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**SECTION 42 APPLICATION (18/00082/S42) TO AMEND CONDITIONS 2 AND 3, TO EXTEND THE TIME TO COMPLETE THE RESTORATION OF QUARRY, IMPOSED ON A GRANT OF PLANNING PERMISSION (06/00689/FUL) FOR THE EXTRACTION AND PROCESSING OF SAND AT UPPER DALHOUSIE SAND QUARRY, BONNYRIGG. THE APPLICATION IS ACCOMPANIED BY AN ENVIRONMENTAL IMPACT ASSESSMENT REPORT SUBMITTED UNDER THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2011.**

Report by Head of Communities and Economy

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## **1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1 In August 2009 planning permission 06/00689/FUL was granted for the extraction and processing of sand and associated plant and office at Upper Dalhousie, Bonnyrigg. This application seeks planning permission to amend conditions 2 and 3 of planning permission 06/00689/FUL to extend the restoration periods of the two extraction areas. The application is accompanied by an Environmental Impact Assessment Report which has been submitted in terms of the EIA (Scotland) (Regulations) 2011. There have been no representations received and consultation responses from The Coal Authority, Historic Environment Scotland, the Scottish Environment Protection Agency (SEPA), Scottish Water, Scottish Natural Heritage, Bonnyrigg and Lasswade Community Council, The Council's Archaeology Advisor, The Council's Environmental Health Manager and the Council's Policy, Road Safety Manager and the Council's Legal Services.**
- 1.2 The relevant development plan policies are policy 4 of the Edinburgh and South East Strategic Development Plan 2013 (SESplan) and policies MIN1, MIN2, RD1, ENV2, ENV4, ENV7, ENV10, ENV11, ENV15, ENV17, ENV18, ENV22, ENV23, ENV24, ENV25, IMP1, and IMP3 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to grant planning permission subject to conditions and securing a bond (between the applicant and**

**landowner) to ensure sufficient funding is in place to restore the site.**

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The Upper Dalhousie Sand Quarry is located to the south east of Bonnyrigg and comprises two extraction areas; Area A is to the south east and Area B is to the north west. The existing processing area, site office and welfare facilities are located to the eastern extent of Area A, close to the site access. The site is accessed of the B6392 distributor road to the south of the Hopefield residential development. The site is approximately 18 hectares.
- 2.2 Extraction from Area A has been completed. Extraction from Area B commenced in 2016 and is ongoing. Area A has been partially restored, with the un-restored area being used for settlement ponds and to accommodate the processing plant and welfare facilities.
- 2.3 The site is bounded by agricultural land and areas of woodland with Whitehill House (and associated residential development) and Rosewell beyond to the west/south west and Bonnyrigg beyond to the north. The closest dwellinghouses are Parkneuk, at approximately 200m to the west and the residential development at Whitehill House, at approximately 400m to the south west.
- 2.4 Immediately adjacent to the proposed northern extraction area (Area B) is an area of land, which was previously quarried for sand and gravel in the 1950's. This area was subsequently utilised by the local authority for the disposal of domestic waste, principally ash, during the 1960's. The area between Area B and the private property at Parkneuk was also utilised by the local authority for the disposal of domestic wastes during the 1960's.

## **3 PROPOSAL**

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 (hereafter referred to as the Act), is to extend the restoration periods for the Dalhousie Sand Quarry.
- 3.2 A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore if planning permission is granted for this application it will supersede planning consent 06/00689/DPP.
- 3.3 Although a Section 42 application is a new planning application in law the Act states *"on such an application the planning authority shall*

*consider only the question of the conditions subject to which planning permission should be granted". The principle, layout and form of development are not subject to assessment.*

- 3.4 Condition 2 of planning application 06/00689/DPP, which relates to extraction Area A, states:

*"Permission for the extraction of sand from area A as indicated on the approved drawing ED20614/FIG3.2 'AREA A EXCAVATION' is granted for a period of 7 years from the date of commencement of operations on the site, such date to be notified to the Planning Authority by the applicants within one week of commencement; and shall be followed by the completion of the restoration of Area A to a condition suitable for agriculture, woodland, as per the details of the Environmental Statement chapter 3.6 to 3.8 as represented in ED20614/FIG4.1 'REVISED RESTORATION MASTERPLAN' and in accordance with the requirements of conditions 51 to 56 below."*

- 3.5 Condition 3 of planning application 06/00689/DPP, which relates to extraction Area B, states:

*"Permission for the extraction of sand from area B as indicated on the approved drawing ED20614/FIG3.3 'AREA B EXCAVATION' is granted for a period of 7 years starting from the date of the completion of the restoration of site A as required by conditions 51 to 56; and shall be followed by the completion of the restoration of Area B to a condition suitable for agriculture, woodland, as per the details of the Environmental Statement chapter 3.6 to 3.8 as represented in ED20614/FIG4.1 'REVISED RESTORATION MASTERPLAN' and in accordance with the requirements of conditions 51 to 56 below."*

- 3.6 It is proposed to:

- extend the permitted period of time for the completion of the restoration of Area A by three years from 2017 to 2020 (condition 2);
- extend the permitted period of time for the completion of the working/extraction of sand and the restoration of Area B by six years from 2024 to 2030 (condition 3);
- work below the water table in Area B to extract additional sand reserves (details covered by the plans approved by condition 3); and,
- seek approval for the restoration plans for Area A and Area B (conditions 2 and 3).

- 3.7 The application is also accompanied by:

- environmental statement;
- a flood risk assessment;
- a drainage impact assessment;
- a transport assessment;
- a habitat survey; and

- a tree survey.

## 4 BACKGROUND

- 4.1 Planning application 06/00689/FUL for the extraction and processing of sand and the erection of the associated plant and office provision at Upper Dalhousie was granted permission in August 2009. This consent has been implemented and work continues on the site.
- 4.2 Planning application 13/00064/DPP for the installation of sand processing plant and a conveyor at the quarry was granted permission in March 2013.
- 4.3 An environmental impact assessment (EIA) scoping request (17/00380/SCO) for the extension of operations was submitted in May 2017. The applicant was advised what matters need to be covered by an EIA which need to be submitted under schedule 2 of the EIA Regulations.
- 4.4 A related planning application (18/00081/DPP) for the extension of the quarry is subject to assessment and is elsewhere on the Committee agenda. The application is related to this proposal in that the extension area (Area C) will provide additional material for the restoration of Area B.

## 5 CONSULTATIONS

- 5.1 The **Coal Authority** confirms that the application site falls within a defined Development High Risk Area. However, the conditions subject to review are not material to coal mining issues and therefore, The Coal Authority has no comments.
- 5.2 **Historic Environment Scotland (HES)** do not have any comments to make on the proposals – however, the application should still be determined in accordance with national and local policies and guidance with regard the historic environment.
- 5.3 The **Scottish Environment Protection Agency (SEPA)** does not object to the application as it is an amendment of conditions which do not materially change the operation of the quarry.
- 5.4 **Scottish Water** does not object to the application.
- 5.5 **Scottish Natural Heritage (SNH)** does not object to the application subject to conditions securing the conclusions set out in the Environmental Statement regarding ecological receptors (ancient woodland and protected species). The new Restoration Masterplan for the site appears to be dependent on securing consent for extraction in Area C (subject of a separate planning application).

- 5.6 The **Bonnyrigg and Lasswade Community Council** advise that they engaged their local community regarding the existing and potential future impacts of the quarrying activity, in particularly the traffic implications, the result of which was that no concerns were raised and as such the Community Council does not object to the application. However the Community Council expect Midlothian Council to secure a bond to ensure the site's restoration.
- 5.7 The **Council's Archaeology Advisor** has no comment.
- 5.8 The **Council's Environmental Health Manager** advises that the site is currently well managed and operates without giving rise to noise or dust nuisance complaints, officers are of the opinion that no additional mitigation measures are required. The Environmental Health Manager has no objections to this application subject to conditions to control noise and dust emissions arising from the operation of the site.
- 5.9 The **Council's Policy and Road Safety Manager** does not object to the application.
- 5.10 The **Council's Legal Services** have advised that as the landowner is the Crown Estates the risk to the Council of the landowner and applicant not restoring the land is low, so if the Council are satisfied with the terms of the bond we do not need to be a party to it, it shall be between the applicant and landowner.

## 6 REPRESENTATIONS

- 6.1 No representations have been received in relation to this application.

## 7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP). The following policies are relevant to the proposal:

Edinburgh South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 **Policy 4 (MINERALS)** requires local development plans; to safeguard mineral resources from sterilisation, identify areas of search, set criteria to assess when considering proposals and support the use of secondary and recycled aggregates.

Midlothian Local Development Plan 2017 (MLDP)

- 7.3 Policy **MIN1: Areas of Search for Surface Extraction** identifies Upper Dalhousie as being an area for the extraction of sand and gravel where surface mineral extraction may be acceptable in

principle. The policy states that the identification of an area of search does not indicate the Council's acceptance of any particular proposal for the winning and working of a surface mineral resource within any or all of that area of search. Outwith the areas of search there is a presumption against surface mineral extraction. In addition the policy safeguards mineral resources from sterilisation, in specific circumstances.

7.4 Policy **MIN2: Surface Mineral Extraction** requires proposals for mineral extraction to meet the criteria set out in the Supplementary Guidance on Resource Extraction. They will not be permitted where they would have a significant adverse effect on communities, sensitive uses or the environment and will only be supported if the Council is satisfied that they are acceptable in relation to the following matters:

- effect on the health and amenity of settlements, communities and housing groups or other sensitive uses;
- effect on the landscape, in particular that of the Green Belt, Pentland Hills Regional Park, and Special Landscape Areas;
- effect on soils, in particular prime agricultural land, and peatland;
- effect on the water environment;
- effect on nature conservation and biodiversity, in particular sites of international, national or local nature conservation value;
- effect on the historic environment, in particular: Conservation areas, scheduled monuments, listed buildings, historic gardens and designed landscapes, historic battlefields, significant archaeological sites (and, where relevant, the settings of the aforementioned designated areas or buildings);
- effect on the road network, particularly local roads;
- cumulative effects of the proposal when combined with other consented or operational mineral extraction or landfill activities;
- effect on the local economy in terms of tourism, leisure or recreation; and,
- robustness and suitability of proposals for restoration and aftercare.

7.5 In determining applications for surface coal extraction, the Council will also consider any beneficial impacts from extraction in terms of site remediation and stabilisation and/or other permanent physical benefits to the community.

7.6 The extraction of a secondary material (for example, fireclay from a coal extraction site) is supported provided that its removal does not detract from high quality restoration, or have unacceptable environmental effects (including from cumulative vehicle movements). In order that the supply and demand for aggregates can be monitored, operators of new aggregates sites will be required to supply annual statements of production and remaining reserves.

- 7.7 Policy **RD1: Development in the Countryside** sets out where appropriate development would be acceptable in the countryside subject to defined criteria. One acceptable use is resource extraction in compliance with Policy MIN1. All such development requires being of a scale or character appropriate to the rural area and landscape, capable of being appropriately accessed and serviced, have acceptable drainage provision and water supply and be accessible by public transport and services, where appropriate.
- 7.8 Policy **ENV2 Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the Midlothian Green Network.
- 7.9 Policy **ENV4 Prime Agricultural Land** does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification to do so.
- 7.10 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.11 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.
- 7.12 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.13 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.14 Policy **ENV 17 Air Quality** states that the Council may require further assessments to identify air quality impacts where considered requisite. It will refuse planning permission, or seek effective mitigation, where development proposals cause unacceptable air quality or dust impacts

- 7.15 Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.
- 7.16 Policy **ENV22: Listed buildings** does not permit development which would adversely affect the character or appearance of a listed building, its setting or any feature of special architectural or historic interest.
- 7.17 Policy **ENV23: Scheduled Monuments** states that development which could have an adverse effect on a scheduled monument, or the integrity of its setting, will not be permitted.
- 7.18 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.19 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.20 Policy **IMP1: New Development** gives the planning authority the policy basis to impose appropriate planning conditions and controls to mitigate the impact of the development.
- 7.21 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

## **8 PLANNING ISSUES**

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

### The Principle of Development

- 8.2 Planning permission for the extraction and processing of sand and associated works was granted in 2009. The site was then given continued support in the MLDP and identified as an area of search for mineral extraction. This application, to extend the period of extraction and restoration does not change this presumption in favour of development.

### Amendments to Conditions 2 and 3

- 8.3 The application seeks to extend the restoration period of Area A from a 2017 deadline to 2020 and to extend the extraction and restoration

period of Area B from a deadline of 2024 to 2030. This is to allow the continued extraction of the resource; including the extraction of sand from below the water table in Area B. This proposal is seen as part of a wider strategy to maximise the onsite resource which includes extending the extraction area into Area C (subject to planning application 18/00081/DPP). It is not uncommon to adjust the operational time periods of resource extraction sites in response to fluctuating demands for materials which influences the rates of extraction, the ability to extract more material than originally expected and to ensure the best possible restoration programme.

- 8.4 Extraction from Area A is completed. Restoration of this part of the site is underway; but behind schedule, in part due to significant level changes which need to be addressed (up to a 10m variance in places) and the siting of water settling ponds on this part of the site. Additional ground works and tree/woodland planting is still required in accordance with the restoration masterplan and as such it is considered necessary to extend the operation period of the site to 2020. The small area occupied by the site office and welfare building will be restored once site operations across the whole site are complete.
- 8.5 Extraction and restoration of Area B is to take place over an additional six year period. The restoration of Area B is proposed to be completed by 2030. The restoration masterplan shows the levels dropping around the south western, north western and south eastern boundaries of the site. The maximum drop in levels amounts to 16m. These areas will be planted with woodland planting, this will integrate the level change into the landscape. The central, fairly level area of the site is to be restored to agricultural grassland. Considering the potential to extract further material and undertake the required restoration it is considered reasonable and necessary to extend the operation period of the site to 2030.
- 8.6 Area C is the subject of a separate planning application (18/00081/DPP), however it is worth noting that the proposed restoration profiles of Areas A and B will tie into this extended extraction area and that some of the material from the proposed extension will be used to restore Area B. The proposed restoration masterplan includes additional informal footpaths, a sand face for nesting sand martins and a pond. The potential biodiversity and wildlife benefits of the restoration proposals are a positive benefit of the development.
- 8.7 The consequence of the extending extraction in Area B and the delayed restoration of Areas A and B is that the environmental impacts of the development will be extended over a longer period of time. However, the existing quarry has not generated any significant complaints and appears to be effectively managed. The restoration of the site can be secured by a bond and by planning conditions.

## Transportation Issues

- 8.8 The transportation statement submitted considers the traffic and transportation effects of the proposal and concludes that the traffic generation will be no greater than that from the existing operations and the access arrangements are not subject to change. No significant environmental effects are anticipated. As with the existing operations, a number of mitigation measures will be put in place including:
- instructions to drivers and suppliers to follow the agreed route to and from the site; and
  - the implementation of good site management practice including wheel washing, vehicle sheeting and road cleaning.
- 8.9 An average of 30 trucks/heavy goods vehicles per day enter and leave the site via the existing access road, this is comparable to the existing volume of vehicular movements. A further 18 non heavy goods vehicles enter and leave the site – these are the 6 staff arriving for and leaving work, deliveries and visitors. The operator also owns the concrete batching plant at Lady Victoria Business Park, nearby on the A7, where much of the extracted material will be used.

## Environmental Statement

- 8.10 The Environmental Statement submitted with the application sets out the findings of an Environmental Impact Assessment process carried out by the applicant under The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. The process identifies the likely significant environmental effects of the development and suggests ways in which any significant negative environmental effects can be mitigated. The statement considers the following issues:
- geology;
  - landscape and visual impact;
  - ecology;
  - soils and agriculture;
  - hydrology;
  - historic environment including archaeology and cultural heritage;
  - noise;
  - air quality;
  - access and transportation issues;
  - recreation
- 8.11 The environmental statement identifies that there are no long term detrimental consequences of the proposed development. The proposal does present an opportunity for potential longer term environmental benefits subject to the restoration programme, which if undertaken in a sensitive manner could enhance the environment for the benefit of

wildlife, the local landscape, drainage, pollution prevention and future recreational and agricultural uses.

- 8.12 The EIA process requires that alternative options to the proposed scheme are considered and a justification is given for the preferred option chosen. The options considered were: 1) do nothing with the site; 2) reduce the extraction area; 3) extract from an alternative site; and 4) work above the water table only. The preferred development option (continued working of the the current site) is considered the best option for a number of reasons. Firstly, the area is identified as an area of search in the MLDP for the extraction of construction aggregate to supply the local area. Secondly, not continuing with the ongoing extraction would have a detrimental impact on the provision of construction sand to meet demand in the region. Thirdly, reducing the extraction area (by not fully exploiting the resource in Area B) would risk sterilising existing available reserves. Fourthly, the current site has minimal detrimental impact on local communities. Finally identifying an alternative site would present a significant challenge in terms of the development plan process and the time taken to reach a point where material could be extracted.

## **9 RECOMMENDATION**

- 9.1 It is recommended that planning permission be granted for the following reason:

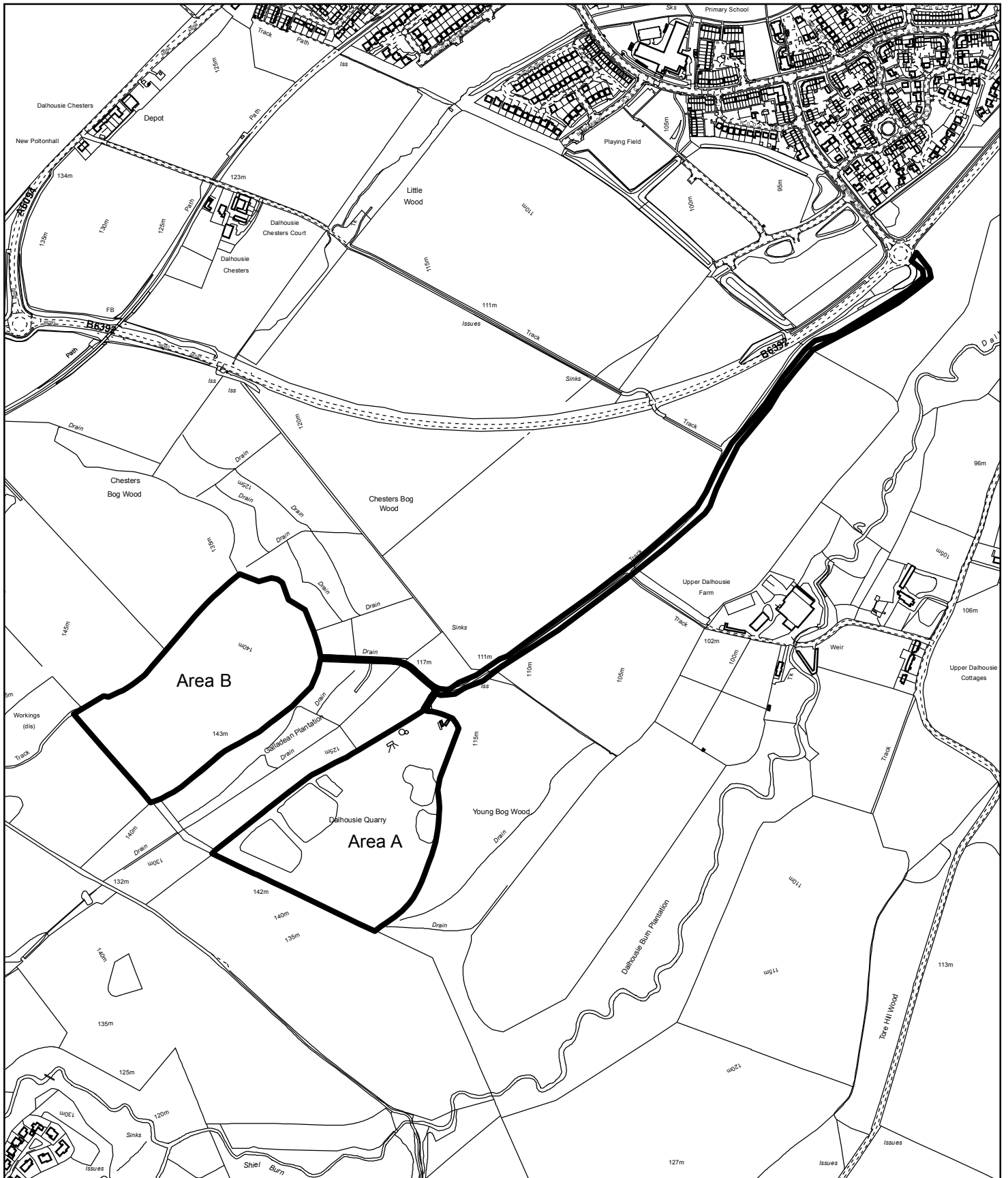
*The proposed development site is identified as a mineral extraction site within the Midlothian Local Development Plan 2017; as such there is a presumption in favour of the proposed development. This presumption in favour of development is not outweighed by any other material considerations. The proposed amendments to conditions 2 and 3 are considered not to undermine this policy position or have long term detrimental environmental impact.*

Subject to:

- i) the developer demonstrating, to the written satisfaction of the Council, that they have sufficient bond provision/insurance in place to ensure that, in the event that the operator is not able to restore the site, financial provision is made to enable the site is restored in accordance with an approved restoration plan.
- ii) conditions to be agreed with the Chair of the Committee:

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

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**Applicant:** Tillicoultry Quarries  
**Agent:** Wardell Armstrong LLP  
**Validation Date:** 2 February 2018  
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**Background Papers:** 18/00081/DPP, 18/00082/S42, 06/00689/FUL



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## Upper Dalhousie Sand Quarry, Bonnyrigg

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