



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in June 2016; and an appeal decision received from Scottish Ministers.

2 BACKGROUND

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes a decision on an appeal which has been considered by Scottish Ministers.

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 7 June 2016 the LRB made the following decisions:

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
1	15/00939/DPP	Gourlaw Farm, Rosewell	Change of use of outbuildings to dog day centre	Review upheld. Permission granted
2	15/00994/DPP	Land west of Springfield House, Lasswade	Erection of 5 dwellinghouses	Review dismissed. Permission refused

3	15/00995/DPP	Cherrytrees, Fala, Pathhead	Erection of dwellinghouse	Review upheld. Permission granted
4	16/00044/DPP	1 Galadale Drive, Newtongrange	Erection of extension to dwellinghouse	Review upheld. Permission granted

4 APPEAL DECISIONS

- 4.1 An appeal against a refusal of a planning permission in principle application (15/00546/PPP) for residential development and associated infrastructure on land west of the Cottage, Hardengreen, Dalkeith has been dismissed. The application was refused by the Planning Committee at its meeting of 17 November 2015. The Scottish Government Reporter dismissed the appeal after considering the proposed development would be inappropriate in the green belt/countryside and would lead towards coalescence between settlements. A copy of the appeal decision accompanies this report.

5 RECOMMENDATION

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting on 7 June 2016.

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Head of Communities and Economy

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Background Papers: LRB procedures agreed on the 26 November 2013.

Appeal Decision Notice

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Decision by Padraic Thornton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2034
- Site address: Lands west of The Cottage, Hardengreen, Dalkeith. EH22 3LF
- Appeal by Avant Homes against the decision by Midlothian Council.
- Application for planning permission in principle 15/00546/PPP dated 26 June 2015 refused by notice dated 30 November 2015.
- The development proposed: Residential development and formation of access, SUDS, landscaping and associated works.
- Date of site visit by Reporter: 6 April 2016

Date of appeal decision: 8 August 2016

Decision

I dismiss the appeal and refuse planning permission in principle.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. The main issues in the appeal are the effective housing land supply available, the impact of the development on green belt and countryside provisions in the development plan and the availability of infrastructure. The relevance of the Scottish Planning Policy presumption in favour of development that contributes to sustainable development and the provisions of the proposed Midlothian Local Development Plan, including prematurity issues, must also be considered.

The site and proposed development:

3. The site of the proposed development has a stated area of 2.2 Ha. It is located at Hardengreen at the southern end of Eskbank. The site has frontage onto the B6392 which links from the A7 to the south to Eskbank to the north. The recently constructed Borders railway line runs along the western edge of the site and it is separated from the site by a post and wire fence. There is a laneway to the northeast which provides access to two residential properties. One of those called The Cottage is in part of the site of the proposed development. The other is called Long Croft and it is located to the north of The Cottage. The lane leads to a pedestrian/cycle way which crosses over the railway line and the A7. This provides access to Bonnyrigg and is part of the Penicuik-Musselburgh footpath and



cycleway. This is a designated Core Path and National Cycle Route. There is some open undeveloped land to the west of the railway line and to the east of the A7. The curtilage of a category 3 listed building known as Hardengreen House is located to the east of the lane which provides access to Long Croft and The Cottage. There are some unused buildings and little used lands within the curtilage.

4. The field which comprises the site of the proposed development dips down towards the location of the current access off the B6392. There is a dip towards this location from the south-west and north-east corners of the site. The site is currently in grassland having been restored from a temporary use as a compound associated with the construction of the railway line. There are some mature trees in lands to the south of the site near the junction of the A7 with the B6392. The railway line crosses over the roundabout at the junction. There are also some trees in the curtilage of The Cottage.

5. The application is for planning permission in principle but some indicative plans have been submitted. The Report of Handling refers to the masterplan indicating 47 units comprising of 25 detached houses, 10 semi-detached houses and 12 flats but reference is made in the documentation generally to approx. 40 housing units. The application is for permission in principle rather than full permission. 25% affordable housing is proposed. Houses would front onto an internal access road network and back onto the rail-line, the B6392 and the curtilage of Long Croft. A small area of open space is indicated at the northern end of the site with a larger open area more centrally located towards the southern end.

Housing land supply issue:

6. The draft Housing Land Audit for 2015 submitted by the planning authority indicates a total effective housing land supply for 9883 housing units on 31 March 2015. The 5 year programme of housing completions for 2015/16 to 2019/20 is stated to be 5205. The planning authority has calculated a 5 year effective supply requirement for this period of 4352 based on the Supplementary Guidance issued in 2014 in accordance with Policy 5 of SESPlan 2013. The appellant, whilst noting that the audit is a draft only, and likely to change to the detriment of the planning authority's argument following consultations, has submitted that the correct 5 year requirement is 5918 units which would leave a deficit of 713 units when compared to the planning authority's programme calculation of 5205. The difference in the figures arises from the appellant excluding the 734 house completions indicated in the 2009 year audit as those are not relevant to the SESplan 2009-2019 requirement and the appellant has also added a 882 unit requirement to take account of a one year allocation of the SESplan 2019-1024 requirement as the relevant 5 year period (2015-2020) includes part of this requirement. The planning authority's calculated surplus of 853 accordingly becomes a deficit of 713 allowing for the planning authority having incorrectly used a figure of 539 rather than 589 for completions for March 2015. If account is taken of the houses permitted under reference PPA-290-2030 and planning authority reference 14/00405/DPP, referred to by the appellant, the 713 figure would be reduced to about 537. (The appellant had calculated a deficit of 1285 houses in the 5 years effective supply on the basis of the 2014 audit. The planning authority had calculated a surplus of 853 houses on the basis of the 2015 draft audit)

7. I accept that the appellant's figures, which appear reasonable, indicate a deficit in the 5 year requirement when compared to the programmed 5 year delivery as calculated by the planning authority. I also accept that the figures may appear worse when the 2015 draft audit is finalised. The planning authority's calculation of the effective 5 year supply 2015-2020 compares the requirement as set out in the SESplan Supplementary Guidance on housing with the 5 year forward programming figure derived from the 2015 audit. This has become the accepted methodology and has been followed in the previous appeal decisions referred to by the appellant. On this basis and taking account of the amendments included in the appellant's response to the planning authority, which seem reasonable, there is a deficit in the 5 year effective land supply. Policy 6 of SESplan which requires the maintenance of a five year effective land supply to meet requirements is accordingly not being complied with. Policy 7 of the SESplan must accordingly be considered. This allows for granting permission for housing development on un-allocated sites, in such circumstances, subject to compliance with 3 criteria.

8. The planning authority has referred to total housing land availability being 9883 houses. In the report to the Planning Committee dated 1 March it is argued that the Reporter in case PPA-290-2030 took account only of the calculated 5 year programming as indicated in the 2014 Housing Audit Report. The planning authority has not however submitted evidence to the effect that some additional parts of this land are effective supply to meet the 5 year requirement as referred to in Policy 6 of the SESplan. I have no evidence to support an argument that land adequate to supply 9883 houses indicated as the total effective land supply in the draft 2015 Housing Audit is available and effective in the relevant 5 year period.

9. Policy 6 of the SESplan requires planning authorities to maintain an adequate 5 year effective housing land supply to meet the requirements set out in the Supplementary Guidance 2014 issued in accordance with Policy 5. The figures submitted indicate a deficit in the effective lands available to meet the calculated 5 year requirement. Policy 6 is accordingly not being complied with.

Policy 7 of SESplan 2013:

10. Policy 7 of the SESplan, on which the appellant relies to a considerable extent, allows for permission to be granted for housing development on green field sites within or outside the Strategic Development Areas in order to maintain a 5 year effective housing land supply subject to 3 specified criteria. The site is located in the A7/A68/Borders Rail Corridor SDA. I will now consider the application against the criteria set out in Policy 7.

11. The first criterion is that the development must be in keeping with the character of the settlement and local area. The local area in this case comprises undeveloped open agricultural lands forming part of the green belt at the outer edge of Eskbank. The settlement of Eskbank peters out as one travels southwards along the B6392. There is woodland along the south-east side of the road at this location and one has left the built up area. There is an open view across the site towards the top of the Pentland Hills, in the distance, from the B6392 at the location of the existing and proposed entrance. The site, with adjoining lands, forms an open space divide, together with the railway line and the A7, between Eskbank and Bonnyrigg. I do not consider that the development proposed, which would involve building up to the edge of the railway line, would be in keeping with the area

or the settlement of Eskbank. I consider that there are strong arguments to the effect that the soft edge to the settlement should be retained to protect the identity and character of Eskbank and prevent coalescence between settlements. The effect of the development in terms of coalescence would be clearly obvious to persons travelling along the B6392 and pedestrians and cyclists using the core path and cycleway to the east and north of the site. The nearest housing schemes in Eskbank are some distance away to the north and the site forms part of a relatively narrow green belt outer edge to the settlement. I consider that the development would not be in character with the local area or the settlement.

12. The second criterion is that the development should not undermine green belt objectives. The purposes of the green belt include maintaining the landscape setting and identity of settlements and preventing coalescence (policy 12 of SESplan). The lands in question here are currently included in the green belt as defined in the 2008 local development plan. The Proposed Midlothian Local Development Plan indicates the site remaining in the green belt which would be reduced in this area by the exclusion of lands west of the A7 in Bonnyrigg. I consider that the development proposed would occupy an important location in the green belt and it would significantly reduce the separation between the built up areas of Eskbank and Bonnyrigg. It would also act as a precedent for the development of the remaining open area at least up to the rail-line if not the A7. I do not consider that the A7, which is in a cutting to the west of the site and railway line, would form an effective visual separation between the settlements at this location. The separation between the settlements to the north where there is a hospital on the west side of the A7 and commercial development close up to the A7 on the east side is very small and I do not consider it an appropriate precedent to continue southwards. In views from the pedestrian/cycle path over the A7 the proposal would result in the developed area extending up to the Hardengreen Roundabout and the A7. The Bonnyrigg settlement to the west is clearly visible from this location and it will encroach closer, in the future, if the housing allocations in the proposed Midlothian Plan are approved. The development would also cut off the view to the Pentland Hills from the B6392. I consider that the development would undermine the objectives of the green belt and be contrary to green belt policy contained in the current and proposed local development plans.

13. The third criterion referred to in Policy 7 is that any additional infrastructure required is either committed or will be funded by the developer. The consultations and report of handling do not indicate any infrastructural deficiencies which cannot be overcome by way of legal agreement and contributions if required. There are some differences of opinion as to whether or not contributions are necessary or reasonable for upgrading denominational education facilities. I do not consider this a critical issue which needs to be resolved at this stage. I note that the drainage report and consultation recommended a Drainage Impact Assessment to ascertain if there is any deficiency in the drainage network. This has not been identified as a significant objection to the proposed development.

14. I consider that the proposed development would not satisfy the first two criteria referred to in Policy 7 of SESplan 2013. The development, accordingly, would not accord with the policy.

Green belt issues not discussed above:

15. Policy 12 of the SESplan is referred to in the first reason for refusal. This policy requires that local development plans should define and maintain green belt boundaries for various purposes including the maintenance of the landscape setting of settlements, preventing coalescence and providing opportunities to access open space and the countryside. This policy refers essentially to requirements to be contained in local development plans rather than being guidance for development management and so does not appear to me to be directly relevant to consideration of the application. I have referred to the purposes of the green belt as set out in Policy 12 in paragraph 12 above.

16. The Proposed Midlothian Local Development Plan would result in the site in question and adjoining lands remaining in the green belt. The proposed plan identifies as a key issue the coalescence of Bonnyrigg and Eskbank. It is stated in the proposed plan that it is important to ensure strict control over the remaining designated area. Paragraph 6.9 of the Main Issues Report, on which report considerable reliance is being placed by the appellant to justify a grant of planning permission, also recognised the danger of coalescence between Eskbank and Bonnyrigg. It refers to the narrow gap between the settlements that would result having regard to the proposed BG1 and BG2 housing allocations. (Hs 9 and Hs 10 indicated in the proposed plan). It proposed shifting the green belt's southern boundary northwards to the Eskbank Road (A6094), but stated that any remaining undeveloped land south of the new green belt boundary would be outside the urban boundary and would continue to be protected by the countryside policy. It appears that this policy was envisaged as protecting the open areas at the location of the proposed development. The site was not indicated for development in either the "preferred strategy" or the "alternative preferred strategy" in the Main Issues Report. The green belt designation for the lands to the east of the A7 and railway line has been retained in the Proposed Midlothian Local Plan. I consider that the proposed development would be in conflict with policy RP2 of the current local development plan (and Policy ENV1 of the proposed local development plan) relating to protection of the green belt because housing development as proposed would not be in accordance with the policy.

Protection of the countryside:

17. The site is located in an area where policy RP1 of the current Midlothian Local Plan relating to protection of the countryside currently applies. I consider that the development would be contrary to policy RP1 as the development does not come within the types specified as being permissible and there is no need for a countryside location for such a housing development. The Main Issues Report on the plan indicates that it was envisaged that this policy would continue to apply to the open lands in the area even if the lands were removed from the green belt. The proposed plan does not indicate any significant change to policy on development in the countryside.

Other issues:

18. The second reason for refusal refers to the land being prime agricultural land and the development accordingly being in conflict with the local development plan policy RP4. The appellant has submitted a detailed report to the effect that the site, which contained a

building compound in the recent past, should be classified as grade 3(2) rather than grade 3(1) and accordingly does not qualify as prime agricultural land. This argument has not been disputed by the planning authority. The site does not form part of any viable agricultural holding. In the circumstances I consider that the development would not be contrary to the policy.

19. The current Midlothian Local Development Plan dates from 2008 and so is over 5 years old. It has not been up dated to take account of the new strategic SESplan. As a 5 year effective land supply is not currently available the provisions in the plan relating to the supply of housing land are also considered not to be up-to-date by virtue of paragraph 125 of the Scottish Planning Policy. The provisions of paragraph 33 of the Scottish Planning Policy, accordingly, apply. The presumption in favour of development that contributes to sustainable development is a significant material consideration. Having considered the 13 principles set out in paragraph 29 of the policy document to determine if the development would contribute to sustainable development I am satisfied that the development would not avoid overdevelopment and protect the amenity of new and existing areas or support one of the qualities of successful places set out in the policy document. I consider that the quality of being distinctive and a place with a sense of identity would be weakened for the reasons referred to in paragraphs 11 and 12 above. I accordingly consider that the presumption does not apply in this case.

20. The presumption in favour of sustainable development does not change the statutory status of the development plan. I am not convinced that this would be the right development in the right place as required by SPP. I am also concerned that a grant of permission would prejudice the provisions of the emerging plan in spite of the relative small scale of the development proposed. Due to the location of the site, at the outer edge of Eskbank, where only a small area of open land remains separating the settlements of Eskbank and Bonnyrigg, I consider that a grant of permission would to some extent determine the future development of adjacent lands. A grant of permission in this case could be regarded as a precedent for the development of the lands to the east of the access lane to Long Croft and The Cottage and also the lands to the west of the railway line as it would extend the built up area of Eskbank up to the A7. A grant of planning permission would have a wider effect on the emerging local plan than merely determining the future use of the site of the proposed development. The future use of the site should be considered with that of the other adjacent open lands. I accordingly consider that even it were to be accepted that the development complies with the principles set out in paragraph 29 of the national planning policy the presumption in favour of sustainable development would not, in spite of it being a significant material consideration, outweigh the provisions of the development plan in this case.

21. The site has some characteristics to support its use for residential purposes. It is located in the A7/A68/Borders Rail Corridor Strategic Development Area and the strategic plan envisages development being focussed towards the 13 SDA's identified. The site has good accessibility being relatively close to the recently constructed rail station to the north and it also abuts the pedestrian path and cycleway. It is not, however, an ideal residential site free from any constraints. The noise assessment submitted concludes that existing noise levels are above those desirable in residential areas (WHO guidance values) and special mitigation measures would be required. Increased night time use of the railway line could also cause problems in the future. I do not consider that the Technical Note for the

Mains Issues Report on Development Sites Assessment, referred to and submitted by the appellant, is conclusive proof or evidence for the proposition that the site should be developed for housing purposes. Some positive points are referred to but so also, are some negative ones. I note that one of the conclusions from the workshops referred to is that a wider range of detailed technical and practical considerations need to be considered to inform the final strategy for the Bonnyrigg and Eskbank area. As referred to in paragraph 16 the site was not included in the identified “preferred strategy” or the “alternative preferred strategy”.

22. The appellant has referred to a number of previous appeal decisions which, it is submitted, set a precedent for granting planning permission in this case. Each application must be treated on its merits and sites at different locations are not comparable having regard to the range and type of issues to be considered.

23. Only one of the appeal decisions referred to is located in the Midlothian Council area. Different development plans and housing land considerations apply to the other areas. The Midlothian, and possibly most similar case, referenced is case reference PPA-290-2030. There are however significant differences in the locations of the sites in question. The lands referred to in PPA-290-2030 are some distance further north where the danger of coalescence with Bonnyrigg or Lasswade is not significant due to the location and the presence of open lands including golf courses on the west side of the A7. The lands to which PPA-290-2030 refers are indicated as being allocated for housing development in the proposed Midlothian Local Development Plan. The proposed plan, whilst not having the legal status of an approved development plan, is a material consideration. The Reporter in case PPA-290-2030 referred to the presence of existing housing developments in the vicinity of the development then proposed. He considered that the development would be a logical extension of Dalkeith/Eskbank. The site of the current proposal is an outlier one some distance removed from existing housing schemes. It is at a location on the outer edge of the settlement where there is currently no intensively built up development. I have already referred to the nature of the area and the absence of any significant development in paragraph 11. I consider that the circumstances are significantly different here from case PPA-290-2030.

24. Four of the cases referred to are located in the Edinburgh City Council area. (Cases PPA-230-3131, 2129, 2140 and 2152) The Reporters decisions and reports indicate a very significant deficit in the 5 years effective housing supply in this area. The report on 3131 indicates that the Reporter considered that the development complied with the 13 criteria for sustainable development set out in the SPP. He also considered that the development would regenerate a degraded site and return it to beneficial use. He considered that the development would consolidate the disparate urban form of the local area and that the impact on the green belt was acceptable. He considered that the development would ensure visual separation between the city and Danderhall. The report on 2129 concluded that the impact on the green belt, local landscape and setting of the relevant part of Edinburgh would be acceptable. The Reporter also considered that the development complied with the 13 criteria referred to in paragraph 29 of the SPP and the criteria set out in SESplan Policy 7. The report on case 2140 indicates similar findings, particularly in relation to the 3 criteria set out in SESplan Policy 7. The Reporter considered that the development would not undermine green belt objectives. In case reference PPA-230-2152 the Reporter concluded that overall the development complied with the criteria set out in

Policy 7 of the SESplan. He did note that the green belt would remain at a considerable width to the south-east of the site (between the site and the Edinburgh By-Pass). In all of these cases the Reporters held that there was a considerable deficit in the effective 5 year housing supply. I accept that there is also a deficit in the current case but to a lesser extent. I consider, however, that the cases referred to are not similar to the current case on which I have concluded in paragraphs 11, 12 and 19 above that the development would not accord with Policy 7 of the SESplan or all of the criteria for development that contribute to sustainable development as set out in paragraph 29 of the SPP.

25. Case PPA-210-2043 refers to a development in the jurisdiction of East Lothian Council. The development proposed would adjoin the existing village of Old Craighall. It would involve building up the existing frontage which was considered positive by the Reporter. The Reporter considered that the issue of coalescence did not arise due to the distance from other settlements and the visual compartmentalisation caused by the elevated A1 and Edinburgh By-Pass. The lands were also identified as a preferred site for development in the Main Issues Report on the East Lothian Local Development Plan although the Reporter did not give significant weight to this in his assessment. The circumstances are accordingly significantly different from the current case when my conclusions as set out above are taken in to account.

26. Case PPA-250-2232 refers to an appeal in the area of jurisdiction of Fife Council. The site proposed for development was not located in the green belt and so consideration under the second criterion of Policy 7 of the SESplan did not arise. The Reporter concluded, on balance, that the development would not be out of character and that there would be adequate separation distance remaining between Inverkeithing and Dalgety Bay. (Letham Hill Wood is located between the settlements). A previous application for a larger development had been refused. The report indicates a very significant deficit in the 5 year housing supply similar to the situation in the Edinburgh City cases. Having regard to my conclusions in relation to Policy 7 of the SESplan I do not consider the Fife case is comparable to the current one.

27. I conclude that there is a deficit in the 5 year effective housing land supply when the requirement is compared with programmed delivery. I consider, however, that the development does not accord with Policy 7 of the SESplan because the development would not be in keeping with the area or settlement and it would undermine green belt objectives. The proposed development would be in conflict with the current Midlothian Local Development Plan as the site is not allocated for housing in that plan and as it would be in conflict with policies RPI and RP2 relating to development in the countryside and in the green belt. Whilst the current local plan is out of date I do not consider that the presumption in favour of development that contributes to sustainable development applies in this case. I do not consider that there are any material considerations which outweigh the provisions of the current development plan and which would justify granting planning permission.

Padraic Thornton

Reporter