy

48. It is important that Scottish Planning Policy is read as a whole. It does introduce a policy presumption in favour of development that contributes to sustainable development. I have no doubt that a wind farm that had acceptable environmental impacts would be considered by the Scottish Government to be an example of development that contributes to sustainable development.

49. However, I do not consider that a wind farm that would have unacceptable landscape and visual impacts would be considered as development that contributes to sustainable development. Paragraph 202 states that *“the siting and design of development should take account of local landscape character.* It adds that *“...developers should seek to minimise adverse impacts through careful planning and design ...”* Paragraph 203 states that *“Planning permission should be refused where the nature or scale of proposed development would have an unacceptable impact on the natural environment.”*

50. I do not see how a development that was considered to have unacceptable landscape and visual impacts could be considered as well designed in outcome 1 or protect and enhance our natural assets in outcome 3. Likewise, a wind farm with unacceptable landscape and visual impacts would conflict with the principles in paragraph 29 regarding good design, protecting and enhancing natural heritage or protecting the amenity of existing development.

51. I do not doubt that the Midlothian Local Plan would be considered as out of date in terms of the guidance in paragraph 33. It was formally adopted some 7 years ago when there was different regional and national planning and energy policies. I therefore find that Scottish Planning Policy and its approach to wind farm development is a significant material consideration.

52. Paragraph 161 states that planning authorities should set out a spatial framework to guide developers following the approach set out in table 1. The site itself is not subject to any designations and the nearest village defined in the local plan is more than 2 kilometres away. It seems clear to me that the site is in group 3 – areas with potential for wind farm development. I note that the council's more recent draft spatial framework also identifies the site for some wind farm development.

53. Many of the matters listed in paragraph 169 that should be considered are similar to the considerations listed in Policy NRG 1. An important difference is that Scottish Planning Policy also states that the benefits of a wind farm should be considered.

54. The proposal would represent a capital expenditure of some £25 million which would have an economic benefit irrespective of where individual components would be sourced. Jobs would be created during construction and in the longer term for maintenance. The proposal has a generating capacity of just under 21 megawatts which would make an important contribution to Scottish Government targets, including reducing the generation of greenhouse gas emissions. It also has to be recognised that the extent of the proposal's

contribution to renewable energy generation is a function of both the size and number of the turbines.

55. Although this matter was debated in the submissions before me, it seems clear that the targets are not a cap. I am aware of no advice from Scottish Ministers suggesting that the threshold for acceptable wind farm proposals has changed due to the progress or otherwise in achieving the published targets.

56. The applicant and its development partner have made a commitment to source the wind turbine towers from a Scottish company. Although an absolute guarantee cannot be given, it is obviously preferable that components are sourced in Scotland than from elsewhere and I consider this commitment to be a benefit. Business rate contributions and land owner payments would also have overall economic benefits. Whilst some parties argued that the alternative route for the horse trail was poorly chosen, I consider that the provision of a new path is a benefit and I am sure that in practice a suitable route could be agreed.

57. The appellant has also proposed a community benefit fund which could include contributions to nearby colleges and the Penicuik Civic Society. Paragraph 173 of Scottish Planning Policy refers to the Scottish Government Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments. I note that this document states that community benefit funds are a voluntary undertaking and are not material considerations.

58. I have carefully considered the benefits of the proposal. However, paragraph 169 also refers to taking into account the landscape and visual impacts. As stated above, I have found them to be unacceptable. It seems to me that Scottish Planning Policy requires the decision maker to balance the benefits and adverse impacts of a proposal before reaching a decision. In my judgement, the adverse landscape and visual impacts that I and other parties have identified outweigh the benefits in this instance.

#### Landscape capacity studies

59. Landscape capacity studies can be useful tools in understanding the nature of impacts caused by wind turbines. They can be helpful in informing the preparation of spatial frameworks and identifying issues for designers to consider. However, they should not be given the attributes of detailed zonings of land for a particular number of turbines of a particular size.

60. Landscape character type boundaries are broad and cannot be treated as precise divisions of land. The wind farm typologies used in both the 2007 landscape capacity study and the 2014 landscape capacity study are also broad. For example, the 2007 study had 5 typologies. There would be a big difference in landscape and visual impact between type 1 – 21 x 90 metre turbines and the lower end of type 2 – 6 X 30 metre turbines. The 2014 study included a different mix of typologies, which mainly focused on height rather than numbers.

61. In my opinion, it would be impossible for any landscape capacity study to properly anticipate all the multiple impacts of the many factors that are involved in the design of a

wind farm. I do not consider that the conclusions of either study are determinative. The 2007 study has been reviewed and replaced by the 2014 study, which in any case might be subject to further change.

62. Nonetheless, a proposal for a 9 X 102 metre turbine wind farm exceeds the predicted capacity in both studies. This is consistent with my judgement that the proposal is out of scale with the surrounding landscape.

#### Midlothian Local Development Plan

63. At the time of the hearing sessions the proposed Midlothian Local Development Plan was about to be consulted upon. I understand that the council is still considering the comments received before submitting the plan for examination. It is therefore quite possible that the detailed policy wording of any relevant policies could change. The proposed plan also includes a spatial framework in figure 6.1 that identifies the site as a wind farm opportunity area. However, as indicated above this is caveated and I consider this matter below.

64. Notwithstanding any detailed changes that might occur, it seems to me that in general terms the Midlothian Local Plan, Proposed Midlothian Local Development Plan and Scottish Planning Policy are adopting similar approaches. The impacts of a proposal have to be balanced against the benefits. It is difficult to see how any likely local development plan policy would automatically support a wind farm that was considered to have unacceptable landscape and visual impacts.

#### Draft Supplementary Guidance 2014 – Wind Energy Development in Midlothian

65. I do not attach much weight to the draft supplementary guidance. Whilst it indicates the council's current thinking, it is subject to potential future changes. As indicated above, the spatial framework does indicate that the site may be suitable for a wind farm. However, as also indicated above, this is caveated. I do not believe it is a fair understanding of the council's position to suggest that it supports 6 X 80 metre turbines or that a height of 80 metres has been established as acceptable. It is clear to me, that at face value, the draft spatial framework and draft supplementary guidance do not provide support for a 9 X 102 metre turbine wind farm.

#### Other matters

66. In some of the submissions, various criticisms were made regarding the efficiency of wind farms and the wisdom of Scottish Government energy policy generally. I appreciate that not everyone agrees with Scottish Government planning and energy policy. Nonetheless, this is properly a matter for Scottish Ministers to determine and it is not appropriate for me to review Scottish Government policy in an individual appeal decision.

67. I am aware of decisions to refuse planning permission for two nearby proposed wind farms at Auchencorth and Spurlens Rig. However, each case must be considered on its merits and I see little in these cases that informs a decision for a different wind farm in a different location, aside from demonstrating that environmentally unacceptable wind farms should not be granted planning permission.

### Material consideration conclusions

68. I find that most of the relevant material considerations would support the refusal of planning permission for a wind farm with unacceptable landscape and visual impacts. However, it is also necessary to weigh the benefits of the proposal against these impacts. In my judgement, on this occasion, I find that the unacceptable landscape and visual impacts are not outweighed by the benefits of the proposal.

### Environmental impact assessment

69. As is required, the submissions included an environmental impact assessment describing the impact of the development on a range of matters. This had been prepared after consultation with the appropriate organisations. Following the formal submission of the application, further information and an addendum were prepared in response to various consultation responses.

70. There were a range of concerns expressed by some parties to some of the conclusions drawn by the appellant from all the submitted environmental information. Above I have set out my conclusions on the main areas of dispute. Overall, I am satisfied that aside from the landscape and visual impacts, there would be no other adverse significant effects on the environment that could not be mitigated by appropriate conditions and agreements. I have also identified the environmental benefits of the proposal in relation to the generation of renewable energy and the reduction of carbon emissions.

### **Overall Conclusions**

71. For the reasons set out above, I conclude that the combination of height, number and layout of the turbines would have unacceptable landscape and visual impacts. The proposal would therefore be contrary to the objectives and policies of the development plan to permit environmentally acceptable wind farms. The proposal does have a number of benefits which need to be considered. However, overall, in my judgement, the benefits do not outweigh the adverse landscape and visual impacts. I therefore conclude that there are insufficient material considerations which would justify granting planning permission in this instance. I have considered all other matters raised but there are none which would lead me to alter my conclusions.

*Dan Jackman*

Reporter

## Appeal Decision Notice

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Decision by David Liddell, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2031
- Site address: Land At Springfield Farm, Springfield Road, Penicuik, Midlothian, EH26 8PR
- Appeal by Springfield Energy Ltd against the decision by Midlothian Council
- Application for planning permission dated 1 May 2015 refused by notice dated 26 August 2015
- Development of two wind turbines of up to 35.5m height to tip and ancillary infrastructure, comprising foundations, crane hardstanding area, access track and underground cabling, and control box
- Application drawings: Figure 1.2 Planning Application Boundary; Figure 2.1 Site Layout; Figure 2.3 Wind Turbine Elevations; Figure 2.4 Control Box
- Dates of site visits by Reporter: 26 & 30 November 2015

Date of appeal decision: 8 December 2015

### Decision

I allow the appeal and grant planning permission subject to the 9 conditions listed at the end of the decision notice. I draw attention to the 3 advisory notes at the end of the notice.

### Preliminary Matter

1. I was asked, on behalf of one of the objectors to the proposal, to hold a hearing session to assist consideration of this appeal. I am satisfied, however, that the scope and extent of the written evidence (supplemented by my unaccompanied inspections of the site, the viewpoint locations and the surrounding area) is such that I can determine the appeal without the need for further procedures.

### Reasoning

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.

3. Having regard to the provisions of the development plan the main issues in this appeal are the landscape and visual impacts, including any cumulative impacts, of the proposal, its impacts on residential amenity and its benefits. I also take account of potential impacts on the nearby Auchencorth Moss Monitoring Station.



### *The development plan*

4. The development plan for this appeal comprises the South East Scotland Strategic Development Plan (SESplan) and the Midlothian Local Plan.

5. I have been referred to Policy 10 Sustainable Energy Technologies of SESplan. This requires the local development plans in the SESplan area to set a framework for the encouragement of renewable energy. This policy has very little direct relevance to individual development proposals like the one before me. It is therefore in assessing the proposal against the terms of the local plan that a judgement can be reached on whether it is in accordance with the development plan.

6. In refusing the planning application, the council refers to policies NRG 1 and NRG 2 of the local plan. Policy NRG 1 Renewable Energy Projects supports renewable energy development subject to a number of criteria. Policy NRG 2 provides support for individual wind turbines and micro-generation. Despite the appeal proposal (being neither a single turbine nor what would commonly be understood to be micro-generation) seeming to be out with the scope of policy NRG 2, both the council and the appellant consider that it is relevant. I am satisfied that policy NRG 2 was framed with small-scale proposals such as this one in mind, and its requirements are similar to those in policy NRG 1. I can therefore accept that policy NRG 2 is of relevance to the appeal.

7. A number of other local plan policies are of relevance. Policy RP 6 Areas of Great Landscape Value aims to protect the scenic qualities and integrity of Areas of Great Landscape Value (AGLVs). Policy RP 7 Landscape Character says that development which may adversely affect the quality of the local landscape will not be permitted. Policy RP 13 Species Protection sets out the requirements for proposals affecting protected species.

### *Material considerations*

8. My attention has been drawn to a number of other documents which are material considerations in this case. These include Scottish Planning Policy (SPP), the proposed Midlothian Local Development Plan (the LDP, which will in time replace the local plan), the 2014 Midlothian Landscape Wind Energy Capacity Study ('the 2014 study'), the predecessor 2007 Landscape Capacity Study for Wind Turbine Development in Midlothian ('the 2007 study'), the draft version of the council's supplementary guidance on wind energy development and the Landscape Technical Note prepared for the Main Issues Report of the LDP. The permission, recently renewed, for 30m high turbines at Rosemay Farm, a short distance to the south of the appeal site, is also a material consideration in this case.

### *The site*

9. The appeal site lies to the south of the complex of farm buildings at Springfield Farm. It is a fairly flat, rectangular field of improved grassland, currently used for the grazing of livestock. The field is bounded by stone walls, post and wire fencing and rows of mature trees. The field sits a little over 1 kilometre west of the A701, and a similar distance northwest of the small village of Leadburn.

### *The proposal*

10. The turbines would be a maximum of 35.5m high to blade tip. Served by a new track from the farm complex, they would be around 200 metres apart, one near the southeast boundary of the field and one near the northwest. Grid connection would be by underground cabling to the existing overhead power line which runs through the farm.

### *The 2007 and 2014 Studies*

11. There is some dispute about the landscape character of the vicinity of the appeal site. The council considers that is unclear, from the mapping in the 2007 and 2014 studies, whether the appeal site lies in the Lowland Moorland landscape character type (LCT) or in the Moorland Fringes. The council's view is that there are no features within the field which indicates which LCT it lies within. On balance, the council considers that the flat and expansive nature of the site and its environs is the dominant characteristic. This being indicative of the Lowland Moorlands, it is on the basis of that LCT which the proposal should be considered.

12. The appellant considers that the site is located within the Moorland Fringes. He contends that the aerial photography submitted with the proposal clearly shows the transition between the two LCTs, and he also points to the more settled nature of the area around the site in contrast to the moorland beyond.

13. On the basis of my site inspection, I find that the site is clearly more closely related to Moorland Fringes than to Lowland Moorland. The field is rectangular, of improved grassland, and bounded by stone walls and planted rows of trees. The fields to the northeast, southeast and southwest generally exhibit similar characteristics. It seems to me that the northwest boundary of the site, which is continued in an almost straight line for some distance in either direction, marks a very clear and obvious boundary between the open moorland lying generally to the west and the more settled landscape to the east. There is a further, smaller area of moorland to the east (Springfield Moss, which is under peat extraction) but this only serves to underline the fringe-like character of this area.

14. It is appropriate at this point to consider the advice in both the 2007 and 2014 studies. The council based its assessment largely on the 2014 study. This provides the most up to date guidance to inform decisions on wind turbine development in Midlothian. On the other hand, policies NRG 1 and NRG 2 refer to the 2007 study.

15. The 2014 study says that it represents strategic guidance, and that the impacts of individual development proposals should be considered on a case-by-case basis. Some flexibility on turbine heights may need to be applied close to the upper height thresholds used in the study. In areas close to the boundaries between LCTs, the advice relating to each relevant LCT ought to be considered.

16. I think it is prudent to approach the 2007 study in a similar spirit. However, the proposal (2 turbines of 35.5m height) does not easily sit within any of the 5 typologies used in the 2007 study. This reduces the extent to which it can provide clear advice relating to the proposal before me. Although I have regard to the 2007 study and note the appellant's



reservations about the 2014 study not having yet been the subject of consultation, I find the advice in the latter document to be more directly applicable to the appeal proposal.

17. In relation to views towards the Pentland Hills, the sensitivity assessment for the Moorland Fringes in the 2007 study says that tall turbines would affect the perception of the vertical scale and prominence of the hills, and could detract from the dramatic form of the northern Pentlands.

18. The study identifies the A701 as one of the roads which affords extensive and often dramatic views towards the hills, in particular where the full height of the northern Pentlands can be seen. It is stated that all typologies, but in particular taller turbines, could interrupt dramatic views to the hills from settlements and from the A701. In addition, turbines and other associated infrastructure could impact on elevated views from the hills.

19. Overall, the study assigns to the Moorland Fringes a landscape and visual sensitivity of medium-high, and there is limited capacity for turbine development. Turbines should be sited to avoid intrusion on key views of the northern Pentlands.

20. The sensitivity assessment for the Lowland Moorlands in the 2007 study says that single and small typologies could fit better at the transition with the Moorland Fringes. The descriptions of the constraints arising from potential impacts on views of the Pentlands are generally similar to those for the Moorland Fringes.

21. Overall, the study assigns to the Lowland Moorlands a medium-high landscape and visual sensitivity. The proximity to the Pentlands is a key constraint severely restricting scope for development. There is limited capacity, and turbines up to 30m high only could be accommodated at the transition with the adjacent Moorland Fringes. Impacts on key views of the Pentlands from roads and settlements should be avoided. There are very few locations which would avoid intrusion on such views.

22. The 2014 study identifies a 'smaller typology' of turbines between 30m and 50m high, including single turbines and small groups. In relation to the Moorland Fringes, there would be medium sensitivity to 30m-50m high turbines as these could fit better with landscape scale and minimise impacts on the Pentlands and views from surrounding settlements. However the accompanying mapping indicates that the appeal site is not within an area with potential for turbines of this height, nor even with potential for turbines below 30m height. This map is replicated in the proposed LDP.

23. In relation to the Lowland Moorland, it is said that these low-lying and open moorlands are important in the contrast they provide to the Pentlands which immediately backdrop them and which rise dramatically to create a highly scenic landscape composition. This relationship, and the potential impacts on views towards the hills and on an appreciation of their vertical scale, are a constraint to wind turbine development. There is said to be no scope to accommodate turbines higher than 30m. Smaller turbines should be located at the transition with the Moorland Fringes. The accompanying mapping does not show where this might apply and appears, in contrast, to indicate that there is 'no potential for wind turbines' in this area. I note that the only mapped area of Moorland Fringes with potential for turbines up to 30m high and which shares a boundary with Lowland Moorland is an area north of the Moorfoot Hills.

24. The 2014 study recommends a spatial landscape strategy for Midlothian. To avoid significant intrusion on key views to the Pentlands is one of the key strategic aims listed. Views from the A701 are said to be amongst the most spectacular.

25. In light of the above, the proposal would clearly run counter to the advice in the 2014 study, and to the draft supplementary guidance which it informs. Although I find a comparison with the 2007 study to be less helpful, on the face of it there is little support for the proposal there either. As I note above, however, the 2014 study advises of the need for individual proposals to be considered on their merits.

### *Landscape impacts*

26. Whilst I acknowledge that impacts on the landscape character of the Lowland Moorland must be considered, I have found that the distinction between the two LCTs is clear. The turbines would, when viewed, be very clearly understood to be part of the farmed and settled Moorland Fringes. The impact on the landscape character of the adjacent Lowland Moorland would be very low.

27. The turbines would be significantly higher than the adjacent trees, and higher still than the farm buildings at somewhat greater distance. They would not, however, overwhelm these features. The locations of the turbines, near the edges of the field, would accord with the ordered nature of this part of the Moorland Fringes. So too, in following the field boundary and then turning at a right angle to it, would the route of the access track. Although they would be locally prominent features, I therefore conclude that the turbines would not have a significant effect on the landscape character of the Moorland Fringes.

28. In relation to cumulative landscape impacts, I am satisfied that, other than the Rosemay turbines, the distances to other consented and operational turbines mean that no significant cumulative impacts, either landscape or visual, would occur. The information submitted by the appellant includes a plan showing the locations of the proposed Rosemay turbines and a photomontage of both proposals from viewpoint A at Leadburn. Both proposals would be fairly similar in size and would appear, from this location at least, to form a coherent and evenly-spaced array. They would have similar relationships with the surrounding landscape of fields, shelterbelts and farm buildings. Photomontages supplied by the Penicuik Environmental Protection Association (PEPA), albeit that the accuracy of these is criticised by the appellant, show similar effects from other locations, although the four turbines would not always appear so evenly spaced. In this context, and noting the relatively modest size of the turbines, there would be no significant cumulative landscape impacts.

29. The Pentland Hills AGLV currently extends as far as the minor road which runs along the northwest edge of Auchencorth Moss, being at closest approach around 1.8 kilometres from the appeal site. The AGLV includes the hills themselves, the policies of Penicuik House and the upper North Esk Valley. Noting the distance to the AGLV, its large extent, the presence of the intervening LCT of Auchencorth Moss and that the core of the AGLV is the upland landscape of the Pentland Hills, I am satisfied that any impacts on the AGLV would be negligible.

30. I therefore conclude that, in relation to its landscape impacts, the proposal would not cause a significant impact on the Pentland Hills AGLV or the Pentland Hills Regional Park. The scenic qualities and the integrity of the AGLV would not be affected. Impacts on the quality of the wider landscape would be very minor, the local character of which would be respected. In these respects, the proposal would therefore comply with policies RP 6, RP 7 NRG 1 and NRG 2 of the local plan. It would also comply with policies NRG 1 Renewable Energy and Low Carbon Energy Projects and ENV 7 Landscape Character of the proposed LDP, which have similar requirements to local plan policies NRG 1 and RP 7 respectively.

31. It is proposed in the LDP that the AGLV is renamed as a Special Landscape Area (SLA) and extended to include Auchencorth Moss and the area of Moorland Fringe in which the appeal site lies. The Landscape Technical Note issued in association with the Main Issues Report for the LDP describes and evaluates the proposed SLA. The council's third reason for refusing the application refers to policy ENV 6 Special Landscape Areas of the proposed LDP. This states that developments affecting Special Landscape Areas must not have a significant adverse effect on the special landscape qualities of any SLA.

32. In relation to my findings above, the core of the SLA would remain the Pentland Hills, and it would be slightly larger in extent. It would, however, include the appeal site. I find above that there would be no significant impacts on the landscape character of either the Lowland Moorland of Auchencorth Moss or the Moorland Fringes in which lies the appeal site. I therefore conclude that there would be no significant impact on the special landscape qualities of the SLA. In this respect, the proposal would satisfy the requirements of policy ENV 6 of the proposed LDP.

33. I address the scenic qualities of the SLA, in particular views towards it and from it, along with visual impacts below.

### *Visual Impacts*

34. The appellant is critical of the council's focus on the impacts of the proposal on views towards the Pentlands. However, on the basis of my site inspections and the written material before me, I agree that impacts on the generally westward and north-westward views towards the hills (from in and around Leadburn) are the critical visual impact which must be considered. From such locations, the flat expanse of Auchencorth Moss serves to underline the height and sculptural form of the hills which rise beyond. Further to the north or south (and of course from further west), the Pentlands would not appear directly behind the turbines. At greater distances from the turbines their visual impacts would generally be lesser.

35. In relation to this critical visual impact, the key consideration is the height of the turbines. This is what determines the degree to which they could appear to diminish the height and drama of the hills. The height of the turbines would also determine whether, and from what locations, they would appear to break the skyline rather than sit below it.

36. I acknowledge that the turbines would have an impact on such views towards the Pentlands. The photomontage for viewpoint A illustrates the likely effects, and there would be similar effects for around 1 kilometre as one approaches Leadburn when travelling north on the A701. Although the turbines would be prominent in the foreground they would

remain, except perhaps from a small number of locations, below the skyline. Although taller than the other landscape features nearby, they would not be dramatically out of scale. They would be clearly understood to be foreground features, distinct from and of an entirely different scale from the hills beyond.

37. I refer again to the consent, recently renewed, for the two 30m high turbines at Rosemay Farm. Although this consent has not been implemented (and may never be), some weight should be attached to it. Having regard to the cumulative photomontage supplied for viewpoint A, the impacts of the proposed turbines on views of the Pentlands beyond would likely be similar to the impacts of the consented Rosemay turbines. Although the Springfield Farm turbines would extend the lateral spread of turbine development, they would not appear, from in and around Leadburn, to be significantly higher than the Rosemay turbines. They would, as I find above, together comprise a cohesive group which accords well with the landscape character of their immediate surroundings. There would be similar cumulative impacts from the stretch of the A701 immediately to the south of Leadburn, although the positions of the Rosemay turbines would mean that these two would appear closer together.

38. Further south on the A701 (as illustrated in viewpoint B) intervening shelterbelts and woodland means visibility of the turbines when travelling north on this road would be very intermittent. I appreciate, of course, that trees which are present now may come to be felled in the future, but I have seen no evidence which would lead me to expect any significant change in the pattern of woodlands and shelterbelts in the area.

39. The visual impacts from the footpath on the former railway line to the east of Leadburn (represented by viewpoint G) would be similar to those at viewpoint A, although the greater distances from here to the turbines mean that they would appear significantly lower in relation to height of the hills beyond. The effects of the slight cutting in which the former railway (now the footpath) sits and the ruderal vegetation on the low embankment are such that, around the location of viewpoint G and on the stretch of the path north of here, views of the hills are often fully or partially obscured. There are, however, much more open and impressive views of the hills from further south along the path, for example from the interpretation board describing the peatland restoration here. It is clear that the turbines would impact upon such views, although to a lesser extent than from Viewpoint A and the stretch of the A701 to the south of it. The turbines would appear well below the skyline of the hills.

40. From further north on the A701 the topography and intervening vegetation means that the turbines would generally be less prominent than from in and around Leadburn. This is illustrated in viewpoints D and E. There would be clearer views from a more elevated stretch of the A6094 near Mosshouses. However, as viewpoint C shows, this southwest view has less drama than the views from around Leadburn, and the distance to the site is such that the turbines would appear smaller.

41. Viewpoint F, from the junction of the A766 and A702, illustrates the kind of visual impacts which could be experienced when looking east towards the turbines. From this particular location, the turbines would be minor features and there would be no significant impacts on this view towards the Moorfoot Hills beyond. Closer views would be available from the minor road which runs through Auchencorth Moss. Even at the nearest point at

around 1.8 kilometres distance, they would appear fairly modest in size and be associated with the settled landscape around Leadburn rather than the moorland in the foreground.

42. Notwithstanding the advice in the 2014 study, in my view the proposed turbines would have only a minor impact on views of the Pentlands, with other visual impacts being lesser still. Given their modest size, their distance, and that they would be visually associated with a fairly settled landscape, impacts upon views from the hills would be negligible. In respect of its visual impacts, the proposal would therefore comply with policies NRG 1, NRG 2 and RP 6 of the local plan. It would also accord with policies NRG 1 and ENV 6 of the proposed LDP, these having similar requirements.

### *Residential amenity*

43. Albeit that there may be impacts on the very attractive (and clearly valued) views of the Pentlands currently enjoyed from some properties, such impacts are commonly held not to be material planning considerations. The nearest houses (aside from the appellant's) are Rosemay farmhouse and Leadburn Manor. From the former, the turbines would be seen beyond the much closer consented Rosemay turbines. Leadburn Manor would be over 800m from the nearest turbine and, at such a distance, the relatively modest size of the turbines would mean that no significant adverse effects on overall residential amenity would be experienced. I draw the same conclusion for other houses which are further afield, including those in Leadburn village itself. No houses are within a distance of ten times the proposed rotor diameter, the distance beyond which the Scottish Government advises that shadow flicker effects are generally unlikely.

44. In relation to noise, the appellant's modelling of the likely noise emissions from the turbines predicts that, even allowing for cumulative effects with the Rosemay turbines, noise levels would not exceed the recommended limits in the 'simplified' method from 'Assessment and Rating of the Noise from Wind Turbines' (ETSU-R-97). The council has raised no concerns in respect of noise, and had not proposed any relevant planning conditions. However, in my view it would be prudent to set noise limits by means of a planning condition. Such a condition is anticipated in the appellant's noise assessment.

45. Overall, I am satisfied that there would be no significant impacts on residential amenity, thereby satisfying the requirements of local plan policies NRG 1 and NRG 2, and of policy NRG 1 in the proposed LDP.

### *Auchencorth Moss Monitoring Station*

46. Representations submitted to DPEA by the Natural Environment Research Council Centre for Ecology and Hydrology (NERC CEH) and Bureau Veritas raise concerns about the impacts of the proposal on the operation of the Auchencorth Moss Monitoring Station, located immediately to the west of the appeal site. A letter from the Scottish Government's Directorate for Environment & Forestry supports these comments.

47. The monitoring station is part of a UK network monitoring air quality. The site helps the UK meet its obligations to report to the European Commission on air quality, and is a site for research on exchange of pollutants and greenhouse gases with peat bogs. It also helps inform research and analysis into the effectiveness of public policy measures on air

quality. NERC CEH operate the monitoring station for the UK government and the devolved administrations. Bureau Veritas undertake monitoring at the station, and is the central management and coordination unit for the UK air quality network.

48. The measurements taken at the monitoring station are potentially sensitive to wake effects from wind turbines, to dust emissions and to the effects of construction activities. The representations request that turbine 2 (the westernmost of the 2) is relocated away from its location to the south (and generally downwind) of the monitoring station, that the access track is surfaced in a material which would minimise dust, and that NERC CEH is informed as to the dates of any construction activities.

49. Following these comments, the appellant's agent discussed these matters with NERC CEH and proposed that turbine 2 be located at the eastern extent of the planning application boundary, which provides a 15m allowance for micro-siting. The subsequent email exchanges between these parties indicate that NERC CEH agree that this would 'minimise' any impacts on the monitoring station and that it is content with this solution.

50. Although the appellant expects that use of the access track for the turbine would be very low, he has agreed with NERC CEH to grass seed the track post construction, and maintain it in such a condition thereafter.

#### *Other potential impacts*

51. In relation to impacts on bats, the appellant states that the turbines would, in accordance with best practice, be no closer than 50 metres from any trees. I note that the Wildlife Information Centre, which provides a screening service for the council on planning applications, is satisfied that sufficient information in relation to bats was submitted with the application. The Wildlife Information Centre did not raise any other concerns about the proposal, including impacts on geese – an issue raised by objectors. In this context, I conclude that there would be no significant impacts on biodiversity or on protected species, and that the requirements of local plan policy RP 13 would be satisfied.

52. I am aware that a proposed wind farm on Auchencorth Moss was dismissed at appeal several years ago, however that was a proposal for many more, much larger, turbines. I also note concerns about setting a precedent for future turbine development, but I must determine the appeal on its own merits. The point is also made that there are sufficient wind farms already consented to meet Scottish Government targets. However, SPP does not indicate that these targets are to be taken as a cap on further development. Given my findings in respect of landscape and visual impacts, I see no reason to conclude that there would be significant impacts on tourism.

#### *The benefits of the proposal*

53. The proposed turbines would have a rated capacity of 100 kilowatts each. Based on site-specific wind data, the appellant anticipates an average annual output of 587.4 MegaWatt hours. It is stated that this would offset the emission of 205 tonnes of carbon-dioxide annually, and would be the equivalent of supplying electricity for 116 homes. This would amount to a fairly modest, yet still notable, benefit in relation to the generation of renewable energy and the associated reduction in greenhouse gas emissions. Objectors

have questioned the assumptions behind these figures. Even if the benefits are less than as stated above, the proposal would still contribute to targets for renewable energy production and the reduction of greenhouse gas emissions.

54. I also acknowledge the benefits to the farm business of the regular and long-term income stream which the turbines would provide. This may help the appellant develop the proposed 'farm park' visitor and education centre, although I give this particular benefit little weight given the early stage this project has reached.

55. The appellant points to support in SPP for renewable energy, whilst objectors take the view that the impacts of the proposal mean that it would be contrary to SPP. In light of my conclusions above, I find that the proposal draws support from SPP including, given that it would produce renewable energy and have very modest visual and other impacts, from the presumption in favour of development which contributes to sustainable development.

## Conclusion

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

57. I have considered all other matters raised, none which alter my conclusions.

58. The council has proposed that only 1 condition be attached, securing restoration of the site at the end of the life of the turbine. The appellant is content with such a condition, and I agree that it is necessary to ensure restoration of the site. I have also, in accordance with standard practice for wind turbine development, imposed a condition limiting the duration of the permission to 25 years. Consequently, I have added a time limit condition, as the standard duration of a planning permission that is imposed by section 58(1) of the Town and Country Planning (Scotland) Act 1997 does not apply to temporary permissions.

59. Given that the final turbine specifications have not been confirmed, there should be a condition requiring that these be agreed with the council beforehand. As noted above, it is also appropriate to have a condition controlling noise levels. Conditions are also required to cover the matters agreed between the appellant and NERC CEH. Finally, a condition can ensure that the Ministry of Defence is, as they request, notified of the construction of the development and the final turbine positions.

*David Liddell*

Reporter

## Conditions

1. The development shall be begun no later than three years from the date of this permission.

*(Reason: in accordance with section 58(4)(c) of the Town and Country Planning (Scotland) Act 1997.)*

2. The permission hereby granted shall endure for a period of 25 years from the date of first commissioning of the turbines. Written confirmation of the date of first commissioning shall be provided to the planning authority within one month of that date.

*(Reason: to define the duration of the consent.)*

3. In the event that either turbine is no longer required, or where it has been non-operational for a continual period of at least 12 months, then the turbine shall be decommissioned and all parts of the turbine removed from the site, including all foundations cabling and transformers, and the site returned to its condition immediately prior to commencement of the development.

*(Reason: to ensure that the site is returned to an acceptable condition in the event that the turbines are no longer required.)*

4. No development shall commence until full details of the proposed wind turbines have been submitted to and approved in writing by the planning authority. These details shall include:

- i. The make, model, design, power rating and sound power levels of the turbines; and
- ii. The external colour and/or finish of the turbines.

Thereafter, development shall progress in accordance with these approved details unless otherwise agreed in writing by the planning authority.

*(Reason: in the interests of visual and residential amenity.)*

5. Turbine 2 shall be located 15 metres to the east of the location shown in the approved drawings.

*(Reason: to minimise impacts on the Auchencorth Moss Monitoring Station.)*

6. The new access track shall be grass seeded within one month of the final commissioning of the wind turbines (or within an alternative period of time previously agreed in writing by the planning authority). Full details of the means of construction of the track, and of its maintenance following completion of the development, shall be submitted to and agreed in writing by the planning authority prior to the development commencing. Thereafter the track shall be constructed and maintained in accordance with the approved details.

*(Reason: to minimise impacts on the Auchencorth Moss Monitoring Station.)*

7. No development shall commence until the developer has provided, in writing, the Natural Environment Research Council Centre for Ecology and Hydrology with the dates that construction will commence on site and is expected to be complete.

*(Reason: to minimise impacts on the Auchencorth Moss Monitoring Station.)*



8. No development shall commence until the developer has provided the Ministry of Defence with the following information in writing:

- i. The dates that construction will commence on site and is expected to be complete;
- ii. The maximum height of each wind turbine and construction-related equipment (such as cranes); and
- iii. The latitude and longitude of each wind turbine.

*(Reason: in the interests of aviation safety.)*

9. Noise from the wind turbines shall not exceed 35dB <sub>LA90 (10 min)</sub> at the boundary of the curtilage of any noise sensitive property at all times at wind speeds of up to 10 metres per second as measured within the site. In the case of properties where the occupier has financial involvement in the wind turbines, noise limits may be increased to 45 dB <sub>LA90 (10min)</sub>.

*(Reason: to protect noise sensitive receptors from unacceptable noise levels.)*

### Advisory notes

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

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

3. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).

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Notice of Intention by Michael J P Cunliffe, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2030
- Site address: Land North and South of Lasswade Road, Eskbank, Dalkeith
- Appeal by Gladman Developments Limited against the failure of Midlothian Council to issue notice of their decision on an application
- Application 14/00420/PPP for planning permission in principle dated 14 June 2014
- The development proposed: Planning permission in principle for residential development with open space, access roads, car parking and associated facilities
- Application drawing: Site location plan (130529 Larkfield Site Boundary)
- Date of site visit by Reporter: 8 October 2015

Date of notice: 15 December 2015

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## Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the conditions listed below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, covering the matters listed in paragraph 43.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are housing land supply, the effects of the proposed development on the character of the surrounding area and on green belt objectives, the availability of infrastructure, and the provisions of the Proposed Midlothian Local Development Plan.

### *The site and the proposed development*

2. The site comprises 7.8 hectares of agricultural land split between two parcels to the north and south of Lasswade Road (A768) on the western edge of Eskbank. The more northerly parcel (Larkfield West, 5 hectares) is bounded by existing housing to the east, mature woodland to the north, and the A7 to the west. The more southerly parcel (Larkfield South, 2.8 hectares) is bounded to the west by the A7, with woodland to the east providing a buffer from existing housing and from parkland to the south. Lasswade Road joins the A7 at a roundabout to the west of the combined site.

3. Both sites are generally level, although to the northern edge of Larkfield West the land begins to slope gently towards the River North Esk. The parcels of land are lined by large hedgerows on the edges bordering roads. In Larkfield South a strip of woodland separates it from the existing residential area to the east, while Larkfield West is bounded by woodland to the north. A line of electricity pylons runs from north to south near the eastern boundary of the combined site. Larkfield West is located within the boundary of the Melville Castle designed landscape, which is included in the Inventory of Gardens and Designed Landscapes in recognition of its national importance. The site lies to the south of the River North Esk and is separated from the core designed landscape around Melville Castle by the A7 bypass to the west.

4. The proposed development would provide up to 120 dwellings, of which 25 per cent would be affordable; associated infrastructure and engineering works, including new vehicular accesses from Lasswade Road; formal and informal public open space; and landscaping and boundary treatments. While the application is for planning permission in principle, the appellant has submitted a masterplan showing a possible layout of the development. This shows the main part of the development on the Larkfield West site, with both sites separated from the A7 and Lasswade Road by dense planting of trees.

#### *The development plan*

5. The development plan comprises the SESplan strategic development plan (SDP) approved by Scottish Ministers in June 2013 and the Midlothian Local Plan adopted in 2008. SESplan Policy 5 (Housing Land) identifies a requirement for sufficient housing land to be allocated so as to enable 107,545 houses to be built across the SESplan area in the period 2009 to 2029, of which 74,835 houses are required for the period 2009 to 2019. Supplementary guidance was adopted in October 2014 to provide detailed further information for local development plans (LDPs) as to how much of that requirement should be met in each of the six council areas. This states the housing land requirement for Midlothian for 2009-2019 as 8,080 units, with a further 4,410 units between 2019 and 2024. The site is within the A7 / A68 / Borders Rail Corridor Strategic Development Area (SDA) identified by SESplan.

6. SESplan Policy 6 (Housing Land Flexibility) requires each planning authority in the SESplan area to maintain a five years' effective housing land supply at all times. The scale of this supply is to derive from the housing requirements for each area identified through the supplementary guidance provided for by Policy 5. For this purpose planning authorities may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the LDP.

7. SESplan Policy 7 (Maintaining a Five Year Housing Land Supply) states that sites for greenfield housing development proposals either within or outwith the identified SDAs may be allocated in LDPs or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria:

- a. The development will be in keeping with the character of the settlement and local area;
- b. The development will not undermine green belt objectives; and

c. Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

8. SESplan Policy 12 (Green Belts) requires local development plans to define and maintain green belts around Edinburgh and to the south-west of Dunfermline to:

- a. Maintain the identity and character of Edinburgh and Dunfermline and their neighbouring towns, and prevent coalescence, unless otherwise justified by the local development plan settlement strategy;
- b. Direct planned growth to the most appropriate locations and support regeneration;
- c. Maintain the landscape setting of these settlements; and
- d. Provide opportunities for access to open space and the countryside.

Local development plans will define green belt boundaries to conform to these purposes, ensuring that the strategic growth requirements of the SDP can be accommodated. LDPs should define the types of development appropriate within green belts.

9. In the local plan, the most relevant policy is Policy RP2 (Protection of the Green Belt). This states that development will not be permitted in this area unless it is essential for the furtherance of agriculture, horticulture, forestry, outdoor sport or outdoor recreation, or is related to other uses appropriate to the rural character of the area. Policy RP4 (Prime Agricultural Land) states that development will not be permitted which leads to the permanent loss of prime agricultural land (Macaulay Classes 1, 2 and 3.1) unless the site is allocated to meet Structure Plan requirements, or there is a locational justification for the development which outweighs the environmental or economic interests served by retaining the farmland in productive use.

### *National policy*

10. Scottish Planning Policy (SPP) introduces a presumption in favour of development that contributes to sustainable development (paragraph 27). The presumption in favour of sustainable development does not change the statutory status of the development plan (paragraph 32). Where the relevant policies in the development plan are out of date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.

11. SPP (paragraph 125) makes it clear that where a shortfall in the 5 year effective housing land supply emerges, then development plan policies for the supply of housing land will not be considered up-to-date. Planning authorities are encouraged to actively manage the housing land supply to ensure that a generous supply of land for house building is maintained and there is always enough effective land for at least 5 years.

12. SPP (paragraph 34) addresses the issue of prematurity. Granting planning permission would prejudice an emerging development plan only where a development is so substantial, or its cumulative effect would be so significant, as to undermine the plan

making process. This would occur by pre-determining decisions about the scale, location or phasing of new developments that are central to the emerging plan. The issue of prematurity will be more relevant the closer the emerging plan is to adoption or approval.

13. The National Planning Framework (NPF3) also promotes the need to ensure a generous supply of housing land in sustainable locations where people want to live. In paragraph 2.5 it notes that the recent financial climate has reduced the amount of new house building and so envisages a significant increase in house building to ensure that housing requirements are met across the country. Specific mention is made of the SESplan area where greater and more concerted effort is required to deliver a generous supply of housing land.

### *Housing land supply*

14. The Midlothian Housing Land Audit 2014 is the most recent available. It shows that the 5-year effective housing land supply position at 31 March 2014 was 4,351 units. On the appellant's calculations, the 5-year requirement derived from SESplan and taking account of completions was 5,030 units leaving a shortfall of 679, without any generosity allowance. However, SPP (paragraph 116) requires housing supply targets to be increased by 10 per cent to 20 per cent to ensure a generous supply. On that basis, the supply would meet 87 per cent of the requirement with no generosity allowance, 75 per cent with a 10 per cent allowance, and 65 per cent with a 20 per cent allowance.

15. The council's response is to increase the supply figure by adding in programmed completions on sites allocated in the Proposed Midlothian LDP. Over the period 2014-19 these additional completions would amount to 1,085 units bringing the total to 5,436 and thus providing a 5 year supply including a generosity allowance (which I calculate as 8 per cent). However, the council's additional figures include completions of 160 houses in 2015-16 and 273 houses in 2016-17. The Proposed Midlothian LDP has not yet been submitted for examination. The council estimates that this will happen in March or April 2016. It would therefore be very late in 2016, at the earliest, before the plan could be adopted. If planning permissions for sites allocated in the plan (which include the appeal site) had to await its adoption, it would not be possible to achieve the 2015-16 and 2016-17 completions envisaged by the council.

16. SESplan Policy 6 requires the council to maintain a five years' effective housing land supply **at all times** (my emphasis). Planning Advice Note 2/2010, paragraph 45, states that housing land audits are the established means for monitoring housing land. Having regard to the most recent audit, I find that at the present time this requirement is not being met in Midlothian. SESplan Policy 7 therefore applies. This supports the granting of planning permission for greenfield housing development proposals, subject to satisfying each of the criteria listed in paragraph 7 above. I shall consider the criteria in turn.

### *The character of the settlement and local area*

17. The sites consists of two agricultural fields lying between existing modern residential development and the A7 road. The effect of the proposed development would be to extend the settlement of Eskbank westwards to the A7. Residents of existing houses to the east of the more northerly site would find that their outlook to the west would change from agricultural land, to built development. Residents east of the southerly site would be less

aware of this change provided the existing belt of mature trees, which provides effective screening, was retained.

18. Trees and hedgerows are important features of the surrounding landscape, including the river valley and main roads, and should be retained and enhanced. This would be possible with sensitive detailed design. I note the council's concern that the indicative masterplan shows houses being built close to existing woodland, with possible adverse effects on the latter. These effects could, however, be avoided through planning conditions requiring further approval of layout and landscaping. There is no inherent conflict between the principle of residential development and the character of the surrounding area, though it might not prove possible to accommodate as many as 120 units while protecting woodland features.

19. On the specific question of the Melville Castle designed landscape, I note that Historic Scotland (now succeeded by Historic Environment Scotland) did not object to the proposal, but commented that the woodlands of the designed landscape provide some scenic value from the surrounding roads and that new woodland planting would both reinforce this landscape character and screen the development from view. It recommended that careful consideration be given to the selection of trees for the new shelterbelts, and that a similar mix of broadleaves and conifers should be used (for example, lime, beech, Scots pine, etc) which would match the species composition of the existing mature policy woodland to the north of the development site. This would reinforce the designed landscape character of the new shelterbelts.

### *Green belt objectives*

20. The second criterion of SESplan Policy 7 is that the development will not undermine green belt objectives. SESplan Policy 12 sets out objectives for green belts to be defined in LDPs. The first is to maintain the identity and character of Edinburgh and Dunfermline and their neighbouring towns, and prevent coalescence. The proposal would not impact on the identity and character of Edinburgh, whose built-up area lies about 2 kilometres to the north and which would continue to be separated from Dalkeith/Eskbank by a broad corridor of undeveloped land. There would be a slight westward extension of Eskbank, but I consider that the A7 would represent a more natural and defensible boundary than the existing western edge of development, particularly at Larkfield West. The land to the west across the A7 is used as a golf course, and coalescence with Lasswade would not arise.

21. The second green belt objective is to direct planned growth to the most appropriate locations and support regeneration. Redevelopment of brownfield sites to support regeneration is a priority, but there is simply not enough brownfield land to accommodate the additional housing requirements identified in SESplan. Some greenfield sites will need to be developed. The proposal represents a logical extension of Dalkeith/Eskbank and, subject to infrastructure capacity, would be an appropriate location for new residential development.

22. The third green belt objective is to maintain the landscape setting of existing settlements. As noted above, the landscape setting of Eskbank to the west is to a large extent defined by trees and hedgerows and by the Esk Valley. Subject to retention of these features and sensitive detailed design, the landscape setting would be maintained.

23. The fourth green belt objective is to provide opportunities for access to open space and the countryside. The remaining green belt would continue to fulfil this function if the development took place. The existing use of the site for arable farming limits its recreational potential, and the objective would be maintained through other opportunities in the surrounding area. Taking all four objectives into account, I consider that the proposal would not undermine green belt objectives.

### *Infrastructure*

24. Road access to both parts of the site would be taken from Lasswade Road. The council's Policy and Road Safety Manager raised no objection, but would require to approve the details of access and parking, measures to reduce the current speed limit on Melville Dykes Road, and the provision of gateway features on Melville Dykes Road. (I observe that at different points along its length, the A768 appears to be known both as Lasswade Road and Melville Dykes Road. The section onto which the development would take access is already subject to a 30 mph speed limit.)

25. A scheme to improve pedestrian and public transport access on the adjacent sections of the A7 is currently being designed by the council. The first phase of this includes the provision of cycleways/footways on both sides of the section of the A7 running from Melville Dykes roundabout to the Bonnyrigg roundabout and the installation of two bus stops and pedestrian crossing points, with the reduction of the speed limit to 40 mph. The council's Policy and Road Safety Manager has advised that no residence on the appeal site be occupied before the first phase is complete.

26. There is currently a lack of school capacity in the area, but this could be remedied with the support of developer contributions. An extension would be required at either King's Park Primary School or Woodburn Primary School to provide additional capacity for this development. St David's RC Primary School is at or near capacity from committed developments in the Dalkeith area, and an extension may be needed. Again, developer contributions would be required. A significant amount of new housing has already been allocated to Dalkeith High School and an extension to that school would be required. A contribution to St David's High School would also be necessary.

27. The appellant has confirmed with Scottish Water that the development could be supplied with fresh water and foul drainage from existing networks. Surface water would require to be managed through sustainable drainage systems (SuDS). Consultation with the Scottish Environment Protection Agency (SEPA) has confirmed that the principles for a SuDS strategy, as set out in the documentation supporting the application, are acceptable. Details would be a matter for subsequent approval. SEPA raised no objection to the proposal on flood risk grounds.

28. It therefore appears to me that, subject to requirements that could be set out in planning conditions, and subject to financial contributions secured by a planning obligation, the proposal would meet the test that any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

### *Compliance with SESplan Policy 7*

29. For the reasons set out above, I consider that the proposal meets the requirements of SESplan Policy 7 and is consistent with the strategic development plan.

### *Midlothian Local Plan*

30. The adopted 2008 local plan locates the site within the green belt. Policy RP2 therefore applies. Since the proposal is not for a type of development listed in the policy, it would not comply. Policy RP4 restricts development which would lead to the permanent loss of prime agricultural land. The land has a Macaulay classification of 2, and is therefore of prime quality. However, SESplan sets a requirement for housing land which will inevitably require greenfield development, and I note that the council in the Proposed LDP has reached the view that there is a locational justification to develop the site for housing, implying that it considers the case for continuing agricultural use to be outweighed. I agree with that conclusion, and regard the proposal as acceptable in terms of Policy RP4.

### *Overall conformity with the development plan*

31. While the proposal would not conform with the adopted local plan, this plan is over seven years old, was prepared in the strategic context of the superseded structure plan, and cannot be considered up to date. I have found that the proposal would be consistent with SESplan, and take the view that the latter should outweigh the local plan. The proposal would therefore accord overall with the relevant provisions of the development plan.

### *Proposed Midlothian Local Development Plan*

32. The appeal site is allocated for housing development in the proposed plan. The Larkfield West site (Hs2) is shown as having an indicative capacity of 60 houses, and Larkfield South (Hs3) as accommodating 30-40 houses. If these allocations are confirmed, the land would be removed from the green belt, whose boundary would be moved to the A7. I note that the combined capacity of the site as shown in the proposed LDP is slightly less than that envisaged in the appeal proposal, but the final numbers would be a matter for detailed design and approval.

33. While the council therefore supports the principle of the development, it considers the application premature since there are representations against the allocation of the land for housing, which it considers need to be resolved through the LDP examination process, and road infrastructure improvements along the A7 corridor are considered necessary before the development could be occupied.

### *Sustainable development*

34. SPP sets out a presumption in favour of development that contributes to sustainable development. Where the relevant policies in the development plan are out of date, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Where a shortfall in the 5 year effective housing land supply emerges, then development plan policies for the supply of housing land will not be



considered up-to-date. The adopted local plan is over 7 years old, and there is a substantial shortfall in the supply of housing land.

35. SPP states that the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. Guiding principles include giving due weight to net economic benefit; supporting good design and the qualities of successful places; supporting delivery of accessible housing, business, retailing and leisure development; supporting delivery of infrastructure, including transport; supporting climate change mitigation and adaptation; protecting, enhancing and promoting access to cultural and natural heritage; and avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

36. The proposal would provide net economic benefit through construction employment and increased demand for local shops and services. Good design and successful place-making would be matters to be addressed at the detailed planning stage. The houses would be accessible, being within reasonable walking and cycling distance of bus and rail public transport. Necessary additional infrastructure would be provided. Climate change mitigation would involve balancing energy-efficient house design against the generation of additional road traffic, while adaptation would include provision of SuDS to control run-off. There would be a slight reduction of landscape quality. There would be a small loss of prime agricultural land, which SPP (paragraph 80) seeks to protect but which, as discussed in paragraph 30 above, I consider justifiable. There would be a slight loss of amenity for the residents of some existing houses.

37. There are therefore both positives and negatives, but I conclude that the former outweigh the latter and the proposal would be broadly consistent with the principles of sustainable development. It therefore derives support from SPP.

### *Prematurity*

38. Paragraph 34 of SPP states that, where a plan is under review, it may be appropriate in some circumstances to consider whether granting planning permission would prejudice the emerging plan. It further states that such circumstances are only likely to apply where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan. While the Proposed Midlothian LDP allocates the site for housing development, it has not yet been submitted for examination. It is the council's position that to approve the present proposal would be premature in these circumstances.

39. SPP states that the issue of prematurity will be more relevant the closer an emerging plan is to adoption or approval. In the case of the Midlothian plan, it appears to me that adoption is at least a year away. I accept that there is an argument that the representations against the inclusion of the site should be examined before the allocation is confirmed. However, in the meantime the requirements of SPP and SESplan for there to be a five years' effective housing land supply at all times are not being met. The appeal proposal would contribute land for up to 120 houses which would help to address the requirements for the period up to 2019. This would be a useful addition to supply, but not one that would

undermine the plan's strategy (with which it is consistent) or preclude other housing sites. It would not in my view undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan. In terms of SPP, I do not therefore consider the granting of planning permission in principle in this case to be premature.

### *Effectiveness*

40. PAN 2/2010 – Affordable Housing and Housing Land Audits sets out in paragraph 55 seven factors to be assessed in determining whether a potential housing site is effective. In terms of ownership, the appellant is understood to have agreements with the owners that would enable development to proceed. The site is free from constraints related to slope, aspect, flood risk, ground stability or vehicular access which would preclude its development. Previous use has not resulted in contamination of the site. There would not be a requirement for deficit funding. In terms of marketability, the site can be developed in the period to 2019 and no difficulty in selling houses is anticipated. Any required infrastructure can be provided realistically by (or with financial contributions from) the developer to allow development. In terms of land use, factors such as ownership and marketability point to housing being a realistic option. The site can therefore be considered effective.

### *Representations*

41. The proposal attracted five letters of objection. The matters raised include some that are not material planning considerations (concerning land ownership as it affects any link paths, and whether the existing medical practice in Dalkeith has spare capacity to meet the demand that would be generated by the development). Other matters such as the loss of greenfield land I have dealt with above. Concerns about road traffic and road safety have been considered by the council's Policy and Road Safety Manager, who raised no objection subject to conditions. Public transport improvements will be provided by the measures being undertaken by the council, including provision of bus stops on the A7. Concerns about drainage capacity do not appear to be supported by Scottish Water. Planting of trees can be secured by condition. The nature and scale of the proposed development is unlikely to generate extraordinary noise and disturbance during periods of construction. Protection of residents of the new houses against noise nuisance from traffic on the A7 can be addressed through detailed design.

### *Conditions and planning obligation*

42. The council has proposed a set of draft conditions, which are generally acceptable to the appellant and form the basis for the conditions listed below. I have omitted the council's proposed Condition 1, since the submitted masterplan is only illustrative and does not form part of the proposal for which planning permission in principle is sought. I have added the condition sought by the council's Policy and Road Safety Manager (see paragraph 25 above).

43. The matters to be covered by the planning obligation, as proposed by the council and agreed by the appellant, are as follows:

- (1) Provision of affordable housing.

- (2) A financial contribution to the Border rail line.
- (3) A financial contribution to the A7 urbanisation scheme.
- (4) A financial contribution to resolve educational capacity constraints.
- (5) Provision and future maintenance of open space and landscaping.

### *Conclusion*

44. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission in principle, subject to conditions and the completion of a planning obligation to address the matters specified in the previous paragraph.

45. I will accordingly defer determination of this appeal for a period of 3 months to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 3 month period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

*Michael J P Cunliffe*

Reporter

### **Conditions**

1. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each residential phase of the development, the provision of affordable housing, the provision of open space, structural landscaping, sustainable drainage systems (SuDS) provision and transportation infrastructure. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

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

2. Development shall not begin on an individual phase of development (identified in compliance with Condition 1) until an application for approval of matters specified in

conditions for a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- a. existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
- b. existing trees, landscaping features and vegetation to be retained, removed, protected during development and in the case of damage, restored;
- c. proposed new structural landscaping, which shall include shelterbelts along the west boundary of the site, and planting in communal areas and open space, including trees, shrubs, hedging and grassed areas. The tree planting within the shelterbelts shall comprise broadleaves and conifers including lime, beech and Scots pine;
- d. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- e. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- f. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed before the houses on adjoining plots are occupied;
- g. drainage details and SuDS to manage water runoff;
- h. proposed car park configuration and surfacing;
- i. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- j. proposed play areas and equipment;
- k. proposed cycle parking facilities; and
- l. an area of improved quality comprising at least 20 per cent of the proposed dwellings.

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

*Reason: To ensure the quality of the development is enhanced by landscaping and that it relates well to its setting.*

3. Development shall not begin on an individual phase of development (identified in compliance with Condition 1) until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential units and other structures 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 identified under Condition 2 (l). No building shall have an under-building that exceeds 0.5 metres in height above ground level. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

*Reason: To ensure the quality of the development is enhanced by the use of suitable materials and that it relates well to its setting.*

4. Development shall not begin on an individual phase of development (identified in compliance with Condition 1) until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle paths and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- a. existing and finished ground levels for all roads, footways and cycle paths in relation to a fixed datum;
- b. the proposed vehicular, cycle and pedestrian accesses into the site;
- c. the proposed roads (including turning facilities), footpaths and cycle paths including suitable walking and cycling routes linking the new housing with the local primary school and the rest of Eskbank;
- d. proposed visibility splays, traffic calming measures, lighting and signage;
- e. proposed construction traffic access and haulage routes;
- f. a residential Green Travel Plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
- g. proposed car parking arrangements;
- h. a programme for completion of the construction of access, roads, footpaths and cycle paths; and
- i. proposed on and off site mitigation measures identified by the residential Green Travel Plan submitted with the application.

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.*

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

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

Before any part of the site is occupied 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.*

6. Development shall not begin until an application for approval of matters specified in conditions for 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 in accordance with the approved details.

*Reason: To ensure the quality of the development is enhanced by the use of art and that it relates well to its setting.*

7. No development shall take place on the proposed site until the applicant has secured the implementation of a programme of archaeological works (evaluation) of at least 8 per cent of the proposed development site in accordance with a written scheme of investigation which has been submitted to and approved in writing by the planning authority.

*Reason: To ensure that the development does not result in the unnecessary loss of buried archaeological material.*

8. Development shall not begin until an application for approval of matters specified in conditions for bat and badger mitigation measures has been submitted to and approved in writing by the planning authority. The application shall include separate bat and badger surveys undertaken by suitably qualified ecologists. The bat and badger surveys shall cover the site and the plantation woodland bounding the site, and shall include recommended mitigation measures.

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

9. The existing woodland immediately to the east of the Larkfield South site and the existing woodland to the immediate north of Larkfield West shall be retained and shall be protected during periods of construction in accordance with BS5837: 2012 'Trees in relation to design, demolition and construction'.

*Reason: To safeguard existing woodland neighbouring the site which makes an important contribution to the landscape character and amenity of the area.*

10. The breeding bird mitigation recommended in section 5 of the Habitat & Protected Species Survey Report by Wardell Armstrong submitted in support of the application shall be carried out in full.

*Reason: In the interest of safeguarding breeding birds.*

11. No residential unit on the site shall be occupied before the completion of the first phase of the A7 urbanisation scheme comprising the provision of cycleways/footways on both sides of the section of the A7 running from Melville Dykes roundabout to the Bonnyrigg roundabout and the installation of two bus stops and pedestrian crossing points, with the reduction of the speed limit to 40 mph.

*Reason: In the interests of road safety and of ensuring that residents have safe and convenient access to bus services.*