



SECTION 42 APPLICATION 17/00385/S42 TO AMEND CONDITION 2(ii) (LANDSCAPING) IMPOSED ON A GRANT OF PLANNING PERMISSION 14/00334/S42 FOR THE ERECTION OF A PETROL FILLING STATION AND RESTAURANT/CAFE; FORMATION OF ASSOCIATED CAR PARKING AND VEHICULAR AND PEDESTRIAN ACCESS; AND ASSOCIATED WORKS ON LAND NORTH WEST OF FORDEL JUNCTION, DALKEITH

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** In May 2011 planning permission in principle was granted for the erection of a petrol filling station and restaurant/café; formation of associated car parking and vehicular and pedestrian access; and associated works on land north west of Fordel Junction, Dalkeith. A subsequent Section 42 application (14/00334/S42) was granted in June 2014 maintaining an extant planning permission for the proposed development on the site.
- 1.2** There have been consultation responses from Historic Environment Scotland, Scottish Environment Protection Agency, Scottish Government, Scottish Natural Heritage, Scottish Water, Transport Scotland, the Council's Archaeology Advisor and the Council's Policy and Road Safety Manager. There have been no representations.
- 1.3** The relevant development plan policies are policy 13 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies RD1, ENV4, ENV6, ENV7 and ENV11 of the Midlothian Local Development Plan 2017.
- 1.4** The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site comprises 3.64 hectares of agricultural land on the north side of the A68 Dalkeith Bypass. The site is located in the countryside approximately 2 miles south east of Dalkeith, immediately adjacent to the A68(T) Dalkeith Bypass. The majority of the site comprises the northernmost of the two loops formed by the A68, the

A6124 and the slip roads off the A68. In addition, the site includes parts of two fields to the south east of the slip road. The fields are bounded by timber post and rail fences, and hedgerows.

- 2.2 The site area is located on the elevated northern slope of a hill that forms part of the ridgeline known as the Mayfield/Tranent Ridge. That ridge forms the watershed between the valleys of the River South Esk and the Tyne Water. The elevated slopes of the Ridge afford extensive and dramatic views across the surrounding valleys and lowland towards the coast. The site is approximately 104 metres higher above sea level than Dalkeith High Street.

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 and Planning Act 2019 (hereafter referred to as the Act), is to amend the wording of condition 2(ii) of planning permission in principle 14/00334/S42. The condition currently reads as follows:

A landscape design statement detailing proposed new planting within the site; including trees, shrubs, hedging and grassed areas. The planting shall include planted up mounds along the edges of the site and tree planting incorporated in the layout of the site as illustrated on page 22 of the Design Statement submitted with the planning application.

- 3.2 It is proposed that the phrase “as illustrated on page 22 of the Design Statement submitted with the planning application” be deleted. The justification for the proposal is the fact that planning permission has been granted in principle and the design shown in the Design Statement was indicative. The condition is intended to secure a detailed landscaping design which takes account of the layout and design that will be secured via other conditions; reference to an indicative design is unnecessary.
- 3.3 A Section 42 application is, in itself, a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore if planning permission is granted for this application it will supersede planning consent 14/00334/S42 if implemented.
- 3.4 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 10/00340/PPP was granted in May 2011 for the erection of a petrol filling station and restaurant/café; formation of associated car parking and vehicular and pedestrian access; and associated works. The indicative plans and statements submitted with the application showed:
1. the erection of a petrol filling station incorporating 10 bays (8 car bays and 2 HGV bays) and a kiosk containing a small retail area for convenience and travel-related goods including snacks;
 2. the erection of a restaurant/cafe, including a drive-through facility and internal eating area;
 3. the erection of a “marker” building, which is a tall freestanding pillar that serves to easily identify the facility to travellers along the A68 and A6106;
 4. the formation of a vehicular access to the site;
 5. the formation of associated car parking, including an area for parking of long vehicles and service areas for the filling station and restaurant/cafe; and,
 6. the formation of a pedestrian route linking the filling station and restaurant/cafe over-bridge providing access to a site which was the subject of a separate application (ref.10/00339/PPP) for planning permission in principle for the erection of hotel, tourist retail outlet and tourist orientation centre and formation of associated car parking and vehicular and pedestrian access and associated works. (This application was subsequently withdrawn by the applicant.)
- 4.2 Planning permission in principle 14/00334/S42 was granted in June 2014 for a Section 42 application that deleted a condition that sought to secure a reduction in CO2 emissions when compared to the 2007 Building Regulations. The application was approved as by the time of submission new Building Regulations (with greater reductions in CO2 emissions) had been introduced. The granting of the Section 42 application had the effect of maintaining an extant planning permission for the site.
- 4.3 When application 10/00340/PPP was submitted in June 2010 the same applicant also submitted an application for planning permission in principle (ref.10/00339/PPP) for the erection of hotel, tourist retail outlet

and tourist orientation centre and formation of associated car parking and vehicular and pedestrian access and associated works on an adjacent site which is land bounded by the A68, the A6124 and north bound slip roads. This adjacent site is on the southern side of the A68(T) and is situated within the southernmost access loop of the A68(T). The application was called in by the Scottish Ministers on 3 November 2011 because of the possible implications for policies within the Edinburgh and the Lothians Structure Plan, the adopted Midlothian Local Plan 2008 and Scottish Planning Policy (SPP). On 22 November 2012 the Ministers confirmed that they were minded to grant planning permission in principle subject to conditions and to the prior signing of a legal agreement to secure developer contributions. Agreement could not be reached on the developer contributions and the application was withdrawn on 29 June 2018.

- 4.4 Applications 10/00339/PPP (southern site) and 10/00340/PPP (northern site that is the subject of the current application) were accompanied by an Environmental Statement (ES) prepared under the Environmental Impact Assessment (Scotland) Regulations 1999. This ES jointly covered both sites. The ES included: (i) a description of the proposed development; (ii) an assessment of alternative locations; (iii) a landscape and visual impact assessment (LVIA); (iv) a habitat assessment; an assessment of the impact on water resources; (v) an environmental desk study of ground conditions; (vi) a waste assessment; (vii) a cultural heritage assessment; (viii) an assessment of social and economic impacts; and, (ix) a summary and conclusions.
- 4.5 As part of the application process for the current planning application an Environmental Impact Assessment (EIA) screening was carried out to comply with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The screening conclusion was that due to the period of time that had elapsed between the original application and the current application an EIA was required and therefore an updated EIA Report should be submitted.
- 4.6 The Planning Authority provided a Scoping Opinion in June 2018 confirming that the EIA Report should address transport, ecology and landscape impact. Updated reports were submitted in November 2018.

5 CONSULTATIONS

- 5.1 **Historic Environment Scotland** does not object to the application.
- 5.2 **The Scottish Environment Protection Agency (SEPA)** does not object to the application.
- 5.3 The **Scottish Government** has confirmed that the submission of an EIA application has been noted in their records.
- 5.4 **Scottish Natural Heritage (SNH)** does not object to the application.

- 5.5 **Scottish Water** has advised that it has infrastructure (large Trunk mains) passing through the application site.
- 5.6 **Transport Scotland** does not object to the application.
- 5.7 The Council's **Archaeology Advisor** does not object to the application.
- 5.8 The Council's **Policy and Road Safety Manager** does not object to the application.

6 REPRESENTATIONS

- 6.1 No representations have been received.

7 PLANNING POLICY

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

Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan)

- 7.2 **Policy 13 (OTHER COUNTRYSIDE DESIGNATIONS)** requires Local Development Plans to review and justify additions or deletions to other countryside designations fulfilling a similar function to those of the Green Belt as appropriate. Opportunities for contributing to the Green Network proposals should also be identified.

Midlothian Local Development Plan 2017

- 7.3 Policy **RD1: Development in the Countryside** 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.

- 7.4 Policy **ENV4: Prime Agricultural Land** does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification to do so.
- 7.5 Policy **ENV6: Special Landscape Areas** states that development proposals will only be permitted where they incorporate high standards of siting and design and where they will not have significant adverse effect on the special landscape qualities of the area.
- 7.6 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.
- 7.7 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.

8 PLANNING ISSUES

- 8.1 The main issue to be determined is whether the proposal accords with the development plan, unless material planning considerations indicate otherwise. The consultation responses received are material considerations.

Principle of Development

- 8.2 The principle of the development at this location was established by the granting of planning permissions 10/00340/PPP and 14/00334/S42. There has been no material change in planning circumstances since the granting of the original permission which would warrant refusal of the Section 42 application on the grounds of the principle of development.

Wording of Condition 2(ii)

- 8.3 The deletion of the phrase *“as illustrated on page 22 of the Design Statement submitted with the planning application”* from condition 2(ii) will improve the precision of the condition and therefore better reflect the guidance contained in the Scottish Government’s Circular 4/1998: The Use of Conditions in Planning Permissions. The amended

condition will have no impact on the planning authority's ability to secure an effective landscape scheme for the proposed development.

EIA Report

- 8.4 An Extended Phase 1 Habitat Survey was conducted on 29 October 2018 and a report of the findings was submitted as part of the updated EIA Report. The survey did not identify any protected species within the application site and assessed the arable land within the application site as being of very little ecological value. The proposal will have limited impact on local biodiversity and, via its landscaping, offers potential for improving local biodiversity.
- 8.5 The 2010 Environmental Statement (ES) included a Transport Assessment (TA) that assessed the impact of both proposed developments. The updated Transport Statement submitted with the current application identifies that the forecast travel flows are approximately 30% of the figure forecast in the 2010 TA. Both the Council and the Scottish Government were satisfied that the junction could accommodate the flows predicted in the 2010 TA; as the current proposal will only generate 30% of the previously forecast traffic flows it does not generate any concerns in relation to its impact on the effective working of the junction. Both Transport Scotland and the Council's Policy and Road Safety Manager were consulted on the application and neither consultee objected to the proposal.
- 8.6 The Landscape and Visual Impact Statement (LVIA) submitted with the 2010 ES was prepared in accordance with the then current Guidance for Landscape and Visual Impact Assessment (GLVIA2) which was published by the Landscape Institute in 2002. Updated guidance (GLVIA3) was published in 2013. In support of the current application a statement of review has been submitted comparing the methodology used in the 2010 LVIA with that set out in GLVIA3 and considering whether the changes to the guidance are likely to affect the findings of the original LVIA.
- 8.7 The LVIA is largely consistent with a report prepared under GLVIA3 and whilst some additional work would be required to comply with current standards, the current proposal is significantly reduced in scale when compared to the development assessed in the 2010 LVIA. The section of the A68(T) where the development is proposed was built as an entirely new road in the late 2000's and opened for use in 2009. The 2010 LVIA was carried out when landscape planting associated with the new road was relatively immature. The intervening years have allowed the planting to mature and development in the surrounding area has also increased. The reduction in scale of the development, when compared to the 2010 LVIA and the changes in the landscape character of the area are likely to result in the landscape and visual effects of the proposed development being similar to lower than the effects reported in the 2010 LVIA.

Conclusion

- 8.8 The updated statements provided for the EIA Report indicate that the impact of the proposed development is likely to be less than that assessed in the 2010 ES. There are no material changes in planning circumstances that would warrant refusal of the current application. As is noted above a Section 42 consent is a new permission in law and planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply. It would be appropriate to attach the same conditions as attached to planning permission in principle 10/00340/PPP with the exception of the changes approved via application 14/00334/S42 and the current application.

9 RECOMMENDATION

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

There is a locational need and justification for the proposed development's countryside location; and, subject to conditions securing landscape mitigation, the proposed development can be satisfactorily integrated into the surrounding landscape. The proposal therefore complies with the policies of the Midlothian Local Development Plan 2017.

Subject to the following conditions:

1. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each phase of the development, the provision of landscaping, trees and shrubs planting, the SUDS provision, transportation infrastructure and implementation of all of the recommendations made in the Extended Phase 1 Habitat Assessment for the site, dated June 2010. Development shall thereafter be carried out in accordance with the approved phasing unless otherwise approved in writing by the planning authority.

Reason: *To ensure the development is implemented in a manner which mitigates the impact of the development process.*

2. Development shall not begin until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels for the buildings, external structures, roads and landscape mounds in relation to a fixed datum;

- ii a landscape design statement detailing proposed new planting within the site; including trees, shrubs, hedging and grassed areas. The planting shall include planted up mounds along the edges of the site and tree planting incorporated in the layout of the site;
- iii the location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- iv a schedule of plants to comprise species, plant sizes and proposed numbers/density;
- v a programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the new buildings on the site being occupied;
- vi proposed car park surfacing;
- vii proposed footpaths; and,
- viii proposed cycle parking facilities.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance. Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure adequate landscape mitigation including measures to have immediate impact in the interests of safeguarding the landscape character and amenity of the area.*

3. Development shall not begin until confirmation has been submitted to and approved by the Planning Authority that there is no contamination of the site and/or previous mineral workings required to be remedied; or alternatively, if there is contamination of the site and/or previous mineral workings required to be remedied 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 of the buildings or parking areas are brought into use 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 is adequately identified and that appropriate decontamination 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.*

- 4. Development shall not begin until an application for approval of matters specified in conditions for the siting, design and external appearance of the service station building, restaurant/cafe, and marker building/structure and other associated structures has been submitted to and approved in writing by the planning authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. Development shall thereafter be carried out using the approved materials or such alternatives as may be approved in writing with the planning authority.

Reason: *In the interests of safeguarding the character and visual amenity of the countryside.*

- 5. Development shall not begin until an application for approval of matters specified in conditions for the site access, roads, footpaths and cycle ways has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii proposed vehicular, cycle and pedestrian access;
 - iii proposed roads (including turning facilities), footpaths and cycle ways;
 - iv proposed visibility splays, traffic calming measures;
 - v proposed car parking arrangements;
 - vi a programme for completion for the construction of access, roads, footpaths and cycle paths; and
 - vii proposed lighting.

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

Reason for 5(i)-(vi): *In the interest of road and pedestrian safety.*

Reason for 5(vii): *In the interests of safeguarding the landscape character and appearance of the area and to ensure that there will be no distraction or dazzle to drivers on the trunk road and that the safety of the traffic on the trunk road will not be diminished.*

6. Development shall not begin until details, including a timetable of implementation, of 'Percent for Art' have been submitted to and approved in writing by the planning authority. The 'Percent for Art' shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with national and local planning guidance and advice.*

7. The restaurant/cafe and car parking and service areas hereby approved shall not come into use unless and until the petrol filling station also approved in terms of this planning permission comes into operation.

Reason: *In the interests of safeguarding the character and amenity of the countryside as the restaurant/cafe and car parking and service areas are only acceptable in the countryside in association with the operation of the petrol filling station for which there is a justifiable operation requirement for within the countryside, and not as independent standalone uses.*

8. The non-fuel retail sales from the petrol filling station shall be ancillary to the sale of fuel to motorists. Prior to the petrol filling station opening for business the proposed shop floor layout, detailing the items to be stocked, shall be submitted to and approved in writing by the Planning Authority.

Reason: *To ensure the use of the retail unit remains compatible with its countryside location and ancillary to the primary use of the petrol filling station.*

9. The proposed development shall conform to the following constraints:
 - i the detailed proposal shall provide for single-storey buildings only;
 - ii. the proposed surface water treatment for the development specified in the surface water drainage strategy report dated April 2011 docketed to this planning permission shall be implemented in full and made operational prior to any of the new buildings hereby approved being occupied. There shall be no variation therefrom unless with the prior approval of the Planning Authority; and,
 - iii. there shall be no drainage connections to the trunk road drainage system.

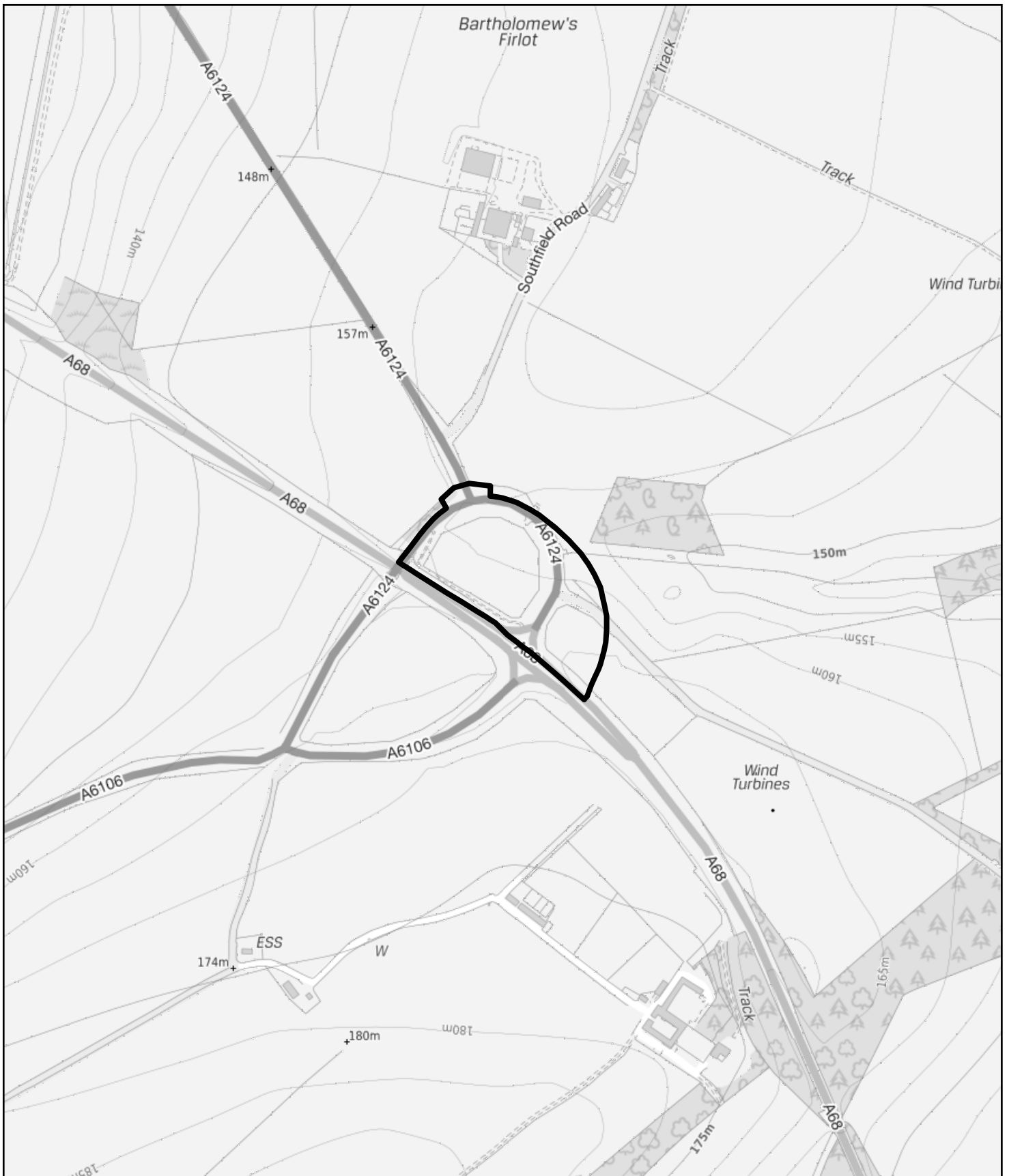
Reason for 9(i): *To ensure that the proposed development does not appear intrusive in the landscape and it can be sufficiently mitigated with landscaping.*

Reason for 9(ii): *To ensure that surface water is adequately drained from the site and to ensure that sufficient land is available within the site for tree and shrub planting to mitigate the landscape impact of the development.*

Reason for 9(iii): *To ensure that the efficiency of the existing drainage network is not adversely affected.*

Dr Mary Smith
Director of Education, Communities and Economy

| | |
|---------------------------|---|
| Date: | 14 February 2020 |
| Application No: | 17/00385/S42 |
| Applicant: | Cranstoun Estate, Fordel House, Fordel, Dalkeith |
| Agent: | Richard Heggie, Urban Animation, 22 Westhall Gardens, Edinburgh |
| Validation Date: | 16 May 2017 |
| Contact Person: | Graeme King |
| Tel No: | 0131 271 3332 |
| Background Papers: | 10/00339/PPP, 10/00340/PPP & 14/00334/S42 |



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Section 42 application to amend condition 2(ii) of planning permission 10/00340/PPP as amended by application 14/00334/S42 Land North West of Fordel Junction, Dalkeith

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No. 17/00385/DPP

Scale: 1:6,500

