



SECTION 42 APPLICATION 19/00432/S42 TO REMOVE CONDITION 15, FOR THE PRIOR APPROVAL OF THE DETAILS OF THE PROVISION AND USE OF ELECTRIC VEHICLE CHARGING STATIONS THROUGHOUT THE DEVELOPMENT, IMPOSED ON A GRANT OF PLANNING PERMISSION (17/00968/DPP) FOR RESIDENTIAL DEVELOPMENT ON LAND 470M WEST OF CORBY CRAIG TERRACE, BILSTON, ROSLIN.

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 At its meeting on 3 April 2018 the Committee granted planning permission (17/00968/DPP) for the erection of 155 dwellinghouses and 36 flatted dwellings; formation of access roads; car parking and associated works on land 470M west of Corby Craig Terrace, Bilston subject to a planning obligation securing developer contributions and conditions. This section 42 application seeks to remove condition 15, which requires the prior approval of details of the provision and use of electric vehicle charging stations throughout the development. There has been one representation received and a consultation response from the Roslin and Bilston Community Council.**
- 1.2 The relevant development plan policies are policies 5 and 7 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT3, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to refuse planning permission.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 Works have commenced to implement planning permission 17/00968/DPP on the site which comprises approximately 8.6 hectares of land to the west/north west of the settlement of Bilston, which was formally agricultural land. The site is part of a larger allocated housing site Hs16 with an indicative capacity of 350 dwellings.**
- 2.2 The site slopes upwards from the south west to the north east. There are open views from the site westwards towards the Pentland Hills and**

the north west of Edinburgh. Much of the character of the site comes from its agricultural setting with existing farms and rolling countryside to the north and east.

- 2.3 Further to the west/north west of the site is land safeguarded as a potential housing allocation; identified for a potential 200 units, beyond which is the corridor of the safeguarded realigned A701 relief road. The remainder of site allocation Hs16 bounds the site to the north east. To the south is Seafield Road and to the west are existing residential properties with the A703 Seafield Moor Road beyond. An existing hedgerow interspersed with trees demarcates the northern, eastern and southern boundaries of the site.
- 2.4 The existing housing in the settlement of Bilston comprises predominantly two-storey detached, semi-detached and terraced houses. The character of the area comprises houses fronting onto streets with small front and rear gardens. The majority of the buildings are characterised by various forms of rendered and reconstituted stone wall finish.

3 PROPOSAL

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 (hereafter referred to as the Act), is to remove condition 15 of planning permission 17/00968/DPP.
- 3.2 A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore, if planning permission were granted for this application it would supersede the planning consent 17/00968/DPP if implemented. It would therefore be a new planning permission for the residential development of the site.
- 3.3 Although a Section 42 application is a new planning application in law the Act states *“on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*. The principle, layout and form of development are not subject to assessment. However, as a new planning application it would be subject to a new/amended legal agreement to secure developer contributions.
- 3.4 Condition 15 of planning permission 17/00968/DPP states:
- “Development shall not begin until details of the provision and use of electric vehicle charging stations throughout the development have been submitted to and approved in writing by the planning authority. 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: To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.”

4 BACKGROUND

- 4.1 Planning permission 17/00968/DPP for the erection of 155 dwellinghouses and 36 flatted dwellings, formation of access roads, SUDS and car parking and associated works at land 470 metres west of Corby Craig Terrace, Bilston was granted with conditions in September 2018.
- 4.2 An environmental impact assessment (EIA) screening opinion request, 15/00937/SCR, for a proposed residential development on the site was submitted 25 November 2015. The applicant was advised that an EIA was not required under schedule 2 of the EIA Regulations.
- 4.3 The applicant carried out a pre-application consultation (15/00936/PAC) for a residential development on the site, which was reported to Committee at its meeting of January 2016.

5. CONSULTATIONS:

- 5.1 **Roslin and Bilston Community Council** object to the application on the basis that there should be no relaxation of the condition requiring electric vehicle charging points as required by policy TRAN5 of the Midlothian Local Development Plan 2017. It is of the utmost importance that electric car charging points be provided. However excellent the provision of information about public transport and opportunities to travel by foot and bicycle, it is highly likely that 50% of the residents will commute into Edinburgh for their work by car. In the interests of sustainability, there must be every encouragement for them to use electric cars. The consultation can be viewed in full on the online application case file.

6. REPRESENTATIONS:

- 6.1 There has been one representation received objecting to the application on the grounds of environmental sustainability; stating all developments whether residential, industrial or retail should be required to provide Electric Vehicle Charging Stations (EVCS) in order to meet Scotland's carbon emissions target and to create a better environment for all. The representation can be viewed in full on the online application case file.

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 2017 (MLDP). The following policies are relevant to the proposal:

Edinburgh South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 **Policy 5 (HOUSING LAND)** requires Local Development Plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing requirements for each period.
- 7.3 **Policy 7 (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY)** states that sites for Greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) The development will be in keeping with the character of the settlement and local area; (b) The development will not undermine Green Belt objectives; and (c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

Midlothian Local Development Plan 2017 (MLDP)

- 7.4 Policy **STRAT3: Strategic Housing Land Allocations** states that strategic land allocations identified in the plan will be supported provided they accord with all other policies. The development strategy supports the provision of an indicative 350 housing units on the site (Hs16).
- 7.5 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.6 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.7 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.8 Policy **DEV6: Layout and Design of New Development** requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet set criteria.
- 7.9 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive

scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.

- 7.10 Policy **DEV9: Open Space Standards** requires that the Council assess applications for new development against set open space standards and seeks an appropriate solution where there is an identified deficiency in quality, quantity and/or accessibility.
- 7.11 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.12 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A701 realignment.
- 7.13 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.14 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.15 Policy **ENV2 Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the *Midlothian Green Network*.
- 7.16 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.
- 7.17 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.18 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 environmental.

- 7.19 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.
- 7.20 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.21 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.22 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.23 Policy **NRG6: Community Heating** seeks to ensure developments deliver, contribute towards or enable the provision of community heating schemes.
- 7.24 Policy **IMP1: New Development**. This policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.
- 7.25 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.26 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

National Policy

- 7.27 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. The individual and cumulative effects of infill must be sustainable in relation to the social and economic infrastructure of a place, and must not lead to over-development.
- 7.28 The SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of the SPP are developed within the local plan and local development plan policies.
- 7.29 The SPP states that *design is a material consideration in determining planning applications* and that *planning permission may be refused and the refusal defended at appeal or local review solely on design grounds*.
- 7.30 The SPP supports the Scottish Government's aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.
- 7.31 The SPP notes that "high quality electronic communications infrastructure is an essential component of economic growth across Scotland". It goes on to state that
- "Planning Authorities should support the expansion of the electronic communications network, including telecommunications, broadband and digital infrastructure, through the development plan and development management decisions, taking into account the economic and social implications of not having full coverage or capacity in an area"*.
- 7.32 The Scottish Government policy statement, **Creating Places**, emphasises the importance of quality design in delivering good places.
- 7.33 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.34 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

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 Principle of Development

- 8.2 The site is allocated for housing and is located within the built up area of Bilston where there is a presumption in favour of appropriate development. The subsequent grant of planning permission 17/00968/DPP for housing reaffirmed the principle of residential development across the application site.

The Removal of Condition 15

- 8.3 Application 17/00968/DPP includes condition 15 which states:

“Development shall not begin until details of the provision and use of electric vehicle charging stations throughout the development have been submitted to and approved in writing by the planning authority. 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.”

- 8.4 In the planning statement submitted in support of the application, the applicant states that there is no policy or guidance which requires the provision of EVCS, in particular with regard residential developments. Neither, the policy referenced by the local planning authority (TRAN5) or the officer guidance takes any cognisance of the potential impact of the electricity network and the required upgrading that may be necessary to achieve the correct supply to support the loadings that would be required with the extensive use of EVCS. Therefore, a blanket approach to the provision of EVCS cannot be taken and EVCS provision for each development would need to be consider in the context of the infrastructure capacity in each location. In relation to the proposed site at Seafield Road, Bilston, investigations have revealed that there is no additional capacity within the existing network to support EVCS.

The Planning Position with regard EVCS

- 8.5 Policy TRAN5 seeks to promote a network of EVCS by requiring provision to be an integral part of any new development. The MLDP was adopted by Midlothian Council on 7 December 2017, which was before the grant of planning permission 17/00968/DPP (approved September 2018). Thereby the policies in the MLDP, including Policy TRAN5, are a significant consideration in the determination of application 17/00968/DPP. Section 25 (status of development plan) of the Town and Country Planning (Scotland) Act 1997 (as amended) states that *“Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise – (a) to be made in accordance with the plan“*.

- 8.6 Adopted policy TRAN 5 states that *“The Council will support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.”* The premise behind Policy TRAN5 is as explained in the preamble text of that policy which states that: *“electric vehicles represent an increasingly realistic option in terms of car ownership and travel; they have the potential to contribute substantially to an overall reduction in CO2 emissions, improving air quality and delivering sustainable development...The Council through the development management process, will provide advice on the detailed siting of such facilities.”*
- 8.7 The applicant has not provided any evidence to substantiate their claim that there does not exist capacity within the electricity network to support the provision of EVCS in the development or that the electricity network capacity cannot be upgraded to provide EVCS. Any cost burden of providing EVCS in the development including any necessary infrastructure cost including upgrading/increasing of the electricity capacity is a development constraint that should be bore by the applicant/developer. Furthermore, it is worth noting that the Proposed Plan approved in December 2014 included later adopted policy TRAN5 – it is therefore reasonable to conclude that in the early design work undertaken by the applicant prior to submitting application 17/00968/DPP in December 2017 early consideration could have been given to securing the required electricity infrastructure.

National Guidance

- 8.8 In its *‘A Nation With Ambition: The Government’s Programme for Scotland 2017-2018’* the Scottish Government announced plans to promote the use of ultra-low emission vehicles (ULEVs) with a target to phase out the need for new petrol and diesel cars by 2032. This is part of a broad plan to cut carbon emissions across Scotland.
- 8.9 To support this aim the Scottish Government has committed to:
- expanding electric charging infrastructure between now and 2022. Easy access to smart and rapid charge points will mean 'range anxiety' will be addressed;
 - work with delivery partners to create Scotland's first 'electric highway' on the A9, including charging points along the route;

- accelerating the procurement of ULEVs in the public and private sectors;
- introducing large scale pilots across the country, to encourage the private motorist to use ULEVs and remove barriers to their use;
- providing financial support for local solutions and small scale research and development to address the particular challenges to expanding the charging infrastructure in Scotland, such as charging in tenement properties, and capitalising on opportunities such as better linking electric vehicles with renewable energy and energy storage and systems in Scotland.

8.10 The Scottish Government has, through its *'Delivering for Today, Investing for Tomorrow: The Government's Programme for Scotland 2018-2019'*, also committed to introducing 1500 new electric vehicle charge points and investing further in the switch to electric vehicles.

8.11 The Scottish Government's aims to reduce carbon are supported through the Planning system. The Scottish Planning Policy (SPP) sets out areas where Planning can assist in reducing carbon emissions across Scotland. The SPP generally seeks to support a shift in energy supply from fossil fuels to renewable sources, thereby reducing carbon emissions. The SPP states that the *Planning system should help reduce emissions and energy use in new buildings from new infrastructure by enabling development at appropriate locations that contributes to energy efficiency*. There are general requirements to ensure new developments are energy efficient. These aspirations should not cease outwith the buildings which form new development. Developments as a whole should aim to reduce carbon emissions.

9 RECOMMENDATION

9.1 It is recommended that planning permission be refused for the following reasons:

It has not been demonstrated to the planning authority that the electricity network within the area does not have capacity and that the electricity network capacity cannot be increased in order to provide electric vehicle charging stations within the residential development the subject of planning permission ref. 17/00968/DPP and this current planning application. In the absence of demonstrable proof that there is an insurmountable technical reason why the electricity capacity cannot be increased, there is no justifiable reason for the planning authority to grant planning permission for residential development without the imposition of condition 15 on application 17/00968/DPP. The provision of electric vehicle charging stations complies with the Midlothian Local Development Plan 2017 and is support by national policy objectives.

Mary Smith
Director of Education, Communities and Economy

Date: 8 November 2019

Application No: 19/00432/S42

Applicant: Mr Craig Henderson

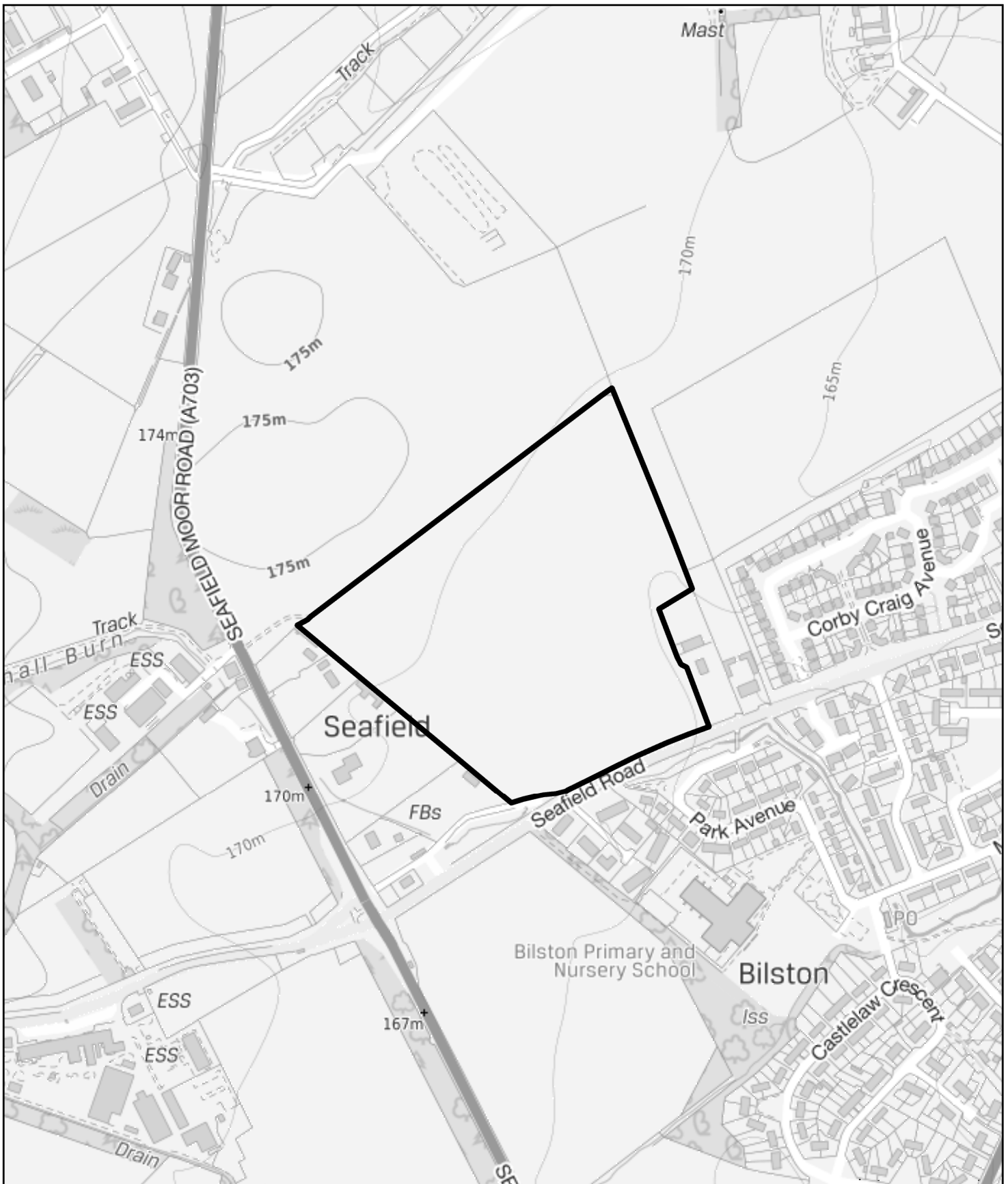
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Background Papers: Applications 17/00968/DPP, 15/00937/SCR and
15/00936/PAC



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Section 42 application to remove condition 15 of planning permission 17/00968/DPP (to develop without providing provisions of electric vehicle charging stations) at Land 470M West of Corby Craig Terrace, Bilston, Roslin

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