

# Minute of Meeting

Planning Committee  
Tuesday 31 October 2023  
Item No: 4.1



## Planning Committee

Date	Time	Venue
Tuesday, 12 September 2023	13:00	Council Chambers, Midlothian House

### Present:

Councillor Imrie (Chair)	Councillor McEwan
Councillor McCall	Councillor McManus
Councillor Parry	Councillor Winchester
Councillor Milligan	Councillor Virgo
Councillor Alexander	Councillor McKenzie
Councillor Pottinger	Councillor Russell
Councillor Cassidy	Councillor Curran
Councillor Scott	Councillor Bowen
Councillor Drummond	

### In Attendance:

William Venters	Principal Solicitor
Derek Oliver	Chief Officer Place
Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
Gary Leadbetter	Democratic Services Officer
Linda Melville	Member Support

## 1. Apologies

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Apologies for absence were received from Councillor Smaill.

## 2. Order of Business

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The order of business was as set out in the Agenda with the exception of Item 5.4 which was withdrawn prior to the meeting.

## 3. Declarations of interest

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Councillor Scott and McEwan declared an interest on Item 5.2.

## 4. Minutes of Previous Meetings

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The minute of the meeting of Tuesday, 16 May 2023 was submitted and approved as a correct record.

## 5. Reports

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Agenda No	Report Title	Submitted by:
5.1	Land Adjacent A68 and A720 City Bypass – Advertisement Prosecution Report and Plans	Chief Officer, Place
<b>Outline of Report and Summary of Discussion</b>		
<p>Planning, Sustainable Growth and Investment Manager, Peter Arnsdorf introduced the report. This report relates to the display of an unauthorised hoarding advertisement on land within the designated greenbelt adjoining the A68/A720 (on) slip road. The displaying of an advertisement that requires express consent without such consent is an offence.</p> <p>This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action in relation to the parties who have displayed an advertisement without expressed consent, pursuant to Section 186 of the Town and Country Planning (Scotland) Act 1997 (by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019). The maximum penalty on successful prosecution is a fine of up to £5,000 per offence plus £500 per day for a continuing offence after conviction.</p> <p>The Chair, Councillor Imrie, thanked Mr Arnsdorf for the report and opened it up to questions.</p>		
<b>Decision</b>		
<p>The Planning Committee agreed to instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action.</p>		

Action
The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.2	10 Kirkhill Terrace, Gorebridge – Enforcement Notice Prosecution Report and Appendices	Chief Officer, Place

#### Outline of Report and Summary of Discussion

Given their declarations of interest, Councillors McEwan and Scott left the Planning Committee meeting for this Item.

The Planning, Sustainable Growth and Investment Manager, Peter Arnsdorf introduced the report. This report relates to the non-compliance with the requirements of an enforcement notice served by the Council pursuant to Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended (by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019), with regard the erection of a dwellinghouse at 10 Kirkhill Terrace, Gorebridge.

The enforcement notice required the alteration of an erected dwellinghouse to accord with a grant of planning permission, ref: 21/00833/DPP (option 1), or the demolition of the unauthorised erected dwellinghouse and the removal of the dismantled materials from the site (option 2). None of these steps have been taken, either by the enforcement notice compliance date of 20 April 2023 (option 1) or 20 June 2023 (option 2) or to date (at the time of drafting this report). Non-compliance with an enforcement notice constitutes an offence.

This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service (COPFS) for consideration to be given to prosecutorial action in relation to the parties who have breached the enforcement notice, pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997. The maximum penalty on successful prosecution is a fine of up to £50,000 per offence.

The Chair, Councillor Imrie, thanked Mr Arnsdorf for the report and opened it up to questions.

Councillor Cassidy noted that this is a serious and difficult matter and put forward a motion that, before any decision is taken, the Local Review Body (LRB) visit, which did not occur, should be revisited. No seconder was identified, upon the question being posed by the Chair.

On a point of clarification Principal Solicitor, William Venters, explained that the decision before the Planning Committee is whether to instruct that the matter to be referred to the COPFS for consideration to be given to prosecutorial action, it does not regard taking enforcement action to demolish the property.

Councillor Virgo sought clarity on whether the matter could be referred back to the LRB, recognising that due to Covid-19 restrictions there may have been issues with how it was reviewed. Mr Arnsdorf noted that the matter had been referred to the LRB, which was considered in September 2020 during a Covid-19 lockdown. Mr Arnsdorf noted that, in place of a site visit, the LRB was shown visuals, as per the correct guidance and procedures at the time. Mr Arnsdorf further explained that the applicant had a three month window to refer the matter to judicial review, if they believed the correct procedures had not been followed. They did not exercise this right and so the LRB decision stands and may not be reopened.

#### Decision

The Planning Committee agreed to instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action.

#### Action

The Planning, Sustainable Growth and Investment Manager

### Councillors McEwan and Scott returned to the Planning Committee meeting.

Agenda No	Report Title	Submitted by:
5.3	Site Ec3 West Straiton Committee Report and Plan	Chief Officer, Place
Outline of Report and Summary of Discussion		
<p>The Planning, Sustainable Growth and Investment Manager, Peter Arnsdorf introduced the report. The purpose of this report is to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre-application consultation for a mixed-use development including business and employment uses (Class 4, 5 and 6), residential (Class 9 and sui generis flatted accommodation); neighbourhood centre including shops, financial, professional and other services (Class 1A), food and drink (Class 3), assembly and leisure (Class 11); together with other related infrastructure including park and ride, associated works including car parking, servicing, access arrangements, landscaping and public realm at West Straiton, Loanhead (part of site Ec3 and land to the west of Ec3).</p> <p>The pre application consultation is reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.</p> <p>It is recommended that the Committee notes:</p> <p>a) the provisional planning position set out in this report;</p>		

- b) that any comments made by Members will form part of the minute of the Committee meeting; and
- c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

The Chair, Councillor Imrie, thanked Mr Arnsdorf for the report and opened it up to questions.

Councillor Curran stated that, for any application submitted that it would be helpful to know whether there are plans to disrupt the local road network and what the applicant proposes to mitigate this. Mr Arnsdorf agreed to take this action forward for future applications.

Councillor Curran requested that in relation to temporary traffic regulation orders (TTRO) a report is returned to the Committee which allows formal democratic input, particularly for major applications where there may be long-term disruption to local road networks. It was agreed officers will take this action away (Derek Oliver will pick this matter up).

Councillor Alexander requested that it is ensured, in relation to new developments which do not occur immediately, that conditions placed are followed through as technology progresses so that old technology is not in place in new developments which may impact the Council in the long-term. The Chair noted that applicants have three years to begin the development which has implications on the conditions placed, in terms of barring renegotiation of conditions within that time.

Mr Arnsdorf explained that planning applications and associated discharge conditions are assessed against the most up-to-date policy position at the time of assessment. Once a determination is made, the applicant has 3 years for implementation, in which conditions may not be changed.

Elected Members raised concerns in relation to essential infrastructure to support the development, with regards to traffic, GP surgeries, schools, etc. Discussion took place on the need to use essential infrastructure as a marker in relation to large developments, to ensure that it exists and is able to support residential developments, which was noted and taken by Mr Arnsdorf. Some further discussion took place in relation to the infrastructure-first principle.

In relation to a query from Councillor Scott regarding the accuracy of current ratios used for education infrastructure, and whether research has or could take place in relation to this, the Chair noted that this should be referred to the Executive Director of Education and Children's Services as this matter falls within their remit.

In response to a question from Councillor Virgo on the prematurity of considering infrastructure-first in the pre-application stage, Mr Arnsdorf noted that the National Planning Framework 4 sets out the policy position towards moving to infrastructure-first but there is a question on how it is funded and by who. Mr Arnsdorf stated that the key concern, from the Council's perspective, is to ensure that infrastructure is delivered that meets the demands of local communities, so this may arise in early

or late phases. Mr Arnsdorf noted that the need to consider infrastructure is becoming increasingly important and entails a higher priority in regard to these matters.

#### Decision

The Planning Committee noted:

- a) the provisional planning position set out in this report;
- b) that any comments made by Members will form part of the minute of the Committee meeting; and
- c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

The Planning Committee further requested that:

1. Inclusion of any disruption to local road networks and the applicant's proposed mitigations in future applications submitted.
2. Return TTRO reports to elected members for consideration.

#### Action

The Planning, Sustainable Growth and Investment Manager.

Agenda No	Report Title	Submitted by:
5.5	Land 100m South of Glenarch Lodge, Melville Road, Dalkeith Committee Report and Plans	Chief Officer, Place

#### Outline of Report and Summary of Discussion

The Planning, Sustainable Growth and Investment Manager, Peter Arnsdorf introduced the report. The application is for the erection of three dwellinghouses, formation of access and car parking and associated works at land 100m south of Glenarch Lodge, Melville Road, Dalkeith.

There have been two representations and consultation responses from Scottish Water, the Coal Authority, Network Rail, the Eskbank and Newbattle Community Council, the Council's Ecological Advisor (TWIC), the Council's Senior Manager Neighbourhood Services (Roads), the Council's Senior Manager Protective Services and the Council's Education Executive Business Manager.

The relevant development plan policies are policies 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23 and 24 of the National Planning Framework 4 (NPF4) and policies STRAT2, DEV2, DEV5, DEV6, DEV7, TRAN5, IT1, ENV7, ENV11, ENV15, ENV16, ENV18, ENV19, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).

The recommendation is to refuse planning permission for reasons 1 to 3:

1. As a result of the proposed loss of trees and ground levelling works required to accommodate the access and visibility splays the development will have a significant detrimental impact on the local landscape and character and appearance of the surrounding area, contrary to policies DEV2, DEV6, DEV7, ENV7 and ENV11 of the Midlothian Local Development Plan and the aims of National Planning Framework 4.
2. The proposed development will result in the significant loss of trees and woodland which will result in the degrading of the landscape buffer and resultant definition of the settlement edge in this area, to the detriment of the character and appearance of the conservation area and local landscape, contrary to the aims of policies ENV7 and ENV11 of the Midlothian Local Development Plan and the aims of National Planning Framework 4.
3. The proposed access and associated works will result in a significant adverse impact on road safety which will be to the detriment of the safety of road users.

Mr Arnsdorf noted that the applicant had now committed to make the required develop contributions if planning permission is granted, as such refusal reason number 4 is no longer recommended. Refusal reason number 4 was as follows:

4. By not meeting the required developer contribution requirements the proposed development does not mitigate its impact on local infrastructure and the environment and as such does not accord with Midlothian Local Development Plan Policies IMP1 and IMP2.

The Chair, Councillor Imrie, thanked Mr Arnsdorf for the report and opened it up to questions.

Councillor Parry raised a question in relation to 5.4 in the report where it states the Coal Authority “recommend permitted development rights be removed relating to extensions and outbuilding in the area around mine shaft zones of influence.” Ms Parry queried whether, if the planning permission is refused, this can become a condition. Mr Arnsdorf noted that if the recommendation of refusal is approved then there is no requirement to consider this matter.

Some discussion took place on what the land might be used for and conditions that may be imposed for any prospective development in respect of the land, with it noted that there was an opportunity to improve the land from its current state.

In a point raised by Councillor McEwan regarding the suitability of the contemporary design of the dwellinghouses for the Conversation Area, Mr Arnsdorf noted that members signalled approval of a contemporary design of a similar style on this site in a 2017 LRB. Given this, officer felt this decision had already been determined. In response to a further query by Councillor McEwan on whether this was setting precedent, Mr Arnsdorf noted that designs need not necessarily be of a traditional or older-style to be considered acceptable.

Councillor Curran raised a concern around road safety, entry points and visibility and noted that speed measures should be installed. Councillor McKenzie further

raised concerns around road safety and entry/access points. Mr Arnsdorf noted the concerns and explained that if the Planning Committee were minded to grant planning permission it may be appropriate to request that the applicant undertake a Road Safety Audit to determine the safest access points and what safety measures or speed restrictions should be put in place to ensure safety.

The Chair noted that there are two conditions in mind, if planning permission is granted:

1. A Landscape Plan.
2. Road Safety Audit.

The Chair moved to grant planning permission, with the two conditions as mentioned. Councillor Curran seconded.

#### **Decision**

The Planning Committee approved the planning permission, subject to the addition of two conditions being imposed, namely a Landscape Plan and Road Safety Audit.

#### **Action**

The Planning, Sustainable Growth and Investment Manager.

## **6. Private Reports**

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No items for discussion

## **7. Date of Next Meeting**

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The next meeting will be held on Tuesday, 31 October 2023.

The meeting terminated at 13:59.