



IMPACT OF NATIONAL PLANNING FRAMEWORK NO.4 (NPF4) ON UNDETERMINED PLANNING APPLICATIONS WHICH ARE THE SUBJECT OF A PLANNING OBLIGATION

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek the Committee's agreement that planning applications, considered prior to the adoption of National Planning Framework No. 4 (NPF4), that have a 'minded to grant' decision and are subject to the completion of a planning obligation are progressed to conclusion without referral back to the Committee or Local Review Body (LRB).

2 BACKGROUND

- 2.1 At its meeting of 28 February 2023 the Committee considered a NPF4 update report which advised; on 11 January 2023 the Scottish Parliament approved NPF4, which was then adopted and published by Scottish Ministers on Monday 13 February 2023. NPF4 along with the Midlothian Local Development Plan (MLDP), which was adopted on 7 November 2017, forms the statutory development plan for Midlothian.
- 2.2 Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (by the 2006 Planning etc. Act and The Planning (Scotland) Act 2019) states: "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise". NPF4 is part of the development plan, along with the MLDP and as such both documents provide the policy position against which planning applications and other applications made under the planning Acts are assessed.
- 2.3 As NPF4 is a more recent document than MLDP, and as such is seen as being more up to date, where there is an incompatibility in policies between NPF4 and MLDP, NPF4 will carry more weight in the decision making process in policy terms – however, the local planning authority can determine that material considerations are such that the policy position set out in MLDP is the position the Council wants to adopt in the assessment of an application especially until MLDP2 is adopted. The development land allocations made and confirmed in the MLDP remain and are not amended as a result of the adoption of NPF4.

- 2.4 Procedurally, planning applications are determined in accordance with the Town and Country Planning (Scotland) Act 1997 as amended (*hereafter referred to as the Act*) and associated regulations and Scottish Government advice in particular the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.
- 2.5 In considering an application section 37(2) of the Act states “the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”.
- 2.6 Section 37(4) of the Act with regard the determination of applications states that “the date of the grant or refusal” ... “shall be the date on which the planning authority’s decision bears to have been signed on behalf of the authority”. The issuing of the decision notice bears the signature of the authority.
- 2.7 The courts have held that a decision on a planning application is not deemed to have been formally made until the issue of a decision letter *Co-operative Retail Services Ltd v Taff-Ely BC (1978)* and later *R v West Oxfordshire District council ex parte Pearce Homes Ltd (1985)*. Court judgements on points of principle and procedure transpose both Scottish and English planning systems.
- 2.8 As a Committee resolution to approve/refuse an application does not constitute a written decision notice, applications may be withdrawn, appealed against non-determination or referred back to Committee for reconsideration before the issue of a decision notice (this scenario is very unusual – but technically possible).
- 2.9 In cases where an application is not subject to a legal agreement/developer contributions it is Midlothian’s practice to issue the decision notice as soon as practicably possible after a Committee resolution (usually the following day). However, there can be a significant period of time between a Committee resolution and the issuing of a decision notice in those cases which are subject to the conclusion of a legal agreement.
- 2.10 The Council as Planning Authority has a number of planning applications which were considered by the Committee or LRB and have been determined to be acceptable subject to a planning obligation to secure developer contributions. Prior to the conclusion of a planning obligation and the issuing of a decision notice applications have a ‘minded to grant’ status.

3 OUTSTANDING APPLICATIONS

- 3.1 The applications set out in the following tables have a ‘minded to grant’ status and are subject to planning obligation negotiations and legal processes.

Table 1 - Planning Application Decisions made by Committee

Planning Application Reference/Site	Developer	Development	Date considered by Committee	Planning Obligation Status
18/00081/DPP Upper Dalhousie Sand Quarry	Tillicoultry Quarries	Extension to sand quarry	28.08.2018	Heads of Terms with applicant
18/00082/S42 Upper Dalhousie Sand Quarry	Tillicoultry Quarries	Amendment to conditions of existing permission	28.08.2018	Heads of Terms with applicant
17/00408/DPP Newton Farm	Cala	Erection of 504 dwellings	22.01.2019 and 24.11.2020	Advanced draft agreement prepared
17/00409/DPP Wellington Farm	Cala	Erection of 117 Dwellings	22.01.2019	Advanced draft agreement prepared
19/01039/PPP Hs16 Bilston	TW/Hallam Land	Residential development in principle (indicative 214 dwellings)	31.08.2021	Advanced draft agreement prepared
20/00151/PPP HS12	TW	Residential development in principle (indicative 1,032 dwellings)	06.04.2021	Legal instructed to draft agreement
20/00774/PPP Hs1 safeguard	Wellington Farms Ltd	Residential development in principle (indicative 360 dwellings)	15.03.2022	Head of Terms negotiations ongoing
21/00982/PPP Sheriffhall South	Buccleuch	Business, commercial, mixed use development	14.06.2022	Agreement out for signing
22/00066/DPP Newbyres, Gorebridge	Persimmon	Erection of 96 dwellings	22.11.2022	Advanced draft agreement prepared
22/00588/S42 Land at Newtonloan	Omnivale	S42 application for business uses – amendments to access	11.01.2023	Legal instructed to draft agreement

Table 2 - Notice of Review Decisions made by Local Review Body (LRB)

Planning Application Reference/Site	Developer	Development	Date considered by LRB	Planning Obligation Status
15/00703/DPP Land at Lugton Brae	Jamie o Rourke	Erection of five dwellings	08.03.2016	Heads of Terms with applicant
21/00571/PPP Land at Newlandrig	Mr Darling	Residential development in principle (indicative 10 dwellings)	22.02.2022	Draft legal agreement with applicant

- 3.2 The 'minded to grant' decisions set out in tables 1 and 2 were made prior to the adoption of NPF4. As it is a requirement to consider the development plan (including NPF4 from 13 February 2023) prior to issuing a planning application decision, officers have reviewed those cases which have 'minded to grant' status and consider NPF4 does not trigger a referral of the cases back to Committee for reconsideration and that the planning applications can precede to approval on the basis determined by the Committee or LRB at the time of consideration – however, as the decisions were ones made by elected members, it is appropriate for the Committee to consider this position.

4 RECOMMENDATIONS

- 4.1 It is recommended that the Committee agrees that those planning applications, considered prior to the adoption of NPF4, that have a 'minded to grant' decision as set out in tables 1 and 2 of the report are progressed to conclusion without being referred back to the Committee or the Local Review Body.

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Background Papers: NPF4 update reported presented to Committee at its meeting of 28 February 2023.