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**SECTION 42 APPLICATION 24/00313/S42 TO AMEND CONDITION 18 (SUSTAINABLE URBAN DRAINAGE SYSTEM) IMPOSED ON A GRANT OF PLANNING PERMISSION IN PRINCIPLE 17/00980/PPP FOR RESIDENTIAL DEVELOPMENT OF UP TO 280 DWELLINGS; COMMERCIAL USE OF CLASS 1 OR 2 OR 3 OR 4 WITH A FLOORSPACE OF UP TO 250SQM; AND ASSOCIATED WORKS AT LAND AT ROSSLYNLEE, ROSLIN**

Report by Chief Officer Place

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

- 1.1 In December 2019 planning permission was granted for residential development of up to 280 dwellings; commercial use of Class 1 or 2 or 3 or 4 with a floorspace of up to 250sqm; and associated works at the former Rosslynlee Hospital, Roslin. The current application is to amend condition 18 in order to enable the installation of an adoptable (by Scottish Water) sustainable urban drainage system (SUDS), rather than the SUDS approved as part of the original planning application.
- 1.2 The application replicates the approach approved by the Committee at its meeting of 12 March 2024 for the former Rosslynlee Hospital site (the current application is for the associated enabling land adjacent to the hospital site).
- 1.3 There have been no representations received or consultations required.
- 1.4 The relevant development plan policies are policy 18 and 22 of the National Planning Framework 4 (NPF4) and policy ENV10 of the Midlothian Local Development Plan 2017 (MLDP).
- 1.5 The recommendation is to grant planning permission subject to conditions and the variation to the existing Planning Obligation either by a Minute of Variation or a Section 75A application, as the original planning application, 17/00980/PPP, is subject to a Planning Obligation securing developer contributions and this agreement needs to continue with the 'new' planning application.

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The site is at Rosslynlee, a rural part of Midlothian between Rosewell

and Penicuik. At its heart is the Category C listed former Rosslynlee Hospital and its associated buildings (a number of which are also Category C listed). The hospital site is surrounded by farmland including two fields which have planning permission for enabling residential development (currently under construction).

- 2.2 The application site is accessible by an unclassified road (Firth Road/Farm Road) connecting to the B7026 (heading towards Auchendinny/Howgate) or unclassified roads connecting to the A6094 (heading towards Rosewell) or the B7003 (heading towards Roslin). The application site is within a landscape comprising tree belts and woodlands.

### **3 PROPOSAL**

- 3.1 The application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019) (hereafter referred to as the Act), is to amend the wording of condition 18 of planning permission 17/00980/PPP. The condition currently reads as follows:

*No dwelling shall be occupied until the surface water drainage arrangements to serve it have been put in place in accordance with the approved details and the agreed phasing plan. For the majority of the site this will require delivery of the Sustainable urban Drainage detention pond shown on the approved drawings pursuant to planning application 17/01001/DPP plus the infrastructure to provide for surface water arising from this site to drain into it, or such other temporary solution, and in the northern part of the site surface water drainage will be to the existing combined sewer running to the north of the site.*

- 3.2 It is proposed that the condition be amended to read as follows:

*No dwelling shall be occupied until the Sustainable Urban Drainage detention basin approved under 23/00219/DPP and the infrastructure to provide for surface water arising from this site to drain into it, or any subsequent amendments, has been installed in accordance with the approved details.*

- 3.3 The result of this change enables the installation of an adoptable (by Scottish Water) SUDS scheme which has approval by way of planning application 23/00219/DPP, rather than the SUDS approved as part of the original planning application. The adoption process is a separate regulatory process between the applicants and Scottish Water. The 2023 scheme results in a change in design which is compatible to the latest standards compared to the 2017 designed scheme.
- 3.4 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.

- 3.5 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. Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply.

## **4 BACKGROUND**

- 4.1 Planning permission in principle 17/00980/PPP for residential development of up to 280 dwellings; commercial use of Class 1, 2, 3 or 4 with a floor space of up to 250sqm; and associated works was granted in 2019.
- 4.2 Planning application 17/01001/DPP for alterations and conversion of former hospital and existing buildings to form 72 dwellings; erection of 24 new dwellinghouses and associated works was granted in 2019.
- 4.3 Listed building consent 18/00061/LBC for the internal and external alterations to the former Rosslynlee Hospital and associated listed buildings to form 69 dwellings and one office including; demolition of the former boiler house, outbuildings and elements of the main building, re-slatting of roof, alterations to existing window and door openings and associated works was granted in 2019.
- 4.4 Planning application 21/00904/DPP for the formation of a footpath was granted in 2022.
- 4.5 Planning application 21/01025/DPP for the formation of car parking and bus turning area; and associated works was granted in 2022.
- 4.6 Planning application 22/00787/DPP for the alterations to existing junctions, resurfacing and other associated works was granted in 2023.
- 4.7 Planning application 23/00219/DPP for the formation of SUDS and associated works was granted in 2023.
- 4.8 Planning application 23/00700/S42 to amend condition 14 of planning permission 17/01001/DPP enables the installation of an adoptable (by Scottish Water) sustainable urban drainage system (SUDS), rather than the SUDS approved as part of the original planning application for the conversion of the former Rosslynlee Hospital was approved by the Committee at its meeting of 12 March 2024. The current application, subject to this report, replicates this approach for the adjoining enabling land.
- 4.9 The application site exceeds two hectares and therefore the proposed

development constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby is required to be determined by the Planning Committee.

## **5 CONSULTATIONS**

5.1 No consultations were required.

## **6 REPRESENTATIONS**

6.1 No representations have been received.

## **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 **18 Infrastructure first**; sets out to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.

7.4 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.

### Midlothian Local Development Plan 2017 (MLDP)

7.5 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.

## **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.

### Condition 18

8.2 Planning permission was originally granted in December 2019 for residential development of up to 280 dwellings; commercial use of Class 1 or 2 or 3 or 4 with a floorspace of up to 250sqm; and associated works at the former Rosslynlee Hospital, Roslin. As part of this application, a drainage strategy and SUDS Pond was approved,

and its installation was secured by condition 18 (the SUDS Pond was not implemented).

- 8.3 However, the SUDs Pond that was originally proposed was not adequate in terms of Scottish Waters latest adoption requirements and therefore it needed to be redesigned to a basin so as to ensure there was adequate capacity – changing from a pond to a basin increased the size of the engineering feature and the land take required to implement it and was therefore a material change to the original permission.
- 8.4 In March 2023, the applicant submitted a planning application for the formation of a SUDS scheme and associated works at the former Rosslynlee Hospital, Roslin (23/00219/DPP). The application was fully assessed in terms of the residential proposals at Rosslynlee and approved subject to conditions in August 2023. Following on from the approval of the SUDS scheme a section 42 planning application 23/00700/S42 to amend condition 14 of planning permission 17/01001/DPP to enable the installation of an adoptable (by Scottish Water) SUDS, rather than the SUDS approved as part of the original planning application for the conversion of the former Rosslynlee Hospital was approved by the Committee at its meeting of 12 March 2024. The current application, subject to this report, replicates this approach for the adjoining enabling land.
- 8.5 The reason for condition 18 of planning permission 17/00980/PPP is in the interests of ensuring a satisfactory drainage system for the site and to accord with MLDP Policies ENV9 and IMP3. The re-wording of the condition does not change this position and ensures that a suitable and adoptable SUDS scheme for the residential development at Rosslynlee is installed.

#### Other Conditions and Planning Obligation

- 8.6 With regards to condition 6 (bus drop off and turning), it is in part a pre commencement condition that has been discharged under planning permission 21/01025/DPP, therefore it is appropriate to modify condition 1 to ensure it is relevant to the current permission, if granted.
- 8.7 Condition 7 (improvements to Gourlaw Junction) is a pre commencement condition that has been discharged under planning permission 22/00787/DPP; therefore, this condition has been updated to ensure that the works are completed as per the approve plans.
- 8.8 The remaining conditions relate to; works to the access road, agreeing materials, the provision of a tree protection plan and arboricultural method statement, on-site engineering works, drainage provision, street lighting and constructional details, archaeological works, landscaping, addressing ground contamination, biodiversity enhancement, electric vehicle charging and refuse storage. These conditions are still relevant, and it is proposed to attach them to the new permission if granted. In addition, in line with current practice, a

Construction Environment Management Plan (CEMP) condition should be added to the new planning permission.

- 8.9 A Planning Obligation is in place in relation to planning permissions 17/00980/PPP and 17/01001/DPP to provide developer contributions towards primary and secondary education, school transport and off-site footpath improvements. Those requirements remain unchanged, however as planning permission 17/00980/PPP is defined in the agreement it will be necessary for the agreement to be modified/varied to ensure that this new permission in law (24/00313/S42) is bound by the agreement.

## 9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

*The proposed amendment to condition 18 does 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 and it secures an adoptable SUDs system. This presumption in favour of development is not outweighed by any other material considerations and accords with the principles approved by the Council. The proposed development accords with the Midlothian Local Development Plan (2017).*

Subject to the variation to the existing Planning Obligation either by a Minute of Variation or a Section 75A application; and the following conditions:

1. No development of a phase shall take place without the prior written approval of the planning authority of all details of the following matters specified by condition for that phase:-
  - a) Appearance (with not less than 20% of total dwellings within the site to be of improved quality of appearance);
  - b) Landscaping;
  - c) Layout (including details and location of the site drainage);
  - d) Scale; and
  - e) Means of Access. Thereafter the development of that phase shall not be carried out otherwise than in accordance with the approved details.

**Reason:** *To safeguard the rights of control by the Local Planning Authority in respect of the matters specified by condition and in the interests of layout and design and to accord with Policy DEV6 and DEV7 of the Midlothian Local Development Plan 2017.*

2. Notwithstanding the details submitted, development shall not commence until a phasing plan (including details of the percentage of dwellings within each phase to be contained within an area of improved quality of appearance pursuant to condition 1a) is

submitted to and agreed in writing by the planning authority. Thereafter the development shall be undertaken only in accordance with the approved phasing plan. For the purpose of this planning permission the extent of a 'phase' shall be determined in accordance with this condition.

**Reason:** *In order to achieve a satisfactory form of development and to accord with Policy DEV6 of the Midlothian Local Development Plan 2017.*

3. Development shall not commence until full details of the existing site levels are submitted to and approved in writing by the planning authority and no development shall commence in any phase until proposed site levels for that phase, have been submitted to and approved in writing by the planning authority. Thereafter the development shall only be carried out in accordance with the approved details.

**Reason:** *In order to achieve a satisfactory form of development to accord with Policy DEV6 of the Midlothian Local Development Plan 2017.*

4. No more than a) 280 dwellings, b) 250 m<sup>2</sup> of either Class 1 (Shops) or Class 2 (Financial and Professional services) or Class 3 (restaurants and cafes) or Class 4 (Business) of the Town and Country Planning (Use Classes) Scotland Order 1997 as amended shall be built within the site.

**Reason:** *In order to define the scope of the planning permission.*

5. Development shall not commence until the planning authority has approved in writing the details of, and arrangements for the setting out of the Public Open Space onsite as part of that phase of the development, such arrangements shall address and contain the following matters:
  - i. The delineation and siting of the proposed Public Open Space,
  - ii. The type and nature of the facilities to be provided within the public open space including the provision of play equipment, and a trim trail within North Park (within the relevant phase(s)), which shall be supplied and installed to a specification as agreed by the planning authority,
  - iii. The arrangements to ensure that the Public Open Space is laid out and completed during the course of the development.

**Reason:** *In the interests of ensuring that there is adequate open space provided for future residents to accord with Policy DEV7 and DEV9 of the Midlothian Local Development Plan 2017.*

6. No dwelling shall be occupied until the approved (or temporary) bus pick up/drop off and bus turning facilities have been provided in accordance with the approved details of planning permission

21/01025/DPP and an agreed phasing plan, which thereafter shall be maintained in accordance with the approved details.

**Reason:** *In the interests of highway safety and to accord with NPF4 and Policy DEV6 of the Midlothian Local Development Plan 2017.*

7. No dwelling shall be occupied until the improvements to the Gourlaw junction (the junction of the unclassified road leading from the A6094 to the site) have been fully implemented in accordance with the approved details as per planning permission 22/00787/DPP, unless otherwise agreed in writing by the planning authority.

**Reason:** *In the interests of highway safety and to accord with NPF4 Policy 18.*

8. No dwelling shall be occupied until the formation of the footpath has been fully implemented in accordance with the approved details of planning permission 21/00904/DPP.

**Reason:** *In the interest of highway safety and to accord with NPF4 Policy 18.*

9. No phase of the built development shall be constructed above foundation level until samples of the external materials to be used in that phase of the development have been submitted to and approved in writing by the planning authority. Development in that phase shall be carried out in accordance with the approved details.

**Reason:** *In the interests of good design and to accord with Policy DEV6 of the Midlothian Local Development Plan 2017.*

10. Development of each phase shall not commence until details of fencing, a Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS) and other measures to protect trees or other landscape features to be retained in that phase), in line with the recommendations of BS5837:2012 have been submitted to and approved in writing by the planning authority. No operations shall commence on site in connection with a particular phase of development (including any soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until such time as the TPP and AMS for that phase have been formally approved by the planning authority and all root protection measures for that phase are in place. The approved details shall remain in place for the duration of construction of that phase of development.

**Reason:** *To ensure the protection of existing landscape features, in line with advice contained in the current versions of BS 5837 Trees in relation to construction and BS8545:2014, in the interests*



*of visual amenity and to accord with Policy ENV11 of the Midlothian Local Development Plan 2017.*

11. No dwelling on any phase shall be constructed until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption by the highway authority within that phase have been submitted to and approved in writing by the planning authority. Thereafter, the development shall be constructed in accordance with the approved details

***Reason:*** *In the interests of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the amenities of the locality and users of the highway and to accord with Policy DEV6 of the Midlothian Local Development Plan 2017.*

12. Development shall not commence until a scheme of temporary security measures to protect the Rosslynlee Hospital listed buildings site from vandalism have been submitted to and approved in writing by the planning authority. No development shall take place until the approved measures have been implemented in full.

***Reason:*** *In the interest of the integrity of the listed buildings and to accord with Policy ENV22 of the Midlothian Local Development Plan 2017.*

13. The landscaping matters specified by condition referred to in condition no. 1 above shall include full details of both hard and soft landscape works for the relevant phase. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; a scheme of public art; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (such as street furniture, play equipment, refuse or other storage units, signs, amenity lighting); proposed functional services above and below ground (such as drainage, power and communications cables or pipelines); planting plans (including compensatory tree planting; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities as appropriate); the identification of all trees and hedgerows to be retained (within the site and on its boundaries) and measures for their protection throughout the course of construction works; an implementation programme; and a management and maintenance programme. All landscaping shall be carried out in accordance with the approved details.

***Reason:*** *In the interests of the quality and design of the development and to accord with Policies DEV6 and DEV7 of the Midlothian Local Development Plan 2017.*

14. No dwelling shall be occupied until the vehicular and pedestrian access to it, both onsite and at the junction with the Rosslynlee Hospital access road, and the parking space(s) for it within its curtilage, has been constructed in accordance with the approved details, unless otherwise agreed in writing by the planning authority.

**Reason:** *In the interests of highway safety and to accord with NPF4 Policies 14 and 18.*

15. No phase of the built development shall be constructed above foundation level until details of a sustainability/biodiversity scheme for each phase of the site, including the provision of house bricks and boxes for bats and swifts for each phase of the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details and the agreed phasing plan.

**Reason:** *In the interests of biodiversity and ecology and to accord with NPF4 Policy 3.*

16. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
  - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
  - iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and,
  - iv. the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

**Reason:** *To ensure that any contamination on the site/ground conditions is adequately identified and that appropriate decontamination measures/ground mitigation 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; to ensure the remediation works are undertaken and to accord with Policy ENV16 of the Midlothian Local Development Plan 2017.*

17. On completion of any decontamination/ remediation works required in condition 16 and prior to the dwellinghouse being occupied on site, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied until this report has been approved by the planning authority.

**Reason:** *To ensure that any contamination on the site/ground conditions is adequately identified and that appropriate decontamination measures/ground mitigation 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; to ensure the remediation works are undertaken to accord with Policy ENV16 of the Midlothian Local Development Plan 2017.*

18. No dwelling shall be occupied until the Sustainable Urban Drainage detention basin approved under 23/00219/DPP and the infrastructure to provide for surface water arising from this site to drain into it, or any subsequent amendments, has been installed in accordance with the approved details.

**Reason:** *In the interests of ensuring satisfactory drainage for the site and to accord with Policies ENV9 and IMP3 of the Midlothian Local Development Plan 2017.*

19. No development shall take place on each phase of the proposed site until the applicant has undertaken and reported upon a programme of archaeological Recording (Appraisal) and Monitored Soil Strip) work in accordance with a written scheme of investigation for that phase which has been submitted by the applicant (or their agent) and approved by the planning authority

**Reason:** *In the interests of the integrity of any archaeological remains and to accord with Policies ENV24 and ENV25 of the Midlothian Local Development Plan 2017.*

20. Prior to the construction of any unit to operate within Class 3 of the Town and Country Planning (Use Classes) Scotland Order 1997 as amended, details of:

- a) scheme of fume extraction including means of noise attenuation of the extract system
- b) details of refuse storage; and,
- c) Hours of operation

shall be submitted to and approved in writing by the local planning authority. Such a unit shall not be brought into use until the scheme of fume extraction and refuse storage have been provided in accordance with the approved details and thereafter

the unit shall only be open for business if those facilities are operational in accordance with the approved details.

**Reason:** *In the interest of the amenity of future residential occupiers and to accord with to accord with Policy DEV2 of the Midlothian Local Development Plan 2017.*

21. No dwelling shall be occupied until a woodland management plan has been submitted to and approved in writing by the planning authority. Thereafter the woodland within the site shall be maintained in perpetuity in accordance with the approved woodland management plan.

**Reason:** *In the interest of the long-term management of trees within the site and to accord with Policy ENV11 of the Midlothian Local Development Plan 2017.*

22. Construction of homes within any phase shall not commence until details have been submitted to and approved in writing by the planning authority of:
- a) the provision and use of electric vehicle charging stations throughout that phase of the development; and,
  - b) a timetable of implementation, of high-speed fibre broadband to each house within that phase.

Development shall thereafter be carried out in accordance with the approved details and the agreed phasing plan or such alternatives as may be approved in writing with the planning authority.

**Reason:** *In the interests of sustainability and to accord with Policies TRAN 5 and IT1 of the Midlothian Local Development Plan 2017.*

23. Development shall not begin until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
- i. Details of a construction access;
  - ii. signage for construction traffic, pedestrians and other users of the site;
  - iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
  - iv. details of piling methods (if employed);
  - v. details of any earthworks;
  - vi. control of emissions strategy;
  - vii. a dust management plan/strategy;
  - viii. waste management and disposal of material strategy;
  - ix. a community liaison representative will be identified to deal with the provision of information on the development

- to the local community and to deal with any complaints, regarding construction on the site;
- x. prevention of mud/debris being deposited on the public highway;
  - xi. material and hazardous material storage and removal; and
  - xii. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

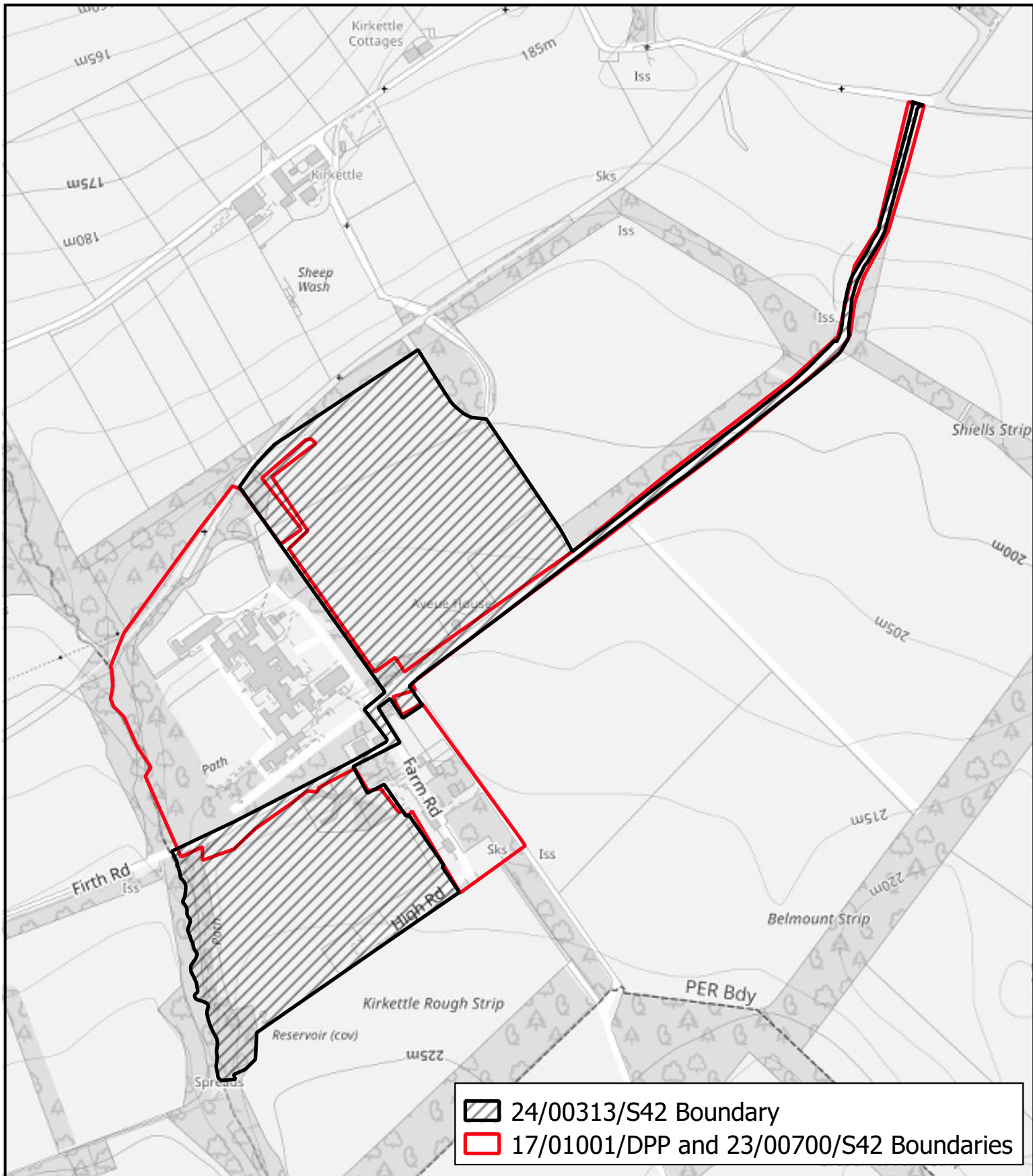
***Reason:*** *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 31 August 2024

**Application No:** 24/00313/S42  
**Applicant:** Oakridge Group  
**Agent:** Nikki McAuley, Ironside Farrar  
**Validation Date:** 6 May 2024  
**Contact Person:** Whitney Lindsay  
**Email:** Whitney.Lindsay@midlothian.gov.uk  
**Background Papers:** Applications - 17/00980/PPP, 17/01001/DPP, 18/00061/LBC, 21/00904/DPP, 21/01025/DPP, 22/00787/DPP 23/00219/DPP and 23/00700/S42

**Attached Plans:** Location plan



**Planning Service  
Place Directorate**

Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith, EH22 3AA

Section 42 application to amend condition 18 of  
planning permission 17/00980/PPP

Land at Roslynlee, Roslin

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