



SECTION 42 APPLICATION 23/00773/S42 TO AMEND CONDITIONS 1 AND 6 OF PLANNING PERMISSION 22/00546/S42 (INFILLING OF QUARRY) TO EXTEND THE DURATION OF OPERATIONS AT MIDDLETON LIMWORKS, GOREBRIDGE

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 At its meeting on 17 November 2015 the Committee granted planning permission for the infilling and restoration of the former Middleton Limeworks Quarry (15/00503/DPP). Subsequently, at its meeting of 10 January 2022 the Committee granted a section 42 application (22/00546/S42) which sought to amend the wording of conditions 1 and 3 attached to the grant of planning permission 15/00503/DPP to extend the duration of the temporary planning permission and to allow the acceptance of non-hazardous waste as an infill material.**
- 1.2 This section 42 application seeks to amend the wording of conditions 1 and 6 attached to the grant of planning permission 22/00546/S42 to extend the duration of the temporary planning permission again and to also extend the timescales for the subsequent landscaping maintenance to reflect the potentially revised expiration date of the planning permission.**
- 1.3 There has been one representation and consultation responses from the Scottish Environment Protection Agency (SEPA), Transport Scotland and the Council's Senior Manager Protective Services (Environmental Health).**
- 1.4 The relevant development plan policies are policies 1 and 12 of National Planning Framework 4 (NPF4) and policies RD1, ENV7, ENV10, ENV15 and WAST3 of the Midlothian Local Development Plan 2017.**
- 1.5 The recommendation is to grant planning permission subject to conditions.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The planning application site relates to the lower quarry at Middleton, also known as quarry 1. The site is a former Limestone Quarry, located in the countryside but relatively close to North Middleton. The site measures approximately 7.7 hectares with the proposed infill area being approximately 5.15 hectares. The application site comprises the quarry void, with quarry faces, and soil storage bunds on the periphery of the void and areas of quarry spoil within the void. The quarry has been partially filled.
- 2.2 The quarry is accessed from a point off an unclassified road that runs in an east to west direction to the north of the application site. The unclassified road is accessed from Guildiehowes Road, which in turn is accessed from the A7, adjacent to North Middleton.

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), seeks to amend two conditions attached to the grant of planning permission for the infilling of a disused 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(s) if implemented. Therefore, if planning permission is granted for this application, it will replace planning consent 22/00546/S42.
- 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 of development is not subject to assessment. Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply.
- 3.4 Condition 1 of planning permission 22/00546/S42 states:
- Planning permission for the infilling of the quarry with the materials stated within condition 3 of planning permission 22/00546/S42 and the restoration of the site shall be completed by 31 March 2024. This planning permission expires on the 31 March 2024.*

Reason: *To make clear the extent and specifications of the*

development for which planning permission is granted, and to ensure the full implementation of all the identified measures for mitigating its environmental impact.

3.5 The applicant is seeking to amend condition 1 so as to extend the time period by a further 2 years and set a clear end date to the operations of 31 March 2026 and to provide clarity on the infill materials that can be used.

3.6 Condition 6 of planning permission 22/00546/S42 states:

Notwithstanding the information contained within the Environmental Statement the restoration and landscaping of the site shall be completed in accordance with the restoration; including levels, approved under the terms of condition 7 of planning permission, 15/00503/DPP, prior to the expiration of this consent as detailed in condition 1 of planning permission 22/00546/S42. The approved, landscaping shall be maintained to the satisfaction of the planning authority for a period of five years after 31 March 2024 (31 March 2029). Maintenance shall include the replacement of any trees, shrubs or hedgerow plants which die, are removed, become, seriously diseased or are severely damaged within that period, by others of a similar size and species to those originally required to be planted.

Reason: *To ensure that all restored land is properly managed for a sufficient period to ensure its effective return to permanent agricultural/forestry use.*

3.7 The applicant proposes to amend condition 6 so that the timescales for landscaping maintenance are amended to reflect the expiration date stated within condition 1. The amendments seek to ensure that the approved landscaping shall be maintained to the satisfaction of the planning authority for a period of five years after 31 March 2026 (31 March 2031).

4 BACKGROUND

4.1 In March 1982 planning permission ref.198/81 was granted for the extraction and working of limestone on both Middleton Quarry No.1 and No.2. Planning permission 198/81 was implemented.

4.2 In December 2012 a Breach of Condition Notice was served on Leiths (Scotland) Limited; who were the operator of the Middleton Quarry. The notice required them to take action in relation to conditions attached to planning permission 198/81, in particular those conditions requiring the infilling of the quarry and its restoration to an agricultural use by the 19 December 2016. The Breach of Condition Notice only required the reinstatement of No.2 quarry (the upper quarry) and the planning authority is currently investigating whether the notice has been complied with.

- 4.3 Planning permission 15/00503/DPP for the infilling of quarry 1 (the lower quarry) was granted subject to conditions (this application was accompanied by an environmental statement prepared under the Environmental Impact Assessment (Scotland) Regulations 2011). The consent was subject to a time limitation condition which required the works to be completed within seven years of commencement.
- 4.4 A section 42 application (ref. no. 22/00546/S42) to amend condition 1 of planning permission 15/00503/DPP (infilling of quarry), to extend duration of temporary permission, and condition 3, to allow the acceptance of non-hazardous waste, was granted permission subject to conditions in January 2023.
- 4.5 Planning application 23/00595/DPP has also been submitted in relation to the application site. This application is for the formation of recycling facility and waste transfer station; continuation of landfill operations and associated works for a 17 year time period:
- One year to allow for the installation of the recycling plant infrastructure;
 - 15 years recycling and waste transfer operations; and
 - One year to re-instate the site.

The permission also seeks the continuation of landfill operations and associated works for the full 17 years. This includes the reworking of parts of the site and infilling and restoration.

5 CONSULTATIONS

- 5.1 The **Scottish Environment Protection Agency (SEPA)** does not object to for the proposed time extension. SEPA confirmed the site will continue to be regulated by SEPA under the Pollution Prevention and Control Regulations.
- 5.2 **Transport Scotland** does not object to the application.
- 5.3 The **Senior Manager Protective Services** does not object to the application. It was recommended that conditions were attached in relation to noise, dust, hours of operation and mud on the road.
- 5.4 The consultation responses are available to view in full on the online planning application case file.

6 REPRESENTATIONS

- 6.1 No representations were received in relation to this application.

7 PLANNING POLICY

7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.

7.2 The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

7.3 Policy 1 **Tackling the Climate and Nature Crises**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crises.

7.4 Policy **12 Zero Waste**; sets out to encourage, promote and facilitate development that is consistent with the waste hierarchy.

Midlothian Local Development Plan 2017 (MLDP)

7.5 Policy **RD1: Development in the Countryside** states that development in the countryside will only be permitted if it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; it accords with policies RD2 (low density rural housing), MIN1 (mineral extraction), NRG1 (renewable and low carbon energy projects) or NRG2 (wind energy); or it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*. For housing, this is limited to homes required to support an established countryside activity.

7.6 With regard to business in the countryside policy **RD1** states that development opportunities that will enhance rural economic development opportunities will be permitted if:

- They are of a scale and character appropriate to the rural area and well integrated into the rural landscape; and
- They are capable of being serviced with an adequate and appropriate access; and
- They are capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, unacceptable discharge to watercourses; and
- They are accessible by public transport and services (where appropriate); and
- They are not primarily of a retail nature; and,
- They do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.

7.7 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.

- 7.8 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 environment.
- 7.9 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.10 Policy **WAST3 (Landfill)** presumes against new landfill development other than as part of a site restoration project. Proposals will only be allowed if there are no significant negative environmental impacts, including from traffic movements. A buffer of 250 metres will be required between a landfill site and any sensitive receptors (primarily residential properties). Applicants will be required to submit proposals for site restoration and aftercare and demonstrate that robust financial arrangements are in place to ensure site restoration.

National Guidance

- 7.11 Also material to the consideration of the application is **Scottish Government's Planning Advice Note 64: Reclamation of Surface Mineral Workings**. Pan 64 also states that the then Scottish Executive (now Scottish Government) considered that financial guarantees are an appropriate means of reassuring local communities of operators' commitment and ability to meet their restoration and aftercare obligations.
- 7.12 Scottish Government advice **Circular 4/1998 (The use of conditions in planning permissions)** sets out six tests which planning conditions must comply with:
- Necessary;
 - Relevant to planning;
 - Relevant to the development to be permitted;
 - Enforceable;
 - Precise; and
 - Reasonable in all other respects.

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 representation and consultation responses received are material considerations.

The Principle of Development

- 8.2 As the proposal is a 'Section 42' application the principle of development is not subject to consideration as set out in paragraph 3.3 of the report. The land is allocated as 'countryside' within the MLDP under Policy RD1 - Development in the Countryside. Proposals for landfill (including restoration) within the site are not specifically contemplated by Policy RD1 as the proposed development is not located within an area of search for surface mineral extraction. The principle of development for infilling and restoration of the former quarry is established by the previous grant of planning permission for material extraction, landfilling and restoration of the site, planning permissions 15/00503/DPP and 22/00546/S42.

Conditions 1 and 6 of Planning Permission 22/00546/S42

- 8.3 Planning condition 1 of planning permission 15/00503/DPP states that *'Planning permission for the infilling of the quarry with the materials stated within condition 3 of planning permission 22/00546/S42 and the restoration of the site shall be completed by 31 March 2024. This planning permission expires on the 31 March 2024.'* It is noted that this permission has now lapsed, however the current section 42 application was submitted and validated in November 2023, prior to the expiration of planning permission 22/00546/S42.
- 8.4 The applicant is seeking to amend condition 1 in order to extend the time period by two years and set a clear end date to the operations of 31 March 2026. The acceptability of the infilling of the quarry has already been established for a limited time period (seven years from the commencement of operations). The applicant is seeking to extend the time period of the planning permission by two years due to the current operations being behind schedule and it not being possible to complete the infilling and reinstatement of the site within the timeframe permitted by the previous planning consent.
- 8.5 The submitted supporting statement sets out that should the associated planning application 23/00595/DPP, for the proposed recycling facility and waste transfer station (as summarised in paragraph 4.5 above), be approved it would be implemented and supersede planning permission 22/00546/S42 and the section 42 application being considered in this report (should it be approved). However, should planning application 23/00595/DPP not be determined positively the site operator will need to fall back on this application to allow the final reinstatement of the land in accordance with an extended timeframe.
- 8.6 Works associated with planning permission 15/00503/DPP commenced on site in March 2017. There is an associated bond for this permission so as to ensure that there are sufficient funds for the restoration of the quarry. If planning permission is granted then a condition can be attached to ensure details of the bond/financial

provision associated with securing the restoration of the site within the amended time-period are submitted.

- 8.7 Planning condition 6 of planning permission 15/00503/DPP states that *'Notwithstanding the information contained within the Environmental Statement the restoration and landscaping of the site shall be completed in accordance with the restoration; including levels, approved under the terms of condition 7 of planning permission, 15/00503/DPP, prior to the expiration of this consent as detailed in condition 1 of planning permission 22/00546/S42. The approved, landscaping shall be maintained to the satisfaction of the planning authority for a period of five years after 31 March 2024 (31 March 2029). Maintenance shall include the replacement of any trees, shrubs or hedgerow plants which die, are removed, become, seriously diseased or are severely damaged within that period, by others of a similar size and species to those originally required to be planted.'*
- 8.8 The applicant is also seeking to amend condition 6 of planning permission 22/00546/S42 so as to ensure the timescales for landscaping maintenance are amended to align the expiration date stated within condition 1. The amendments seek to ensure that the approved landscaping shall be maintained to the satisfaction of the planning authority for a period of five years. If it is acceptable to extend the infilling operations, then it is logical to extend the landscaping requirements to align with the change in programming.
- 8.9 Neither SEPA nor the Council's Senior Manager Protective Services have objected to the proposed extended timeframe for site completion.

Other Conditions

- 8.10 The remaining conditions relate to the approved environmental statement; restoration material details and plan; securing a bond for site restoration; transportation assessment; road maintenance and hours of operation; dust management; and noise mitigation. These conditions are still relevant, and it is proposed to attach them to the new permission if granted. However, some of the conditions are required to be re-worded to ensure they are relevant to the current permission.

Other Matters

- 8.11 No road safety concerns as a consequence of the proposed revised conditions, or from the existing development have been identified by Transport Scotland.

Conclusion

- 8.12 This application, if approved, will allow the operator a further two years to conclude the on-site operations in connection with a legacy planning

permission. While site operations cannot be carried on indefinitely there will be no significant harm to the local environment as a result of allowing this small extension of time, and as such, the proposal complies with the aims of the development plan and the previous grants of planning permission.

9 RECOMMENDATION

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

The proposed amendments to two conditions do not fundamentally change the development which is being implemented under a previous grant of planning permission. The proposed development does not have adverse environmental impacts subject to detailed/technical matters being agreed/secured by condition. This presumption in favour of development is not outweighed by any other material considerations. The proposed development accords with the Midlothian Local Development Plan (2017) or NPF4.

9.2 Subject to the following conditions:

1. Planning permission for the infilling of the quarry with the materials stated within condition 3 of planning permission 22/00546/S42 and restoration of the site shall expire on the 31 March 2026.
2. Except as subsequently amended, or as otherwise required by the terms of this permission, the development hereby approved shall be carried out in accordance with the application plans, and the details contained in the Environmental Statement approved by planning permission 15/00503/DPP and 22/00546/S42, dated June 2015, including the implementation of all the measures contained in that document for the mitigation of the environmental impact of the operations.

Reason: for conditions 1 & 2: To make clear the extent and specifications of the development for which planning permission is granted, and to ensure the full implementation of all the identified measures for mitigating its environmental impact.

3. Only inert material, as specified in the table at Schedule 2, Paragraph 4 of the Landfill (Scotland) Regulations 2004 and non-hazardous waste codes 19 12 09 and 19 12 12 as defined by the Landfill (Scotland) Regulations 2004, shall be used for infilling purposes and the material shall arrive at the site in a condition suitable for purpose.

Reason: To ensure that only appropriate materials are used for infilling and to ensure adequate protection of the water environment.

4. At the end of the month during which infilling commences and at the end of each month thereafter until the site is fully restored, the developer shall send to the planning authority a written record of where each load of material being used to infill the site has come from, the type of material and the tonnage.

Reason: *To ensure that only appropriate materials are used for infilling and to ensure adequate protection of the water environment and so that the planning authority can monitor progress with the infilling.*

5. Within one month from the date of this planning permission, the applicants or their successors shall submit for the approval of the planning authority a detailed restoration plan of the whole site, including the haul road, showing the final contours to be achieved in restoration, and the location of any hedges, fences, gates, walls and access points on the restores site, together with a written specification where such details are not shown on the plan; the plan shall also include proposals for the removal or other treatment of areas of hardstanding, areas occupied by plant or buildings, and the full length of the haul road, together with detailed landscaping proposals for the whole site, including the haul road, indicating the numbers, sizes, species, positions and planting densities of all trees and shrubs to be planted.
6. Notwithstanding the information contained within the Environmental Statement the restoration and landscaping of the site shall be completed in accordance with the restoration; including levels, approved under the terms of condition 7 of planning permission 15/00503/DPP and condition 6 of planning permission 22/00546/S42, prior to the expiration of this consent as detailed in condition 1 of planning permission 23/00773/S42. The approved landscaping shall be maintained to the satisfaction of the planning authority for a period of five years from the time of any planting or construction. Maintenance shall include the replacement of any trees, shrubs or hedgerow plants which die, are removed, become seriously diseased or are severely damaged within that period, by others of a similar size and species to those originally required to be planted.

Reason for conditions 5 and 6: *To ensure that all restored land is properly managed for a sufficient period to ensure its effective return to permanent agricultural/forestry use.*

7. The developer shall ensure that the approved bond or other financial provision associated with planning permission 15/00503/DPP and 22/00546/S42 is maintained through the duration of, and linked to, this planning permission. A copy of the bond/financial provision securing the restoration of the site shall be

submitted to planning authority within 3 months of this grant of planning permission. The bond will only be considered acceptable if approved in writing by the planning authority. Development shall cease within 6 months of this grant of planning permission if the bond/financial provision securing the restoration of the site is not approved in writing by the planning authority.

Reason: *To ensure that there are sufficient funds available throughout the life of the development to carry out the full restoration of the site.*

8. Notwithstanding that specified in the Transportation Assessment, the first 40 metres (not 20 metres as stated in the TA) of private access road into the site; measured back from the site access, shall be surfaced in non-loose material within 3 months of this grant of planning permission.

Reason: *To ensure that the public roads including the access road leading to the quarry and the A7 are kept free from loose material being deposited from vehicles entering or exiting the site in the interest of road safety.*

9. Any identified damage to the highway during infilling and restoration works shall be repaired within 3 months of the operator being notified of the required works.

Reasons: *Various sections of the road carriageway / verge have suffered damage over the years and they require to be repaired prior to the intensification of the use of the road in the interests of road and pedestrian safety.*

10. Notwithstanding that stated in docketed application 15/00503/DPP, 22/00546/S42 and 23/00773/S42 documents operations; including the access and egress of vehicles into and out of the site shall only take place during the hours of 08.00 to 19.00 Mondays to Fridays and 08.00 to 12.00 Saturdays with no working on Sunday. In addition, no work on the construction of the access road, or site preparation works, shall take place out with the hours of 08.00 to 19.00 Mondays to Fridays and 08.00 to 12.00 Saturdays inclusive. There shall be no variation there from unless with the prior written approval of the planning authority.

Reason: *In the interests of safeguarding the amenity of nearby noise sensitive properties and the character and amenity of the countryside.*

11. The approved Dust Management Plan that was approved in writing by the planning authority under condition 13 of planning permission 15/00503/DPP and condition 11 of planning permission 22/00546/S42 shall be adhered to. Additionally, following any

substantiated complaints about dust, or where visual inspection indicates significant dust emissions or dust tracked out of the site onto public roads, a programme of monitoring at the sensitive receptor(s) shall be undertaken by the operator over a period of time agreed in writing by the planning authority and steps taken, as agreed with the planning authority, to clean the public highway, reduce dust emissions and any other steps to mitigate the impact from dust.

Reason: *To mitigate the potential impact of the development on air quality in the interest of safeguarding the amenity of neighbouring properties and the amenity of the area.*

12. A daytime limit of 55 dB LAeq, 1 h (free field) shall be met at noise sensitive properties, with the exception of Halkerston Cottages where a daytime limit of 45 dB LAeq, 1 h (free field) shall be met and Guildie Howes shall be subject to a daytime limit of 50 dB LAeq.

Reason: *To mitigate the potential noise impact of the development in the interest of safeguarding the amenity of neighbouring noise sensitive properties.*

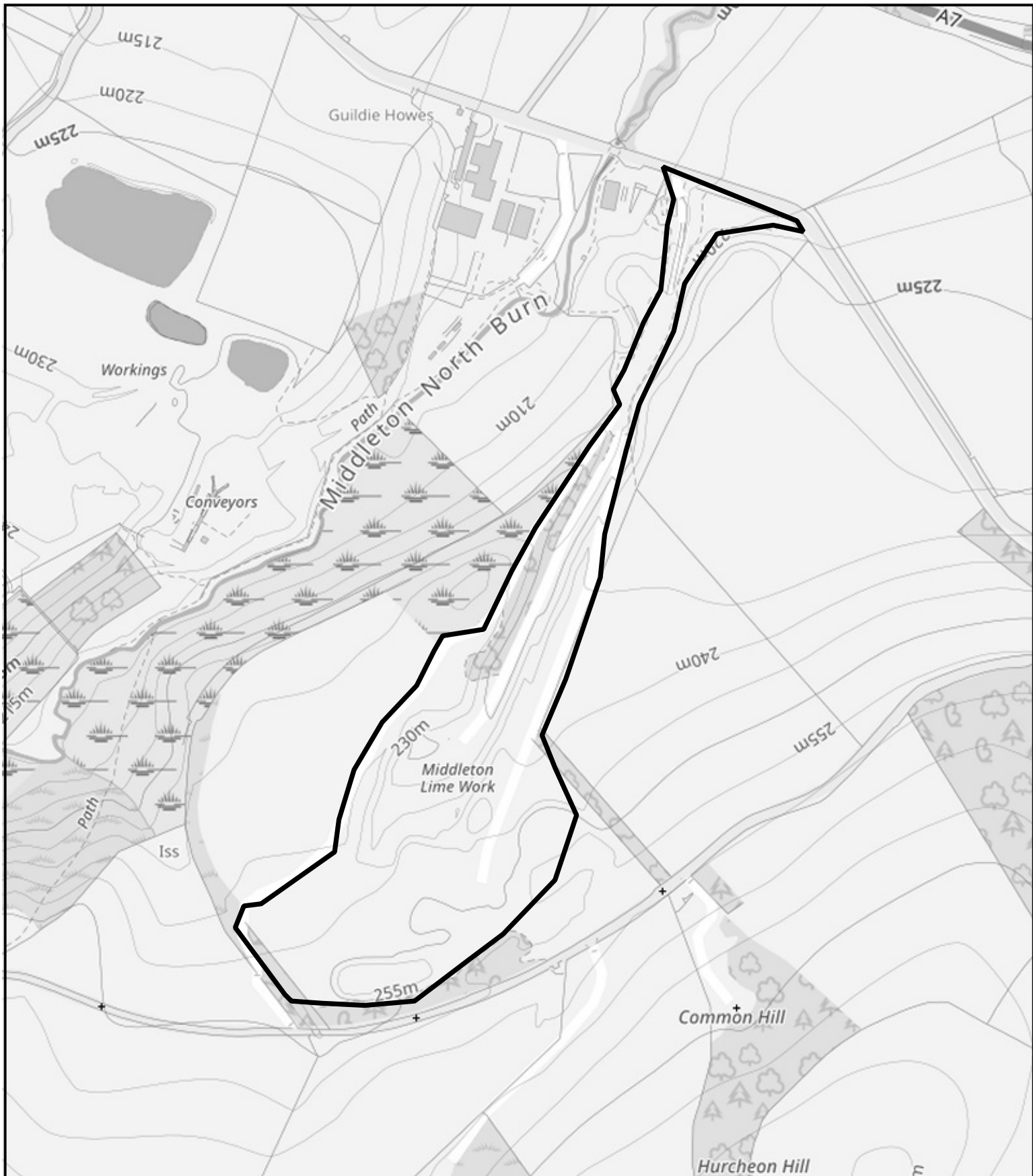
13. No mud, soil or debris shall be deposited on the public highway by vehicles entering or leaving the site. Any mud, soil or debris deposited on the public highway shall be removed and the highway cleaned. The applicant shall retain an operational road sweeper on site whilst infilling operations and restoration works are taking place to ensure the highway is cleaned within one hour of the operator being notified by the local authority, the Police or any other Government Agency or Public Body.

Reason: *In the interests of highway safety.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 24 May 2024

Application No: 23/00773/S42
Applicant: The NWH Group
Agent: William Booth, Dalgleish Associates Ltd.
Validation Date: 29 November 2023
Contact Person: Whitney Lindsay
Email: Whitney.Lindsay@midlothian.gov.uk
Background Papers: Planning Application 15/00503/DPP and 22/00546/S42
Attached Plans: Location Plan and Site Plan



**Planning Service
Place Directorate**

Midlothian Council
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Section 42 application to amend conditions 1 and 6 of consent 22/00546/S42 to extend the timeframe of operations

Middleton Limeworks, near Gorebridge

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File No. 23/00773/S42







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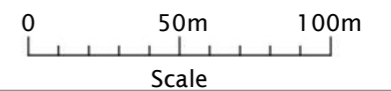
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SITE PLAN

Legend

-  Application Boundary
-  Quarry Void Infill Area
-  Existing Woodland
-  Infilled Area
-  Area to be Infilled
-  Temporary Surcharge Materials



Client: NWH GROUP

Project: MIDDLETON QUARRY

Title: SITE PLAN

Figure: 633-01 Drawn: LJT

Scale: 1:2,500 Checked: WB

Date: 22.02.24 Sheet Size: A3

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