



SCOTTISH MINISTERS CALL-IN DECISION WITH REGARD A PLANNING APPLICATION 21/00148/PPP FOR THE ERECTION OF NINE TERRACED COTTAGES, FORMATION OF CAR PARKING AND ASSOCIATED WORKS AT THE FORMER PETROL FILLING STATION, BIGGAR ROAD, HILLEND, DAMHEAD

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a Scottish Ministers call-in decision with regard a planning application (21/00148/PPP) for the erection of nine dwellinghouses; formation of car parking and associated works at land at the former petrol filling station, Biggar Road, Hillend, Damhead.

2 BACKGROUND

- 2.1 Planning application 21/00148/DPP was refused planning permission for the following reasons:
- 1. It has not been demonstrated that the dwellings are required for the furtherance of an established Green Belt activity. No alternative acceptable justification has been provided for the proposed development in the Green Belt. The proposal is therefore contrary to policy ENV1 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.*
 - 2. It has not been demonstrated to the satisfaction of the Planning Authority or Transport Scotland that the development proposal will not result in a significant adverse impact upon pedestrian and road safety at this busy trunk road. In addition, the proposal includes an inadequate off-street parking spaces, contrary to Midlothian Council's Parking Standards, which will result in a significant adverse impact on road safety. There are road safety concerns which are a material consideration that warrant refusal of the application.*
 - 3. The design of the dwellings are not of sufficient good quality for this sensitive area, being neither of a traditional design nor of a*

high quality contemporary design. The siting, scale, density and design of the development fails to adequately reflect the surrounding characteristics of the area and fails to complement or enhance the character of the surrounding area. The proposal is therefore contrary to policy ENV1 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.

4. *It has not been demonstrated to the satisfaction of the Planning Authority that the proposed dwellings will be afforded an adequate level of residential amenity and therefore does not comply with policy DEV6 of the adopted Midlothian Local Development Plan 2017.*
5. *It has not been demonstrated to the satisfaction of the Planning Authority that the surface water drainage from the development proposal will adequately be addressed.*

- 2.2 The decision notice was issued on 6 August 2021. In response the applicant exercised their right of appeal and submitted a notice of review which was considered by Midlothian Council's Local Review Body (LRB) at its meeting of December 2021. The LRB determined to uphold the review and grant planning permission subject to notifying Scottish Ministers (because of an objection from Transport Scotland); the prior signing and registration of a planning obligation to secure developer contributions; and conditions.
- 2.3 The planning application was subject to an objection from Transport Scotland as a statutory consultee. Under the terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, applications where a planning authority proposes to grant planning permission contrary to an objection from a government agency must notify Scottish Ministers in advance of issuing the decision. The Scottish Ministers were notified on the LRB decision on 23 December 2021.
- 2.4 In response to the notification the application was called in by Scottish Ministers for determination on 10 March 2022. It was considered by means of written submissions and an unaccompanied site inspection took place on 19 April 2022 by a Reporter appointed by the Scottish Ministers. The Reporter's recommendation was issued to the Scottish Ministers on 26 August 2022 - a copy of the report is attached to this report as Appendix A.
- 2.5 On 26 January 2023 the Scottish Ministers issued a procedure notice which sought comments from the applicant and the planning authority in relation to the implications of the Revised Draft National Planning Framework 4 on the determination of the application – comments were provided in response to the request. On 21 July 2023 the applicant

and planning authority were invited to provide comments on the relevance of the Scottish Ministers' appeal decision relating to a residential development at Mossend, West Calder. The parties were also invited to comment on how the Midlothian Housing Land Audit affected the case. On 2 July 2024, the applicant and planning authority were invited to give further comments, this time on the relevance of the court's opinion on the Mossend legal challenge and the subsequent Chief Planner letter (dated 27 June 2024) on planning for housing. The Mossend court decision and Chief Planner's letter reaffirm the Scottish Government's position regarding windfall/unallocated housing sites and the status of National Planning Framework 4 (NPF4).

- 2.6 The Reporter recommended that planning permission be granted - the Scottish Ministers agreed with the reporter's recommendation and are minded to grant planning permission for the proposed development subject to a planning obligation to secure developer contributions and conditions. A copy of the appeal decision is attached to this report as Appendix B.

3 THE DECISION

- 3.1 In considering the appeal the Reporter reached the following conclusions:

- 3.2 "This case must be determined 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 the effect of the proposal upon:

- control of development in the green belt;
- road and pedestrian safety;
- design;
- living conditions;
- surface water drainage, and
- housing land supply."

Control of Development in the Green Belt

- 3.3 "The proposal is one for open market housing and is not required for the furtherance of an established green belt activity (i.e. agriculture, horticulture or forestry). It plainly would not, therefore, accord with MLDP Policy ENV 1, when viewed in isolation. However, I have found that there is currently a moderate shortfall in housing land supply within Midlothian. SESplan Policy 7, with which I have found the proposal would accord, therefore over-rides MLDP Policy ENV 1. On this basis, the proposal would, I find, be both necessary and acceptable development within the green belt." *It is worth noting that this stated position on housing supply has been superseded by NPF4.*

Road and Pedestrian Safety

- 3.4 “The conditions that Transport Scotland stipulated in 09/00588/DPP were met and planning permission was duly granted for a 23-bedroom hotel on the site. The prohibition of a right hand turn into the site remains in force and it is reasonable to proceed on the basis that drivers would obey the Highway Code and not, as the council suggests, make an illegal manoeuvre from the A702 into the site. Accident data from the past six years does not support a conclusion that road conditions are currently unsafe and the proposed use would be likely to involve fewer vehicle movements than the permitted hotel scheme would have.”
- 3.5 “Transport Scotland and the applicant’s expert disagree about this matter. It is not uncommon for professionals to come to different conclusions based upon the same evidence. My first procedure notice asked Transport Scotland to explain how and why road conditions now are materially different to what they were when it was last consulted about them in relation to 09/00588/DPP. In its response, it stated: “...several elements that need to be considered, when assessing the effects of a proposed development, may have changed in the intervening period”. This is clearly true. I therefore undertook my own observations of traffic volumes and composition. The results of these observations are detailed in Chapter 5 above. In the absence of any evidence of equal authority provided by Transport Scotland, or any other party, I am entitled to draw conclusions from my own observations.”
- 3.6 “In relation to the question of why the discharge of the two principal conditions sought by Transport Scotland in 09/00588/DPP (i.e. no right turn into the site and the creation of a single vehicular access) are no longer sufficient to satisfy its concerns, Transport Scotland responded: “conditions relevant previously are not necessarily directly transferable to today”. Hence, I issued a third procedure notice seeking Transport Scotland’s views on the wording of a suspensive condition that would satisfy its concerns.”
- 3.7 “Returning to the facts of the case, I disagree that the intensity of the proposed use (i.e. 18 bedrooms and 14 car parking spaces) in comparison with the approved hotel use (i.e. 23 bedrooms and 23 car parking spaces) would give rise to concerns so serious that they could not be satisfactorily addressed by condition.”

Design

- 3.8 “The council has not provided any detailed critique of the proposed design. I have expressed my own view of the proposed design and find that it would respond well to the topography of the site and that the overall approach is cohesive and takes inspiration from a common form of steading development; an older example of which is evident

relatively close to the site. The council would have an opportunity to control the appearance of external materials of construction by condition. I have based my finding on a comparison of the permitted hotel scheme with what is now proposed. When comparing the two, the current scheme would be less intensive and would also be more likely to represent the sustainable development of a site that has evidently blighted the area for many years. Thus, all relevant material considerations concerning design suggest that the proposal would be acceptable.”

Living Conditions

- 3.9 “The proposed houses would deliver an acceptable standard of accommodation internally. Although the amount of useable private outdoor living space would be limited by the topography of the site, all of the proposed houses would have two bedrooms and are unlikely to be occupied by families with more than one child. The provision of private balconies for houses 5, 6, 7, 8 and 9 would compensate for the steeply sloping rear gardens and the gardens are not so steeply sloping that they would be unsafe. Moreover, as this is a proposal for open market housing, it would principally be a matter for potential owners to decide whether the gardens would be suitable for them and for the final developer to decide whether the commercial risk of building the houses to this design is acceptable. MLDP Policy DEV 6 criterion H expects open space to be provided for different age groups, whereas criterion K requires private open space to be provided on a scale appropriate to dwelling type. The proposed accommodation would generally accord with these criteria for the reasons I have given above. However, houses 5, 6, 7, 8 and 9 would be sited across the contours of the slope at the rear of the site. For this reason, the proposal would not accord with criterion G of MLDP Policy DEV 6.”
- 3.10 “Bedroom 2 in house 7 would appear rather gloomy and the aspect of the dining rooms of houses 5 and 9 would not be as good as other rooms with a twin aspect. However, it is unlikely that the gable ends of houses 3 and 4 would appear overbearing in outlook from the affected dining rooms. The other issue raised by the council, namely protection from road noise could be adequately addressed by condition.”
- 3.11 “I find that the proposal would generally accord with the relevant provisions of MLDP Policy DEV 6. Where there is a lack of accord with this policy, this needs to be balanced against the desirability of preserving the character of the surrounding green belt landscape by resisting the creation of a raised platform of earth upon which to provide level gardens for houses 5, 6, 7, 8 and 9.”

Surface Water Drainage

- 3.12 “The information provided by the applicant in its phase 1 drainage impact assessment needs to be updated. However, there is likely to be

no substantive difference between the findings of the submitted assessment and those of an updated assessment. This is because the intensity of the proposed use (nine dwellings) is lower than that for which the submitted assessment was produced (16 dwellings). Thus, the provision of an updated assessment and technical details of the resultant drainage scheme could both be addressed by condition.”

Overall Planning Balance

- 3.13 “Given that I have identified a moderate shortfall in housing land supply, SESplan Policy 7 over-rides the proposal’s lack of accordance with MLDP Policy ENV1. There are also minor policy conflicts with other parts of the adopted development plan. Nevertheless, I find that, despite these concerns, the proposal would be effective and would generally accord with the development plan as a whole. Any serious deficiencies could be addressed by condition.”
- 3.14 “Even if I were to find that the proposal would fail to accord overall with the development plan, there are a number of material considerations that pull very strongly in the opposite direction.”
- 3.15 “First amongst these is the fact that SESplan is out of date. SPP paragraph 33 is therefore engaged, which states: “the presumption in favour of development that contributes to sustainable development will be a significant material consideration”. Helping to address a housing shortfall is of itself a contribution to sustainable development. So, the question to ponder is whether the deficiencies in the proposal are so serious that they significantly and demonstrably outweigh the benefits when assessed against the wider policies in SPP and the adopted development plan.”
- 3.16 “Another significant material consideration is the approval of 09/00588/DPP during which the conditions required by Transport Scotland were satisfactorily met and either remain in force or are still a part of the proposed layout.”
- 3.17 “I am satisfied that the deficiencies in the proposal do not significantly and demonstrably outweigh the benefits associated with helping to meet the moderate shortfall in housing land supply in Midlothian. The proposal would, therefore, be sustainable overall.” *It is worth noting that following the adoption of NPF4 in February 2023 it cannot be argued that Midlothian has a shortfall in its housing land supply – the Reporters comments were made in August 2022 pre NPF4.*

Conclusion

- 3.18 “The proposal would accord overall with the relevant provisions of the development plan. Even if Ministers were to disagree with my finding in this regard, I conclude that this lack of accordance is outweighed by

material considerations such that the development plan should be set aside in this instance.”

- 3.19 The Scottish Ministers agreed with the Reporter’s recommendation and are minded to grant planning permission for the proposed development subject to a planning obligation to secure developer contributions and conditions.

4 RECOMMENDATION

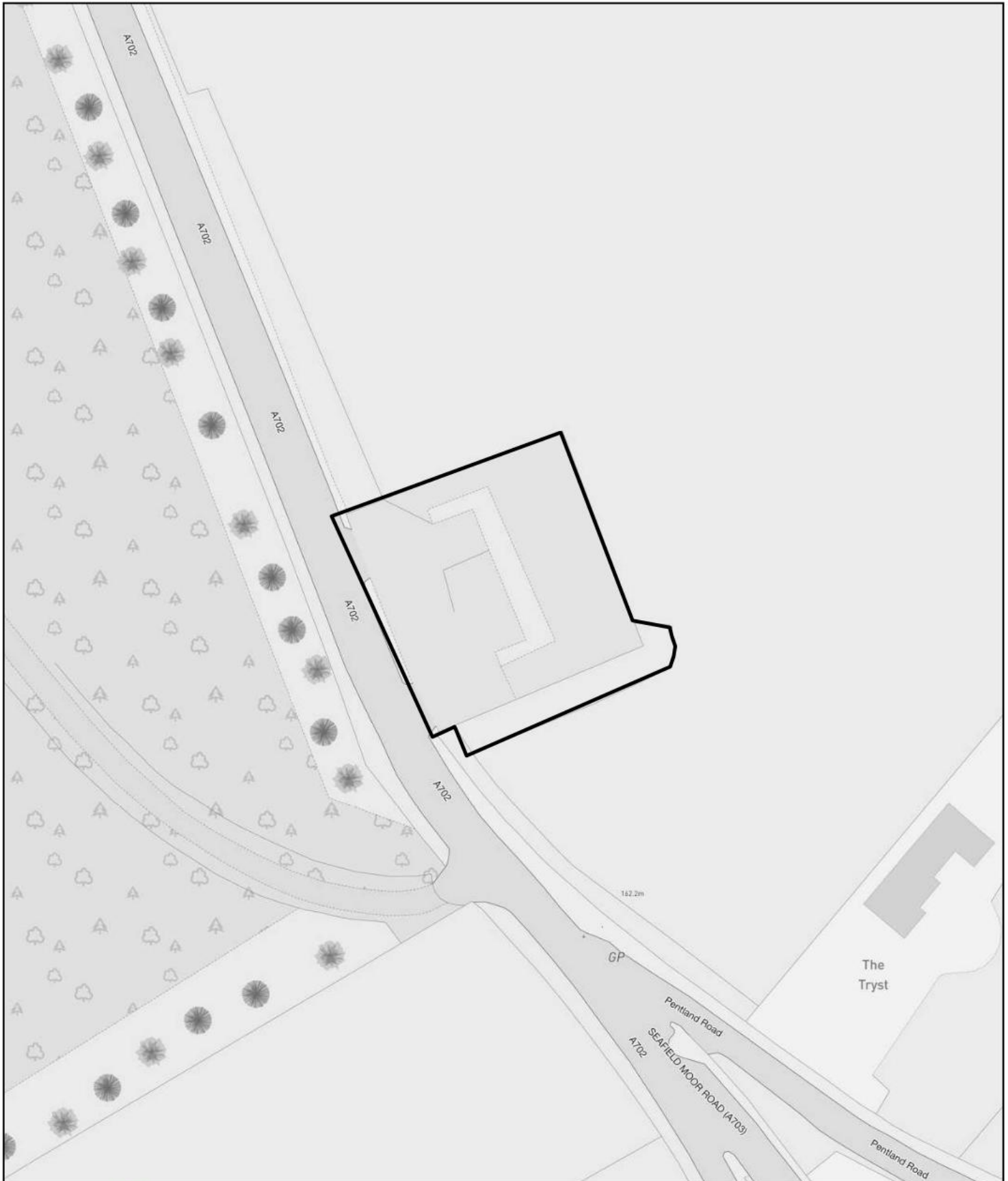
- 4.1 It is recommended that the Committee notes the planning permission appeal decision with regard the erection of nine dwellinghouses; formation of car parking and associated works at land at the former petrol filling station, Biggar Road, Hillend, Damhead.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 18 April 2025

Contact Person: Whitney Lindsay, Planning Officer
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Location Plan



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

Erection of 9 dwellings; formation of car parking and associated works at Land At Former Filling Station, Biggar Road, Hillend,

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Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Report by Philip Barton, a reporter appointed by the Scottish Ministers

- Case reference: NA-290-001
- Site Address: former filling station, Biggar Road, Hillend, Damhead, EH10 7DU
- Application by C M Roofing and Building Limited
- Application for planning permission, ref. 21/00148/DPP dated 2 March 2021, called-in by notice dated 10 March 2022
- The development proposed: erection of 9 terraced cottages, formation of car parking and associated works
- Date of site visit: 19 April 2022

Date of this report and recommendation: 26 August 2022

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Abbreviations

DPEA	Scottish Government Planning and Environmental Appeals Division
HGV	Heavy Goods Vehicle
HNDA	Housing Need and Demand Assessment
HLR	Housing Land Requirement
HST	Housing Supply Target
LRB	Local Review Body
MLDP	Midlothian Local Development Plan 2017
MLP	Midlothian Local Plan 2008
NPF4	Scotland 2045: Our Fourth National Planning Framework
SESplan	The Strategic Development Plan for Edinburgh and South East Scotland
SG1	Supplementary Planning Guidance: Developer Contributions
SG2	Housing Development in the Countryside and Green Belt Supplementary Guidance
SPP	Scottish Planning Policy
TRICS	Trip Rate Information Computer System
TRO	Traffic Regulation Order



Summary of Report into Called-In Planning Application

Erection of 9 terraced cottages, formation of car parking and associated works

• Case reference	NA-290-001
• Case type	Notified application
• Reporter	Philip Barton
• Applicant	CM Roofing and Building Limited
• Planning authority	Midlothian Council
• Other parties	Transport Scotland
• Date of application	2 March 2021
• Date case received by DPEA	11 March 2022
• Method of consideration and date	Written submissions and unaccompanied site inspection on 19 April 2022
• Date of report	26 August 2022
• Reporter's recommendation	Grant planning permission with conditions

Proposal

1.1 The application seeks planning permission for the construction of nine two-bedroom dwellings on a previously developed site in the Green Belt. It would be laid out to resemble the residential conversion of a traditional steading. This case must be determined in accordance with the development plan unless material considerations indicate otherwise.

Main Issues

1.2 These are the effect of the proposal upon:

- control of development in the green belt;
- road and pedestrian safety;
- design;
- living conditions;
- surface water drainage, and
- housing land supply.

Material Considerations

1.3 The principal material considerations in this case are:

- SESplan is out of date;
- SPP paragraph 33 is engaged;
- previous planning permissions;

- existing traffic regulation order;
- road traffic accident data, and
- reasonable to assume that drivers will obey the rules of the road.

Findings

Green Belt

1.4 The proposal could not accord with MLDP Policy ENV 1 Protection of the Green Belt when this policy is considered in isolation. However, given that I have found there to be a moderate shortfall in housing land supply, SESplan Policy 7 over-rides this consideration.

Road and Pedestrian Safety

1.5 In comparison with what has previously been permitted, there would be fewer traffic movements. Observed road conditions; the prohibition of a right hand turn into the site and the creation of a new single vehicular access indicate that the sustained objection to the proposal by Transport Scotland has not been objectively justified. Moreover, it is unreasonable to approach a matter such as road safety on the basis that drivers will generally act unlawfully. This is another material consideration that weighs in favour of granting planning permission.

Design

1.6 In comparison with what has previously been permitted, the overall design concept is an improvement, and the council would retain control over the external appearance of the building by condition. The current scheme would be less intensive than what has previously been permitted and would also be more likely to represent the sustainable development of a site that has evidently blighted the area for many years. Thus, all relevant material considerations concerning design suggest that the proposal would be acceptable. It would, therefore, accord with relevant criteria of MLDP Policy DEV 6 Layout and Design of New Development.

Living Conditions

1.7 The proposal would generally accord with relevant criteria of MLDP Policy DEV 6. Where there is a lack of accord with this policy, this may be made more acceptable by condition. Any remaining deficiencies would need to be balanced against the desirability of preserving the character of the surrounding green belt landscape by resisting the creation of a raised platform of earth upon which to provide level gardens.

Surface Water Drainage

1.8 This is a matter that could adequately be addressed by condition and is a neutral factor.

Housing Land Supply

1.9 SESplan is out of date and its housing land supply calculations expire in 2024. Consequently, a procedure notice was issued, asking the council to explain how it was able to demonstrate that it currently has a robust at least five year effective housing land supply. It is unable to demonstrate this successfully and I have found there to be a moderate shortfall in housing land supply in Midlothian. The delivery of housing to meet an identified shortfall in supply contributes to sustainable development objectives. This is a material

consideration that potentially outweighs any lack of accordancy with the adopted development plan.

Overall Planning Balance

1.10 Given the housing land supply position in Midlothian, the proposal would accord with the relevant provisions of the adopted development plan as a whole. Even if there were found to be some lack of accordancy that could not otherwise be overcome, the combined strength of pull of the significant material considerations identified above is sufficient to indicate that the development plan should be set aside in this instance and that planning permission should be granted, with conditions.

Recommendation

It is recommended that planning permission be granted subject to the conditions listed at Appendix 1.

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Planning and Environmental Appeals Division
Hadrian House
Callendar Business Park
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FK1 1XR

DPEA case reference: NA-290-001

The Scottish Ministers
Edinburgh

Ministers

On 19 April 2022 I conducted an unaccompanied site inspection of the site, addressed former filling station, Biggar Road, Hillend, Damhead, EH10 7DU, and its environs.

A report is required because the Midlothian Council LRB indicated its intent to allow an appeal against the refusal of planning permission by Midlothian Council for the erection of nine dwellinghouses on the site.

The Town and Country Planning (Reference of Application) (Midlothian Council) (Erection of 9 terraced cottages, formation of car parking and associated works, at former filling station, Biggar Road, Hillend) Direction 2022 is dated 10 March 2021.

The Direction was given “in view of Transport Scotland’s objection to the proposed development and the potential for significant adverse impact upon road safety”.

My report is arranged on a topic basis, with a separate chapter discussing each of the original reasons for refusal given by the council. Although, following the decision of the LRB, these reasons no longer reflect the council’s position, they nevertheless continue to represent the key issues for Ministers to consider when determining the application.

The report takes account of the content of all substantive written representations made in connection with the proposal and what I saw during my site inspection, as well as all responses to the three procedure notices that I issued.

CHAPTER 1: BACKGROUND

Site Location and Description

1.1 The application site is owned by CM Roofing and Building Limited and extends to about 2,730 square metres (according to site layout plan, ref: 1450-00-007), being located on the easterly side of the A702, about 70 metres north of its junction with the A703 and Old Pentland Road. In the immediate vicinity of the site (a radius of 500 metres), there are small groups of buildings and isolated rural enterprises and dwellinghouses scattered throughout the countryside to the north, south and west of the site. To the east there is only undulating open land, most of which appears to be under arable cultivation or used for grazing. The site is within a green belt allocation of the MLDP.

1.2 The A702 is a busy trunk road linking Edinburgh with the A74(M) at Abington. The Lothianburn Junction of The City of Edinburgh By-Pass is about one kilometre away from the site. The junctions with the A703 and Old Pentland Road are uncontrolled and there is a significant change in levels between Old Pentland Road and the A702. Close to these junctions, there are two opposing bends in the A702 and the road rises gently from the appeal site to the crest of a hill, where it then changes bearing from roughly north/south to roughly north east/south west. Road centre-line markings and a no-right-turn sign prevent the site being lawfully accessed by road from the Edinburgh-bound carriageway.

1.3 The site is served by two vehicle crossovers and was originally used as a motor vehicle fuel filling station. It was subsequently used for the occasional retail sale of Christmas trees; by Scottish Water as a compound for works carried out on a new water supply pipe, and as a temporary car wash. It is bounded on three sides by mature deciduous trees and other vegetation. There are no permanent buildings on site but temporary buildings, likely to have been associated with the former use as a car wash, remain in place. There was no activity on site at the time of my site inspection and the site was secured with temporary metal fencing.

Description of Proposal

1.4 The applicant proposes to erect nine two-bedroom dwellinghouses on the site. Five would be terraced two-storey cottages. The remaining four would be two pairs of semi-detached dormer bungalows. The associated parking and bin storage would be accommodated at the front of the site, adjacent to the A702. Access from the A702 would be by a single crossover, whereas there are currently two crossovers to the site.

1.5 The applicant has taken advantage of the steeply sloping land furthest from the A702 to reduce the visual impact of the two-storey dwellings on public views from the west. To the east, the topography between the site and The City of Edinburgh By-Pass is undulating and there are no significant public viewpoints from which the development could readily be seen.

1.6 The submitted plans and the design and access statement indicate that a number of trees and shrubs would be planted around the site boundary. These would provide further screening of the site.

Planning History

1.7 The site has been the object of a number of development proposals over the years. Proposals for which planning permission was refused between 1982 and 2008 include:

- erection of single dwellinghouse;

- poultry run;
- hotel;
- garden centre;
- retail sale of Christmas trees (28 days per year);
- car wash/valeting station;
- storage yard;
- erection of four dwellinghouses, and
- erection of 16 dwellings.

1.8 Planning permission has been granted for the following proposals:

- 09/00588/DPP – hotel;
- 10/00529/DPP – hotel (amendment to 09/00588/DPP) on appeal to LRB;
- 11/00168/DPP – car wash/valeting station (temporary for 3 years);
- 12/00126/DPP – amendment/deletion of conditions attached to 11/00168/DPP, and
- 13/00726/DPP – extension of time limit imposed by 11/00168/DPP.

Delegated Case Decision Maker's Reasons for Refusal

1.9 The council has consistently refused applications on the grounds of green belt harm, road and pedestrian safety and design. The original reasons for refusal of the proposal now before Ministers for a decision (21/00148/DPP) are copied below from the decision notice issued by the council and dated 6 August 2021:

1. It has not been demonstrated that the dwellings are required for the furtherance of an established Green Belt activity. No alternative acceptable justification has been provided for the proposed development in the Green Belt. The proposal is therefore contrary to policy ENV1 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.
2. It has not been demonstrated to the satisfaction of the Planning Authority or Transport Scotland that the development proposal will not result in a significant adverse impact upon pedestrian and road safety at this busy trunk road. In addition the proposal includes an [sic] inadequate off-street parking spaces, contrary to Midlothian Council's Parking Standards, which will result in a significant adverse impact on road safety. There are road safety concerns which are a material consideration that warrant refusal of the application.
3. The design of the dwellings are [sic] not of sufficient good quality for this sensitive area, being neither of a traditional design nor of a high quality contemporary design. The siting, scale, density and design of the development fails to adequately reflect the surrounding characteristics of the area, and fails to complement or enhance the character of the surrounding area. The proposal is therefore contrary to policy ENV1 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.
4. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed dwellings will be afforded an adequate level of residential amenity and therefore does not comply with policy DEV6 of the adopted Midlothian Local Development Plan 2017.

5. It has not been demonstrated to the satisfaction of the Planning Authority that the surface water drainage from the development proposal will adequately be addressed.

CHAPTER 2: POLICY CONTEXT

Housing Land Supply

2.1 The development plan for the area comprises SESplan, approved 2013, and MLDP, adopted 7 November 2017. SESplan is out of date and its housing land supply calculations expire in 2024. Consequently, I issued a procedure notice asking the council to explain how it is able to demonstrate that it currently has a robust at least five year effective housing land supply. The applicant responded with its own calculations.

2.2 The council's calculations in response to my procedure notice are based upon meeting the HST. As the applicant points out, paragraph 62 of the judgement in *Mactaggart Mickel et al. v Inverclyde* [2020] CSIH44 states: "SPP is phrased in a manner whereby it is not the housing supply target which is to be met but the HLR". However, the applicant also refers to the examination report for the West Lothian Local Development Plan, which states: "the housing land requirement' set by the [SESplan] supplementary guidance should most logically be regarded as equating to the housing supply target for the purpose of the examination".

2.3 Consequently, it is not necessarily fatal to the council's position that it bases its arguments, not upon the HLR but upon meeting the HST because they are an equivalence as far as SESplan is concerned.

2.4 I must first establish whether there is a shortfall in housing land supply. If there is, I must then go on to establish its scale. The most recent housing land audit identifies sufficient land for 11,938 new homes and covers the period up to 31 March 2021. The five year supply of effective housing land for the period 2021 to 2026 equates to 4,500 homes. The applicant does not dispute this figure.

2.5 There is currently no universally agreed method of determining an up-to-date HLR. The applicant has used a methodology that takes into account completions (a residual method), whereas the council has used an average method based upon figures for the five-year period from 2019 to 2024. It has also presented a number of other scenarios, leading to results ranging from 2.7 years (SESplan 2019-2024 plus shortfall from previous plan period plus 20% generosity allowance) to 10.9 years (HNDA for rejected SESplan 2 lowest growth scenario). However, great caution needs to be exercised when using documents such as more recent HNDAs or housing land audits to calculate an up-to-date HLR. This is a task more properly undertaken during the plan-making process. Consequently, I have not entertained the calculations suggested by the council that rely upon various updated HNDA scenarios.

2.6 As all methods have their benefits and drawbacks, it is not unreasonable for the council and the applicant to favour the method which best supports the arguments they wish to make. I am intellectually drawn to the residual method because it seems reasonable to me to take into account actual completions from previous years when assessing current land supply. In paragraph 25 of her notice of intention, the Reporter for PPA-400-2118 concluded that a residual method should be employed to decide whether there is a shortfall in housing land supply in West Lothian. Given that West Lothian is also in the SESplan area, I see no good reason for me to conclude differently in the case of Midlothian.

2.7 SPP paragraph 110 expects planning authorities to maintain at least a five year supply of effective housing land at all times. The relevant five-year period in this case is, therefore, 2022 to 2027. Both the council and the applicant agree that there is a putative supply of land for 4,500 homes for the period 2021 to 2026. Given that SESplan

calculations expire in 2024, I have no more reliable figures before me upon which to base an assessment of supply after 2024 than those derived from the most up-to-date housing land audit and I am mindful that both the council and the applicant agree on this.

2.8 I further note the findings of the Reporter in relation to housing demand, set out in paragraph 24 of PPA-400-2118, to wit: “if I accept that demand is static during the period of the plan which I do, it would be unreasonable and inconsistent to ignore the historic backlog in completions”. I have no evidence before me to suggest that I should come to a different conclusion about demand in Midlothian between 2025 and 2027. Consequently, I accept that it is reasonable for both the council and the applicant to base their calculations upon a supply of land sufficient for 4,500 homes.

2.9 The council’s third calculation takes into account the shortfall from the previous plan period and, on this basis, finds that there was a sufficient supply of housing land for 3.3 years for the period 2019 to 2024. The applicant’s equivalent calculation comes up with a figure of 3.82 years for the same period. Given that the housing land supply position for the period 2025 to 2027 is unknowable, I am satisfied on the evidence before me that the council is unable to demonstrate that it currently has a robust at least five year effective housing land supply. I consider a shortfall of between 1.18 and 1.7 years to be moderate.

2.10 The more favourable calculations of supply referred to by the council are based upon the rejected SESplan2; the HNDA scenarios associated with it and the draft NPF4. I have already explained why I am unable to entertain calculations based upon the more recent HNDA figures. Moreover, in relation to substantially the same arguments put to her by West Lothian Council, in paragraphs 22 and 23 of her notice of intention for PPA-400-2118, the Reporter found: “...SESplan 2, in respect of which the housing needs and demand assessment was undertaken, was rejected by the Scottish Ministers and has not been proceeded with. In any event these figures are not housing supply targets or housing land requirements. The housing land requirement remains as set out in SESplan and in my view the Housing Needs and Demands Assessment 2 has little relevance to this appeal. Separately I recognise that new housing land requirements will be introduced in the fourth National Planning Framework in due course...However the preparation and adoption of the National Planning Framework is at such as [sic] early stage, I consider that it has little bearing on this appeal.”

2.11 The notice of intention for PPA-400-2118 was issued on 24 November 2021 and, although it relates to another SESplan constituent authority, there has been no material change in circumstances to indicate that I should adopt a contrary position in this report.

2.12 SPP paragraph 33 states that, where a development plan is more than five years old, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Helping to address a housing shortfall is of itself a contribution to sustainable development and, in this case, no preliminary test therefore needs to be passed as to whether the proposal is development that contributes to sustainable development.

2.13 As the presumption in SPP paragraph 33 is engaged, the likelihood that there will be an insufficient supply of housing land for the period up to 2024 is a material consideration that points towards approval of the application. Other material considerations also point to approval. Where there is a demonstrable lack of accord with the development plan, the so-called ‘tilted balance’ indicates that planning permission should nevertheless be granted.

2.14 There remains the question as to whether the site would be effective. The permitted hotel scheme was not implemented and all other applications for residential development

have been refused. Housing is likely to be more commercially viable than hotel development and the failure to implement the hotel permission cannot, therefore, be taken as an indication that the site would be ineffective for housing. The applicant owns the site and has shown interest in developing it for residential use over a period of many years. I am satisfied that the site would be effective. I also note in this respect the reference made by the applicant to pages five and six of the judgement in *British Railways Board v Secretary of State for the Environment and Others* [1993] WL 963747 in relation to granting planning permission in cases where there may be impediments to implementation.

2.15 Consequently, if I were to recommend that planning permission should be refused, I would need to show that the adverse impacts of any harms identified in this case would significantly and demonstrably outweigh the benefits of the proposal in relation to the contribution that it would make to sustainable development through housing delivery in an area that cannot demonstrate that it currently has an adequate supply of housing land. Hence, against this background, the unknowable nature of the housing land supply position from 2025 to 2027 would be unlikely to tip the balance towards refusal of the application and the proposal should be considered sustainable overall.

Other Policy Considerations

2.16 Turning to MLDP policies, Policy ENV 1 Protection of the Green Belt states:

Development will not be permitted in the Green Belt except for proposals that:

- A. are necessary to agriculture, horticulture or forestry; or
- B. provide opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
- C. are related to other uses appropriate to the rural character of the area; or
- D. provide for essential infrastructure; or
- E. form development that meets a national requirement or established need if no other site is available.

Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt which are to:

- Direct development to the most appropriate locations and support regeneration;
- Protect and enhance the character, landscape setting and identity of the City and Midlothian towns by clearly identifying their physical boundaries and preventing coalescence; and
- Protect and provide access to open space.

Housing

Housing will normally only be permissible where it is required for the furtherance of an established Green Belt activity (see criterion A above). The applicant will be required to show the need for the new dwelling is permanent; cannot be met within an existing settlement; and that the occupier will be employed full-time in the associated countryside activity. A planning condition limiting the occupancy of the house is likely to be attached in the event of approval.

2.17 MLDP Policy DEV 6 Layout and Design of New Development states:

The Council will require good design and a high quality of architecture, in both the overall layout of development proposals and their constituent parts.

The layout and design of development proposals should meet the following criteria:

- A. the layout of development proposals should complement or enhance the character of any adjoining or nearby urban area; include attractive street frontages; provide outlook onto communal open space; and integrate the siting of buildings, landscaping, open space, boundary treatment, and pedestrian/ cycle/ vehicular routes;
- B. any locally prominent landscape feature or historic building should be reflected in the layout and local landmarks and viewpoints should be incorporated into the streetscape to provide a welcoming atmosphere and assist with navigation;
- C. good quality materials should be used in the design;
- D. existing pedestrian routes, including desire lines, should be taken into account and the layout should be convenient for pedestrians and cyclists, with special attention to the provision of footpaths and cycleways which create links between key destinations;
- E. a high standard of passive energy gain should be achieved and overshadowing of buildings should be avoided;
- F. pedestrian routes, open space, sustainable urban drainage features or roads should be overlooked by front or side windows of buildings and doors should face onto streets or active frontages;
- G. buildings should be laid along contours to avoid excessive changes in levels and underbuilding in the street scene;
- H. open space for different age groups should be designed and sited to minimise disturbance and protect residential amenity;
- I. adequate spacing between housing should be provided to ensure privacy and amenity*¹;
- J. where there is a recognised need for new open space in the area (see policy DEV9: Open Space Standards), this should complement and/or contribute to existing open space provision and the proposed green network*²;
- K. private open space should be provided on a scale appropriate to the relevant dwelling type*¹;
- L. where the proposed development is of a scale and in a location which makes the provision of bus services a realistic prospect, roads providing access through the site must be of a width and design sufficient to allow the passage of buses, with lay-bys provided to allow them to stop without obstructing other traffic;
- M. any roads, lighting and parking must satisfy the Council's standards; and
- N. cycle parking and bin stores shall be incorporated into the layout of developments.

Exceptions to the above criteria may be considered where the proposed development is of a very high standard.

*1 Reference should be made to the Supplementary Guidance on Quality of Place for further detailed requirements.

*2 Where new open space is provided, arrangements for its long-term maintenance (typically 15 years) shall be agreed with the Council prior to any consent being issued. Such arrangements will include long-term funding for the maintenance of open space, landscaping and equipment.

2.18 MLDP Policy IMP 2 Essential Infrastructure Required to Enable New Development to Take Place sets out Midlothian Council policy with regard to developer contributions and the LRB stated that, if planning permission were to be granted, it would be subject to a legal agreement to secure developer contributions towards primary and secondary school education provision and school transport provision. The precise justification for these contributions is not explicitly set out.

2.19 SG1 was adopted on 6 March 2012 but refers to superseded MLP policies. Neither does it provide any clarity about which proposals are exempt from liability for developer contributions. Nor is any reference made within it to contributions for school transport. In my second procedure notice, I asked the council to explain the policy basis for requiring developer contributions in this case.

2.20 SG1 is not a part of the adopted development plan (i.e. the MLDP). I have no reason to doubt that it was part of the adopted MLP but the MLP has been superseded. As a result, all supplementary guidance associated with the MLP must be treated as having expired unless consulted upon and adopted afresh as a part of the MLDP. I have been pointed to no evidence to show that SG1 was consulted upon as part of the examination of the current local development plan or at any other time since the MLDP was adopted.

2.21 I find, therefore, that there is no statutory link between MLDP policies and the advice in SG1. Consequently, although MLDP policies IMP 1 New Development and STRAT 2 Windfall Housing Sites refer either directly or indirectly to the need for developer contributions, the crucial detail about how these should be calculated is missing from the MLDP. In the absence of a clear and lawful policy context for requiring developer contributions, I cannot recommend that the LRB requirement to secure developer contributions towards primary and secondary school education provision and school transport provision be endorsed.

2.22 Similarly, footnote 1 to MLDP Policy DEV 6 refers developers to “the Supplementary Guidance on Quality of Place for further detailed requirements”. A copy of this guidance has not been provided to me and, according to what I have seen, it has not yet been drafted. Instead, the council relies upon MLP Policy DP2 Development Guidelines. As the MLP has been superseded, I consider the continued use of its policies for development control purposes to be unlawful and that they cannot supplant MLDP policies and its associated guidance.

2.23 A copy of SG2 was not provided and it appeared to be available only in draft form. In response to my second procedure notice, the council explained that this was due to a technical issue with the link to the document on the council’s website. An electronic copy was subsequently provided to me and I am satisfied that SG2 forms a part of the adopted development plan for the area.

CHAPTER 3: MOST RELEVANT MATERIAL CONSIDERATIONS

3.1 The previous permissions for a hotel (i.e. 09/00588/DPP and 10/00529/DPP) on the site are relevant, as are the existing road markings and signage that prohibit the lawful execution of a right hand turn into the site.

3.2 The submitted transport assessment includes raw data from 1) Crashmap and 2) Personal Injury Accident Statistics from the Transport Scotland Accident Manager Database.

3.3 It is reasonable to assume that all drivers would observe the Highway Code and otherwise drive within the law.

3.4 As I discuss above, in Chapter 2: Policy Considerations, I have identified a moderate shortfall in housing land supply in Midlothian and SPP paragraph 33 is therefore engaged.

CHAPTER 4: REASON FOR REFUSAL 1 – GREEN BELT

4.1 The first reason for refusal was:

1. It has not been demonstrated that the dwellings are required for the furtherance of an established Green Belt activity. No alternative acceptable justification has been provided for the proposed development in the Green Belt. The proposal is therefore contrary to policy ENV1 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.

4.2 SG2 paragraph 6.2 makes it clear that the exception relating to groups of five dwellings in the countryside does not apply in the green belt.

4.3 As far as MLDP Policy ENV 1 is concerned, the original reason for refusal relates to the second part of the policy, which states: "Housing will normally only be permissible where it is required for the furtherance of an established Green Belt activity" (i.e. agriculture, horticulture or forestry) and indicates that occupation should be controlled accordingly by condition.

4.4 The use of the word "normally" in the policy allows room for exceptions. Again, the need to address the moderate shortfall in housing land supply that I have identified may constitute the exceptional circumstances required to justify granting planning permission in this case. Moreover, MLDP paragraph 2.3.10 states: "where there is an identified deficit in the five year effective housing land supply there will be a requirement to ensure the continued delivery of housing to meet the housing land requirement. Therefore, housing proposals on greenfield/green belt locations may be acceptable where it is demonstrated that they will augment the 5-year housing land supply following the provisions of SESplan Policy 7".

4.5 SESplan Policy 7: Maintaining a five year housing land supply states: "Sites for greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans 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."

4.6 So, as far as SESplan Policy 7 is concerned, if houses are to be built on green belt to address a shortfall in housing land supply, green belt objectives must not be undermined. SPP paragraph 49 indicates that the objectives of identifying green belts are:

- directing development to the most appropriate locations and supporting regeneration;
- protecting and enhancing the character, landscape setting and identity of the settlement; and
- protecting and providing access to open space.

The site is brownfield (previously developed) land and has, according to the evidence before me, detracted from the general character and appearance of the area for many years. Hence, although it is located in the countryside, the proposal would not undermine the first SPP objective.

4.7 Turning to the second SPP objective, given my findings about design and layout, as well as the generally dispersed character of development in the vicinity of the site, I am satisfied that the proposal would not undermine this second objective.

4.8 As far as the third SPP objective is concerned, the land is currently privately owned and there are no public paths crossing it. Development would increase public access to the site and provide some public open space in the form of landscaping. So, neither would the proposal undermine this third objective. On this basis, the proposal would accord with SESplan Policy 7 criterion b.

4.9 Criterion a. of SESplan Policy 7 is satisfied because the general pattern of development proposed would be consistent with the established character of land use in the area, which consists of scattered dwellings, some in small groups. So, the proposed scheme would generally accord with the pattern of development in the locality.

4.10 Criterion c. of SESplan Policy 7 is also satisfied because the TRO required by Transport Scotland in 09/00588/DPP, as well as the proposed changes to vehicular access to the site have been or would be funded by the applicant or the final developer.

4.11 The site may therefore be treated as a windfall site, to which MLDP STRAT 2 would apply, if it were located in a built-up area. However, the site is in the countryside and MLDP paragraph 2.3.5 states: "outwith the built-up areas, there is a general presumption against housing development unless a deficit in the 5 year effective housing land supply emerges". There is a moderate shortfall in housing land supply and the proposal accords with SESplan Policy 7. Consequently, MLDP Policy ENV 1 is over-ridden in this case.

4.12 Even if there were to be disagreement on this point, in the light of the body of case law that has developed since SESplan was approved, there would be a need to go on to consider whether material considerations outweigh any lack of accord with the development plan when all other relevant factors are taken into account and weighed in the balance.

4.13 So, in balancing all of the relevant policy factors against the moderate shortfall in housing land supply that I have identified, I find that the proposed development would accord with the totality of what the adopted development plan has to say about residential development on green belt land. Thus, in the unique circumstances of this case, the proposal would be appropriate development in the green belt.

CHAPTER 5: REASON FOR REFUSAL 2 – ROAD AND PEDESTRIAN SAFETY

5.1 The second reason for refusal is:

2. It has not been demonstrated to the satisfaction of the Planning Authority or Transport Scotland that the development proposal will not result in a significant adverse impact upon pedestrian and road safety at this busy trunk road. In addition, the proposal includes an [sic] inadequate off-street parking spaces, contrary to Midlothian Council's Parking Standards, which will result in a significant adverse impact on road safety. There are road safety concerns which are a material consideration that warrant refusal of the application.

5.2 In the opinion of Transport Scotland, the transport statement submitted by the applicant, dated 1 March 2021, does not adequately address the issue of road and pedestrian safety. However, there are other material considerations that need to be taken into account in addition to this information.

5.3 Significantly, Transport Scotland has not explained in what ways the submitted transport statement is deficient. As I am not qualified to criticise either Transport Scotland or the applicant's consultant on these technical matters, I shall comment only upon raw data and my own observations during my site inspection to advise Ministers.

5.4 Appendix D of the submitted transport assessment sets out objective accident data. Two sources are used: 1) Crashmap and 2) Personal Injury Accident Statistics from the Transport Scotland Accident Manager Database. Transport Scotland data is provided by Police Scotland, which records only incidents involving injury.

5.5 Between 1 January 2015 and 30 October 2020, the Transport Scotland data indicates that there were 23 incidents, all of which involved "slight" injury. There is a cluster of incidents around the junction of the A702 with Old Pentland Road and the A703. However, I can see nothing in the raw data which suggests that movements on and off the site played any part in these accidents. Indeed, despite a change from 1 July 2019 in the way accidents are recorded and categorised by Police Scotland, I can see no evidence to suggest that there has been a significant change in the frequency or severity of incidents in the period 2015 to 2020. The average number of incidents per year has been 3.8, with one incident in 2019 and three in 2020. In my assessment, the raw data does not support the view held by Transport Scotland and objectors that the proposed site access would, in principle, be prejudicial to road and pedestrian safety.

5.6 Turning to my own observations, I placed myself at the location of the proposed site access and noted traffic and road conditions for a period of 20 minutes (09:50 to 10:10 on a weekday). In the vicinity of the site, the maximum speed for the road is 40 miles per hour. Visibility for drivers is unobstructed for about 50 metres in a southerly direction (towards the junction of the A702 with Old Pentland Road and the A703) and for about 200 metres in a northerly direction (towards Edinburgh). No parking, waiting or loading is permitted for a distance of about 135 metres in the vicinity of the site on the southerly bound carriageway. From the northerly edge of the site, no overtaking is permitted on either side of the A702 for a distance of about 477 metres. Located at 55°53'17.84" N, 3°11'57.83" W is a road sign prohibiting a right hand turn into the site from the northerly-bound carriageway.

5.7 The A702 is a busy road, with most drivers travelling close to the maximum speed for the road. However, drivers travelling in a southerly direction were observed to slow down as they approached the junction with the A703 and Old Pentland Road. Similarly, there were frequent gaps in northerly bound traffic as queues formed behind drivers turning right from the A702 into Old Pentland Road or the A703.

5.8 I observed the following vehicle profile, ordered by vulnerability (least vulnerable first). The frequency per minute calculation was arrived at by multiplying the observed number by three and dividing the product by 60:

- HGV 23 (1.20 per minute equivalent)
- Coach 1 (0.05 per minute equivalent)
- Bus 4 (0.20 per minute equivalent)
- Van 71 (3.60 per minute equivalent)
- Car 317 (15.90 per minute equivalent)
- Motorcycle 3 (0.20 per minute equivalent)
- Cyclist 0
- Pedestrian 1 (0.05 per minute equivalent)

5.9 The number of vulnerable road users (pedestrians and cyclists) observed was very low. In addition, there are dedicated cycle lanes on both sides of the A702 and there are pavements on both sides of this road. There are no controlled crossing points over the A702 in the vicinity of the site but there is a crossing point, with tactile paving and dropped kerbs, about 87 metres away from the location of the proposed site access. At this point visibility for pedestrians is unobstructed for about 110 metres in a southerly direction and about 120 metres in a northerly direction. There are bus stops on both sides of the A703, about 150 metres away from the site. However, the crossing point of Old Pentland Road is sub-standard and difficult, even hazardous, to negotiate for people with mobility difficulties, especially wheelchair-users.

5.10 The traffic counts above put the number of incidents involving injury into context. Although incidents that did not involve injury (such as minor collisions) are not recorded, I conclude that a total of 23 slight injuries over a period of six years (fewer than four per annum) on such a busy road should not give rise to concern when vehicle movements related to the occupation of nine dwellings are added to the traffic count. The TRICS data appended to the submitted transport assessment indicates that the number of vehicles that would be added to southerly flows on the A702 at peak times would be negligible.

5.11 It is reasonable to assume that all drivers would observe the Highway Code and otherwise drive within the law. Drivers leaving the site and heading for Edinburgh may choose to make a right turn across the southerly-bound carriageway, which would involve some risk of vehicle conflict. However, from what I observed, there are sufficient gaps in traffic flow from the south to allow drivers time to safely make this manoeuvre. Moreover, some drivers may find it easier to turn left out of the site, turn off the A702 almost immediately onto Old Pentland Road, then turn left onto the A701, before joining The City of Edinburgh Bypass (A720) at Straiton Junction. This would be likely to take only a couple of minutes longer than waiting for a gap in the traffic approaching from the south and joining the bypass at Lothianburn Junction. So, I consider it unlikely that all drivers would invariably choose to turn right out of the site.

5.12 For vehicles turning left into the site from the A702, other drivers would have plenty of time to slow down once the driver indicated their intention to turn left. From what I observed, drivers intending to turn left down Old Pentland Road or the A703 were already indicating their intention to do so by the time they passed the site. Given the proximity of the junction, prohibition of overtaking and impending rise in the road and right hand bend, most drivers start to slow down in the vicinity of the site. So, I conclude that turning left into the site would not increase the risk of vehicle conflict in any material way.

5.13 I also conclude that reducing the number of access points from two to one would improve visibility for drivers and make it easier for pedestrians to avoid conflict with vehicles.

5.14 A further material consideration is the approval of 09/00588/DPP, for a 23-bedroom hotel. In relation to this application, Transport Scotland was satisfied that its concerns would be met if three steps were taken, namely:

A. The agreement reached would include the provision of a Layout 3 access as detailed on the revised drawings forward by Gilberts, E-mail of the 29th April 2010. [i.e. a single vehicular access to the site]

B. The applicant has also confirmed that they would be willing to undertake mitigating measures to the A702 as detailed in the BEAR Report 'Accident Investigation and Prevention Study, A702 Hillend to Lothianburn', Draft Report dated April 2010.

C. Additionally the applicant is willing to promote a Traffic Regulation Order banning right turning traffic from the Trunk Road to the site accompanied by the appropriate routing signage for north bound traffic via lothainburn [sic] roundabout and access the site from the south bound A702.

5.15 All three conditions were met. The approved access would have replaced the existing two vehicle access points with one, as is proposed with the current proposal, and the TRO banning right turning traffic from the A702 is now in place. The current proposal would have a total of 18 bedrooms and 14 parking spaces. The approved hotel would have had 23 bedrooms and 23 parking spaces. Transport Scotland was evidently satisfied that a hotel use, which would be likely to generate more vehicle movements than nine dwellings would, could be permitted with conditions. Two of those conditions have already been met. I am not persuaded that the adverse impacts upon road and pedestrian safety caused by the current proposal would be any greater than those associated with the previously permitted hotel scheme.

5.16 Thus, notwithstanding the error in the transport statement methodology (i.e. vehicle movements related to eight dwellings, not nine), I conclude on this issue that, on the balance of probability, the evidence submitted, when considered in the light of all other material considerations relating to road conditions, markings and signage, as well as previous planning permissions, indicate that the proposed development would not increase the risk of vehicle and vehicle/pedestrian conflict to such an extent that road and/or pedestrian safety would be harmfully prejudiced.

5.17 Deficiencies in the car park layout could be addressed by condition and LRB suggested condition 6 does this.

CHAPTER 6: REASON FOR REFUSAL 3 – DESIGN

6.1 The third reason for refusal is:

3. The design of the dwellings are [sic] not of sufficient good quality for this sensitive area, being neither of a traditional design nor of a high quality contemporary design. The siting, scale, density and design of the development fails to adequately reflect the surrounding characteristics of the area, and fails to complement or enhance the character of the surrounding area. The proposal is therefore contrary to policy ENV1 of the adopted Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.

6.2 This reason for refusal is redundant because the design considerations that are applicable to proposals for infill residential development within existing housing groups in the countryside do not apply in the Green Belt (see SG2 paragraph 6.2). Neither would this proposal involve the conversion of redundant farm or other non-residential buildings.

6.3 The most relevant design consideration, therefore, would appear to relate to how the proposed design compares with the design of the permitted hotel scheme, which is a material consideration in this case. Both schemes respond well to the topography of the site. This allows the perceived height of the buildings when viewed from the A702 to be single storey.

6.4 Many steadings have a distinctive wide “U” shape, with a long, low stable/barn block flanked by shorter, gabled barns. Sometimes, a farmhouse sits on one corner of the steading but in many cases a steading has no living space associated with it. Almost invariably, the open part of the “U” faces a road or farm track. Sometimes the open part of the “U” is walled off, with a small entranceway in the centre. It is not uncommon for steadings to be converted to residential use, with access from the closest highway through the open part of the “U”. This is the layout proposed here.

6.5 Both the hotel scheme and the proposed houses have been designed to give the appearance of a steading conversion. Indeed, I consider that the current scheme accomplishes this better than the hotel scheme does because of the separation between the buildings and the orientation of the gables of the houses closest to the A702 towards the road, which leads the eye into what resembles the closed part of the “U”.

6.6 There is an original steading about 280 metres away from the site, on the A702, called Hillend House Barn, which is evidently used as holiday lets. It provides useful design cues for the proposed dwellings and details of external materials of construction of the proposed houses could be controlled by condition. LRB suggested condition 2 does this.

CHAPTER 7: REASON FOR REFUSAL 4 – LIVING CONDITIONS

7.1 The fourth reason for refusal is:

4. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed dwellings will be afforded an adequate level of residential amenity and therefore does not comply with policy DEV6 of the adopted Midlothian Local Development Plan 2017.

7.2 The council is concerned about the amount of useable private outdoor living space (i.e. rear gardens), the degree of separation between gables and front elevations and the effect of road noise upon living conditions.

7.3 The topography of the site makes it impossible for the proposed layout to fully accord with MLDP Policy DEV 6 criterion G. Hence, there are significant changes in level where houses 5, 6, 7, 8 and 9 are concerned, with the main entrance of each being reached by means of a raised walkway (see drawing number 1450-00-007, dated 2 March 2021). There are windows in the front elevations of these houses at 'garden' (basement) level. These look out onto a retaining wall and the spaces beneath the raised walkways are not practicably useable. However, with the exception of bedroom 2 in house 7, these windows are not the sole source of light to the rooms they serve. I therefore conclude that the changes in level across the site would not lead to unacceptably poor living conditions inside the proposed dwellings.

7.4 As to the amount of private outdoor living space, MLDP Policy DEV 6 criteria H and K must be read together. Criterion H expects open space to be provided for different age groups, whereas criterion K requires private open space to be provided on a scale appropriate to dwelling type. All of the proposed dwellings would have 2 bedrooms, so it is likely that families with one child would occupy some of them. Houses 1, 2, 3 and 4 would be provided with 54.52, 40.03, 77.46 and 64.50 square metres of private outdoor living space respectively. I consider that gardens of such sizes would be big enough to provide sufficient space for a single child to play in, for outdoor entertainment (e.g. barbecuing) and for the drying of clothes.

7.5 Houses 5, 6, 7, 8 and 9 would each be provided with a rear balcony at ground floor level. These would all be private because every one would be shielded from overlooking by the protruding stairwell of the neighbouring house. With the exception of bedroom 2 in house 7, at garden level French windows would allow occupants of the bedrooms direct access to a private rear garden. Beyond the immediate curtilage of the building, the land drops from about 157.3 metres above datum to about 154.3 metres above datum – a change in level of about 3 metres across about 9 metres of ground. The gradient would therefore be about -18.4° or -33.3% from the rear elevation of the building to the rear boundary of the site. This is steep, but not dangerously precipitous. As the houses would be for sale on the open market, I consider that it would primarily be a matter for potential purchasers to decide whether a steeply sloping garden would be suitable for them to manage and for the final developer to decide whether the commercial risk was acceptable.

7.6 The alternative would be to substantially raise land levels in order to provide a more level platform for the gardens. This would inevitably make the site appear far more prominent in the green belt. I consider that the steeply sloping gardens represent an acceptable trade-off against landscape considerations.

7.7 In relation to the juxtaposition of elevations (i.e. the gable ends of houses 3 and 4 and the front elevations of houses 5, 6, 8 and 9) only the dining rooms of houses 5 and 9 would have a single aspect to the gable end of houses 3 and 4 respectively. As a dining

room (or possibly as a home office), I consider that outlook from them is not as crucial to good living conditions as it would be from a room used by all family members throughout the day.

7.8 I consider that any further investigations relating to road noise and the details of acoustic insulation and performance could adequately be secured by condition and note that LRB suggested conditions 3 and 4 seek to address these matters.

7.9 The other criteria of MLDP Policy DEV 6 do not relate directly to living conditions. Moreover, the council has not referred to this policy in its third reason for refusal, which relates to design. Nevertheless, I consider that the efforts made to limit the visual impact of the proposal by responding positively to the existing topography of the site and the attempt to replicate the form and scale of a steading conversion would allow the proposal to accord with criteria A and B of this policy.

CHAPTER 8: REASON FOR REFUSAL 5 – SURFACE WATER DRAINAGE

8.1 The fifth reason for refusal is:

5. It has not been demonstrated to the satisfaction of the Planning Authority that the surface water drainage from the development proposal will adequately be addressed.

8.2 The submitted phase 1 drainage impact assessment was not produced for the current proposal because it refers to a previous (refused) application for 14 flats and two houses. Nevertheless, as the proposed nine houses would be likely to have no greater impact upon surface water drainage than this previous proposal would have, I find that its conclusions may still be relied upon.

8.3 The council is concerned only about surface water drainage. The impact assessment finds that a soakaway solution with on-site attenuation to cope with a 1 in 200 year critical storm event would be a suitable solution. Details of the proposed soakaway could be secured by condition, and I note that LRB suggested condition 11 deals with this.

CHAPTER 9: REASONED CONCLUSIONS AND RECOMMENDATION

9.1 This case must be determined 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 the effect of the proposal upon:

- control of development in the green belt;
- road and pedestrian safety;
- design;
- living conditions;
- surface water drainage, and
- housing land supply.

9.2 The policy context for the appeal is set out in Chapter 2 above.

Control of Development in the Green Belt

9.3 The proposal is one for open market housing and is not required for the furtherance of an established green belt activity (i.e. agriculture, horticulture or forestry). It plainly would not, therefore, accord with MLDP Policy ENV 1, when viewed in isolation. However, I have found that there is currently a moderate shortfall in housing land supply within Midlothian. SESplan Policy 7, with which I have found the proposal would accord, therefore over-rides MLDP Policy ENV 1. On this basis, the proposal would, I find, be both necessary and acceptable development within the green belt.

Road and Pedestrian Safety

9.4 The conditions that Transport Scotland stipulated in 09/00588/DPP were met and planning permission was duly granted for a 23-bedroom hotel on the site. The prohibition of a right hand turn into the site remains in force and it is reasonable to proceed on the basis that drivers would obey the Highway Code and not, as the council suggests, make an illegal manoeuvre from the A702 into the site. Accident data from the past six years does not support a conclusion that road conditions are currently unsafe and the proposed use would be likely to involve fewer vehicle movements than the permitted hotel scheme would have.

9.5 Transport Scotland and the applicant's expert disagree about this matter. It is not uncommon for professionals to come to different conclusions based upon the same evidence. My first procedure notice asked Transport Scotland to explain how and why road conditions now are materially different to what they were when it was last consulted about them in relation to 09/00588/DPP. In its response, it stated: "...several elements that need to be considered, when assessing the effects of a proposed development, may have changed in the intervening period". This is clearly true. I therefore undertook my own observations of traffic volumes and composition. The results of these observations are detailed in Chapter 5 above. In the absence of any evidence of equal authority provided by Transport Scotland, or any other party, I am entitled to draw conclusions from my own observations.

9.6 In relation to the question of why the discharge of the two principal conditions sought by Transport Scotland in 09/00588/DPP (i.e. no right turn into the site and the creation of a single vehicular access) are no longer sufficient to satisfy its concerns, Transport Scotland responded: "conditions relevant previously are not necessarily directly transferable to today". Hence, I issued a third procedure notice seeking Transport Scotland's views on the wording of a suspensive condition that would satisfy its concerns.

9.7 Returning to the facts of the case, I disagree that the intensity of the proposed use (i.e. 18 bedrooms and 14 car parking spaces) in comparison with the approved hotel use (i.e. 23 bedrooms and 23 car parking spaces) would give rise to concerns so serious that they could not be satisfactorily addressed by condition. All of the evidence discussed in Chapter 5 above points to a conclusion that the sustained objection by Transport Scotland has not been objectively justified.

Design

9.8 The council has not provided any detailed critique of the proposed design. In Chapter 6 above I have expressed my own view of the proposed design and find that it would respond well to the topography of the site and that the overall approach is cohesive and takes inspiration from a common form of steading development; an older example of which is evident relatively close to the site. The council would have an opportunity to control the appearance of external materials of construction by condition. I have based my finding on a comparison of the permitted hotel scheme with what is now proposed. When comparing the two, the current scheme would be less intensive and would also be more likely to represent the sustainable development of a site that has evidently blighted the area for many years. Thus, all relevant material considerations concerning design suggest that the proposal would be acceptable.

Living Conditions

9.9 The proposed houses would deliver an acceptable standard of accommodation internally. Although the amount of useable private outdoor living space would be limited by the topography of the site, all of the proposed houses would have two bedrooms and are unlikely to be occupied by families with more than one child. The provision of private balconies for houses 5, 6, 7, 8 and 9 would compensate for the steeply sloping rear gardens and the gardens are not so steeply sloping that they would be unsafe. Moreover, as this is a proposal for open market housing, it would principally be a matter for potential owners to decide whether the gardens would be suitable for them and for the final developer to decide whether the commercial risk of building the houses to this design is acceptable. MLDP Policy DEV 6 criterion H expects open space to be provided for different age groups, whereas criterion K requires private open space to be provided on a scale appropriate to dwelling type. The proposed accommodation would generally accord with these criteria for the reasons I have given above. However, houses 5, 6, 7, 8 and 9 would be sited across the contours of the slope at the rear of the site. For this reason, the proposal would not accord with criterion G of MLDP Policy DEV 6.

9.10 Bedroom 2 in house 7 would appear rather gloomy and the aspect of the dining rooms of houses 5 and 9 would not be as good as other rooms with a twin aspect. However, it is unlikely that the gable ends of houses 3 and 4 would appear overbearing in outlook from the affected dining rooms. The other issue raised by the council, namely protection from road noise could be adequately addressed by condition.

9.11 I find that the proposal would generally accord with the relevant provisions of MLDP Policy DEV 6. Where there is a lack of accord with this policy, this needs to be balanced against the desirability of preserving the character of the surrounding green belt landscape by resisting the creation of a raised platform of earth upon which to provide level gardens for houses 5, 6, 7, 8 and 9.

Surface Water Drainage

9.12 The information provided by the applicant in its phase 1 drainage impact assessment needs to be updated. However, there is likely to be no substantive difference between the

findings of the submitted assessment and those of an updated assessment. This is because the intensity of the proposed use (nine dwellings) is lower than that for which the submitted assessment was produced (16 dwellings). Thus, the provision of an updated assessment and technical details of the resultant drainage scheme could both be addressed by condition.

Overall Planning Balance

9.13 Given that I have identified a moderate shortfall in housing land supply, SESplan Policy 7 over-rides the proposal's lack of accord with MLDP Policy ENV1. There are also minor policy conflicts with other parts of the adopted development plan. Nevertheless, I find that, despite these concerns, the proposal would be effective and would generally accord with the development plan as a whole. Any serious deficiencies could be addressed by condition.

9.14 Even if I were to find that the proposal would fail to accord overall with the development plan, there are a number of material considerations that pull very strongly in the opposite direction.

9.15 First amongst these is the fact that SESplan is out of date. SPP paragraph 33 is therefore engaged, which states: "the presumption in favour of development that contributes to sustainable development will be a significant material consideration". Helping to address a housing shortfall is of itself a contribution to sustainable development. So, the question to ponder is whether the deficiencies in the proposal are so serious that they significantly and demonstrably outweigh the benefits when assessed against the wider policies in SPP and the adopted development plan.

9.16 Another significant material consideration is the approval of 09/00588/DPP during which the conditions required by Transport Scotland were satisfactorily met and either remain in force or are still a part of the proposed layout.

9.17 I am satisfied that the deficiencies in the proposal do not significantly and demonstrably outweigh the benefits associated with helping to meet the moderate shortfall in housing land supply in Midlothian. The proposal would, therefore, be sustainable overall.

Conclusion

9.18 The proposal would accord overall with the relevant provisions of the development plan. Even if Ministers were to disagree with my finding in this regard, I conclude that this lack of accord is outweighed by material considerations such that the development plan should be set aside in this instance.

Recommendation

9.19 I recommend that planning permission is granted with conditions.

Conditions

9.20 I must also consider whether planning conditions are capable of addressing deficiencies that would otherwise require planning permission to be refused. The LRB suggested conditions address these and I discuss below whether they meet the six tests.

9.21 The LRB has suggested 12 conditions. My recommended conditions are detailed in Appendix 1 below.

9.22 Suggested condition 1 is a standard landscaping condition. Given the site's green belt location, it is important that both hard and soft landscaping is well-designed and maintained. The suggested condition would achieve this. However, the requirement to provide details of surface water drainage in suggested condition 11 is duplicated here. It is also important that the approved scheme is completed before first occupation of any of the dwellings hereby permitted. I have recommended that suggested condition 1 be amended accordingly.

9.23 Suggested condition 2 fails the test of precision and also duplicates the requirement in suggested condition 1 to provide details of hard surfacing materials. I consider it important for samples of the proposed materials of construction to be approved because the council will need to satisfy itself that the texture and colour of these materials are appropriate for the building and its setting. I have recommended that suggested condition 2 be amended accordingly.

9.24 Suggested condition 3 seeks to ensure that road noise would not disturb future occupants of the houses. During my site visit I noted that there is a high level of road noise and I agree that this condition is necessary. I have recommended some minor changes to the suggested condition to aid clarity.

9.25 Suggested condition 4 requires acoustic glazing to be installed to all windows facing the A702. I agree that this is necessary. However, the requirement for the design of the windows themselves to be subject to separate approval is unnecessary because suggested condition 2 requires all external materials of construction, which would include windows, to be approved in writing prior to development commencing. I have recommended that this clause of the suggested condition be deleted.

9.26 Suggested condition 5 would achieve a biodiversity gain for the site and I agree that it meets the six tests. I have recommended some minor changes in the interests of consistency and clarity.

9.27 I consider suggested condition 6 to be unnecessary and unreasonable. The parking area is not part of the public road and there would be good intervisibility between drivers and pedestrians. Drivers of smaller cars would likely have little difficulty manoeuvring in and out of spaces 5 and 14 and there is adequate space to turn a smaller car around without requiring a long reversing manoeuvre. I have recommended that suggested condition 6 be deleted.

9.28 Suggested condition 7 would aid toward meeting the Scottish Government's net zero targets. I agree that it meets the six tests but have recommended some minor changes in the interests of consistency and clarity.

9.29 Suggested condition 8 would support the delivery of digital infrastructure and would accord with the six tests. I have recommended some minor changes in the interests of consistency and clarity.

9.30 I have seen no evidence to suggest that there have ever been mineral workings at the site. However, it was a fuel filling station and it is likely that the ground is contaminated with hydrocarbons. Consequently, suggested condition 9 is necessary but I have recommended that all references to mineral workings are deleted. I also consider that suggested condition 10 could reasonably be included within suggested condition 9. I have recommended that suggested conditions 9 and 10 be revised accordingly.

9.31 Suggested condition 11 is necessary because the submitted phase 1 drainage impact assessment was produced for a different proposal. It is also necessary because the

submitted plans do not show drainage measures in sufficient detail. I have recommended some minor changes in the interests of consistency and clarity.

9.32 Suggested condition 12 meets the six tests because the presence of at least one invasive plant species has been identified on the site. I have recommended some minor changes in the interests of consistency and clarity.

9.33 In addition to these conditions, I consider it both necessary and reasonable to attach a suspensive condition requiring the applicant to address general issues of road safety raised by Transport Scotland. I issued a procedure notice requesting the views of Transport Scotland and the applicant on the necessity for and wording of any such condition(s). Transport Scotland responded with seven suggested conditions.

9.34 Paragraph 5.4 of Circular 3/2013 – Development Management Procedures states: “It is not the intention that a notice of initiation of development be taken as a declaration that suspensive conditions have been met. However it does, insofar as it sets out a date on which development is intended to commence, provide to a planning authority an indication of the date by which suspensive conditions should be met. It would be for the planning authority on receipt of such a notice to consider whether any suspensive conditions were attached to the development and whether compliance with such conditions should be confirmed”. Consequently, I agree with the applicant that it is unnecessary to refer in any suggested condition to arrangements for that condition to be discharged.

9.35 The first suggested condition would require the specification of the proposed access and reinstated footways to be approved by the council, in consultation with Transport Scotland, as trunk roads authority. Transport Scotland is a statutory consultee in the planning process. This means that Midlothian Council must consult Transport Scotland before granting planning permission for developments which are likely to have an impact on the trunk road network.

9.36 The A702 is a trunk road and so Transport Scotland would need to be consulted during determination of any application for the approval of matters specified in a condition that relate to vehicular access to or from this road if the council were to consider such application to be necessary. It would therefore be redundant to refer to these matters in any of the suggested conditions. In addition, there is no need to specify compliance with a particular technical standard in the condition because this would more properly be a matter for the council and the applicant to agree upon.

9.37 I also consider it more appropriate for reference to any amendments to the design required as a result of the Road Safety Audit required by suggested condition two to be incorporated into this condition.

9.38 The third suggested condition would require the new access to be completed prior to any other development taking place on the site. I have found that road conditions are not currently unsafe and, given the need for plant and machinery to be moved on and off the site during development, it may aid the safe operation of the site for the existing two accesses to remain in operation until development is substantially complete. Keeping the existing accesses open would not necessarily preclude the new access from being created as soon as possible but I am not convinced that their closure is either necessary or reasonable as a condition of any further development taking place on site.

9.39 I agree that the location and design of external lighting should be controlled. However, this is most efficiently done by adding this element to criterion iv) of recommended condition 1) (hard and soft landscaping).

9.40 Suggested conditions five and six may be amalgamated but I see no need for the design of such a facility to be subject to separate control because its operation would essentially be a management issue. I do consider it necessary, however, to specify that a clean zone is maintained between the end of the facility and the A702.

9.41 Suggested condition 7 may be incorporated into recommended condition 9) (surface water drainage).

Planning Obligation

9.42 The LRB considers that developer contributions should be made towards primary and secondary school education provision and school transport provision. However, I can see nothing in MLDP Policy IMP 1 or IMP 2 to indicate how contributions should be calculated.

9.43 Although SG1 paragraph 93 explains how pupil ratios will be used to determine the level of contributions, this guidance was part of the superseded MLP and it mentions nothing about contributions towards school transport. Neither is the issue of developer contributions raised anywhere in the report of handling for the application.

9.44 On the basis of the evidence presented, I consider that the LRB requirement for developer contributions to be made towards primary and secondary school places and school transport is not well justified and recommend that no liability for developer contributions should fall upon the applicant.

Philip Barton
Reporter

Appendix 1: Recommended Conditions

- 1) No development shall take place until details of a scheme of hard and soft landscaping works have been submitted to and approved in writing by the planning authority. The approved details shall include:
 - i) existing and finished ground levels and floor levels for all buildings, garden ground and roads in relation to a fixed datum;
 - ii) existing trees, landscaping features and vegetation to be retained, removed or protected during development and in the case of damage, restored;
 - iii) proposed new planting in communal areas, rain gardens, and open space, including trees, shrubs, hedging, wildflowers and grassed areas as well as root protection measures;
 - iv) location and design of any proposed external lighting, walls, fences and gates, including retaining walls and those surrounding bin stores or any other ancillary structures;
 - v) schedule of plants to comprise species, plant sizes and proposed numbers and/or density;
 - vi) programme of maintenance for all soft and hard landscaping;
 - vii) proposed car park configuration and surfacing; and
 - viii) proposed footpaths and cycle paths (designed to be unsuitable for motorcycle use).

All hard and soft landscaping works shall be completed in accordance with the approved details prior to first occupation of any of the dwellings hereby approved and shall subsequently be managed in accordance with the approved programme of maintenance. Any tree or shrub removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by specimens of a similar species to those originally approved unless otherwise agreed in writing by the planning authority.

Reason: *To enhance the character and appearance of the area; to respect the site's Green Belt location and to accord with Midlothian Local Development Plan 2017 (MLDP) Policies ENV 1, DEV 6 and DEV 7.*

- 2) No development shall take place until samples of all materials to be used on external surfaces of the buildings; boundary walls; retaining walls; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall take place using the approved materials unless any variation is agreed in writing by the planning authority.

Reason: *To enhance the character and appearance of the area and to accord with MLDP Policies ENV 1 and DEV 6.*

- 3) No development shall take place until a Road Traffic Noise Assessment has been undertaken and submitted to the planning authority for its written approval. Any noise mitigation measures identified within the approved Road Traffic Noise Assessment Report shall be implemented prior to the first occupation of any dwelling hereby approved where mitigation measures are required. Development shall take place in accordance with the approved mitigation measures and those measures shall thereafter be retained for the lifetime of the development unless the planning authority gives its written approval for their removal or variation.

Reason: To protect the living conditions of future occupants of the houses and to accord with MLDP Policy DEV 6.

- 4) No development shall take place until details of the specification of acoustic glazing to be fitted have been submitted to and approved in writing by the planning authority. The approved acoustic glazing shall be fitted to all window openings fronting onto or facing the A702 prior to first occupation of any of the dwellings thereby identified and shall subsequently be retained for the lifetime of the development unless the planning authority gives its written approval for their removal or replacement.

Reason: To protect the living conditions of future occupants of the houses and to accord with MLDP Policy DEV 6.

- 5) No development shall take place until details of a scheme for biodiversity gain have been submitted to and approved in writing by the planning authority. The approved details shall include the provision of house bricks and boxes for bats and swifts throughout the development. Development shall take place in accordance with the approved details and shall thereafter be retained as approved for the lifetime of the development unless the planning authority gives its written approval for their removal or replacement.

Reason: To achieve a biodiversity gain for the area and to accord with MLDP Policy DEV 5.

- 6) No development shall take place until details of the specification and siting of electric vehicle charging stations throughout the development have been submitted to and approved in writing by the planning authority. Development shall take place in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted and shall thereafter be retained as approved for the lifetime of the development unless the planning authority gives its written approval for their removal or replacement.

Reason: To accord with MLDP Policy TRAN 5.

- 7) No development shall take place until details of the provision of high speed fibre broadband to each house hereby approved have been submitted to and approved in writing by the planning authority. The approved details shall include a timetable for implementation to ensure that high speed fibre broadband is delivered prior to the first occupation of each dwelling hereby permitted. The delivery of high speed fibre broadband shall be implemented in accordance with the approved details.

Reason: To deliver appropriate digital infrastructure in accordance with MLDP Policy IT1.

- 8) No development shall take place until details of a decontamination and remediation scheme to deal with any contamination of the site have been submitted to and approved in writing by the planning authority. The approved details shall include:
 - i) the nature, extent and type(s) of contamination on the site;
 - ii) measures to treat or remove contamination to ensure that the site is fit for the residential use hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii) measures to deal with contamination encountered during construction work; and

- iv) the condition of the site on completion of the specified decontamination and remediation measures.

On completion of the works described in the approved decontamination and remediation scheme, a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme.

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.*

- 9) No development shall take place until details of a Surface Water Management Plan have been submitted to and approved in writing by the planning authority. There shall be no drainage connections to the trunk road drainage system. Development shall take place in accordance with the approved Surface Water Management Plan unless the planning authority gives its written approval to any variation.

Reason: *To ensure that there is suitable drainage of the site.*

- 10) No development shall take place until an invasive species survey has been carried out and details of a scheme to eliminate any invasive species therein identified have been submitted to and approved in writing by the planning authority. The approved scheme shall be fully implemented prior to development commencing unless the planning authority gives its written approval to any variation.

Reason: *To ensure that appropriate mitigation measures are in place to deal with any invasive species.*

- 11) No development shall take place until a Stage 1 and Stage 2 Road Safety Audit has been submitted to and approved in writing by the planning authority.

Reason: *In the interests of road and pedestrian safety*

- 12) No development shall take place until detailed drawings of the proposed vehicular access to the site from the A702 have been submitted to and approved in writing by the planning authority. The approved details shall include a specification for the reinstatement of the public footway across the two existing vehicular accesses and shall take into account any amendments required as a consequence of the Road Safety Audit conducted in compliance with condition 11) above. The approved new access and reinstated public footway shall be completed in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.

Reason: *In the interests of road and pedestrian safety.*

- 13) Any vehicle transporting excavated material onto or off the site shall be sheeted and must be treated by a wheel washing facility prior to it re-joining the public road network. This facility must remain operative at all times during earth moving operations. A 'clean zone' shall be maintained between the end of the facility and the A702.

Reason: *In the interests of road safety.*



E-mail: Planning.Decisions@gov.scot

Mr G Gilbert
Gilberts
Sent by email

Our ref: NA-290-001
Planning Authority ref:21/00148/DPP

30 January 2025

Dear Mr Gilbert

NOTICE OF INTENTION

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 ERECTION OF 9 TERRACED COTTAGES, FORMATION OF CAR PARKING AND ASSOCIATED WORKS, AT FORMER FILLING STATION, BIGGAR ROAD, HILLEND, DAMHEAD EH10 7DU ('the proposed development')

1. This letter contains the Scottish Ministers' proposed decision on the above planning application submitted to Midlothian Council by Gilberts on behalf of C M Roofing and Building Limited on 2 March 2021 (council reference: 21/00148/DPP).
2. The application was called in for the Scottish Ministers' determination on 10 March 2022. It was considered by means of written submissions and an unaccompanied site inspection which took place on 19 April 2022 by a reporter appointed by the Scottish Ministers for that purpose.
3. The final report with the reporter's recommendation was issued to the Scottish Ministers on 26 August 2022. A copy of the reporter's report ('the report') is enclosed. All references to paragraph and chapter numbers, unless otherwise stated, are to those in the report.
4. On 26 January 2023, the Scottish Ministers issued a procedure notice which sought comments from the applicant and the planning authority in relation to the implications of Revised Draft National Planning 4 for the determination of the application. On 21 July 2023, the applicant and planning authority were invited to provide comments on the relevance of the Scottish Ministers' decision on a recalled appeal for residential development at Mossend, West Calder. The parties were also invited to comment on how the Midlothian Housing Land Audit affected their case. The parties were given an opportunity to comment on each other's responses. On 2 July 2024, the applicant and planning authority were invited to give comments on the relevance of the court's opinion on the Mossend legal challenge and the subsequent Chief Planner letter (dated 27 June 2024) on planning for housing. The parties were also given an opportunity to comment on each other's responses.

Reporter's Recommendation and the Scottish Ministers' Decision

5. The reporter has recommended that planning permission should be granted subject to conditions. The Scottish Ministers have carefully considered all of the evidence presented and the reporter's findings and conclusions in their report. The Scottish Ministers agree with the reporter's recommendation, as is explained in this decision letter, and are minded to grant planning permission for the proposed development subject to conditions and a planning obligation.

The development plan and national policy context

6. Under the terms of section 25 of the Town and Country Planning (Scotland) Act 1997 ('the Planning Act') the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.
7. On 13 February 2023, National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers and replaced National Planning Framework 3 and Scottish Planning Policy. On the same date, SESPlan and its associated supplementary guidance ceased to have effect. The statutory development plan covering the application site now consists of NPF4 and the Midlothian Local Development Plan 2017 (MLDP) and associated supplementary guidance. The Scottish Ministers have therefore not taken the reporter's findings and conclusions with regard to Scottish Planning Policy in paragraphs 2.13-2.15 into account in determining this application.
8. The Scottish Ministers agree with the Reporter's summary of relevant policies of the MLDP including Policy ENV1 'Protection of the Green Belt'; Policy DEV 6 'Layout and Design of New Development'; and IMP2 'Essential Infrastructure Required to Enable New Development to Take Place', set out in paragraphs 2.16 - 2.18. Other relevant MLDP policies include Policies DEV 5 on sustainability in new development, DEV 7 on landscaping in new development; NR 3 and NR 4 regarding energy use and low and zero-generating technology; IMP 1 on new development, IMP 3 on water and drainage.
9. The Scottish Ministers agree with the Reporter that the Council's Supplementary Guidance SG2 (Housing Development in the Countryside and Green Belt Supplementary Guidance) forms part of the statutory development plan.
10. The Scottish Ministers agree with the reporter that the main issues are:
 - control of development in the green belt;
 - road and pedestrian safety;
 - design;
 - living conditions;
 - surface water drainage, and
 - housing land supply.

Policies on green belt, rural development and brownfield land

11. The Scottish Ministers agree with the reporter that the proposed development would not accord with MLDP Policy ENV1 'Protection of the Green Belt' (paragraph 9.3). However, given that SESPlan has ceased to have effect, the Scottish Ministers disagree with the reporter that SESPlan Policy 7 over-rides that MLDP policy.

12. Contrary to the reporter's findings in paragraph 4.4, the Scottish Ministers do not consider that any shortfall in housing land supply constitutes an exceptional circumstance to justify granting planning permission in this case. The Scottish Ministers acknowledge that MLDP paragraph 2.3.10 states that 'housing proposals on greenfield/green belt locations *may* be acceptable where it is demonstrated that they will augment the 5-year housing land supply following the provisions of SESplan Policy 7' (emphasis added). However, SESPlan no longer has any effect. In addition, the provisions of the MLDP regarding a 'shortfall' or 'deficit' in the five year effective housing land supply are incompatible with, and therefore prevailed over by, NPF4 Policy 16(f). This is because these provisions cover the same subject matter but would have a different effect.
13. National policy in relation to green belts is set out in Policy 8 of NPF4. The applicant notes that the current green belt identified in the adopted MLDP has not been drawn on the basis set out in the 'Local Development Plans' section of the green belt policy topic, so questions whether NPF4 Policy 8 is directly applicable to the current green belt. However, the Scottish Ministers consider that Policy 8 is applicable and is a consideration in determining this application. The policy states that development proposals within a green belt designated within the LDP will only be supported if they are for a prescribed type of development or use, set out in part (i) of the policy. The proposed development does not fall within any of those specified circumstances, and as such the Scottish Ministers consider it to be contrary to Policy 8.
14. NPF4 Policy 9 (Brownfield, vacant and derelict land and empty buildings) states (in summary) that development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land will be supported. That policy therefore provides support for the development of the site. The policy also states its intent is to help reduce the need for greenfield development. The applicant has acknowledged that 'this support conflicts with [NPF4] Policy 8 on green belts and considers the decision maker will have to weigh up the conflicting policy provisions, as well as taking account of all policy matters and material considerations.'
15. The Scottish Ministers consider that NPF4 Policy 17 'Rural homes' is relevant to this case. The applicant considers the locality is 'semi-urban' and notes that NPF4 does not contain a definition of 'rural' yet considers that the proposed development gains support from clause a(ii) of the policy because it reuses brownfield land where a return to a natural state has not or will not happen without intervention. The applicant also considers the proposal should be supported in respect of local living. The council on the other hand expresses concern about the design of the proposed development, arguing it would not complement or enhance the character of the area and that it would not fully comply with Policy 17.
16. The Scottish Ministers consider that the proposed development is in keeping with the character of the area (for the reasons set out by the reporter in paragraphs 6.4 to 6.6) and gains support from NPF4 Policy 17. The proposed development also gains support from NPF4 Policy 29 on Rural development which provides support to development proposals that contribute to the viability, sustainability and diversity of rural communities and the local rural economy. The proposed development gains support from NPF4 Policy 9 and Scottish ministers consider it does not undermine the stated policy outcomes for green belts.

Sustainable transport and road and pedestrian safety

17. NPF4 Policy 13 'Sustainable transport' is relevant to this case. Part (b) of the policy states that development proposals will be supported where it can be demonstrated that the transport requirements generated have been considered in line with the sustainable travel and investment hierarchies and where appropriate they (amongst other things):
- (i) Provide direct, easy, segregated and safe links to local facilities via walking, wheeling and cycling networks before occupation;
 - (ii) Will be accessible by public transport, ideally supporting the use of existing services;
 - (iii) Provide low or zero-emission vehicle and cycle charging points in safe and convenient locations, in alignment with building standards;
 - (iv) Have taken into account, at the earliest stage of design, the transport needs of diverse groups including users with protected characteristics to ensure the safety, ease and needs of all users.
18. The Scottish Ministers consider that, subject to compliance with conditions, the proposed development would satisfy the above requirements (i) to (iii) as appropriate for the scale and location of the development. The Scottish Ministers consider that further information would have been required in order to satisfy point (iv). This is particularly in view of the reporter's observation at paragraph 5.9 that whilst there are bus stops on both sides of the A703, about 150 metres away from the site, the crossing to Old Pentland Road (which would likely need to be crossed in order to access those bus stops) is sub-standard and difficult, even hazardous, to negotiate for people with mobility difficulties, especially wheelchair users.
19. Part (g) of NPF4 Policy 13 states (amongst other things) that development proposals that have the potential to affect the operation and safety of the Strategic Transport Network will be fully assessed to determine their impact.
20. The Scottish Ministers note the reporter's findings set out in paragraphs 5.5 to 5.17 regarding road and pedestrian safety. The Scottish Ministers give limited weight to the previous grants of planning permission for a hotel on the site as a material consideration. This is because those permissions were granted prior to the adoption of the current Midlothian LDP and prior to the publication of NPF4 and was not implemented. The reporter has included suspensive conditions that require the applicant to address Transport Scotland's concerns. They prohibit development until a Stage 1 and Stage 2 Road Safety Audit (RSA), and details of the proposed vehicular safety access (informed by the RSA), have been submitted and approved by the council and Transport Scotland, which would satisfy NPF4 Policy 13(g).

Design, quality and place and amenity

21. The reporter deals with 'design' and 'living conditions' in separate chapters of his report (reflecting the distinct original reasons for refusal of the planning application). The Scottish Ministers however consider these matters together as they both relate to design, quality and place (the subject of NPF4 Policy 14) and MLDP Policy DEV6 'Layout and Design of New Development'.
22. The Scottish Ministers agree with the reporter's findings set out in paragraphs 6.3 to 6.6 with regard to the design of the development, except his finding that the most relevant design consideration relates to how the proposed design compares with the design of the permitted hotel scheme. The Scottish Ministers consider that the most relevant design consideration is the extent to which the proposed development satisfies the relevant criteria set out in MLDP Policy DEV6 and NPF4 Policy 14.

23. MLDP Policy DEV6 states that the council will require good design and a high quality of architecture, in both the overall layout of development proposals and their constituent parts. It states that the layout and design of development proposals should meet specific criteria, including:

A. the layout of development proposals should complement or enhance the character of any adjoining or nearby urban area; include attractive street frontages; provide outlook onto communal open space; and integrate the siting of buildings, landscaping, open space, boundary treatment, and pedestrian/ cycle/ vehicular routes;

G. buildings should be laid along contours to avoid excessive changes in levels and underbuilding in the street scene;

H. open space for different age groups should be designed and sited to minimise disturbance and protect residential amenity;

I. adequate spacing between housing should be provided to ensure privacy and amenity; and

K. private open space should be provided on a scale appropriate to the relevant dwelling type.

24. NPF4 Policy 14 states that (a) development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale. It also states that (b) development proposals will be supported where they are consistent with the six qualities of successful places: healthy, pleasant, connected, distinctive, sustainable, and adaptable.

25. The Scottish Ministers note the reporter's comment (paragraph 7.3) that the topography of the site makes it impossible for the proposed layout to fully accord with criterion G of MLDP DEV8 above. However, the Scottish Ministers consider that this is partly the result of the number of houses proposed by the application.

26. The Scottish Ministers agree with the reporter that the changes in level across the site would not lead to 'unacceptably poor living conditions. However, the Scottish Ministers note that:

- the only window of a bedroom in house 7 would face on to a retaining wall and would be "rather gloomy" (paragraph 9.10);
- the rear gardens of houses 5-9 would be steep at around -18.4° or -33.3% (paragraph 7.5), and
- the rear garden of each of the houses 6-8 would potentially only be accessible by going through the house (potentially making garden maintenance or improvements difficult) or through one or more rear gardens of the neighbouring houses (leading to loss of privacy).

27. The Scottish Ministers agree with the reporter in paragraph 4.6 that the site is a brownfield site that has detracted from the character and general appearance of the area for many years. The Scottish Ministers consider that the proposal is broadly in line

with the six qualities of successful places and agree with the reporter's view in paragraph 9.6 that the design responds well to the topography of the site and that the overall approach is cohesive and takes inspiration from a common form of steading development; an older example of which is evident relatively close to the site.

Other relevant issues

28. As the proposed development is not allocated for housing in the LDP it is not supported by part (a) of NPF4 Policy 16 (Quality Homes).
29. Housing development proposals on land that has not been allocated for such development (such as in this instance) are required to be assessed against part (f) of Policy 16. The applicant argues that Policy 16 (f) is not a relevant policy for the purposes of this application and that it cannot be applied until such a time as a new Local Development Plan has been adopted in the relevant area and a 'deliverable housing land pipeline' established. The Scottish Ministers note the court's opinion in the case of Miller Homes vs. Scottish Ministers that there is nothing to suggest that the operation of any parts of Policy 16 be postponed until new-style LDPs are in place.
30. In order to gain support from criterion (i) of Policy 16 (f), the proposed development must be supported by an agreed timescale for build out. This has not been provided by the applicant. However, if the proposed development could be supported by criterion (i), it must also comply with criterion (ii) which requires proposals to be otherwise consistent with the plan's spatial strategy and other relevant policies including local living and 20-minute neighbourhoods. As covered in paragraph 33 below, although the Scottish Ministers consider that the proposed development makes a reasonable contribution to local living it is not consistent with NPF4 and LDP policies on green belts. The Scottish Ministers consider that the proposed development does satisfy bullet point 2 of criterion (iii) namely being consistent with policy on rural homes, specifically NPF4 Policy 17. The Scottish Ministers do not consider that the proposal is for a smaller scale opportunity within an existing settlement boundary or is for the delivery of less than 50 affordable homes as part of a local authority supported affordable housing plan and therefore, does not satisfy bullet points 3 and 4 of criterion (iii). Consequently, the Scottish Ministers find that the proposed development is overall, contrary to Policy 16 (f).
31. The Scottish Ministers agree with the reporter that further investigations relating to road noise and the details of acoustic insulation and performance, and the matter of surface water drainage, could adequately be addressed by way of conditions in this case (paragraphs 7.8 and 9.12).
32. NPF4 Policy 15 (Local living and 20-minute neighbourhoods) intends to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options. It states that development proposals will contribute to local living including, where relevant, 20-minute neighbourhoods. The Scottish Ministers consider that the proposed development would make a reasonable contribution to local living. The submitted transport assessment confirms that the site is well placed for bus services into Edinburgh city (the nearest bus stops being around 200 metres walk from the development); there are footways on both sides of the road; the majority of Edinburgh city is within a 20–40-minute cycle. A snowsports centre, public house and restaurant and a service station are within a ten-minute walk of the site.

33. NPF4 Policy 1 states that when considering all development proposals significant weight will be given to the global climate and nature crises. NPF4 Policy 2 sets out an exception that development proposals will be sited and designed both to minimise lifecycle greenhouse gas emissions as far as possible, and to adapt to current and future risks from climate change. The planning authority states it has not been demonstrated that the proposal will result in zero carbon and provide a nature positive place. The applicant on the other hand states that Policy 1 does not require all individual developments to be zero carbon and is intended to be an overarching policy to be considered in terms of compliance or otherwise with the policies that follow. The applicant highlights that the site is on the edge of the Edinburgh urban area and is very well located in terms of public transport, and that the new homes would be built in accordance with up-to-date building regulations, ensuring that lifecycle greenhouse gas emissions are minimised.
34. The applicant also states that in order to comply with current building regulations, the design would need to be amended to incorporate air-source heat pumps and that they can be introduced without any significant visual impact. and could be addressed by a non-material variation to any permission or a condition. The Scottish Ministers consider it would be inappropriate to attach this as a condition in this notice of intention letter as Circular 4/1998 makes it clear that conditions must be attached for planning reasons and in this instance, the condition would be to ensure that building standard regulations are met.
35. Overall, the Scottish Ministers consider that given the nature and relatively small scale of the proposed development, the significant weight to be applied under Policy 1 does not tip the balance in either direction in this case, and that any non-compliance with Policy 2 regarding the proposals current lack of renewable energy sources would not be sufficient to warrant refusal of planning permission.
36. The Scottish Ministers consider that the site is of limited biodiversity value. A condition has been imposed requiring details of a scheme for biodiversity gain to comply with NPF4 Policy 3.

Planning obligation

37. The Scottish Ministers disagree with the reporter (paragraph 9.44) that no liability for developer contributions should fall upon the applicant. The Scottish Ministers acknowledge that whilst Supplementary Planning Guidance: Developer Contributions 2012 no longer forms a statutory part of the current development plan. LDP Policy IMP1 (New Development) clearly sets out the policy basis for seeking developer contributions and that where appropriate, developer contributions will be sought where new development gives rise to a need; that appropriate provision is made for essential infrastructure, including education provision.
38. The Scottish Ministers advocate a plan led system, where levels (or methods of calculation) of contributions to be sought, are set out to provide greater clarity and certainty for users of the planning system. However, the absence of this detail, as part of an adopted plan or supplementary guidance does not remove the ability to secure such contributions, reflecting the impacts of the development. Therefore, in this case, the Scottish Ministers consider that a planning obligation should be completed to secure payment of a financial contribution towards primary education, secondary education and school transport as per the provision of LDP Policy IMP1 (New Development).

Conclusions

39. Whilst the reporter concluded that SESplan over-rode the proposal's lack of accordance with MLDP Policy ENV 1, this can no longer be the case as SESplan has ceased to have effect. In addition, the Scottish Planning Policy 'presumption in favour of development that contributes to sustainable development' no longer exists following the replacement of SPP with NPF4.
40. The Scottish Ministers conclude that the proposed development gains support from some policies of the development plan, in particular NPF4 Policies 17 'Rural Homes', 29 'Rural Development' and 9 'Brownfield, vacant and derelict land and empty buildings'. It does not conflict with several other policies. However, it is contrary to MLDP Policy ENV 1 and NPF4 Policy 8 a (i) regarding development proposals within the green belt, and is not fully supported by NPF4 Policy 16.
41. The proposed development is located on a brownfield site within the green belt just outwith the Edinburgh boundary and is well located in terms of accessibility and local services. While the proposed development conflicts with the criteria of part (i) of NPF4 Policy 8 (green belt), the Scottish Ministers consider it does not undermine the achievement of the stated policy outcomes for green belts.
42. On balance, the Scottish Ministers consider that the benefits of the proposed development, including the provision of 9 homes that reasonably contribute to local living and the redevelopment of brownfield land within an accessible location near local services, outweighs its departure from the development plan in this instance and that the balance is in favour of granting planning permission subject to conditions and the conclusion of a planning obligation towards education provision.

Formal Decision

43. Accordingly, the Scottish Ministers hereby defer their formal decision on the planning application, in the first instance for a period of 4 months, to enable the relevant planning obligations, or other suitable agreement, to be completed and registered to the Scottish Ministers' satisfaction.

Appendix 1: Proposed conditions and planning obligation

Planning Obligation

A planning obligation should commit the developer to make a financial contribution towards primary education, secondary education and school transport as per the provision of LDP Policy IMP1 (New Development).

Planning Conditions

- 1) No development shall take place until details of a scheme of hard and soft landscaping works have been submitted to and approved in writing by the planning authority. The approved details shall include:
 - i) existing and finished ground levels and floor levels for all buildings, garden ground and roads in relation to a fixed datum;
 - ii) existing trees, landscaping features and vegetation to be retained, removed or protected during development and in the case of damage, restored;
 - iii) proposed new planting in communal areas, rain gardens, and open space, including trees, shrubs, hedging, wildflowers and grassed areas as well as root protection measures;
 - iv) location and design of any proposed external lighting, walls, fences and gates, including retaining walls and those surrounding bin stores or any other ancillary structures;
 - v) schedule of plants to comprise species, plant sizes and proposed numbers and/or density;
 - vi) programme of maintenance for all soft and hard landscaping;
 - vii) proposed car park configuration and surfacing; and
 - viii) proposed footpaths and cycle paths (designed to be unsuitable for motorcycle use).

All hard and soft landscaping works shall be completed in accordance with the approved details prior to first occupation of any of the dwellings hereby approved and shall subsequently be managed in accordance with the approved programme of maintenance. Any tree or shrub removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by specimens of a similar species to those originally approved unless otherwise agreed in writing by the planning authority.

Reason: *To enhance the character and appearance of the area and to respect the site's Green Belt location.*

- 2) No development shall take place until samples of all materials to be used on external surfaces of the buildings; boundary walls; retaining walls; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall take place using the approved materials unless any variation is agreed in writing by the planning authority.

Reason: *To enhance the character and appearance of the area.*

- 3) No development shall take place until a Road Traffic Noise Assessment has been undertaken and submitted to the planning authority for its written approval. Any noise mitigation measures identified within the approved Road Traffic Noise Assessment

Report shall be implemented prior to the first occupation of any dwelling hereby approved where mitigation measures are required. Development shall take place in accordance with the approved mitigation measures and those measures shall thereafter be retained for the lifetime of the development unless the planning authority gives its written approval for their removal or variation.

Reason: *To protect the living conditions of future occupants of the houses.*

- 4) No development shall take place until details of the specification of acoustic glazing to be fitted have been submitted to and approved in writing by the planning authority. The approved acoustic glazing shall be fitted to all window openings fronting onto or facing the A702 prior to first occupation of any of the dwellings thereby identified and shall subsequently be retained for the lifetime of the development unless the planning authority gives its written approval for their removal or replacement.

Reason: *To protect the living conditions of future occupants of the houses.*

- 5) No development shall take place until details of a scheme for biodiversity gain have been submitted to and approved in writing by the planning authority. The approved details shall include the provision of house bricks and boxes for bats and swifts throughout the development. Development shall take place in accordance with the approved details and shall thereafter be retained as approved for the lifetime of the development unless the planning authority gives its written approval for their removal or replacement.

Reason: *To achieve a biodiversity gain for the area.*

- 6) No development shall take place until details of the specification and siting of electric vehicle charging stations throughout the development have been submitted to and approved in writing by the planning authority. Development shall take place in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted and shall thereafter be retained as approved for the lifetime of the development unless the planning authority gives its written approval for their removal or replacement.

Reason: *To accord with Transport policies.*

- 7) No development shall take place until details of the provision of high speed fibre broadband to each house hereby approved have been submitted to and approved in writing by the planning authority. The approved details shall include a timetable for implementation to ensure that high speed fibre broadband is delivered prior to the first occupation of each dwelling hereby permitted. The delivery of high speed fibre broadband shall be implemented in accordance with the approved details.

Reason: *To deliver appropriate digital infrastructure.*

- 8) No development shall take place until details of a decontamination and remediation scheme to deal with any contamination of the site have been submitted to and approved in writing by the planning authority. The approved details shall include:

- i) the nature, extent and type(s) of contamination on the site;

- ii) measures to treat or remove contamination to ensure that the site is fit for the residential use hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
- iii) measures to deal with contamination encountered during construction work; and
- iv) the condition of the site on completion of the specified decontamination and remediation measures.

On completion of the works described in the approved decontamination and remediation scheme, a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme.

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.*

- 9) No development shall take place until details of a Surface Water Management Plan have been submitted to and approved in writing by the planning authority. There shall be no drainage connections to the trunk road drainage system. Development shall take place in accordance with the approved Surface Water Management Plan unless the planning authority gives its written approval to any variation.

Reason: *To ensure that there is suitable drainage of the site.*

- 10) No development shall take place until an invasive species survey has been carried out and details of a scheme to eliminate any invasive species therein identified have been submitted to and approved in writing by the planning authority. The approved scheme shall be fully implemented prior to development commencing unless the planning authority gives its written approval to any variation.

Reason: *To ensure that appropriate mitigation measures are in place to deal with any invasive species.*

- 11) No development shall take place until a Stage 1 and Stage 2 Road Safety Audit has been submitted to and approved in writing by the planning authority.

Reason: *In the interests of road and pedestrian safety*

- 12) No development shall take place until detailed drawings of the proposed vehicular access to the site from the A702 have been submitted to and approved in writing by the planning authority. The approved details shall include a specification for the reinstatement of the public footway across the two existing vehicular accesses and shall take into account any amendments required as a consequence of the Road Safety Audit conducted in compliance with condition 11) above. The approved new access and reinstated public footway shall be completed in accordance with the approved details prior to the first occupation of any of the dwellings hereby permitted.

Reason: *In the interests of road and pedestrian safety.*

- 13) Any vehicle transporting excavated material onto or off the site shall be sheeted and must be treated by a wheel washing facility prior to it re-joining the public road network.

This facility must remain operative at all times during earth moving operations. A 'clean zone' shall be maintained between the end of the facility and the A702.

Reason: In the interests of road safety.

Yours sincerely

Paul Lawson

PAUL LAWSON