

Notice of meeting and agenda



Planning Committee

Venue: Council Chambers, Midlothian House, Dalkeith, EH22 1DN

Date: Tuesday, 20 February 2018

Time: 14:00

John Blair
Director, Resources

Contact:

Clerk Name: Mike Broadway

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Further Information:

This is a meeting which is open to members of the public.

Audio Recording Notice: Please note that this meeting will be recorded. The recording will be publicly available following the meeting. The Council will comply with its statutory obligations under the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

1 Welcome, Introductions and Apologies

2 Order of Business

Including notice of new business submitted as urgent for consideration at the end of the meeting.

3 Declarations of Interest

Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

4 Minutes of Previous Meeting

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| 4.1 | Minutes of Meeting held on 9 January 2018 - For Approval | 5 - 12 |
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5 Public Reports

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| 5.1 | Planning Performance Framework Annual Report 2016/17 – Report by Head of Communities and Economy. | 13 - 20 |
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| 5.2 | Major Applications: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage – Report by Head of Communities and Economy. | 21 - 26 |
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| 5.3 | Appeals and Local Review Body Decisions - Report by Head of Communities and Economy. | 27 - 46 |
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Pre-Application Consultation Reports - Report by Head of Communities and Economy.

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| 5.4 | Proposed Use of Land for the Storage of Soil (Top Soil and Sub Soil) at Shawfair Site F, Monktonhall Colliery Road, Dalkeith (17/00859/PAC). | 47 - 50 |
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Applications for Planning Permission Considered for the First Time – Reports by Head of Communities and Economy.

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| 5.5 | Application for Planning Permission in Principle for the Erection of Retail Unit at Soutra Mains Farm, Blackshiels, Fala, Pathhead (17/00951/PPP). | 51 - 66 |
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| 5.6 | Application for Planning Permission for the Erection of Two Storey Drive Through Restaurant; Alterations to Existing Car Park and Access Roads at Land At Tesco Car Park, Hardengreen, Dalkeith (17/00944/DPP). | 67 - 86 |
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- 5.7** Application for Planning Permission for the Erection of Dwellinghouse; Garage and Stable Block; Formation of Access; Areas of Hard Standing and Associated Works on Land North Of Crichton Village Pathhead (17/00939/DPP). **87 - 100**

6 Private Reports

No private reports to be discussed at this meeting.

Plans and papers relating to the applications on this agenda can also be viewed online at www.midlothian.gov.uk.

Minute of Meeting

Planning Committee
Tuesday 20 February 2018
Item No 4.1



Planning Committee

Date	Time	Venue
9 January 2018	2.00 pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Baird	Councillor Cassidy
Councillor Curran	Councillor Hackett
Councillor Hardie	Councillor Johnstone
Councillor Lay-Douglas	Councillor Milligan
Councillor Muirhead	Councillor Munro
Councillor Russell	Councillor Smail

1. Apologies

Apologies received from Councillors McCall, Montgomery, Parry and Winchester.

2. Order of Business

The order of business was confirmed as outlined in the agenda that had been circulated.

3. Declarations of interest

Councillor Baird declared a non-pecuniary interest in agenda item 5.6 - Application for Planning Permission for the Erection of 179 Dwellinghouses and 20 Flatted Dwellings, Formation of Access Road and Car Parking and Associated Works at land north of Oak Place, Mayfield (16/99134/DPP) – on the ground that the proposed development site was visible from his property. He indicated that he felt the nature of his interest was such that he did not feel it necessary to withdraw and he would remain in attendance during the debate, although he would not contribute to any discussion on this particular item.

4. Minutes of Previous Meetings

The Minutes of (i) Meeting of 14 November 2017 and (ii) Special Meeting of 5 December 2017 were submitted and approved as correct records.

With regards to paragraph 5.8 of the minutes of meeting of 14 November 2017, Councillor Hackett drew the Committee's attention to remarks that had been made following the meeting concerning the way in which he had voted on this particular application having been unduly influenced by party politics. He assured Members that given the quasi-judicial nature of the Committee that this was not the case and that the reason he had called the application in was that he was interested to hear other Members' views on the matter.

The Chair reiterated Councillor Hackett's comments regarding the quasi-judicial nature of the Committee, emphasising that there was no party whip and it was for individual members to come to their own views on the individual merits of any particular application. In the event that there was a difference of opinion then by all means discuss it, but do so in a manner that befitted the standing of the Committee.

5. Reports

Agenda No	Report Title	Presented by:
5.1	Supplementary Guidance: Green Networks	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 22 December 2017, by the Head of Communities and Economy, seeking the Committee's agreement to undertake a formal consultation on its proposed 'Green Networks' supplementary guidance; a copy of which was appended to the report.

The report explained that the Midlothian Local Development Plan 2017 (MLDP), which had been adopted by the Council at its meeting on 7 November 2017, had included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas (Section 7.2, pages 81 and 82 of the MLDP). Additional guidance was required to provide further detail and interpretation of the policies and strategy set out in its development plan. One of the topic areas which needed further clarification was with regard Midlothian's Green Networks.

The supplementary guidance provided a framework supporting the delivery of the green network across the whole of Midlothian. The green network being connected areas of green and blue spaces within, around and between towns and villages that provided usable open space, active travel routes (routes for walking and cycling), habitats for wildlife and plants, and natural surface water and flood water management opportunities.

Summary of Discussion

The Committee, having heard from the Planning Manager, welcomed the Supplementary Guidance and looked forward to seeing the comments received as a result of the public consultations.

Decision

After further discussion, the Committee:-

- a) approved the draft Green Network Supplementary Guidance for consultation; and
- b) noted that a further report on the Green Network Supplementary Guidance would be brought forward for consideration following conclusion of the consultation period.

Action

Head of Communities and Economy/Planning Manager

Agenda No	Report Title	Presented by:
5.2	Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage	Peter Arnsdorf

Executive Summary of Report
There was submitted report, dated 22 December 2017, by the Head of Communities and Economy, updating the Committee on 'major' planning applications, formal pre-application consultations by prospective applicants and the expected programme of applications due for reporting.
Decision
The Committee, having heard from the Planning Manager, agreed:- (a) To note the current position in relation to major planning application proposals which were likely to be considered by the Committee in 2018; and (b) To note the updates for each of the applications.
Action
Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.3	Appeal and Local Review Body Decisions	Peter Arnsdorf
Executive Summary of Report		
There was submitted report, dated 22 December 2017, by the Head of Communities and Economy, detailing the notices of review determined by the Local Review Body (LRB) at its meeting in November 2017, and advising that there were no appeals determined by Scottish Ministers to report.		
Decision		
The Committee, having heard from the Planning Manager, noted the decisions made by the Local Review Body at its meeting on 7 November 2017.		
Action		
Head of Communities and Economy		

Agenda No	Report Title	Presented by:
5.4	Pre-Application Consultation: Proposed Mixed Use Development Comprising Offices, Stores, Garage and Workshops, Enterprise Business Units, Parking and Ancillary Facilities at land west of Burnbrae Terrace, Bonnyrigg (17/00721/PAC).	Peter Arnsdorf
Executive Summary of Report		
There was submitted report, dated 22 December 2017, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed mixed use development comprising offices, stores, garage and workshops, enterprise business units, parking and ancillary facilities at land west of Burnbrae Terrace, Bonnyrigg. (17/00721/PAC).		

The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.

Summary of Discussion

The Committee, having heard from the Planning Manager, acknowledged concerns regarding the change in the allocated class uses for the site and also questions regarding whether these were sufficient to accommodate the proposed development. There was also concerns expressed regarding the compatibility of such uses with the neighbour residential sites. It being suggested that, especially in the case of those neighbouring site(s) which had not yet been developed out, the provision for the inclusion of mitigating measures to allow for the prospective Classes Uses approved in relation to the adjoining 'economic development site' should be made. It was also felt that a full environment impact assessment and mitigating measures would be required for the application site.

Decision

- (a) To note the provisional planning position set out in the report;
- (b) To note the comments made by Members; and
- (c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.5	Pre-Application Consultation: Proposed Residential Development at land at Gore Avenue and Newbryes Crescent, Gorebridge (17/00913/PAC)	Peter Arnsdorf
Executive Summary of Report		
There was submitted report, dated 22 December 2017, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed residential development at land at Gore Avenue and Newbyres Crescent, Gorebridge (17/00913/PAC).		

The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.

Summary of Discussion

Having heard from the Planning Manager, the Committee in considering the proposed development, discussed the importance of the layout being sympathetic to the existing surrounding properties/infrastructure and topography of the site. There was also a need to avoiding the shortcomings of the previous scheme, where there had been drainage issues, a void space at the rear of the gardens of existing properties in Newbyres Crescent and rear gardens that we laid out in such a way that they made routine upkeep extremely challenging. Finally, given the history of the site, provision need to be include to ensure that appropriate measures were taken to address any geological risks.

Decision

- (a) To note the provisional planning position set out in the report;
- (b) To note the comments made by Members; and
- (c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.6	Application for Planning Permission for the Erection of 179 Dwellinghouses and 20 Flatted Dwellings, Formation of Access Road and Car Parking and Associated Works at land north of Oak Place, Mayfield (16/99134/DPP)	Peter Arnsdorf
Executive Summary of Report		
There was submitted report, dated 7 November 2017, by the Head of Communities and Economy concerning the above application.		
Decision		
Having heard from the Planning Manager, the Committee agreed that planning permission be refused for the following reasons:		

1. There is not an education solution to accommodate all of the school children that would arise from the proposed residential development of the site, in particular non-denominational primary school children and as such the proposed development does not accord with policies IMP1 and IMP2 of the Midlothian Local Development Plan 2017.
2. The provision of up to 40 (20%) affordable housing units falls below the 25% (50 units) requirement set by policy DEV3 of the Midlothian Local Development Plan 2017. No reasoned justification, for the development in an area of housing need, has been submitted to support the below policy provision.
3. The proposed development of the site for 199 residential units, when the site is allocated for 63 residential units, is an overdevelopment of the site which is detrimental to the character and amenity of the area and the future occupants of the development contrary to policies DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017. The overdevelopment of the site is demonstrated by the large proportion of the proposed dwellings having unduly small sized rear private gardens, there being inadequate communal open space and children's play areas, inadequate spacing between proposed and existing dwellings, excessive raising in site levels and likely engineering works, including retaining structures to facilitate the development and buildings not being optimally orientated relative to the sites contours.
4. The engineering works to re-grade the levels on the site; in particular on the western part of the site, would be unduly visually dramatic, contrived and intrusive in the landscape to the detriment to the landscape and character and amenity of the area. Therefore the proposed development is contrary to policies DEV2, DEV6 and DEV7 of the Midlothian Local Development Plan 2017.
5. It has not been demonstrated to the Planning Authority that the contiguous height of retaining structures and boundary walls/fences required to be erected on the site to facilitate the proposed number of residential units and the proposed layout, would not impose themselves on the proposed houses or appear unduly intrusive, harmful to the character and amenity of the area. Therefore the proposed development is contrary to policies DEV2, DEV6 and DEV7 of the Midlothian Local Development Plan 2017.
6. Insufficient information has been submitted with the planning application to demonstrate to the Planning Authority that the SUDS detention basin would not pose a safety and security risk as a result of it not having adequate passive surveillance. Therefore the proposed development is contrary to policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017.
7. It has not been demonstrated to the Planning Authority that service vehicles can be manoeuvred through the site without posing a risk to pedestrians and other road users and also damage to property.

8.	The proposed development does not provide a 'Safe Route to School' or 'Green Network' to Lawfield Primary School from a point in the vicinity of the south western corner of the site contrary to policies TRAN1, ENV2, IMP1 and IMP2 of the Midlothian Local Development Plan 2017 and the aspiration of the Scottish Government policy statement 'Designing Street' that a connected permeable network be provided for in new developments.
9.	Insufficient information has been submitted with the application to enable the Planning Authority to assess whether the proposed parking meets the Council's parking standards.
10.	No cycle parking is proposed for the flats. Therefore the future occupants of the proposed flats would not be afforded adequate residential amenity and the proposed development does not accord with Midlothian Council's cycle parking standards.
Action	
Head of Communities and Economy	

Agenda No	Report Title	Presented by:
5.7	Application for Planning Permission for the Formation and Installation of Sustainable Urban Drainage System (SUDS) at land at Easter Bush Campus, Bush Farm Road, Roslin (17/00773/DPP)	Peter Arnsdorf
Executive Summary of Report		
There was submitted report, dated 22 December 2017, by the Head of Communities and Economy concerning the above application.		
Decision		
The Committee, having heard from the Planning Manager, agreed that planning permission be granted for the following reason: <i>The proposed development will support the furtherance of existing activities within the Bush Bioscience Cluster. The proposal therefore complies with the aims of policies STRAT1, STRAT5 and ECON2 of the adopted Midlothian Local Development Plan 2017.</i>		
Action		
Head of Communities and Economy		

The meeting terminated at 2.30pm.



PLANNING PERFORMANCE FRAMEWORK ANNUAL REPORT 2016/17

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report provides an update on the progress of work undertaken on the Planning Performance Framework (PPF) for Midlothian. Specifically, it provides feedback from Scottish Government on the Council's submitted PPF for 2016/17.

2 BACKGROUND

- 2.1 An initial report to Committee in November 2012 explained that from October 2012 the Scottish Government's Minister for Local Government and Planning (now Local Government and Housing) had instigated a new Planning Performance Framework system under which each local planning authority in Scotland would be required to submit annually a report to Scottish Government on its performance across a range of quantitative and qualitative measures, including the long-standing indicators of age of local plan(s) and speed of handling planning applications. Accordingly, this Council has prepared and submitted an annual PPF report every year since 2011/12. The feedback from Scottish Government has been reported to the Committee.
- 2.2 As reported to Committee in November 2012 it remains the case that Scottish Government officials have made clear that the primary purpose of the PPF is to provide Ministers, Councils and the public with a much better understanding of how a particular planning authority is performing. Whilst it is inevitable that comparisons across planning authorities will be made, Scottish Government is advising that it is not a 'name and shame' exercise: where particular authorities may be underperforming the Scottish Government officials through normal liaison with officers in the relevant authorities will seek to assist and support improvement.
- 2.3 The Council's PPF for 2016/17 was submitted to Scottish Government in July 2017. Given its size a copy of the document has been placed in the Members' Library. It provides a comprehensive review of progress during the year and highlights steady improvement in a number of areas, examples of good quality development taking place on the

ground; as well as continued good progress in the preparation of the Midlothian Local Development Plan.

3 FEEDBACK ON THE 2016/17 SUBMISSION

- 3.1 Formal written feedback was received 21 December 2017 by way of a letter from the Minister for Local Government and Housing, and enclosing a specific report on a total of fifteen 'performance markers'. A copy of the feedback is attached to this report.
- 3.2 In the feedback report on the fifteen performance markers, seven were rated as 'green' giving no cause for concern, four were rated as 'amber' where areas for improvement are identified, and the following two areas were rated as 'red' where some specific attention is required:-
- i) local development plan – less than 5 years since adoption; and
 - ii) development plan scheme – project plan for next local plan.
- 3.4 The two 'reds' relate to the progress of the local development plan and since submitting the 2016/17 PPF in July 2017 the Council has adopted the Midlothian Local Development Plan 2017 (at its meeting of the Council 7 November 2017). A project plan for the Council's next plan is being prepared.
- 3.5 Two performance matters relating to engagement on the Main Issues Report (MIR) were scored as not applicable because of the stage of Midlothian's Proposed Plan. This was also the position in 2014/15 and again in 2015/16. These measures had previously been scored as green in 2013/14.
- 3.6 The PPF feedback also sets out the timescales for the determination of planning applications. The average time to determine local (non-householder) developments for 2016/17 was 11 weeks, better than the Scottish average of 11.1 weeks. The average time to determine householder developments for 2016/17 was 6.8 weeks, better than the Scottish average of 7.3 weeks. The average time to determine major developments for 2016/17 is stated as being 84.7 weeks, however the Midlothian figure should be 57 weeks (*this has been confirmed by the Scottish Government*), and is greater than the Scottish average of 37.1 weeks.
- 3.7 The main reasons why the average time to determine major developments is greater than the Scottish average are as follows:
- the time taken to conclude a legal agreement to secure developer contributions;
 - the applicant amending the scheme during the processing of the application;
 - awaiting additional information from applicants and/or consultees;
 - on the request from the applicant; and
 - the volume of major applications (including matters specified in conditions applications).

4 RECOMMENDATION

- 4.1 It is recommended that the Committee notes the feedback from Scottish Government on the Council's submitted Planning Performance Framework (PPF) for 2016/17.

Ian Johnson
Head of Communities and Economy

Date: 8 February 2018
Contact Person: Peter Arnsdorf, Planning Manager
Tel No: 0131 271 3310
Background Paper: Council's PPF (2016/17) submission

T: 0300 244 4000
E: scottish.ministers@gov.scot

Mr Kenneth Lawrie
Chief Executive
Midlothian Council

21 December 2017

Dear Mr Lawrie

PLANNING PERFORMANCE FRAMEWORK FEEDBACK 2016/17

Please find attached feedback on your planning performance framework report for the period April 2016 to March 2017.

You will be aware that we recently introduced the Planning Bill to the Scottish Parliament. The Bill aims to support effective performance across a range of planning functions. It includes specific provisions to strengthen and improve performance monitoring; to appoint a national performance co-ordinator to provide advice and recommendations; and powers to conduct assessments and if necessary require improvements to be made. This structured approach is essential to improving the reputation of the system across the country. It aims to provide better support to authorities, whilst recognising that other factors and stakeholders, impact on your performance.

I appreciate that resourcing is a critical issue for you, and the Bill includes provisions for discretionary charging to allow greater local flexibility. Following the Bill, we will consult on revising the fee regime to better reflect the developments which are being brought forward.

We will continue to liaise with COSLA, SOLACE and Heads of Planning Scotland as the Bill progresses through the Parliamentary process. I would like to take this opportunity to encourage you all to actively engage - this is a fantastic opportunity to make our system work better to enable planners to deliver the high-quality development our communities need, and it is important that voices from all viewpoints are heard. You can monitor the progress of the Bill on the Parliament website at: www.parliament.scot/parliamentarybusiness/Bills/106768.aspx

Kind Regards



KEVIN STEWART

CC: Ian Johnson, Head of Planning and Development

PERFORMANCE MARKERS REPORT 2016/17

Name of planning authority: **Midlothian**

The High Level Group on Performance agreed a set of performance markers. We have assessed your report against those markers to give an indication of priority areas for improvement action. The high level group will monitor and evaluate how the key markers have been reported and the value which they have added.

The Red, Amber, Green ratings are based on the evidence provided within the PPF reports. Where no information or insufficient evidence has been provided, a 'red' marking has been allocated.

No.	Performance Marker	RAG rating	Comments
1	Decision-making: continuous reduction of average timescales for all development categories [Q1 - Q4]	Amber	<p>Major Applications Your timescales of 84.7 weeks are much slower than the previous year and are significantly slower than the Scottish average of 37.1 weeks. RAG = Red</p> <p>Local Non-Householder Applications Your timescales of 11.0 weeks are slightly slower than the previous year and are faster than the Scottish average of 11.1 weeks. RAG = Amber</p> <p>Householder Applications Your timescales of 6.8 weeks have improved since the previous year and are faster than the Scottish average of 7.3 weeks. RAG = Green</p> <p>Overall RAG = Amber</p>
2	Processing agreements: <ul style="list-style-type: none"> offer to all prospective applicants for major development planning applications; and availability publicised on website 	Green	<p>You invited all applicants for major developments to sign up to a processing agreement, however all of them declined the offer. RAG = Green</p> <p>You have published a processing agreement template on your website. RAG = Green</p> <p>Overall RAG = Green</p>
3	Early collaboration with applicants and consultees <ul style="list-style-type: none"> availability and promotion of pre-application discussions for all prospective applications; and clear and proportionate requests for supporting information 	Green	<p>You encourage pre-application discussion to prospective applicants and use this time to try and resolve design issues prior to submission of an application. You provide a duty officer service and individual officers are available to meet applicants and developers to discuss applications. RAG = Green</p> <p>Guidance is produced in consultation with statutory consultees to ensure that advice to applicants is clear and proportionate. RAG = Green</p> <p>Overall RAG = Green</p>

4	Legal agreements: conclude (or reconsider) applications after resolving to grant permission reducing number of live applications more than 6 months after resolution to grant (from last reporting period)	Amber	The average timescale for processing local applications with legal agreements is down to 30.8 weeks, an improvement on last year, but slower than the Scottish average. The average timescales for major applications with legal agreements has increased to 84.7, which is above the national average. A new process has been implemented whereby applicants are being advised that they risk application being referred to elected members and potentially refused if an agreement is not concluded within 6 months from the date of resolution to grant planning permission.
5	Enforcement charter updated / re-published within last 2 years	Green	Your enforcement charter is 13 months old at the time of reporting.
6	Continuous improvement: <ul style="list-style-type: none"> progress/improvement in relation to PPF National Headline Indicators; and progress ambitious and relevant service improvement commitments identified through PPF report 	Amber	Both major and non-householder decision times are slower. Householder timescales have improved and are faster than the Scottish average. Your LDP is out of date and will not be replaced within the 5 year timescale. RAG = Red You have completed most of your commitments. You have committed to taking forward 5 improvements in 2017-18 with 2 of those being carried forward from 2016-17. RAG = Green Overall RAG = Amber
7	Local development plan less than 5 years since adoption	Red	Your LDP is over 8 years old at the time of reporting.
8	Development plan scheme – next LDP: <ul style="list-style-type: none"> on course for adoption within 5 years of current plan(s) adoption; and project planned and expected to be delivered to planned timescale 	Red	It is noted that your LDP is currently under examination however, it will not be replaced within the required timescale. RAG = Red Other than mentioning your development plan scheme it is not clear from your report how the replacement of your LDP is project managed to ensure it remains on track to be replaced within the timescales you set out. RAG = Red Overall RAG = Red
9	Elected members engaged early (pre-MIR) in development plan preparation – <i>if plan has been at pre-MIR stage during reporting year</i>	N/A	
10	Cross sector stakeholders* engaged early (pre-MIR) in development plan preparation – <i>if plan has been at pre-MIR stage during reporting year</i>	N/A	
11	Regular and proportionate policy advice produced on information required to support applications; and	Green	You have produced validation checklists for a range of application types to ensure the correct information is submitted so that applications can be progressed on receipt. You have also produced a range of supplementary guidance and other guidance which will be put in place alongside your LDP.
12	Corporate working across services to improve outputs and services for customer benefit (for example: protocols; joined-up services; single contact arrangements; joint pre-application advice)	Green	You provide a duty officer service, ensure a single point of contact throughout the life of an application and have provided good examples of working with other councils and other council services to deliver developments.

13	Sharing good practice, skills and knowledge between authorities	Green	You share an archaeologist with East Lothian Council and are procuring a developer contribution database with West Lothian Council. You participate in benchmarking and are active members in the SESplan Board and Operation Group.
14	Stalled sites / legacy cases: conclusion or withdrawal of old planning applications and reducing number of live applications more than one year old	Green	You have cleared 10 legacy cases during the reporting year leaving 28 cases still to be decided. You have processes in place to keep track of cases to ensure progress continues to be made.
15	Developer contributions: clear and proportionate expectations <ul style="list-style-type: none"> • set out in development plan (and/or emerging plan); and • in pre-application discussions 	Amber	<p>The new LDP is in an advanced stage. You indicate that you will produce new supplementary guidance on developer contributions in the coming year. You do not mention whether the current LDP provides a framework for developer contributions.</p> <p>RAG = Green</p> <p>There is no indication of whether developer contributions are discussed at the pre-app stage.</p> <p>RAG = Amber</p> <p>Overall RAG = Amber</p>

MIDLOTHIAN COUNCIL
Performance against Key Markers

Marker		2012-13	2013-14	2014-15	2015-16	2016-17
1	Decision making timescales					
2	Processing agreements					
3	Early collaboration					
4	Legal agreements					
5	Enforcement charter					
6	Continuous improvement					
7	Local development plan					
8	Development plan scheme					
9	Elected members engaged early (pre-MIR)			N/A	N/A	N/A
10	Stakeholders engaged early (pre-MIR)			N/A	N/A	N/A
11	Regular and proportionate advice to support applications					
12	Corporate working across services					
13	Sharing good practice, skills and knowledge					
14	Stalled sites/legacy cases					
15	Developer contributions					

Overall Markings (total numbers for red, amber and green)

2012-13	3	8	4
2013-14	2	8	5
2014-15	3	5	5
2015-16	5	4	4
2016-17	2	4	7

Decision Making Timescales (weeks)

	2012-13	2013-14	2014-15	2015-16	2016-17	2016-17 Scottish Average
Major Development	42.8	60.5	77.4	47.8	84.7	37.1
Local (Non-Householder) Development	21.5	19.7	11.0	10.7	11	11.1
Householder Development	7.5	6.9	6.7	6.9	6.8	7.3



MAJOR DEVELOPMENTS: APPLICATIONS CURRENTLY BEING ASSESSED AND OTHER DEVELOPMENTS AT PRE-APPLICATION CONSULTATION STAGE

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report updates the Committee with regard to 'major' planning applications, formal pre-application consultations by prospective applicants, and the expected programme of applications due for reporting to the Committee.

2 BACKGROUND

- 2.1 A major application is defined by regulations and constitutes proposed developments over a specified size. For example; a development comprising 50 or more dwellings, a business/industry use with a gross floor space exceeding 10,000 square metres, a retail development with a gross floor space exceeding 5,000 square metres and sites exceeding 2 hectares. A major application (with the exception of a Section 42 application to amend a previous grant of planning permission) cannot be submitted to the planning authority for determination without undertaking a formal pre application consultation (PAC) with local communities.
- 2.2 At its meeting of 8 June 2010 the Planning Committee instructed that it be provided with updated information on the procedural progress of major applications on a regular basis.
- 2.3 The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants is outlined in Appendices A and B attached to this report.

3 DEVELOPMENT PLAN UPDATE

- 3.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan June 2013 (SDP1) and the Midlothian Local Development Plan 2017 (MLDP). The MLDP was adopted by the Council at its meeting of 7 November 2017. The proposed Strategic Development Plan (SDP2) is currently subject to examination by Scottish Government Reporters. The Reporter's findings are scheduled to be published in April 2018.

4 RECOMMENDATION

- 4.1 The Committee is recommended to note the major planning application proposals which are likely to be considered by the Committee in 2018 and the updates for each of the applications.

Ian Johnson
Head of Communities and Economy

Date: 8 February 2018
Contact Person: Peter Arnsdorf, Planning Manager
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Tel No: 0131 271 3310

Background Papers: Planning Committee Report entitled 'Major Developments: Applications currently being assessed and other developments at Pre-Application Consultation stage' 8 June 2010.

APPENDIX A

MAJOR APPLICATIONS CURRENTLY BEING ASSESSED

Ref	Location	Proposal	Expected date of reporting to Committee	Comment
16/00893/PPP	Land At Salter's Park, Dalkeith	Application for Planning Permission in Principle for residential development, employment uses and associated works	Being held in abeyance at the applicants request	Pre-Application Consultation (14/00833/PAC) carried out by the applicants in November and December 2014 and January 2015. The applicant is currently reviewing their position following advice from officers that the development is contrary to the development plan,
17/00298/PPP	Land north of Dalhousie Dairy Bonnyrigg	Application for Planning Permission in Principle for residential development. The site is identified for an indicative 300 residential units.	Being held in abeyance because of an appeal decision to grant planning permission for residential development on the site.	Pre-Application Consultation (16/00157/PAC and 16/00161/PAC) carried out by the applicants in March/April 2016. This application is a repeat application of 16/00712/PPP, which is subject to a resolution from a Scottish Government Reporter to grant planning permission subject the conclusion of a legal agreement to secure developer contributions. A draft legal agreement has been agreed between the applicant and the Council and is currently with the Reporter for consideration. Once concluded the current application is likely to be withdrawn. Pre-Application Consultation (14/00415/PAC) carried out by the applicants in June - September 2014.
17/00409/DPP	Land at Wellington Farm, Old Craighall Road, Millerhill	Erection of 116 residential units; formation of access roads, SUDs features and associated works	May 2018	
17/00408/DPP	Land at Old Craighall Road, Millerhill	Erection of 125 residential units; formation of access roads, SUDs features and associated works	May 2018	Pre-Application Consultation (14/00415/PAC) carried out by the applicants in June - September 2014.
17/00435/DPP	Land at Newbyres, River Gore Road, Gorebridge	Erection of 125 residential units; formation of access roads, SUDs features and associated works	April 2018	Pre-Application Consultation (13/00609/PAC) carried out by the applicants in August - November 2013.

17/00650/S42	Land bounded By A720 Old Dalkeith Road and The Wisp Millerhill, Dalkeith	Section 42 application to amend condition 4 of planning permission 02/00660/OUT - this seeks to change the means by which the Master Plan and Design Guide for Shawfair can be amended	April 2018	<p>Section 42 applications do not require to go through the Pre-Application Consultation process.</p> <p>This application is seeking to change the methodology by which the Master Plan and Design Guide (and related addenda) could be amended. A consequence of this Section 42 application is that the Council will need to review the original grant of planning permission for the whole of the Shawfair development.</p>
17/00968/DPP	Land 470m west of Corby Craig Terrace, Bilston	Erection of 155 dwellingshouses, 36 flatted dwellings and associated works	April 2018	<p>Pre-Application Consultation (15/00936/PAC) carried out by the applicants in November and December 2015 and January 2016.</p> <p>This application replaces withdrawn application 16/00861/DPP.</p>
17/00980/PPP	Land adjacent former Rosslynlee Hospital, Roslin (Site AHs1)	Residential development and associated works and ancillary commercial use	June 2018	<p>Pre-Application Consultation (16/00266/PAC) carried out by the applicants in April, May and June 2016</p> <p>The site is identified as an additional housing opportunity in the adopted MLDP with an indicative 120 – 300 units.</p>
17/01001/DPP <i>New addition to the table</i>	Land at the former Rosslynlee Hospital, Roslin (Site AHs1)	Alterations and conversion of former hospital and buildings to form 71 dwellings, erection of 30 dwellingshouses and associated works	June 2018	<p>Pre-Application Consultation (16/00267/PAC) carried out by the applicants in April, May and June 2016</p> <p>The site is identified as an additional housing opportunity in the adopted MLDP with an indicative 120 – 300 units.</p>

APPENDIX B

NOTICE OF PRE-APPLICATION CONSULTATIONS RECEIVED AND NO APPLICATION HAS BEEN SUBMITTED

Ref	Location	Proposal	Date of receipt of PAC	Earliest date for receipt of planning application and current position
15/00774/PAC	Site Hs14, Rosewell North, Rosewell	Residential development The site is identified for an indicative 60 residential units.	22 September 2015	15/12/15 - no application yet received. A pre-application report was reported to the November 2015 meeting of the Committee.
16/00830/PAC	Land east of junction with Greenhall Road Barleyknowe Road Gorebridge	Residential development This site is not allocated for housing	24 November 2016	10/02/17 - no application yet received. A pre-application report was reported to the January 2017 meeting of the Committee.
17/00296/PAC	Land to the east of Lawfield Road and to the north of Ash Grove, Mayfield	Residential development This site is not allocated for housing	19 April 2017	06/07/17 - no application yet received. A pre-application report was reported to the June 2017 meeting of the Committee.
17/00367/PAC	Site Hs12 Hopefield Farm 2 Bonnyrigg	Residential development The site is identified for an indicative 375 residential units.	9 May 2017	02/08/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00402/PAC	Site Hs11 Dalhousie South Bonnyrigg	Residential development The site is identified for an indicative 360 residential units. Extension to existing sand quarry	19 May 2017	12/08/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00565/PAC	Land south west of Upper Dalhousie Sand Quarry, Rosewell	Residential development The site is identified for an indicative 350 residential units.	13 July 2017	06/10/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00606/PAC	Land south east of Auchendinny, The Brae, Auchendinny (Site Hs20)	Residential development The site is identified for an indicative 350 residential units.	27 July 2017	20/10/17 - no application yet received. A pre-application report was reported to the November 2017 meeting of the Committee.

17/00663/PAC	Land bounded by A7, Stobhill Road and Pentland Avenue, Gorebridge	Mixed use development comprising residential and commercial land uses	16 August 2017	09/11/17 - no application yet received. A pre-application report was reported to the October 2017 meeting of the Committee.
17/00670/PAC	Land to the north of Hardengreen House, Dalkeith	Mixed use development including Class 1 (Shops); Class 2 (Financial, Professional and Other Services); Class 3 (Food and Drink); Class 4 (Business); Class 9 (Houses); and Class 10 (Non-Residential Institutions).	22 August 2017	15/11/17 - no application yet received. A pre-application report was reported to the October 2017 meeting of the Committee.
17/00693/PAC	Land 65M west of Rosslyn Bowling Club, Main Street, Roslin (Site Hs19)	Residential development The site forms part of (approximately 25%) a larger development site identified for an indicative 260 residential units.	30 August 2017	23/11/17 - no application yet received. A pre-application report was reported to the November 2017 meeting of the Committee.
17/00721/PAC	Land west of Burnbrae Terrace Bonnyrigg	Mixed use development including offices, stores, garage and workshops, enterprise business units, parking and ancillary facilities	12 September 2017	06/12/17 - no application yet received. A pre-application report was reported to the January 2018 meeting of the Committee.
17/00859/PAC	Shawfair Site F Monktonhall Colliery Road, Dalkeith	Use of land for the storage of soil (top soil and sub soil)	27 October 2017	12/01/18 – no application yet received. A pre-application report is reported to this meeting of the Committee.
17/00913/PAC	Land at Gore Avenue and Newbyres Crescent, Gorebridge	Residential development The applicant is considering an indicative 75 residential units.	27 November 2017	20/02/17 - no application yet received. A pre-application report was reported to the January 2018 meeting of the Committee.



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 January 2018; and two appeal decisions 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 two decisions on appeal which have been considered by Scottish Ministers.

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 16 January 2018 the LRB made the following decisions:

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
1	17/00636/DPP	14 High Street, Lasswade	Change of use from office to restaurant	Permission granted at LRB meeting of 16.01.2018
2	17/00690/DPP	Land west of Roanshead Crescent, Easthouses	Planning permission in principle for the erection of three dwellinghouses	Permission refused at LRB meeting of 16.01.2018

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
3	17/00758/DPP	31A Eldindean Road, Bonnyrigg	Extension to dwelling house	Permission refused at LRB meeting of 16.01.2018
4	17/00404/S42	2A Nivensknowe Road, Loanhead	Application to remove conditions relating to fencing and boundary treatment from a previous grant of planning permission to change the use of warehouse to vehicle servicing depot	Permission granted at LRB meeting of 16.01.2018

4 APPEAL DECISIONS

- 4.1 An appeal against a refusal of planning permission for the erection of nine dwelling houses, formation of access and car parking and associated works at land west of the Laird and Dog Hotel, High Street, Lasswade has been dismissed. The Reporter appointed by the Scottish Ministers concluded that the proposed development is out of keeping with the character of the area and the conservation area in terms of its scale, form, design and materials. The Reporter also dismissed a claim for costs made by the applicant. A copy of the appeal decision accompanies this report.
- 4.2 An appeal against a refusal of planning permission for the erection of 11 flatted dwellings and five dwelling houses, formation of access and car parking and associated works at land at junction of Bryans Road and Morris Road, Newtongrange has been upheld subject to conditions and the conclusion of a legal agreement to secure developer contributions. The Reporter appointed by the Scottish Ministers concluded that the proposed development is in keeping with the character of the area in terms of its scale, form, design and materials. 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 in January 2018 and the appeal decisions by Scottish Ministers.

Ian Johnson
Head of Communities and Economy

Date: 8 February 2018
Contact Person: Peter Arnsdorf, Planning Manager
 peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310
Background Papers: LRB procedures agreed on the 13 June 2017.



Decision by Nick Smith, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2042
- Site address: Land west of the Laird and Dog Hotel, High Street, Lasswade, EH18 1NB
- Appeal by Cook Investments/Dimension Homes Ltd against the decision by Midlothian Council
- Application for planning permission 16/00727/DPP dated 19 October 2016 refused by notice dated 16 June 2017
- The development proposed: erection of 9 dwelling houses; formation of new access and car parking and associated works
- Date of site visit by Reporter: 8 November 2017

Date of appeal decision: 15 January 2018

Decision

I dismiss the appeal and refuse planning permission.

My decision on the appellant's claim for an award of expenses is set out in a separate decision notice, also issued today.

Preliminary matter

1. The council concluded that the size and nature of the proposal meant it did not require an environmental impact assessment (EIA). However, due to an oversight a formal screening opinion was not adopted and placed on Part 1 of the planning register. Having had regard to all of the submissions, I am satisfied that the proposal is not EIA development.

Reasoning

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises SESplan Strategic Development Plan 2013 and Midlothian Local Development Plan 2017. There are several matters raised by local residents to which I have had regard and I consider these later in this decision notice. There is little dispute about the principle of redeveloping this brownfield site for housing. The main issues in this appeal are the impacts of the proposal on:

- the character or appearance of the Lasswade and Kevoch Conservation Area;
- the setting of nearby listed buildings;



- the specific qualities, character and integrity of the nearby Melville Castle Garden and Designed Landscape;
- the adjacent Old Lasswade Parish Church scheduled ancient monument; and,
- the amenity of neighbouring properties.

3. No parties refer me to policies in SESplan (2013) or to any provisions of the proposed SESplan (2016). It could be argued that SESplan (2013) policy 1B is relevant because it seeks to conserve and enhance the built environment. However, I am satisfied that this and all other relevant matters are covered by policies in the Midlothian Local Development Plan (2017).

4. Since this appeal was submitted the council has adopted a new local development plan which replaces the Local Plan (2008). Helpfully, both the council and the appellant referenced policies in both the Local Plan (2008) and the Proposed Local Development Plan (2014). The council has advised of minor modifications to some of these proposed local development plan policies that took place upon adoption. I find that these modifications do not fundamentally change the aims or contents of these policies. I therefore use the Local Development Plan (2017) policies listed below in my consideration of this appeal:

- STRAT2: Windfall housing sites
- DEV2: Protecting amenity within built up areas
- DEV5: Sustainability in new development
- DEV6: Layout and design in new development
- DEV7: Landscaping in new development
- DEV9: Open space standards
- ENV6: Special landscape areas
- ENV11: Woodland, trees and hedges
- ENV16: Vacant, derelict and contaminated land
- ENV19: Conservation areas
- ENV23: Scheduled ancient monuments
- IMP1: New development
- IMP2: Essential infrastructure required to enable new development to take place

5. The site is within the Lasswade and Kevoch conservation area with several listed buildings close by. I must therefore have special regard to the desirability of preserving the setting of the nearby listed buildings and I must pay special attention to the desirability of preserving or enhancing the character or appearance of the Lasswade and Kevoch conservation area, in accordance with sections 59(1) and 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

6. Scottish Historic Environment Policy paragraph 3.76 requires me to have careful regard to the specific qualities, character and integrity of the nearby Melville Castle Garden and Designed Landscape. The proposal is also directly adjacent to land containing a scheduled ancient monument; however no works are proposed to this monument.

Impact on the conservation area and nearby historic assets

7. I have been referred to the nearby Mavisbank development by the same developer. Whilst this development uses similar materials to the proposal it is otherwise considerably different. Mavisbank's homes are one and a half storeys with pitched slate roofs in a courtyard style. The properties closest to the A768 reflect the colour and style of the original buildings opposite. The site is largely flat and on the edge of Loanhead village, which is not part of the same conservation area. The appeal proposal differs from each of these and I must consider it on its merits. As such I give Mavisbank little weight.

8. Both the council and the appellant reference the original site development brief (2004) and the updated development brief (2013). Both are based on policies in the now replaced Midlothian Local Plan (2008). However, both the council and the appellant refer me to the equivalent policies in the proposed local development plan (2014) - now slightly modified in the adopted plan (2017). The content and aims of many of these policies continue to be the same as the now replaced local plan (2008). I therefore give the development brief (2013) some weight. I find that the original development brief (2004) has been superseded and I give it no weight.

9. The updated development brief (2013) covers the largest part of the site, where the former school was located; bullets two and three require a maximum of six homes. The proposal is numerically consistent with this but these same bullets require the six homes to be located on the plot of the former school. Production 063: Overlaid Building Plan shows this is not the case. The scale of the proposal therefore exceeds the provisions of the brief.

10. The Lasswade and Kevock Conservation Area Character Appraisal must form part of my consideration under policy ENV19. It notes that the area surrounding the site, including the High Street, School Green and the lower part of Polton Road, is dominated by 19th century buildings. It also remarks on the dominant style of pitched and slated roofs. This was evident from my site inspection. I therefore find that the critical issue is the impact of the scale, form, design and materials of the proposal on the character and appearance of the conservation area.

11. The development brief (2013) bullets seven and ten require pitched roofs that are finished in slate. The proposed roofs are flat, albeit with a gently sloped element, and are not finished in slate. I find that this jars with the roofscape of the conservation area, which is dominated by pitched, slate roofs. On my site inspection I saw a small number of garages and two homes with flat roofs in the conservation area. These were hidden amongst the vegetation and overshadowed by taller nearby pitched, slate-roofed houses. I therefore give their presence little weight.

12. I find that the proposed third storeys give the impression of bolted-on, box-like structures which overhang the front and sides of the buildings. I find this to suggest significant bulk to the third stories, which would be most visible given their height and prominent hillside position. The site is visible from properties and streets within the conservation area on both sides of the river; including several points along Westmill Road and Polton Road (opposite the site). For these reasons I agree with the council's conclusions regarding juxtaposition.

13. The appellant argues that the council opposes contemporary design and refers me to Scottish Planning Policy, Creating Places, Planning Advice Note 67 and Scottish Historic

Environment Policy. I give these documents some weight. They show how contemporary architecture can (my emphasis) enhance sensitive historic environments. However, their policies and guidance operate within the provisions of Sections 59(1) and 64(1) of the Act, which are my main consideration. I find that these national policies do not argue that contemporary architecture is automatically acceptable in any form where historic assets are present.

14. I find the issue is not the contemporary design but the absence of pitched, slate roofs and that the flat roofs and bulky third stories are obvious and intrusive. I find this to be emphasised by the scale and massing of the proposal, which forms a distinctive block on a prominent hillside. As such I find that the proposal does not fit well with the character or appearance of the conservation area. For the same reasons I find the proposal would adversely affect the setting of the category C listed Lasswade Hall and Bridgend House to the east of the site. These are lower down the hill and form part of the same townscape. Consequently the proposal is contrary to policy ENV19 and the provisions of Sections 59(1) and 64(1) of the Act, to which I must have regard.

15. No works are proposed to the Old Lasswade Parish Church scheduled ancient monument, which is on adjacent land. The setting of the category B listed manse and stables to the north west is shielded by trees and a high stone wall along Gospel Wynd/Coffin Lane as well as by the proposed planting around the site boundary. I therefore find the impact of the proposal on these historic assets to be limited. This same vegetation and the local topography also provide visual separation from the nearby western edge of the Melville Castle Garden and Designed Landscape. I therefore find there are no risks to its specific qualities, character and integrity. I also note that Historic Environment Scotland raises no issues with regard to these historic assets.

16. Whilst this proposal is on brownfield land within a defined built up area it is likely to detract materially from the existing character and appearance of the Lasswade and Kevoch Conservation Area, which makes up the adjoining urban area (as set out above). Therefore the proposal also fails policies DEV2 and DEV6 part A. The proposal also fails policy ENV16, which is dependent on meeting policy DEV2. Whilst this is a windfall site the proposal does not have regard to the character of the area in terms of scale, form and design (as set out above). Therefore the proposal also fails policy STRAT2 part C.

Amenity and neighbouring properties

17. Some neighbouring residents raise concerns that the proposed earthworks could undermine the structural integrity of their properties and boundary walls. However, I agree with the council's conclusion in report of handling paragraph 8.16. This acknowledges that the appellant has prepared a method statement (production 041) and that these matters will form part of the building warrant process rather than the planning process. I also agree with the council's consideration of amenity matters in the report of handling for properties adjacent the site to the east. However, plot nine is immediately adjacent to the boundary wall with the neighbouring property at Old School House to the west.

18. Production 084 and the plot, elevation and floor plans suggest that the western corner of plot nine's third storey would overlook Old School House's eastern corner and garden. This would be further emphasised by the steep, downward sloping site topography

along this boundary. Whilst the positioning of plot nine's side and rear windows may reduce some of the overlooking impact I am not convinced that this overcomes the matter due to the height and immediate proximity of plot nine's third story to the boundary. I find that this situation is the result of the proposed design and layout which locates plot nine (and others) outwith the footprint of the original school building. I also find that this could not be overcome through conditions. For this reason I find that the proposal also fails policy DEV2 on amenity grounds.

Other matters

19. Neighbouring residents have raised issues relating to landscape and tree loss. However, the proposal includes planting along the northern and western boundaries to retain the woodland backdrop, consistent with the development brief (2013). The evidence before me does not identify tree preservation orders on the site. I therefore agree with the council's consideration of these matters in the report of handling. I was also made aware of offsite Japanese Knot Weed near to the site entrance. However, this is for separate processes and authorities and it does not affect my consideration of this appeal.

20. Several parties raise concerns about the proposed road access and road safety. The appellant considers that this should not have been a reason for refusal. On my site inspection I saw that the A768 is a busy road, even though this part is a 20 miles per hour zone. The council's roads team note this site does not have a record of accidents and is not currently an area of road safety concern. The council's roads team note that the anticipated traffic resultant from the proposal would be less than was historically the case. They conclude that the existing visibility splays do not meet current standards but that this could be overcome through conditions. Were I to allow the appeal I would impose such conditions. However, these conditions would not resolve the issues set out above with regard to the proposal's impacts on amenity and the historic environment.

Planning obligations

21. The appellant also raises several matters with regard to planning obligations sought by the council in the event of approval. They also refer to the recent Elsie case judgement with regard to the principle of trivial relationships between proposed development and infrastructure to which its developers are asked to contribute. However, as I am dismissing this appeal and therefore such issues are not required to be addressed in this notice.

Conclusions

22. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions. Accordingly I dismiss the appeal.

Nick Smith

Reporter



Decision by Nick Smith, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-290-2042
- Site address: Land west of the Laird and Dog Hotel, High Street, Lasswade, EH18 1NB
- Claim for expenses by Cook Investments/Dimension Homes Ltd against Midlothian Council

Date of decision: 15 January 2018

Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. Scottish Ministers' policy on expenses in planning appeals is contained in Circular 6/1990: *Awards of expenses in appeals and other planning proceedings*. For a claim to be successful it must be made at the appropriate stage in proceedings; the party against whom the claim is made must have acted unreasonably; and that unreasonable conduct must have caused the party making the claim to incur unnecessary expense.
2. In this case the claim was included in the appellant's appeal statement and was, therefore made at the appropriate stage of the proceedings.
3. Section six of the appellant's appeal statement makes their case for expenses on the basis that the council's handling procedures, timescales and decision making were not reasonable and that the council's refusal of the application lacked adequate reasoning.
4. The council accepts that the recommendation of council officials to the committee was to grant planning permission subject to conditions. In reaching a decision on an application however, members do not have to follow the recommendation of officials. The committee must determine each application on its own merits, having regard to the development plan and all the material information available to it. The acceptability of a proposal and its compliance with the development plan is a matter for the judgement of committee members.
5. In a democratic context, a committee is entitled to arrive at a decision different from that recommended by its professional officers, provided it had reasonable grounds for doing



so. I am satisfied that the council properly exercised its planning judgement. The committee clearly took account of local representations, as it was required to do, but there is no evidence that the strength of local opposition led the committee to exercise its planning judgement unreasonably. On consideration of this appeal I have reached the same conclusion as the council on the impact of the proposal's scale, form and design upon the character and appearance of the conservation area.

6. On the matter of the information that was before the committee; the report of handling was before the committee prior to its decision. Elected members often raise and debate matters with varying levels of relevance to a case during their consideration. I have listened to the audio file provided by the appellant and considered the report of handling. I find no evidence to persuade me that the information before the committee was incorrect or insufficient.

7. The procedures to be followed at committee meetings are a matter for the council, and the evidence does not suggest to me that the procedures followed were unusual or unreasonable. In addition, there is no evidence that the council failed to consider the relevant provisions of the development plan, which were set out in the planning officer's report to the committee and form part of the reasons for refusal. Although there was some matter of debate regarding the number of homes and the development brief, these matters were clarified.

8. The time taken by the council to determine the proposal is not a matter upon which I can comment.

9. I can understand the appellant's wish to contest the third reason for refusal regarding the access arrangements. However, I find that the appellant's claim is based on the nature of discussions held by councillors at the committee which determined the original application. I have already noted in paragraph 4 to 7 (above) my conclusions regarding these matters. Overall, I conclude that the council did not act unreasonably in finding the access arrangements to be unsatisfactory. On that basis there is no need to consider whether the appellant incurred unnecessary expense.

10. Even if this were not the case, reasons for refusal one and two mean that the appellant would still have needed to lodge an appeal in the absence of reason three. I am also satisfied that the appellant has not had to carry out additional or substantive work to make their case regarding the proposed access. The vast majority of their appeal statement focuses on the proposal's location, scale, form and design and also the planning obligations to be sought in the event of approval.

11. I therefore decline to award expenses to the appellant.

Nick Smith
Reporter



Notice of Intention by Amanda Chisholm, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2041
- Site address: Land at junction of Bryans Road and Morris Road, Newtongrange, Dalkeith, EH22 4ST
- Appeal by T&V Builders against the decision by Midlothian Council
- Application for planning permission 16/00809/DPP dated 16 November 2016 refused by notice dated 20 June 2017
- The development proposed: Erection of eleven flatbed dwellings and five dwelling houses; formation of car parking and access road; and associated works.
- Application drawings listed in schedule
- Date of site visit by Reporter: 19 September 2017

Date of appeal decision: 22 January 2018

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the 11 proposed conditions listed at the end of this notice, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement, covering the subject areas listed in paragraph 30 below.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. The development plan comprises the Edinburgh and South East Scotland Strategic Development Plan, adopted in June 2013, and the Midlothian Local Development Plan (LDP), adopted in November 2017. The proposal at appeal does not raise any strategic issues and falls to be assessed against the relevant provisions of the Local Development Plan.
3. Having regard to the provisions of the development plan, the main issues in this appeal are the effect of the proposed development on (1) the character of the area and (2) residential and neighbouring amenity; (3) the adequacy of the proposed dwelling houses' garden grounds; and (4) the safety implications of vehicular access arrangements.

Background



4. The application at appeal follows refusal of an earlier application in June 2015 for thirteen flatted dwellings and five dwelling houses on the same site (15/00029/DPP) and dismissal of the subsequent appeal (PPA-290-2029) in November 2015. The application has revised this previous proposal to address the reasons for refusal.

5. Overall there have been five planning applications for this site, including this one, since 2007. Of these, an application for twelve dwelling houses (16/00207/DPP) was granted subject to conditions and a planning obligation. In response to the interest in the site the planning authority drew up an informal development brief, which was provided as pre-application advice in this case. As this document was intended to provide guidance to assist developers, and was not subject to statutory adoption procedures, it carries little weight as a material consideration.

6. While I am mindful of the previous application and the appeal decision, as well as the extant planning permission, I have considered this case on its own merits.

Character of the area

7. The LDP seeks to protect the existing character of built-up areas from inappropriate development. Policy STRAT2 (Windfall Housing Sites) supports housing development on windfall brownfield sites within built-up areas, provided that it has regard to the character of the area in terms of scale, form, design and materials. This is echoed by the requirements of Policy DEV2 (Protecting Amenity within the Built-Up Area) that development shall not detract materially from the existing character or amenity of built-up residential areas.

8. The appeal site is located within the built-up area of Newtongrange, and comprises brownfield land. The area, largely residential, is characterised by a variety of housing designs and types, including four-in-a-block flats and terraced, semi-detached, and detached dwelling houses, mainly sitting in their own garden grounds. The overall impression is one of spaciousness. Bryans Farmhouse, a traditional two-storey dwelling house, sits in its own garden grounds immediately adjacent to the western boundary of the appeal site. Other buildings in the area comprise a police station, a shop, a fast-food outlet and an industrial estate. Newbattle High School is situated approximately 500 metres to the north. The principle of residential development at this brownfield location, in a predominantly residential area, is not disputed.

9. In terms of mass and bulk, the proposed terraced housing would echo that existing in the area. The depth of the flatted building would accommodate one flat only, apart from the southernmost element, which echoes the depth of other buildings in the locale. In my view the flatted building would constitute a modern interpretation of flatted development, and its massing and bulk would not be out of step with some of the other modern housing in the area.

10. In terms of height, the proposed terraced houses would present as two storeys, with the second floor accommodated within the pitched roof. The proposed flatted building would be two storeys, apart from a three-storey element at its southeast corner. These heights would generally accord with the one- or two-storey heights of existing dwellings in the area. The exception would be at the southeast corner. Although this would introduce a

new height feature into the locale, its extent would be limited, and I agree that this three-storey element would provide an added design emphasis to the building, as set out in the non-statutory development brief.

11. In regard to roof design, LDP policy does not preclude flat roofs. I agree that most of the dwellings in the site's environs have pitched roofs of various styles. At the site inspection, however, I observed some relatively modern buildings with flat roofs in the vicinity of the appeal site: one group of dwellings on Morris Road and other non-residential buildings, i.e. the police station, the school and the buildings within the industrial estate. In this location a flat-roofed development would continue this modern theme and would therefore not be incongruous. I also consider that a pitched roof on the flatted building would increase its height and thus the potential for overshadowing of the neighbouring property.

12. Taking all these things together, although the proposed development would introduce some change into the surrounding area, I do not consider that it would conflict with LDP policies in terms of its effect on the character of the area.

Residential and neighbouring amenity

13. In terms of quality of place, the LDP seeks to ensure that new development meets basic functional requirements such as satisfying privacy, sunlight and daylight levels in order to preserve the quality of life of residents. While Policy DEV2 protects the amenity of built-up residential areas, Policy DEV6 (Layout and Design of New Development) requires good design and a high quality of architecture, in both the overall layout of development proposals and their constituent parts. This includes avoiding overshadowing of buildings; adequate spacing between housing to ensure privacy and amenity; and providing private open space on a scale appropriate to the relevant dwelling type. These policies are intended to be supported by supplementary guidance on quality of place; however, this document has yet to be finalised and, as such, some of the more prescriptive elements of the superseded Local Plan (Policy DP2) are not currently defined in the new policy regime.

14. In terms of separation distance, the southwestern corner of the flatted block would be close to the boundary with the outbuilding of Bryans Farmhouse; however, relying on the council's measurements, this two-storey element would be approximately 15 and 13 metres from the closest windows of Bryans Farmhouse and its conservatory respectively. The three-storey element would be approximately 21 and 19 metres from these facades. In terms of overlooking and privacy, on the site inspection I observed that the ground floor, rear garden and conservatory are mainly screened from views from the appeal site by a combination of walls, fences and outbuildings. The ground levels in the appeal site vary, with a slight uphill slope from west to east and from south to north. The two- and three-storey components of the flatted block would be 6.1 metres and 8.9 metres in height, including this slope, slightly lower and higher than Bryans Farmhouse respectively. Accordingly, these elevations of the flatted block would overlook the habitable rooms on the house's eastern façade. However, no windows are proposed for these elevations, apart from bathroom windows for which opaque glazing is proposed (Drawing 14038/P25); the adjacent bedroom windows would be angled to look away from the farmhouse (Drawing 14038/P23A). Taking these things together, I consider that overlooking of Bryans

Farmhouse would be effectively prevented. I also consider that the separation distances and relative heights would avoid any overbearing impact.

15. In terms of overshadowing, relying on the 'sun on ground indicators' used by the council, the height and separation distance of the southwestern corner of the flatted block would result in some overshadowing of the ground floor of Bryans Farmhouse, on the eastern and southern elevations. This would be limited to the early morning, until 9:30 a.m., after which the outbuilding would be overshadowed until early afternoon (1 p.m.) which would therefore affect the efficiency of the solar panels fixed to the roof. However, I do not consider this overshadowing to be significant enough to dismiss the appeal.

16. The terraced houses would be some 9.5 metres high, taking into account the higher ground level. They would therefore be higher than Bryans Farmhouse as well as being in relatively close proximity. However, as they would effectively be at right angles to the farmhouse, overlooking would be limited to the nearest bathroom windows on the front elevation, for which opaque glazing is proposed. No concerns were expressed in this regard and I consider that, given the proposed mitigation, overlooking would be avoided.

17. I note the concerns expressed regarding the potential effect on the child-minding business run by the owner of Bryans Farmhouse. My understanding is that this business is ancillary to the house. I do not consider that a child-minding business would require a greater level of privacy than the house and, given my conclusions above, do not find that the child-minding business would be significantly affected by overlooking or overshadowing.

Adequacy of garden grounds

18. Policy DEV6 (Layout and Design of New Development) requires that private open space should be provided on a scale appropriate to the relevant dwelling type.

19. The rear gardens for the proposed terraced houses would not be uniform in size, ranging from 60.42 to 69.4 square metres in area. While I acknowledge that larger garden sizes could be desirable, I agree that an increased length would likely result in long and narrow gardens that would be difficult to use and maintain. I therefore consider that the proposed rear gardens would be sufficient to meet the requirements of Policy DEV6.

20. The amenity space for the flatted building would comprise the green space shown on Drawing 14038/P21/C which, taken together, would total 630 square metres in extent, approximately 57 square metres per flat. While I acknowledge that some of this space would not be ideal for amenity use, such as sitting outdoors, overall this allocated space would contribute to the amenity of the residents. I therefore consider that sufficient amenity space would be allocated for the flatted block's residents.

Access arrangements

21. Vehicular access would be via a pend from Morris Road through the flatted block, leading to the car park and terraced houses. According to the written submissions, Morris Road is well used by vehicles and pedestrians, particularly students, and I observed this at the site inspection. I have considered the adequacy of vehicular access arrangements, and the potential risk of collisions between vehicles exiting the appeal site and pedestrians

and/or vehicles using Morris Road, in light of the concerns raised. At this location the building would be set back from the footway by at least two metres and therefore would not impede the visibility of drivers entering or exiting the car park. I also note, from Drawing 14038/P29B, that there would be a wall separating the pedestrian access to the building entrance from the vehicular access: where it would adjoin the footway it would appear to be half a metre in height, the same as the rest of the wall around the site's curtilage. At this height, I consider that visibility at this point would not be obstructed. However, were the wall to be higher than half a metre at this point, it might obstruct visibility of those exiting. I consider that the council is best placed to deal with this issue and secure a wall height appropriate to ensure driver visibility at this point, through a planning condition.

22. The exit would be on an upward slope and concerns have been expressed about drivers accelerating away. However, the local authority had requested a standard vehicle footway and dropped kerb access to the car park, which would give pedestrians priority and reduce vehicle speed, and this is shown on Drawing 14038/P21 C. In addition, the junction of Morris Road and Bryans Road/ Suttieslea Road is now controlled by traffic lights, which would reduce the speed of vehicles on this part of Morris Road. Taking all these together, I do not consider that there would be an increased risk of accident as vehicles enter and exit the appeal site.

23. The local authority has not raised concerns about the potential for the proposed building to encroach on the sightlines of vehicles using the junction of Bryans Road and Morris Road, but concerns have been expressed in the representations. The flatted building would be set back from Bryans Road by more than 13 metres at its closest point, slightly back from the frontage of Bryans Farmhouse. The intervening ground would comprise grassed amenity space, separated from the road by a footway and a brick wall (0.5 metre high) surmounted by railings. Given its setback from Bryans Road, and the open nature of the amenity space, I do not consider that the building would restrict motorists' visibility at this location.

24. Finally, I have considered the potential impact on access by the emergency services. While I understand the concerns raised in the representations, this is a matter for the local authority to consider when reviewing an application for a building warrant. I have therefore not considered it further here.

Other matters

25. The site is considered to contain archaeological remains and concerns have been expressed that appropriate archaeological investigation is required prior to development. In line with Policy ENV25, such investigation can be effected through condition and I have therefore not considered this matter further.

Conditions and Legal Agreement

26. The list of suggested conditions, for use were the appeal to be allowed, was provided by the council prior to the adoption of the Midlothian LDP but taking into account its proposed policies. These conditions reflect those recommended in the report to the planning committee; the appellant has signalled that it is content with them. Given the council's responsibility for the enforcement of these conditions, I have adopted the council's

wording where possible, taking into account the principles set out in Circular 4/1998: The Use of Conditions in Planning Permissions and making amendments to reflect the adoption of the LDP.

27. In particular, I have added wording to Condition 1(iv) to reflect my concerns about the height of the wall that would separate the pedestrian access to the building from the vehicular access at the proposed bend and secure an appropriate design that would ensure driver visibility at this location.

28. I have also added wording to Condition 3 to ensure that specified bedroom windows in the flatted block would be angled to look away from the farmhouse, as shown on Drawing 14038/P23A, to prevent overlooking.

29. The appellant and the council agree that the Heads of Terms for an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 should include provision of affordable housing and contributions towards education provision, Borders Rail Link, children's play provision and community facilities, in line with the requirements of Policies IMP1 and IMP2 of the LDP. I have reviewed the proposed planning obligation using the policy tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements, and consider that the obligation is necessary to make the proposed development acceptable in planning terms; serve a planning purpose; relate to the proposed development; are fair and reasonable in scale, kind and all other respects.

30. Before granting planning permission I therefore consider that a planning obligation covering the topics of affordable housing, education provision, Borders Rail Link, children's play provision and community facilities should be completed. Accordingly, I will defer determination of this appeal for a period of 12 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 12 week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will review the situation.

31. The conditions and advisory notes which I am minded to attach to the planning permission, should it be granted, are shown below.

Overall Conclusion

32. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Amanda Chisholm

Reporter

Proposed Conditions

1. Development shall not begin until details of a scheme of hard and soft landscaping have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i. existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
- ii. existing trees, landscaping features and vegetation to be retained, removed, protected during development and, in the case of damage, restored;
- iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
- iv. location and design of any proposed walls, fences and gates, including those surrounding the bin storage area and that separating the pedestrian access to the flatted block from the vehicular access;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses/buildings on adjoining plots being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place outwith the bird breeding season (March-August);
- vii. drainage details and details of sustainable urban drainage systems to manage water runoff;
- viii. proposed car park configuration and surfacing;
- ix. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- x. details of car park and footpath lighting.

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 (vi). 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 the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV6 and DEV7 of the adopted Midlothian Local Development Plan and national planning guidance and advice.

2. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2 and DEV6 of the adopted Midlothian Local Development Plan and national planning guidance and advice.

3. The windows identified in yellow on approved drawing no. 14038/P25 shall be glazed with obscured glass. The obscured glass shall not be replaced with clear glass unless otherwise agreed in writing by the Planning Authority. The windows in the flatted block

identified on approved drawing no. 14038/P25 shall be directed away from the neighbouring plot as shown on drawing nos. 14038/P22B and 14038/P23A.

Reason: In the interests of protecting the amenity of the neighbouring residential property.

4. Details of the appearance of the proposed cycle store shall be submitted to and approved in writing by the planning authority prior to the commencement of development on site. Details shall include the internal provision of Sheffield storage racks.

Reason: To ensure that adequate cycle parking facilities are provided on site in order to encourage sustainable forms of transport.

5. The buildings permitted shall not be occupied or brought into use until vehicular, cycle and pedestrian access details and routes have been constructed in accordance with plans to be submitted and approved in writing. The plans shall include details of construction, visibility, traffic calming measures, lighting and signage.

Reason: To ensure the future users of the buildings have safe and convenient access to and from the site.

6. Development shall not begin until a scheme of archaeological investigation has been undertaken in accordance with details submitted to and approved in writing by the planning authority.

Reason: To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policies ENV24 and ENV25 of the adopted Midlothian Local Development Plan.

7. No development shall take place on site until the applicants or their successors have submitted a detailed site investigation report, with regards coal mining legacy, following intrusive site investigation works, to the planning authority and that this report is agreed in writing by the planning authority. The site investigation report shall identify any need for remedial works to treat the areas of shallow mine workings and no development shall commence on site until the agreed mitigation measures have been carried out.

Reason: The submitted Coal Mining Risk Assessment (Mineral Stability Desktop Report) identifies that further investigation work is required to be undertaken in order to establish the exact situation regarding coal mining legacy issues on the site. The above details are required in order to ensure that the site can safely be developed.

8. 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 policies in the adopted Midlothian Local Development Plan and national planning guidance and advice.

9. Development shall not begin until details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwelling house. The delivery of high speed fibre broadband shall be implemented as per the approved details.

Reason: To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the adopted Midlothian Local Development Plan.

10. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: To ensure the development accords with the requirements of policy DEV5 of the adopted Midlothian Local Development Plan.

11. 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 adopted Midlothian Local Development Plan.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Schedule of application drawings

14038/P01	-	location plan
14038/P21C	-	site plan
14038/P22B	-	ground floor plan (flats)
14038/P23A	-	first and second floor plan (flats)
14038/P24A	-	terrace house plans
14038/P25	-	elevations (provided by Midlothian Council in response to the appeal)
14038/P26A	-	bicycle store and section through pend
14038/P27B	-	street elevations
14038/P28B	-	street elevations
14038/P29B	-	3D images



PRE - APPLICATION REPORT REGARDING THE STORAGE OF SOIL (TOP SOIL AND SUB SOIL) AT SHAWFAIR SITE F, MONKTONHALL COLLIERY ROAD, DALKEITH (17/00859/PAC)

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a pre-application consultation submitted on behalf of Shawfair LLP regarding storage of soil (top soil and sub soil) at Shawfair Site F, on the north side of Monktonhall Colliery Road, Dalkeith. The site comprises part of the main Shawfair housing site h43 in the Midlothian Local Development Plan 2017 (MLDP).
- 1.2 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.

2 BACKGROUND

- 2.1 Guidance on the role of Councillors in the pre-application process, published by the Commissioner for Ethical Standards in Public Life in Scotland, was reported to the Committee at its meeting of 6 June 2017. The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 A pre-application consultation for storage of soil (top soil and sub soil) at Shawfair Site F, Monktonhall Colliery Road, Dalkeith was submitted on 27 October 2017.
- 2.3 As part of the pre-application consultation, a public event took place at Danderhall Leisure Centre on 23 November 2017, from 4 – 7 pm. On the conclusion of the consultation the applicant could submit a planning application for the proposal. It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance reported to the Committee at its meeting in June 2017) not offer views, as the forum for doing so will be at meetings of the Planning Committee.

- 2.4 Copies of the pre application notices have been sent by the prospective applicant to the local elected members and Danderhall and District Community Council.

3 PLANNING CONSIDERATIONS

- 3.1 In assessing any subsequent planning application the main planning issue to be considered in determining the application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise.
- 3.2 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).
- 3.3 The 8.87ha site is currently in agricultural use.
- 3.4 The site comprises part of the main Shawfair housing site h43 in the MLDP and as such any subsequent application will be subject to assessment against MLDP policies STRAT1: Committed Development; DEV2: Protecting Amenity within the Built-Up Area; and ENV10: Water Environment.
- 3.5 It is anticipated that the storage of soil is temporary and in connection with the development of Shawfair, material considerations will include; the length of time the soil is to be stored, the nature and significance of any impacts on the amenity of the area, road safety and traffic flow, and the water environment.
- 3.6 If an application is submitted there will be a presumption in favour of the storage of soil on a temporary basis to facilitate the Shawfair development.

4 PROCEDURES

- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.
- 4.3 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures advises that Councillors are expected to approach their decision-making with an open mind in that they must have regard to all material considerations and be prepared to change

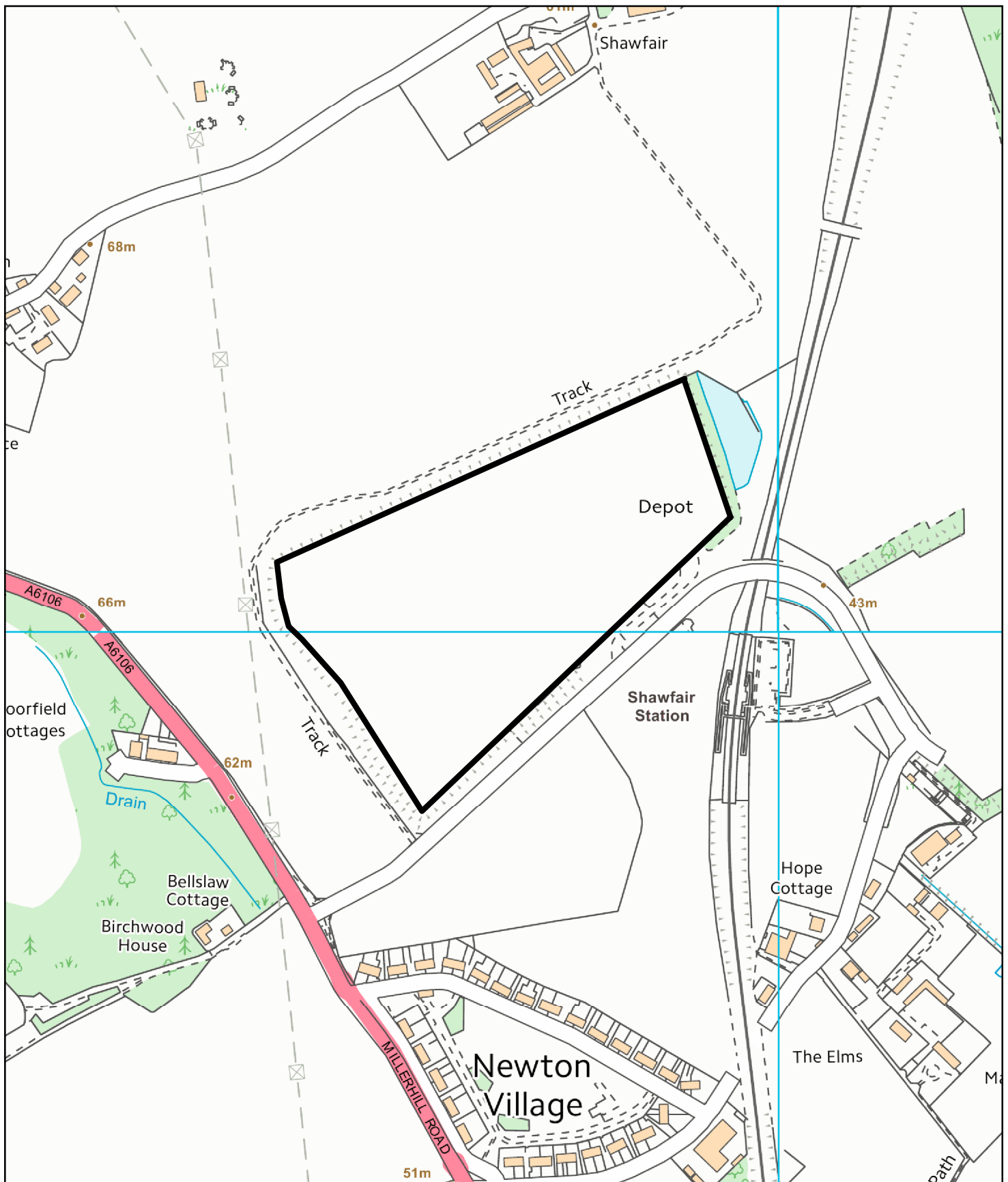
their views which they are minded towards if persuaded that they should.

5 RECOMMENDATION

- 5.1 It is recommended that the Committee notes:
- 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.

Ian Johnson
Head of Communities and Economy

Date:	8 February 2018
Contact Person:	Brian Forsyth, Planning Officer
Tel No:	0131 271 3473



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

Proposal of application for storage of soil (top soil and sub soil)
at Shawfair Site F, Monktonhall Colliery Road, Dalkeith

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**APPLICATION FOR PLANNING PERMISSION 17/00951/PPP FOR
PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF RETAIL
UNIT AT SOUTRA MAINS FARM, BLACKSHIELDS, FALA, PATHHEAD**

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 This application is for planning permission in principle for the erection of a retail unit at Soutra Mains Farm, Pathhead. There have been no representations. Consultation responses from Transport Scotland, Scottish Water and the Council's Policy and Road Safety Manager.**
- 1.2 The relevant development plan policies are policies 3 and 8 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and Policies TRC2, RD1, ENV6 and ENV7 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.3 The planning history of the application site is also a significant material consideration as retail development at this rural location has been previously refused by the Council's Local Review Body, the Council's Planning Committee and by a Reporter appointed by the Scottish Ministers, who dismissed an appeal seeking planning permission for retail units on the site.**
- 1.4 Planning permission in principle for an identical proposal was refused by the Committee at its meeting of 14 November 2017. There are no material changes in the development proposal that would warrant a departure from the MLDP or from the Committee's previous assessment of the application.**
- 1.5 The recommendation is to refuse planning permission.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises a rectangular area of agricultural land at Soutra Mains Farm, measuring 0.44 hectares, which currently accommodates a large agricultural shed.**
- 2.2 The collection of buildings at Soutra Mains Farm includes four holiday cottages, a single storey cafe building, two farm houses and**

agricultural buildings. The holiday cottages and cafe are relatively recent additions (2014) to the group.

- 2.3 Access and egress at the application site is taken via the existing new vehicle access road taken from the A68. This access was formed as part of the holiday cottage and café development.

3 PROPOSAL

- 3.1 The applicant is seeking planning permission in principle for the erection of a retail unit. An indicative design and layout has been submitted alongside the application. It is noted within the applicant's supporting information that an internal floor space of some 1,800 square metres would be created within the application site.
- 3.2 The indicative design of the retail unit shows an open plan interchangeable retail space that can be utilised by various small businesses. The proposal comprises a mostly single storey building arranged around a courtyard in the style of an agricultural steading.
- 3.3 The applicant has submitted the following documents in support of the application:
- Landscape and Visual Appraisal;
 - Transportation Assessment;
 - Planning and Retail Impact Assessment;
 - Ecological/Habitat Survey; and
 - Indicative Layout and Design Drawings.
- 3.4 The applicant has submitted a petition in support of the application with 262 signatures collected from customers of the cafe. A short covering statement was noted at the top of the petition stating that the Russell family (the applicant) would like support with their current planning application. The planning reference, site address and a short description of the proposal were also noted.

4 BACKGROUND

- 4.1 Outline planning permission, 08/00159/OUT, for the erection of holiday cottages, coffee shop, parking area and new access road was approved in May 2010. Permission was granted subject to a number of conditions, including a limit on the number of holiday cottages to four. The coffee shop was allowed as being ancillary to the main use of the site as holiday accommodation.
- 4.2 A detailed planning application 10/00538/DPP for the erection of a coffee/gift shop and four holiday lodges was refused in December 2010 for the following reasons:

1. It has not been demonstrated that the proposed retail use has a requirement for a countryside location and it is not of a scale

appropriate to its position in the countryside and area of great landscape value; for these reasons the proposal does not comply with the terms of policy RP1 of the Midlothian Local Plan.

2. The proposal does not comply with the terms of policy ECON8 of the Midlothian Local Plan as it primarily comprises a retail development of an inappropriate scale in the countryside.

3. The scale, form and design of the proposed development will have an adverse impact on the character and appearance of the landscape, which forms part of the area of great landscape value, and which convey a level of development inappropriate to the confines of this site; and is therefore contrary to the terms of policies RP6 and RP7 of the Midlothian Local Plan.

4. The proposed tourist accommodation dwellings have not been designed to enhance the area of great landscape value and results in buildings that are out of character with the rural setting ;and as such do not comply with the terms of policies DP1 and ECON7 of the Midlothian Local Plan.

5. The increased level of traffic generated by the retail use would lead to an increased level of traffic leaving and entering the trunk road which may be detrimental to the safety of other road users.

- 4.3 Application 11/00199/MSD to discharge the conditions of the original 2008 application was approved. However, it was only possible to discharge some of the conditions as information had not been submitted in connection with some of the outstanding conditions.
- 4.4 Application 12/00067/MSD was submitted to address the remaining outstanding matters relating to the 2008 and 2011 applications. However, insufficient information was submitted and a further grant of permission was issued, but not all the conditions were discharged.
- 4.5 Application 13/00274/MSD was submitted in order to discharge the outstanding matters from the 2008, 2011 and 2012 applications. This application was submitted with the same information as had been submitted previously. The planning authority refused the planning application due to not being able to assess the proposal given the lack of information submitted by the applicant.
- 4.6 Planning application 13/00370/DPP for the erection of four retail units (part retrospective) was refused in September 2013 for the following reasons:

1. The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the Edinburgh and the Lothians

Structure Plan (ELSP) policy ENV3 and adopted Midlothian Local Plan (MLP) policies RP1 and ECON8.

2. As the application site is in the countryside it is not in one of the locations specified in the ELSP policy RET1 - Sequential approach to the location of retail and commercial leisure development, as being potentially suitable for retail developments. Accordingly, the proposed development is contrary to ELSP policy RET1 and the adopted MLP policy SHOP5.

3. It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.

4. It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.

- 4.7 The applicant appealed the refusal of planning application 13/00370/DPP to the Local Review Body (LRB). The LRB dismissed the review request and upheld the decision to refuse planning permission on the following grounds:

1. The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Plan (2008) policies RP1, SHOP5 and ECON8;

2. It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead; and

3. It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.

- 4.8 Planning application 14/00293/DPP for the erection of four retail units (part retrospective) was refused by Midlothian Council's Planning Committee in September 2014 for the following reasons:

1. The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Plan (2008) policies RP1, SHOP5 and ECON8.

2. As the application site is in a remote countryside location it is not in one of the acceptable types of locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy. As no sequential test has been submitted for assessment it has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Strategic Development Plan and policy SHOP5 of the adopted Midlothian Local Plan.

3. It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.

4. It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.

- 4.9 This applicant appealed against the Planning Committee's decision to refuse planning application 14/00293/DPP. The application was also refused at appeal by the Reporter on the 15 December 2014.
- 4.10 Application 14/00542/MSD to discharge the conditions of the original 2008 application was approved in September 2014.
- 4.11 Pre-application advice was provided in December 2016 with regards to a development proposal seeking to erect a new building to incorporate a visitor centre comprising open retail space/retail units and a tourism facility. Overall, it was advised that it was unlikely that the development proposal would be supported.
- 4.12 Planning application 17/00641/PPP for planning permission in principle for the erection of retail unit was refused by the Committee at its meeting of 14 November 2017 for the following reasons:

1. The proposed retail development would comprise of a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Development Plan (2017) policies TRC2 and RD1.

2. As the application site is in a remote countryside location it is not in one of the acceptable locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy (SPP). As no sequential test has been submitted for assessment it has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other

more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Strategic Development Plan and policy TRC2 of the adopted Midlothian Local Development Plan (2017).

3. It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.

4. It has not been demonstrated to the satisfaction of the Planning Authority that the required visibility splays (215 metres in each direction) can be achieved.

5. The indicative information submitted shows a building which, on account of its scale, form, design and materials will not be compatible to its location or to existing nearby buildings.

- 4.13 The current application has been called to Planning Committee for consideration by Councillor Smaill.

5 CONSULTATIONS

- 5.1 **Transport Scotland** does not object to the planning application but requests that a condition be imposed seeking adequate visibility splays. This condition is required in order to maintain highway safety. It is noted that Transport Scotland reduced the visibility splay requirement from 215 metres, as stated in their consultation response to the previous planning application 17/00641/PPP, to 193 metres in each direction.
- 5.2 **Scottish Water** does not object to the development proposal. It was noted that the applicant should be aware that this does not confirm that the proposed development can currently be serviced.
- 5.3 The Council's **Policy and Road Safety Manager** does not object to the proposed development.

6 REPRESENTATIONS

- 6.1 No representations were 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 2017 (MLDP), adopted in November 2017. The following policies are relevant to the proposal:

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

- 7.2 The Strategic Development Plan sets out some key aims, three of which are:
- Integrate land use and sustainable modes of transport, reduce the need to travel and cut carbon emissions by steering new development to the most sustainable locations;
 - Conserve and enhance the natural and built environment; and
 - Promote the development of urban brownfield land for appropriate uses.
- 7.3 **Policy 3** (Town Centres and Retail) aims to promote a sequential approach to the selection of locations for retail and commercial leisure proposals.
- 7.4 **Policy 8** (Transportation) seeks to ensure that new development minimises the generation of additional car traffic.

Midlothian Local Development Plan (MLDP)

- 7.5 Policy **TRC2: Location of New Retail and Commercial Leisure Facilities** is relevant to the siting of new retail and commercial leisure facilities. The policy and the role of centres are defined in the network of centres which give support to development in town centres, to Straiton where alternatives are not available in a town centre, and to a new out of centre location that is supported in the southern A7 corridor (Redheugh). Policy TCR2 also supports retail development (up to 1000sqm gross floor area) at local centres (these are identified in the network of centres). The policy also allows for new local centres to come forward serving housing developments where these are not served adequately by existing centres. There is no support for retail development in the countryside.
- 7.6 Policy **RD1: Development in the Countryside** sets out where appropriate development would be acceptable in the countryside subject to defined criteria. The policy states that proposals will not be permissible if they are of a primarily retail nature.
- 7.7 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.
- 7.8 Policy **ENV7: Landscape Character** which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required.

7.9 **The Scottish Planning Policy (SPP)** promotes a town centre first principle, which considers the health and vibrancy of town centres. The SPP promotes the use of the sequential town centre first approach, outlining the following order of preference for commercial development proposals:

- town centre (including local centres);
- edge of town centre;
- other commercial centres identified in the development plan; and
- out-of-centre locations that are, or can be made easily accessible by a choice of transport modes.

8 PLANNING ISSUES

8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies, unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations. A significant material consideration in this case is the planning history of the site, particularly as the Council has consistently resisted the introduction of retail based development in this rural location. On the 14 November 2017 the Committee refused planning permission in principle for an identical development comprising the erection of a retail unit; there are no material changes between the previous and current development proposals. In addition, the Council's Local Review Body's previous decision to uphold the decision to refuse planning permission for retail units in this location in 2013 is relevant. Furthermore, the Planning Committee have refused permission for retail development on this site and subsequently a Reporter appointed by the Scottish Ministers dismissed in 2014 an appeal seeking permission for retail units in this location.

The Principle of Development

- 8.2 The application site is located within a designated area of countryside and a Special Landscape Area (SLA). The relevant policies of the development plan state that rural developments must demonstrate a requirement for a countryside location and take account of accessibility to public transport and services. In addition, development in the countryside must have an operational requirement for such a location that cannot be met on a site within an urban area or land allocated for that purpose, and be compatible with the rural character of the area. The proposal neither requires a countryside location nor is compatible with the rural character of the area.
- 8.3 MLDP policy RD1 adds an additional restriction where proposals will not be permissible where they are of a primarily retail nature. There is no policy support for retail development within the countryside.

- 8.4 A Planning and Retail Impact Assessment accompanied the application detailing the operational requirement for the rural countryside location; the applicant advised that the basis of the proposal is centred upon farm diversification by branching into retail and tourism. In relation to the information submitted by the applicant, it is noted on the indicative floor plan that the retail unit will be open plan and may comprise a delicatessen, ice cream parlour, bakery, butchers, green grocer, newsagent/gift shop, clothing, gifts and crafts and a tourist information area. The indicative retail uses are those commonly found in town centres or neighbourhood centres and as such are not appropriate to a rural countryside location.
- 8.5 Scottish Government Policy and the Strategic Development Plan seeks a sequential approach to the siting of new retail facilities which means that they should be located in accordance with the following priorities, depending on the availability of suitable opportunities within the expected catchment area of the proposed development: a) within a town centre; failing that b) on the edge of a town centre, or significantly close to form an effective extension to the centre; failing which c); within another shopping location of an appropriate size, character and function, including major shopping centres; failing which d) on the edge of such established shopping locations referred to in c), or sufficiently close to form an effective extension; failing which e) elsewhere within an existing or planned urban area defined in the local plan. The application site is outwith the sequential hierarchy and therefore has no support by national policy or development plan policy.
- 8.6 Generally, it would be expected that retail activities are sited within the town centres in Midlothian. Town centres are the sustainable option for retail activities given that they have the best access to public transport and greater footfall. Following the sequential approach ensures that development is guided to appropriate, sustainable and viable sites which support the community and economic growth in a logical and sustainable way. Retail developments, like the proposal, in rural locations undermine the sense of community and economic benefits which are delivered by vibrant town and neighbourhood centres.
- 8.7 Within the supporting Planning and Retail Impact Assessment it is noted that the town centre of Dalkeith had four vacant units within the town centre at the time the survey was undertaken. No information was provided with regards to available units in Pathhead. It was also noted that no suitable sites at the edge of the centre of Dalkeith were available. Overall, it was concluded by the applicant that there are no appropriate sites/units of a scale that could accommodate the mix of uses proposed at Soutra. It is unknown if the eight individual businesses have sought premises individually. The proposed retail uses detailed within the indicative floor plan would contribute towards the vitality of any town centre.

- 8.8 The application site is not within a town centre, Straiton or at the new retail opportunity location in the Redheugh area. Soutra Farm is not one of the Council's identified local centres, and nor does the site meet the criteria to be identified as a new local centre. The siting of the proposed retail unit fails the sequential test.
- 8.9 In relation to the information submitted by the applicant, it was noted that the target market for the proposed retail unit would primarily be tourists, visitors and residents that would be more inclined to stop for a leisurely visit and as a consequence this would not impact the retail offer in Pathhead. As previously noted, the uses detailed within the indicative floor plan would contribute towards the vitality of any town centre and as such the applicant's statement is refuted.
- 8.10 The footprint of the proposed development is less than the scale at which Midlothian Council would normally require Retail Impact Assessment (RIA) to be carried out, although the MLDP does allow for a RIA to be undertaken for smaller proposals (para. 4.6.5). In the circumstances, the Planning Authority considers that a RIA is not necessary. The purpose of a RIA is to ensure that proposals conforming with the sequential approach meet qualitative and quantitative deficiencies and can be implemented without undermining town centres. A RIA could not be used as a justification to over-ride the need to apply the sequential approach.
- 8.11 Within the applicant's supporting information, it is noted that there is a demand for the proposed development from the local community and businesses. It is stated that eight local businesses have committed to the applicant in terms of wishing to rent space within the new unit, these businesses employ 8-15 people. The applicant estimates that the development would result in a total of 25 permanent jobs at the site. However, there is no evidence submitted to support these statements. No information has been provided regarding the exact location of the existing businesses seeking to move to the application site; their current employment status; the viability of the existing home businesses; whether the businesses have sought out alternative premises in local town centres; and whether these business people have considered the long term viability of operating a retail business in such a rural location. Furthermore it is unlikely that the uses identified in paragraph 8.4 are currently operating from existing residential properties.
- 8.12 The footprint of the existing café is approximately 200 square metres which is of a complementary scale to the existing holiday lets and farm. The indicative internal floor area of the retail unit is detailed to be 1800 square metre which is approximately four times the size of the existing agricultural shed which the retail unit looks to replace. The proposed retail unit is of an excessive scale that would dominate the site, existing café and tourist accommodation.

- 8.13 It has not been demonstrated to the satisfaction of the planning authority that there is an operational requirement for the retail development and it is unlikely that any form of retail development could be successfully argued to have an operational requirement to be located at Soutra, other than some form of agricultural-related sales of a scale compatible with the farm. There is no operational requirement for a retail unit of this scale to be located at Soutra. The confirmed national, regional and local policy position is that these types of retail units should be located within existing retail centres, helping deliver sustainable economic development and contribute to existing town centre and retail centre viability.
- 8.14 The policy position is predicated on the assessment that the type of development proposed in this application, if supported, could readily undermine the viability and vitality of Midlothian's town centres to the detriment of existing business and jobs. This type and scale of retail development, which has no operational requirement for being in the countryside, attracts typical town centre uses away from the town centres in to areas where operating costs, such as rent, can often be lower. This also reduces the attractiveness to shoppers of existing town centres.
- 8.15 The application site does not benefit from good public transport links. In addition, the proposed development will potentially generate significantly increased levels of journeys by car. This is an unsustainable form of development and is contrary to the aims of sustainable development as pursued by the Scottish Government and Midlothian Council, through planning policy.
- 8.16 The proposed development has not demonstrated, to the satisfaction of the Planning Authority, that there is a requirement for a countryside location for this development. Accordingly, the application proposal is contrary to policy RP1 of the MLDP.
- 8.17 Policy RD1 of the MLDP states that development will not be approved in rural areas where it is primarily of a retail nature. This application relates solely to the erection of a large retail unit and is, therefore, not in compliance with policy RD1 of the MLDP.
- 8.18 Planning policies do support some forms of farm related diversification, including the possibility of a farm shop selling goods grown or produced on the farm. However, it is not evident that a retail development of this scale would be viable, nor has it been demonstrated that the proposed development in this case constitutes farm related diversification. The proposal is a speculative retail proposal in the countryside, for which there is no policy support and a planning history consistently resisting such a development.
- 8.19 As noted in paragraph 4.9 above a Scottish Government Reporter dismissed an appeal for the erection of four retail units of a smaller

scale than the current proposal at the application site in 2014. The three main issues previously considered by the Reporter with regards to the earlier retail proposal were in relation to the effect of the proposed shops on the vitality and viability of nearby town centres; the operational requirement of the proposed uses to be in location in the countryside by means of the sequential approach and the impact upon road safety.

- 8.20 The applicant has not addressed these reasons for a previous application being refused and dismissed at appeal.

Transport

- 8.21 A supporting transportation assessment was submitted along with the application which provided an assessment of the development proposal in terms of road safety. The supporting transportation assessment noted that the appropriate junction visibility splay, for the speeds past the site, is 160 metres for traffic going south, and 210 metres for traffic going north.
- 8.22 Transport Scotland have reviewed the transportation assessment and reduced the visibility splay requirement compared to their requirement on the previous application (17/00641/PPP). Transport Scotland has reduced the requirement for sightlines to 193 metres in each direction.
- 8.23 The applicant has not demonstrated that visibility splays of this distance can be achieved. It is noted that the majority of the surrounding land is within the ownership of the applicant and that the required visibility splays may be achieved. However, to achieve the required visibility splays, will require the loss of existing established boundary treatments adjacent to the main A68 including tree planting and a boundary wall which is likely to have an adverse visual impact upon the character and appearance of the landscape and may not be considered to be acceptable.

Indicative drawings

- 8.24 The application was accompanied with an indicative layout and design for the proposed retail unit which is of a large and imposing scale in comparison to the farmhouse, dwelling, holiday cottages and cafe. The proposed design is likely to lead to visual confusion due to the lack of cultural or historical association to Soutra Farm. The design approach appears to give the impression of a steading which would be more appropriate to a larger, grand country house rather than the more modest farmhouse at Soutra.
- 8.25 The footprint of the existing café is approximately 200 square metres. The indicative footprint of the retail unit is detailed to be 1800 square metre which is approximately four times the size of the existing

agricultural shed which the retail unit seeks to replace. The proposed retail unit is of an excessive scale which will visually dominate the site.

- 8.26 Supporting statements were included with the application which included visualisations and design rationale. The existing agricultural shed, which is sought to be replaced, clearly reads as part of Soutra Mains Farm which contributes towards the agricultural appearance of the site. The proposed retail development fails to visually connect to the existing buildings through its form, scale, design or siting.
- 8.27 Furthermore, the indicative design and scale of the development proposal and associated infrastructure is likely to undermine views of the Lammermuir scarp from the north and north-west as well as views from the A68 travelling north at the gateway to Midlothian.
- 8.28 Within the design and access statement comparisons have been made to Mortonhall Stable Block, Newhailes Block conversion and Castlemilk Stable Block; all of which are of a grander scale associated with estates. It remains unclear what the design rationale is for the choice of materials, including the horizontal split on the end features on the front elevation. In this area these types of buildings are almost exclusively built and finished with natural stone. The pitches on some of the roofs look very shallow, perhaps incapable of accommodating a traditional roofing material.

Biodiversity

- 8.29 The submitted ecology report noted that there is no sign of any protected species being present on site. Badger and Otter have been recorded nearby but there is no evidence of them on site. There is also no evidence of any bat species roosting on site. The design of the current building offers negligible bat roosting opportunities so there is no reason to consider bat surveys. There are no concerns with regards to protected species in relation to the development proposal.

Conclusion

- 8.30 The policies of the development plan are intended to be applied consistently in order to give applicants and developers certainty with regards to the potential outcome of planning proposals in principle. Departing from the adopted policies undermines the effective implementation of the policies and wider aims of the Council as local planning authority as established in its adopted development plan.
- 8.31 While the Planning Authority supports businesses in Midlothian, development needs to be sited in appropriate locations and comply with the policies of the development plan. This proposed development does not comply with the aims of the Council, most particularly in supporting and promoting viable and economically healthy town centres, as expressed in the MLDP. Furthermore, there is insufficient

evidence to suggest that the potential economic benefit as a result of the development should be considered a significant material consideration which would outweigh the policy position.

9 RECOMMENDATION

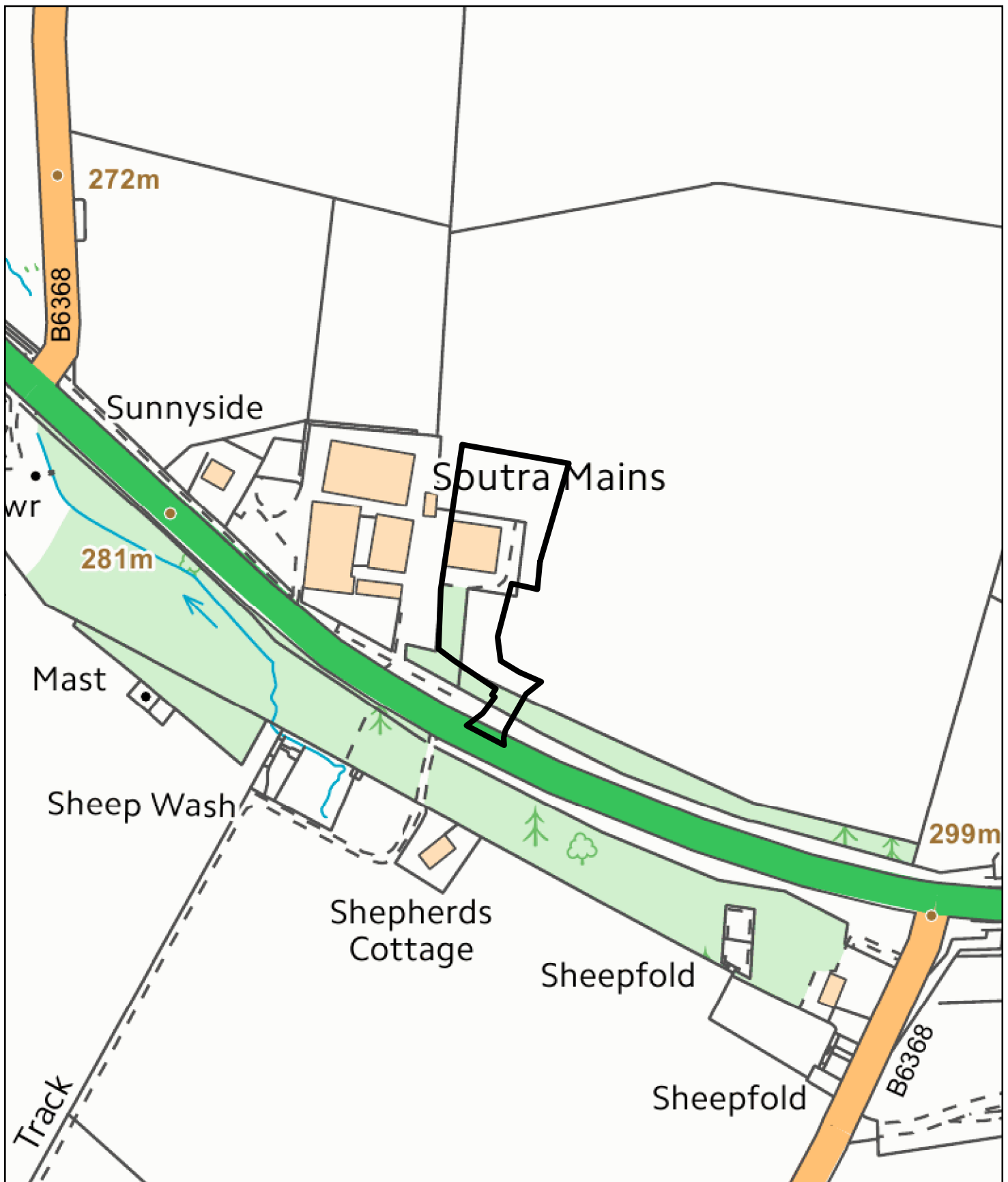
9.1 That planning permission be refused for the following reasons:

1. *The proposed retail development would comprise of a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to policies TRC2 and RD1 of the Midlothian Local Development Plan 2017.*
2. *As the application site is in a remote countryside location it is not in one of the acceptable locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy (SPP). It has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Edinburgh and South East Scotland Strategic Development Plan 2013 and policy TRC2 of the Midlothian Local Development Plan 2017.*
3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*
4. *It has not been demonstrated to the satisfaction of the Planning Authority that the required visibility splays (193 metres in each direction) can be achieved. Furthermore, if the visibility can be achieved it has not been demonstrated to the satisfaction of the Planning Authority that it can be done so without a detrimental impact on the landscape and the character of the area.*
5. *The indicative information submitted shows a building which, on account of its scale, form, design and materials will not be compatible to its location or to existing nearby buildings.*

Ian Johnson
Head of Communities and Economy

Date: 8 February 2018

Application No: 17/00951/PPP
Applicant: Mr George Russell (Jr)
Agent: Ms Suzanne McIntosh
Validation Date: 06 December 2017
Contact Person: Whitney Lindsay
Tel No: 0131 271 3315
Background Papers: 08/00159/OUT, 10/00538/DPP, 11/00199/MSC,
12/00067/MSC, 13/00274/MSC, 13/00370/DPP,
14/00293/DPP, 14/00542/MSC and
17/00641/PPP.



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

Application for planning permission in principle for the erection of
retail unit at Soutra Mains Farm Blackshiels Pathhead

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File No. 17/00951/PPP

Scale: 1:2,500
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APPLICATION FOR PLANNING PERMISSION 17/00944/DPP, ERECTION OF TWO STOREY DRIVE THROUGH RESTAURANT; ALTERATIONS TO EXISTING CAR PARK AND ACCESS ROADS AT LAND AT TESCO CAR PARK, HARDENGREEN, DALKEITH

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the erection of a two storey drive through restaurant and associated alterations to an existing supermarket car park and access roads. The application site is an area of the existing car park at Tesco, Hardengreen, Dalkeith. There has been 40 representations and consultation responses from the Coal Authority, the Council's Environmental Health Manager, the Council's Policy and Road Safety Manager, the Eskbank and Newbattle Community Council and the Bonnyrigg and Lasswade Community Council. The relevant development plan policies are DEV2, DEV5, DEV6, DEV7, TRAN1, TRAN2 TRAN3, TCR1, TCR2 and IMP2 of the Midlothian Local Development Plan 2017. The recommendation is to grant planning permission subject to conditions and securing developer contributions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The site is an area of car park that serves the existing Tesco supermarket at Hardengreen. The site is situated approximately 100 metres south west of the supermarket building. The site is currently occupied by 58 car parking spaces, of which 2 are currently being used to house recycling facilities; a small building, housing the store's Click and Collect operations, with 7 associated parking spaces; and an area of concrete hardstanding that was formerly occupied by a recycling machine and now houses recycling skips/bin.
- 2.2** The site area is 2,236 square metres (0.22 hectares). The site is relatively flat.
- 2.3** The site is bounded to the north east by a further area of car parking, to the south east by the internal access road that provides access to the supermarket for buses and delivery vehicles; beyond the access road is a vehicle coachworks business. The site is bounded to the south west by the same access road; beyond the access road is a vacant plot

of land that has been the subject of planning applications for retail development. To the north west the site is bounded by a roundabout that forms part of the internal road network of the supermarket and the main access road to the supermarket car park.

- 2.4 Most of the site is situated within the Eskbank and Newbattle Community Council area. However a small portion of the application site at the south western edge is situated within Bonnyrigg and Lasswade Community Council area.

3 PROPOSAL

- 3.1 The proposal relates to the erection of a two storey drive through restaurant. The applicant is McDonald's Restaurants. The ground floor of the building will house the customer counters, the kitchen and storage space. The upper floor will house the dining space and service facilities for customers and staff; the supporting transport statement states that the restaurant will have 187 seats. Various plant such ventilation equipment and solar panels will be sited on the roof of the building; the plant will be enclosed by a screen to ensure that it is not visible from ground level.
- 3.2 The main car parking and circulation space will be to the south east of the building. The restaurant will have access to 33 parking spaces; of which 19 will be within the curtilage of the restaurant and 14 will be shared with Tesco. The dedicated spaces will include 2 disabled spaces, 2 electric vehicle charging spaces and 1 reserve space for drive through customers. The drive through lane will be accessed through the car park and will pass round the south western and north western edges of the building.
- 3.3 The building will be predominantly two storeys in height with a single storey element attached to the south west elevation of the building and an enclosed open corral area attached to the south west elevation of the single storey element. The building will be oriented with its principal elevation facing south eastwards. The principal elevation will have a total width of 31.1 metres including the single storey element and corral area. The building will be 12.6 metres deep and 8.5 meters tall to the top of the plant enclosure screen that will be situated on the roof of the building.
- 3.4 The building will have a contemporary design with a flat roof, large areas of full height glazing and a modern palette of finish materials. The walls will be clad with a mix of laminate and ceramic cladding panels using predominantly grey stone effect or walnut coloured timber effect. A vertical feature is created at two corners of the building via the use of timber effect aluminium battens. The colours of the building will be a mix of grey and timber effect.

- 3.5 The application is accompanied by:
- a planning statement;
 - a design and access statement;
 - a ground stability report;
 - a noise report;
 - a transport statement; and
 - a travel plan.

4 BACKGROUND

- 4.1 In 1995 outline planning permission was granted for a private housing development of 45 houses and a superstore and associated parking spaces at Hardengreen (application reference 237/92). The planning permission was granted by the Secretary of State following an inquiry which considered four outline applications relating to superstores; three of the applications were for sites close to the A7 and the fourth was for a site in Dalkeith. In 1996 outline consent was granted for the erection of a petrol filling station and associated services (application reference 342/92).
- 4.2 Planning permission was granted in 1997 for the erection of a foodstore and petrol filling station with associated car park, service yard, ancillary plant and equipment (application reference 115/97). This permission was subsequently amended via application 0071/98 which increased the area of the foodstore by 1519 sqm to 5964 sqm.
- 4.3 In addition to the current planning application the applicant has also submitted four applications for Express Advertisement Consent (application references 17/00947/ADV, 17/00948/ADV, 17/00949/ADV and 17/00950/ADV) which relate to signage required in association with or as a consequence of the current planning application. These applications do not form of this planning application. An extension has been agreed with the applicant's agent to allow time for the planning application to be considered by the Committee before any decisions are issued in relation to the advert applications.
- 4.4 The vacant site to the south west of the application site has been the subject of various applications. Outline planning permission was previously granted at appeal for a licensed restaurant, bar and indoor play area (application reference 00/00516/OUT). This development was not implemented, and the planning permission has since expired.
- 4.5 A subsequent detailed planning application for the erection of a restaurant, bar and children's play area with associated access, car parking and landscaping (application reference 01/00169/FUL) was refused and then upheld at appeal, but again was not implemented and this permission has also expired.
- 4.6 A planning application for the erection of a residential care home, including formation of vehicle access and associated car parking,

(application reference 04/00531/FUL) was approved in 2005 and was also not implemented and has since expired.

- 4.7 In late 2015, a planning application for the erection of retail unit and associated garden centre, formation of access and car parking (application reference 15/00921/DPP) was refused as the Council considered that the site was not acceptable for retail development as it did not conform to the criteria specified in the sequential town centre first approach as detailed in Scottish Planning Policy or the then adopted local plan (Midlothian Local Plan 2008). No sequential test had been submitted, nor was it demonstrated to the satisfaction of the planning authority that the site would be appropriate for the proposed use and that there are no other more sustainable sites which could accommodate the development more appropriately. It had also not been adequately demonstrated that the unit would not undermine the vitality and viability of Midlothian town centres or that there is a qualitative or quantitative deficiency which would be addressed through the approval of the application. In addition, the site was not considered to be in a neighbourhood shopping centre, and was therefore contrary to the then adopted local plan. There was also a concern that the size, design, materials and position of the building, and the lack of opportunities for landscaping of the development, would have a significant detrimental impact on the visual amenity of the area.
- 4.8 In 2016 a revised application for the erection of retail unit, formation of access and car parking (application reference 16/00618/DPP) was refused by the Committee. The reasons for refusal were similar to the 2015 application. The applicant appealed the decision and the appeal was dismissed.
- 4.9 The current application has been called to committee by Councillor Smaill on matters relating to effects on residential areas and traffic capacity.

5 CONSULTATIONS

- 5.1 The **Coal Authority** agrees with the findings of the ground stability report that probable shallow mine workings potentially pose a risk to the stability of the proposed development and that therefore a scheme of investigations is necessary to determine the location of any mine workings. The Coal Authority has no objection to the proposal subject to a condition being used to secure a scheme of investigations and, if necessary, a scheme of remediation prior to further development being carried out.
- 5.2 The Council's **Environmental Health Manager** has no objection to the proposal subject to any consent including conditions relating to the noise of plant, machinery and equipment; noise from the speaker system associated with the restaurant's drive through facilities; details of the ventilation system being supplied; and a scheme of

investigations and, if necessary, a scheme of remediation to deal with any possible ground contamination.

- 5.3 The Council's **Policy and Road Safety Manager** has no objection to the proposal.
- 5.4 **Eskbank and Newbattle Community Council** objects to the proposal on the following grounds:
- additional time should be allowed for consultation with the community for applications of this type and that wider neighbour notification should be carried out;
 - concern about the possible increase in traffic using Eskbank Roundabout and the resulting congestion. The accuracy of the information provided in the applicant's transport statement is queried and it is suggested that the Council should commission independent analysis of such submissions in the future. It is noted that when the initial location for Eskbank station was identified Tesco raised concerns regarding the increase in traffic and the impact on Eskbank Roundabout. It is also noted that it is difficult for pedestrians to cross the access road to Tesco at present and that more traffic will make this harder;
 - the remaining car parking spaces will not be sufficient to accommodate the demand for spaces at Tesco and questions whether the Council has been rigorous enough in assessing the information provided;
 - the design is not of a high enough standard in particular the colour scheme;
 - the Community Council hopes that McDonald's will contribute towards litter picking in the area and that this can be secured either via condition or developer contributions;
 - the Council should have been more rigorous in assessing the information provided by the applicant when calculating developer contributions; and
 - the proposal will have a detrimental impact on businesses within Dalkeith town centre and that the proposal is contrary to retail policies contained in the Midlothian Local Development Plan 2017. Reference is made to the Reporter's decision on application 16/00618/DPP
- 5.5 **Bonnyrigg and Lasswade Community Council** offered neutral comments on the application. The Community Council acknowledges that the proposal will provide employment but is concerned that the restaurant will cause anti-social behaviour and result in an increase in littering. It is recommended that conditions be attached relating to litter and noise. It is suggested that McDonald's should contribute to Community Action Teams.

6 REPRESENTATIONS

- 6.1 There have been 41 representations received, of which 39 are objections and two are in support. All representations can be viewed fully online. The reasons for objecting are as follows:
- the existing Tesco shop generates litter and the proposed development will add to this;
 - the proposed development will cause congestion on Eskbank Roundabout and on the access roads that serve the existing Tesco car park and filling station;
 - the proposed restaurant will attract anti-social behaviour;
 - the proposed development will encourage unhealthy eating contrary to wider Scottish Government targets and initiatives;
 - there are existing McDonald's drive throughs at Straiton and Fort Kinnaird which is adequate provision for the area;
 - the increase in traffic will make it harder for pedestrians to cross roads in the surrounding area;
 - the proposal will undermine existing businesses within Dalkeith town centre;
 - lack of neighbour notification;
 - additional noise;
 - no demonstration of local need;
 - the impact on parking in Hardengreen Lane;
 - loss of community identity due to the fact that the application is a multi-national company;
 - policy DP7 of the Midlothian Local Plan 2008 has not been carried over to the Midlothian Local Development Plan 2017;
 - unattractive signage;
 - 24 hour operation should not be allowed;
 - loss of parking spaces within Tesco car park;
 - impact on the character and appearance of Eskbank;
 - failure to comply with national targets on waste reduction; and
 - queries relating to the accuracy of the supporting information provided by the applicant.
- 6.2 The two representations in support of the proposal did not provide any reasons for supporting the application.

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. The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **DEV2: Development 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.
- 7.3 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.4 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.
- 7.5 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.
- 7.6 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.7 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A7 urbanisation.
- 7.8 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.
- 7.9 Policy **TCR1: Town Centres** supports proposals for retail, commercial leisure development or other uses which will attract significant numbers of people in Midlothian's town centres, provided their scale and function is consistent with the town centre's role. In support of this policy the Council will prepare supplementary guidance on food and drink and other non-retail uses in town centres; this guidance will also include guidance in respect of food and drink and hot food takeaways outwith town centres. The guidance is currently being prepared by the Council.
- 7.10 Policy **TCR2: Location of New Retail and Commercial Leisure Facilities** states that the Council will apply a sequential town centre first approach to the assessment of such applications. The policy does not refer to or apply to food and drink uses or hot food takeaways.
- 7.11 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. Amongst the projects identified as being essential requirements is the A7 Urbanisation.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of development

- 8.2 The application site is situated within the built-up area of Dalkeith and Eskbank and within the site (car park) of an existing retail unit. Policy DEV2 provides support for development in such areas unless it detracts materially from the existing character or amenity of the area; subject to the assessment of the proposal's impact on the character and amenity the principle of the development is acceptable.
- 8.3 Applications in 2015 and 2016 for retail development on the neighbouring site failed to establish that the principle of retail development at that location was acceptable. The applications failed to satisfactorily demonstrate that a sequential town centre first approach had been followed and that they would not undermine the vitality and viability of Dalkeith or Bonnyrigg town centres. The fundamental difference between those two applications and the current application is the nature of the development being proposed; the current application relates to a drive through restaurant and policies TCR1 and TCR2 promote a sequential town centre first approach for retail uses rather than food and drink uses. While the impact on the established town centres could still be considered as a material consideration in the assessment of the application; it is important to acknowledge that what is being proposed is a drive through restaurant which is not a type of development that would be expected to be accommodated within a town centre. Furthermore, the applicant's business model is to provide drive through restaurants in close proximity to other high car use uses such as supermarkets and retail outlets – the operators will not propose a similar use in a town centre.

Traffic, Parking and Pedestrian Access

- 8.4 The application is supported by a transport statement which includes details of traffic generation at two existing McDonald's restaurants, one in Hamilton and one in Arbroath, both of which the applicant considers to have a similar relationship to an existing supermarket as that proposed at Hardengreen. McDonald's peak trading hours are 16:00 to 19:00 hours on a Friday and 11:00 to 15:00 hours on a Saturday; the figures from the Hamilton and Arbroath stores have been averaged to

provide estimated traffic generation figures suitable for assessing the impact of the proposal on Eskbank Roundabout. In addition to the traffic generation data gathered, the restaurant surveys in Hamilton and Arbroath also include interviews with customers to identify the purpose of their trip. The responses were grouped into three categories: additional (where the sole purpose of the journey was to visit McDonald's); existing (where the visit to McDonald's was en route to another destination, for example visiting on the way home from work); and shared (where the visit to McDonald's was linked with a visit to the neighbouring store). The survey responses were used to establish the percentages of trips that fell within each category.

- 8.5 Using the survey results the transport statement anticipates that the proposed drive through restaurant will generate 106 arrivals and 106 departures during its peak hour (17:00 to 18:00) on a Friday; and 105 arrivals and 114 departures during its peak hour (13:00 to 14:00) on a Saturday. The journey purpose percentages are 14% additional, 56% existing and 30% shared. This provides figures for peak hour arrivals on a Friday of 15 new trips, 59 existing trips diverting to McDonald's and 32 shared trips with customers also visiting Tesco; and peak hour arrivals on a Saturday of 21 new, 34 existing and 50 shared. The transport statement concludes that during the restaurant's busiest trading hours the new trips generated would equivalent to one every 3 to 4 minutes and that Eskbank Roundabout can accommodate this additional traffic. It must be noted that the Saturday peak would be equivalent to one trip every 2 minutes; however, the Council's Policy and Road Safety Manager is satisfied that the proposal will not have a significant impact on Eskbank Roundabout. One representor has queried the trip generation data and suggested that the existing trips should in fact be considered as additional trips since the diversion of their journey to McDonald's will require the roundabout to be navigated on one further occasion when compared to a non-diverted trip. The Council's Policy and Road Safety Manager is satisfied that the transport statement has been prepared using commonly accepted methodologies for the preparation of trip generation data.
- 8.6 The existing Tesco car park has 459 spaces. Parking standards for retail developments of more than 1000 sqm are specified in the Scottish Government's National standards which are contained in Annex B of the Scottish Planning Policy. The National standards seek to encourage parking restraint and specify a maximum parking standard. The store at Hardengreen has a gross external floor area (GFA) of 7020 sqm; at the maximum rate of 1 space per 14 sqm this gives a maximum parking standard of 501 spaces. As the current parking provision is below the maximum allowed it complies with national standards.
- 8.7 The proposed development would result in a reduction in the number of parking spaces due to spaces being lost on the application site and further spaces being lost due to the relocation of the Click and Collect

(which will be the subject of a separate planning application from Tesco) and the recycling facilities (which does not constitute development and therefore does not require planning permission). The proposed layout would have 415 spaces of which 382 would be allocated to Tesco, 19 would be allocated to McDonald's and 14 would be shared. In support of the application the transport statement includes figures of a car parking survey of the existing Tesco car park. The survey was carried out for the same hours as McDonald's peak trading hours; the survey identified that the peak occupancy level was at 12:00 on Saturday when 270 spaces were occupied. From the information provided, it is clear that the proposed 382 spaces that would be allocated to Tesco would amply accommodate typical peak demand.

- 8.8 Midlothian Council's parking standards require restaurants to provide spaces at the rate of 12 per 100 sqm of public floor area. The proposed restaurant has a public floor area of 210 sqm which would require 25 spaces to comply with standards. The proposed allocation of 33 spaces (19 dedicated and 14 shared) complies with standards.
- 8.9 A number of representations have made reference to the difficulties faced by pedestrians in navigating the surrounding road network. Particularly difficult for pedestrians is the route from Eskbank (Bonnyrigg Road) to Bonnyrigg (Eskbank Road) which for pedestrians using the footway on the south of these roads requires pedestrians to cross both the entrance to Tesco and the A7. While there is a pedestrian route over the A7 via a footbridge, which links to the existing cycle path network in the area, accessing the bridge requires a diversion from the main roads and this can discourage pedestrians. As the transport statement concludes that the additional trips generated will not cause significant capacity issues for the road network there is unlikely to be significant changes to pedestrian use of the junctions. In the longer term the urbanisation of the A7 is intended to make the route more accessible for public transport, cycling and pedestrians; the applicant will be required to provide a developer contribution towards this project.
- 8.10 Eskbank and Newbattle Community Council has queried whether the information submitted in the applicant's transport statement has been rigorously assessed by the Council. The information has been assessed by a suitably qualified member of Council staff with years of experience in the assessment of such submissions. It is not the standard practise of the Council to commission independent third party assessments of such submissions.

Design

- 8.11 The building will have a contemporary design with a flat roof, large areas of full height glazing and a modern palette of finish materials. The design reflects contemporary architectural trends in both shop and restaurant design. A mix of materials and architectural details is used to

create variety on all four elevations of the building. While the building will be a corporate design that is utilised throughout the UK, it has the appearance and character of a modern urban building; the design shares many characteristics with modern office and housing developments. The building design and finish materials represent an improvement on the existing supermarket, petrol filling station and vehicle coachworks buildings.

Litter

- 8.12 The planning statement submitted in support of the application states that it is McDonald's company policy to conduct a minimum of three daily litter patrols to pick up litter in the vicinity of a restaurant. Many of the representations received have referred to existing litter problems in the surrounding area and are concerned that the current proposal would exacerbate this situation if granted.
- 8.13 At present the only McDonald's restaurant in Midlothian is the restaurant located at Straiton Retail Park. Consent for that restaurant was granted following an appeal to the Scottish Government and the Reporter attached a condition requiring the submission of a litter collection policy and plan. As part of the information submitted to discharge the condition McDonald's agreed to carry out litter picks throughout Straiton Retail Park. A similar condition could be attached at Hardengreen to ensure that a litter collection policy covering the walkways leading to Hardengreen Lane and Eskbank Station is secured via condition.

Anti-Social Behaviour

- 8.14 Many of the representations have referred to existing instances of anti-social behaviour which they perceive as being a result of the Tesco store being an encouragement for groups of people, in particular teenagers, to congregate in the area. The representations consider that the siting of a drive through restaurant will worsen this situation. While the threat of anti-social behaviour is a material consideration it is a threat that is extremely difficult to quantify.
- 8.15 In the case of the current application, the two most obvious ways in which the planning authority can control anti-social behaviour are to refuse the application or to restrict the hours of operation. Drive through restaurants are common features of urban areas throughout Scotland and the UK; there are currently three such facilities operating in Midlothian, all in the Straiton area. No evidence has been presented to the planning authority to demonstrate that such facilities create excessive levels of anti-social behaviour; it would not be reasonable for the planning authority to refuse the application on the basis of a perceived risk of anti-social behaviour.

- 8.16 The supporting information provided with the application indicates that the restaurant will operate 24 hours a day. The existing supermarket and petrol filling station both currently operate 24 hours a day; given the proximity of these uses to the proposed restaurant it would not be reasonable to seek to restrict the hours of operation by virtue of a planning condition. It is worth noting that catering premises that wish to operate between the hours of 23:00 and 05:00 require a Late Hours Catering Licence issued under the Civic Government (Scotland) Act 1982; as part of the process of assessing such applications the Council consults with the Police. The guidance provided to planning authorities by the Scottish Government makes clear that planning conditions should not seek to duplicate powers and functions that are undertaken via existing alternative legislation.

Noise and ventilation

- 8.17 The Council's Environmental Health Manager has recommended that if consent is to be granted conditions should be attached to the permission to ensure that the amenity of nearby residential properties are safeguarded. A condition to ensure that any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an internationally recognised standard developed by the International Organization for Standardization (ISO) to determine acceptable noise levels for indoor environments) will safeguard the amenity of local residents. A further condition will ensure that sound from speakers associated with the drive through function will not be audible in any nearby living apartment. It is Midlothian Council's standard practise to attach a condition specifying details of ventilation equipment to applications for restaurants and hot food takeaways; the standard condition would be appropriate in this instance.

Healthy Eating

- 8.18 The MLDP does not contain any policies relating to healthy eating; there are no planning policy grounds on which to refuse the application on such a basis. Planning case law is mixed on the issue of whether or not healthy eating initiatives can be considered to be a material consideration in the assessment of planning applications. The proposed restaurant is not close to any schools and there are no similar facilities in the immediate vicinity of the proposed site; given these facts the planning authority does not consider that any negative impact on healthy eating initiatives would be a significant enough material consideration to warrant refusal of the application. It is important to acknowledge that the application must be assessed on the merits of the application and not on any perceived failings of the applicant; while the applicant is McDonald's any consent could in theory be implemented by an alternative operator with a different range of products.

Neighbour Notification

- 8.19 The site boundary identified on the location plan relates to the area of the car park that the application relates to. Neighbour notification has been sent to notifiable addresses within 20 metres of the boundary of the application site, as per Scottish Government regulations. While it is acknowledged that this means that residential properties at Muirpark and Hardengreen Lane did not receive neighbour notification the Planning Authority is satisfied that the statutory requirements have been complied with.

Developer contributions

- 8.20 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:
- Necessary to make the proposed development acceptable in planning terms (paragraph 15)
 - Serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
 - Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)
 - Fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)
 - Be reasonable in all other respects
- 8.21 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.22 This proposed development of which the principal element is the provision of a drive through restaurant has been assessed in relation to the above guidance and it is considered that a Planning Obligation is required in respect of the Council's A7 urbanisation proposals.
- 8.23 The MLDP identifies the urbanisation of the A7 as being key to encouraging safe pedestrian and cycle routes within this transport corridor. A proportionate contribution will be required from this development.
- 8.24 The transport statement submitted in support of the application includes pre-application correspondence between the applicant and the Council's Lead Officer: Planning Obligations. The Council provided an initial figure based on overall trips generated; the contribution level was

subsequently reduced to remove trips shared with trips to Tesco i.e. trips that would occur irrespective of the restaurant. Eskbank and Newbattle Community Council has queried whether the Council should have contested this issue. As is noted above obligations must fairly and reasonably relate in scale and kind to the proposed development and must be reasonable in all other respects. The contribution levels reflect the impact of the proposed development.

9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

The proposed development is situated within the built-up area of Dalkeith and Eskbank and will not detract materially from the existing character or amenity of the area. The proposal therefore complies with policies DEV2, TRAN2 and IMP2 of the Midlothian Local Development Plan. The perceived threats associated with litter, anti-social behaviour and healthy eating are not significant enough material considerations to warrant refusal of the application.

Subject to:

- i) the prior signing of a legal agreement to secure the provision of developer contributions towards A7 Urbanisation. The legal agreement shall be concluded prior to the issuing of the planning permission and shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.
- ii) the following conditions:
 - 1. Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:
 - i the nature, extent and types of contamination on the site;
 - ii measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii measures to deal with contamination encountered during construction work; and
 - iv the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied 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.*

2. Development shall not begin until a scheme of investigation and remediation to deal with previous mineral workings has been submitted to and approved in writing by the Planning Authority. The scheme shall include:
 - i. a scheme of intrusive site investigations;
 - ii. a report of findings arising from the intrusive site investigations; and
 - iii. a scheme of remedial works for approval by the Coal Authority.

Before any work starts onsite on the proposed development the investigation schemes and remediation works shall be fully implemented as approved by the Planning Authority and the Coal Authority.

Reason: *To ensure that any risks posed by the coal mining history of the area are identified and addressed prior to development commencing.*

3. Development shall not begin until a detailed scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained, removed or protected during development;
 - iii proposed new planting in planting areas, including trees, shrubs, hedging and grassed areas;
 - iv location and design of all proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi a programme for completion and subsequent maintenance of all soft and hard landscaping. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
 - vii drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff;
 - viii proposed car park configuration and surfacing.

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 (vi). Thereafter any trees or shrubs (existing or planted) that are subsequently lost through removal, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the next available planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

4. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the physical development is of an appropriate standard in terms of its impact on the character and appearance of the area. To ensure compliance with local and national planning guidance and advice.*

5. Prior to the restaurant opening to the public details of a litter collection plan for the surrounding area, including the public walkways from the application site to Hardengreen Lane and Eskbank Station, shall be submitted to and approved in writing by the Planning Authority. All the measures identified in the approved plan shall be in place and fully operational for the opening of the restaurant to members of the public and shall continue in operation for the duration of the approved use, unless otherwise approved in writing by the Planning Authority.

Reason: *To protect the character and amenity of the surrounding area.*

6. Unless otherwise approved in writing by the Planning Authority the approved Store Travel Plan shall be complied with for the duration of the approved use.

Reason: *To ensure that the number of vehicle trips generated by staff of the restaurant is minimised.*

7. Unless otherwise approved in writing by the Planning Authority the vehicular access and parking arrangements shown on the approved Proposed Site Layout (Drawing number 7167-SA-8389-P004 D) shall be operational prior to the restaurant being opened to the public.

Reason: *To ensure that queuing and disruption to Eskbank Roundabout is minimised.*

8. The kitchen of the restaurant shall be ventilated by an extraction ventilation system which shall:
- a) Be designed to achieve 30 air changes per hour;
 - b) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
 - c) Prevent the emission of cooking odours likely to cause nuisance to neighbouring commercial units and surrounding residential properties; and
 - d) Terminate at sufficient height to permit the free disposal of exhaust fumes.
9. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an acceptable noise rating level based on an international standard) when measured within any nearby living apartment and no structure borne vibration is perceptible within any living apartment.
10. The sound emitted by any tannoy/loudspeaker system serving the restaurant's drive through facilities shall be controlled to ensure that no amplified speech is audible within any nearby living apartment.

Reason for conditions 8, 9 and 10: *To safeguard nearby residential amenity.*

11. Development shall not begin until details for the provision and use of electric vehicle charging stations throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details 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.*

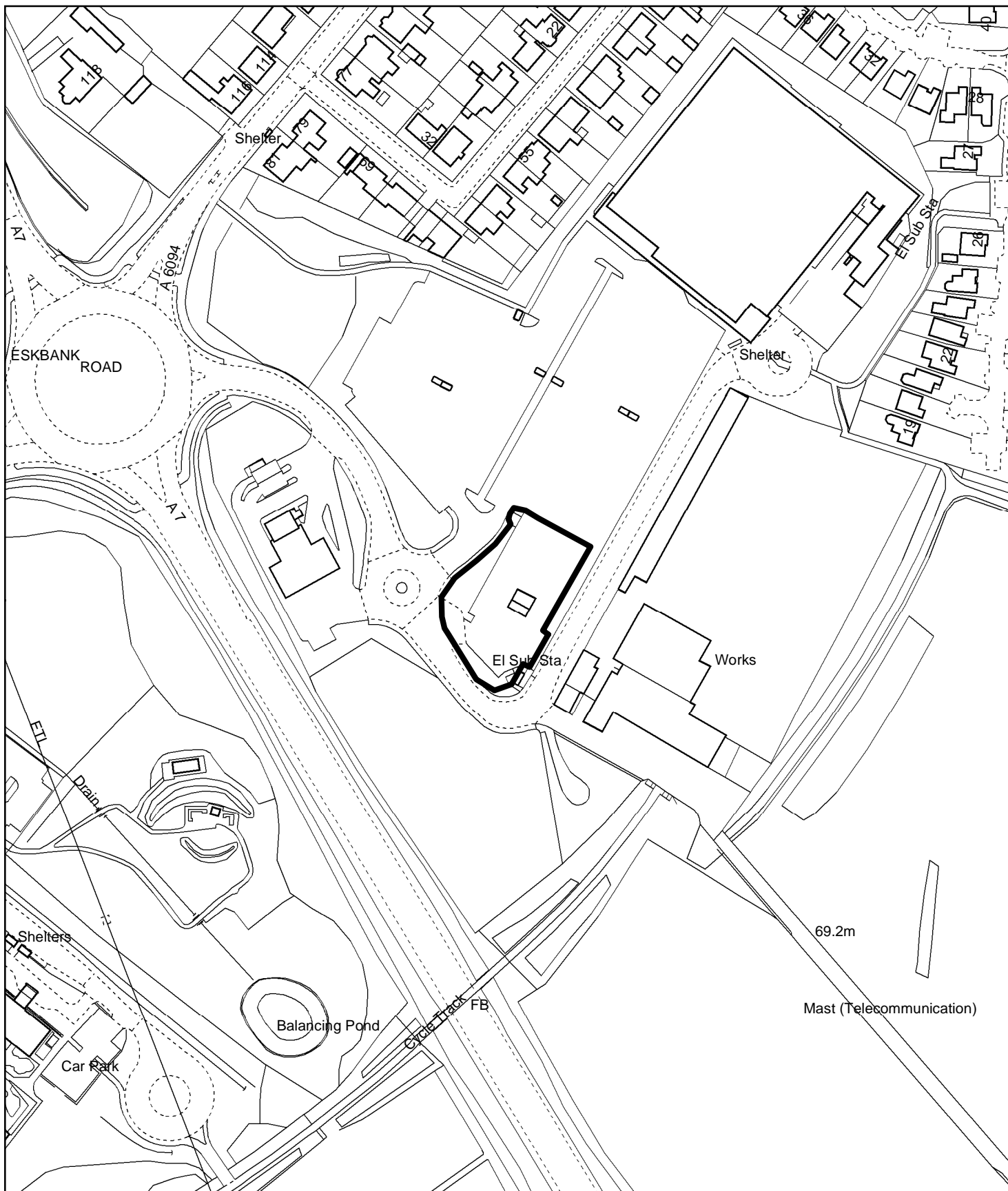
12. Development shall not begin until a scheme of sustainability/biodiversity for the site has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details

or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan 2017.*

Ian Johnson
Head of Communities and Economy

Date:	8 February 2018
Application No:	17/00944/DPP
Applicant:	McDonald's Restaurants, 11-59 High Road, East Finchley, London
Agent:	Matthew Carpenter, Planware Ltd, The Granary, 37 The Granary, Walnut Tree Lane, Sudbury
Validation Date:	1 December 2017
Contact Person:	Graeme King
Tel No:	0131 271 3332
Background Papers:	None



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

Erection of two storey drive through restaurant; alterations to existing car park and access roads at Land At Tesco Car Park Hardengreen Dalkeith

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File No. 17/00944/DPP

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**APPLICATION FOR PLANNING PERMISSION (17/00939/DPP) FOR THE
ERECTION OF DWELLINGHOUSE; GARAGE AND STABLE BLOCK;
FORMATION OF ACCESS; AREAS OF HARDSTANDING AND
ASSOCIATED WORKS AT LAND NORTH OF CRICHTON VILLAGE,
PATHHEAD**

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** This application is for the erection of a dwellinghouse, garage, stable block, formation of hardstanding and associated works on land north of Crichton village, Pathhead. There have been eight representations and consultation responses from Scottish Water, the Council's Archaeology Advisor and the Councils Policy and Road Safety Manager. The relevant development plan policies are DEV5, DEV6, DEV7, TRAN5, RD1, ENV4, ENV6, ENV7, ENV11, ENV19, ENV24 and ENV25 of the Midlothian Local Development Plan 2017 (MLDP). The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site comprises a plot of land on the northern edge of Crichton Village, to the west of the B6367 road. The site is located to the rear of 9 Crichton Village. The application site is located within the countryside, a Special Landscape Area (SLA) and within the Borthwick and Crichton Conservation Area.
- 2.2** The site comprises an agricultural field used for grazing; with a small timber stable block located in the southern corner. The site, is contained by trees and hedgerows along the field boundaries, measures approximately 1,933sqm and is relatively flat.
- 2.3** The neighbouring dwellings of Crichton village are primarily single storey and 1½ storey dwellings of traditional design and form.

3 PROPOSAL

- 3.1** The proposal is for the erection of a contemporary designed detached dwellinghouse, garage and stable block.

- 3.2 The dwellinghouse comprises of three pitched roof buildings of various heights connected together by single storey flat roof links. The dwelling is laid out in a 'T' plan formation. The dwelling is primarily single storey in height with a 1½ storey element. The application dwelling is of a contemporary design finished in white render and stained black horizontal Siberian larch cladding with aluclad (aluminium clad timber) fenestration and a dark grey metal sinusoidal clad pitched and flat roof.
- 3.3 The proposed dwelling comprises a living room, utility room, dining room, bathroom, kitchen, en-suite and four bedrooms; two of the bedrooms and the en-suite are located at first floor level.
- 3.4 The proposed single storey garage and stable block are laid out in a rectangular footprint and are to be sited within the southern side of the site. The proposed garage and stable block are to be finished in white render with a grey metal sinusoidal clad mono-pitch roof. Details regarding the material finish of the stable and garage doors have not been specified on the submitted plans. A white rendered 2.3 metre high boundary wall and 1.5 metre high double timber gates are proposed between the proposed dwelling and the garage and stable block building to provide a fully enclosed rear garden.
- 3.5 The parking and turning area will be formed using a cedagravel system comprising plastic honeycomb holding trays laid out on hardcore substrate with gravel set into the trays so as to form a porous surface. The dwellinghouse will be accessible via a new vehicle access taken from the B6367.
- 3.7 The proposal would result in the removal of a number of trees and shrubs and introduce new compensatory trees and planting within the application site. A design and access statement, tree survey, planting specification and maintenance plan have been submitted in response to the site's location within a conservation area and SLA.

4 BACKGROUND

- 4.1 There is no relevant planning history.
- 4.2 The current application has been called to Planning Committee for consideration by Councillor Smaill for consideration of the character of the proposals in relation to the conservation area and SLA.

5 CONSULTATIONS

- 5.1 **Scottish Water** has no objection.
- 5.2 The Council's **Archaeological Consultant** noted that historically, the land within the application boundary has been within enclosed farmland since at least the 19th century and lies in close proximity to a later

prehistoric scheduled monument (SM6231). The application site has potential archaeological significance and therefore there is a requirement for a programme of archaeological works (Archive Assessment and Evaluation) to be carried out to record any historical remains and to determine whether the development will disturb any buried archaeological deposits.

- 5.3 The Council's **Policy and Road Safety Manager** has not objected to the planning application but has requested further details regarding the access to be submitted.

6 REPRESENTATIONS

- 6.1 There have been eight representations received, of which six are objections, one is neutral and one is in support. All representations can be viewed fully online. The reasons for objecting are as follows:

- the application site is located within a SLA and on prime agricultural land which restricts development;
- the development proposal does not respect the character or appearance of the Borthwick and Crichton Conservation Area;
- the introduction of a new dwellinghouse to Crichton Village will set a precedent and encourage further development;
- concern that the proposal will lead to the further development of land within the applicant's ownership;
- the material finish of the dwelling is out of character for the village;
- first new dwelling to be erected in over 130 years would irrevocably alter the character of the hamlet;
- visual impact on the open views from the main road into Crichton;
- proposal is contrary to Midlothian Local Development Plan policies ENV4, ENV6, ENV7, ENV19, ENV22, ENV23 and ENV24;
- design does not respect the character or appearance of the listed buildings;
- Crichton is a popular destination for locals and the development will impact upon this; and
- loss of established trees.

- 6.3 The one neutral representation considered the proposed buildings to be of interesting design and sited in a location that would have minimal impact upon the existing buildings and character of the village as long as the planting around the site was broadly maintained.

- 6.4 The one supporting representation considered the development proposal to be a positive addition for Crichton.

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), adopted in November 2017. The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.3 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.
- 7.4 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.
- 7.5 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.
- 7.6 Policy **RD1: Development in the Countryside** states that development in the countryside will only be permitted if:
- it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; or
 - it accords with policies RD2, MIN1, NRG1 or NRG2; or
 - it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*.

The following circumstances are exceptions to the above requirements to demonstrate that the housing is for the furtherance of a countryside activity:

- housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units); or
 - conversions of redundant farm buildings or other non-residential buildings; or
 - redevelopment of redundant farm buildings or other non-residential buildings; or
 - enabling development where it can be clearly shown to be the only means of preventing the loss of a heritage asset and securing its long-term future.
- 7.7 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.

- 7.8 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.
- 7.9 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.
- 7.10 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.
- 7.11 Policy **ENV19: Conservation Areas** states that development will not be permitted within or adjacent to conservation areas where it would have any adverse effect on its character or appearance.
- 7.12 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.
- 7.13 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.

National Policy

- 7.11 Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
- 7.12 Historic Environment Scotland Policy Statement 2016 and Scottish Planning Policy (SPP) offer guidance on the protection and management of the historic environment. Conservation Areas are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. Their

designation provides the basis for the positive management of an area. A proposed development that would have a neutral effect on the character or appearance of a conservation area (i.e. does no harm) should be treated as one which preserves that character or appearance. The Policy Statement and SPP also indicate that the planning authority should consider the design, materials, scale and sitting of any development, and its impact on the character of the conservation areas and their setting.

- 7.13 Historic Environment Scotland's 'Managing Change in the Historic Environment Document on New Design in Historic Settings' states that there is a view that new buildings in historic settings should seek to replicate existing buildings in design, appearance and materials. While this may be appropriate in specific circumstances, for example where part of a larger architectural composition had been lost, in general Historic Environment Scotland believe that new interventions in historic settings do not need to look 'old' in order to create a harmonious relationship with their surroundings. Some of the best recent examples are contemporary design responses. This approach suggests an honesty and confidence in our modern architecture which will be valued by future generations.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development

- 8.2 Development within the countryside needs to demonstrate a requirement for a countryside location. Unallocated housing development within the countryside will only be permitted where; it demonstrates it is required for the furtherance of an established countryside activity (agriculture, horticulture, forestry, countryside recreation or tourism), it is classed as a housing grouping development, it comprises the conversion of redundant rural buildings or is required to secure the long term future of a heritage asset.
- 8.3 Should the principle of a dwellinghouse be deemed acceptable, then any building should satisfy the following criteria set out in MLDP policy RD1; it should be of a scale and character appropriate to the rural area; be well integrated into the rural landscape; be capable of being serviced with an adequate and appropriate access; capable of being provided with drainage and public water supply; and take account of accessibility to public transport and services (where appropriate). New houses should be designed so as to enhance the appearance of the countryside.

- 8.4 Policy RD1 gives policy support to small scale incremental housing development in the countryside by allowing small villages, hamlets and clusters of dwellings which are classed as being in the countryside (without a defined settlement boundary confirming an urban area) to increase by one new dwelling during the plan period per five existing dwellings. On the basis that Crichton comprises 19 residential properties policy RD1 would support an additional three residential units during the local plan period. As no new housing has been proposed or built in Crichton since the adoption of the MLDP in November 2017 the principle of the development is acceptable if the siting of the unit can be considered part of the Crichton cluster.
- 8.5 The housing group element of MLDP policy RD1 carries forward a Council desire to see limited housing development in the countryside as originally set out in policy DP1, Section 1.2: Housing Groups introduced in the 2008 local plan. Policy DP1, Section 1.2 was supported by Supplementary Planning Guidance (SPG) adopted by the Council on 6 October 2009. In due course the guidance will be updated to reflect the policy position set out in the MLDP, but in the meantime the 2009 SPG represents best practise with regard to the siting of housing within housing groups in the countryside and as such can be considered as a material consideration in the assessment of the current application.
- 8.6 The SPG identifies and provides guidance on the criteria used for identifying acceptable plots; identifies housing groups which the planning authority considers to have potential to accommodate additional units; and includes guidance on where development could be accommodated within the identified housing groups. Crichton was identified as a housing group that could accommodate three additional units. The guidance notes that the fields to the north and south of the village are very open with no physical features to provide containment. It also notes that due to the housing group being located within a conservation area, as well as comprising of a the large number of listed buildings, care should be taken in relation to the effect of any development on the character, appearance and setting of these historic features.
- 8.7 The boundary treatment on the north of the application site presents a clear definable boundary between the open grazing fields to the north of the site and the dwellings and other rural buildings to the south and as such a dwellinghouse on the proposed site will be interpreted as an additional dwelling to the established housing of Crichton. Furthermore the orientation of the buildings at 9 Crichton Village (The Old Joiners Shop) turn the corner of the built form from Crichton Village along the B6367 and as such the proposed dwelling can be seen as a 'natural' evolution of the village.

- 8.8 The remaining planning issues relate to the appropriateness of the scale, mass and proportions of the dwellinghouse, the design, material finish, siting, amenity space, access, impact on local amenity and impact upon the character and appearance of the SLA and conservation area.

Site Layout

- 8.9 It is noted that policy DP2 Development Guidelines, from the now superseded 2008 Midlothian Local Plan, set out design guidance for new development. The guidance has been successfully applied to development proposals throughout Midlothian and will be echoed within the Council's Supplementary Guidance on Quality of Place which is currently being drafted.
- 8.10 The shape and size of the application site presents the potential for a flexible approach to the siting of a dwellinghouse. However, the single storey dwellinghouse known as The Old Joiners Shop, located on the corner of the main B6367 and Colegate Road to the south of the application site assists in dictating an acceptable location for the proposed dwelling. The proposed siting of the dwelling to the north of the plot protects privacy with this neighbouring dwellinghouse and setting it back from the road aligns it with The Old Joiners Shop and presents the opportunity for landscaping at the front of the site to continue the rural character of the B6367.
- 8.11 In between the dwelling, garage, stable block and the main B6367 Road is an area of gravel to provide a turning and parking area. The gravel is to be formed using a cedagravel system; a plastic honeycomb holding trays laid out on hardcore substrate with gravel set into the trays to form porous surface. The dwelling is afforded over 650sqm of useable garden ground which is in excess of the appropriate standard of 130sqm.
- 8.12 The proposed layout of the dwelling, garage and stable block maximises the potential of the site whilst respecting the character of the locale. The proposed development presents a solution which complies with the development plan.

Design

- 8.13 The proposed dwellinghouse is of a contemporary design which is to be finished in contrasting materials. The use of white render, stained black timber cladding with a large amount of glazing contributes towards the interesting and attractive appearance of the dwelling. The proposed garage and stable block are to be finished in materials that match the proposed dwelling. All the finishing materials are to be of a high quality.

- 8.14 The pitched roofs of the main parts of the dwellinghouse draws from the traditional form of neighbouring dwellings within Crichton Village, whilst the use of flat roof links contributes towards the contemporary design. The use of grey metal sinusoidal cladding is not a traditional roofing material for dwellings. However, the use of metal profiled roof creates visual interest to the contemporary design of the building which also reflects the rural character of the wider locale.
- 8.15 Within Scotland the traditional approach to building design primarily takes the form of buildings with pitched roofs. However, this does not limit building design to only comprise of buildings with pitched roofs. Variations in design, form and material finish contribute towards a rich, diverse and interesting built environment. Development which is of a strong modern design and reflects the locale should be supported if it is the right development in the right location. Flat roofs are often used to create a contemporary building form which in turn reduces the scale of the proposal in terms of height. The flat roof components of the dwellinghouse are passive to the pitched roof components and will be interpreted as subservient to the traditional form of the dwellinghouse.
- 8.16 The height of the proposed dwelling, garage and stable block varies and steps down towards the neighbouring properties to the south and in doing so does not dominate the landscape of the settlement form. The visual scale and siting of the proposed dwellinghouse, garage and stable block are not considered to be dominating nor out of character to the locale. Variations in heights of buildings is a common feature in the countryside and adds interest in the built form. This variation often reflects the incremental growth of rural settlements. The proposal sensitively reflects this evolution of the settlement.
- 8.17 Representations raising concerns about the design and scale of the proposed development suggest it is 'out of character' with Crichton Village and results in an adverse impact upon the conservation area. The siting of the plot, with a measure of separation from other dwellings, means it is not an 'infill' development that would be best designed to mirror adjoining buildings to create uniformity. There is variation in the design and scale of the buildings in Crichton and the proposal seeks to complement this pattern rather than mirror it. Guidance and good practice with regard historical environments seeks to secure quality development, this can include the use of contemporary architecture in the right locations.
- 8.18 The application site's boundaries are defined by trees and planting; some of which will be removed and replaced as part of the development proposal. The application site is currently host to a small single storey horse stables which contributes little to the character and appearance of the area. The existing timber stable block is to be removed and replaced by the proposed dwelling, stable block and garage.

- 8.19 The submitted landscaping plan and tree survey specify which trees are to be removed to enable the development proposal. There are no concerns with regards to the loss of the trees indicated on the submitted plan. The proposed replacement planting to the west, east and south will frame the dwelling and make a positive contribution towards the setting. There are some minor concerns with regards to the lack of replacement planting along the northern boundary of the application site and in response a condition will require an amended landscaping plan to be submitted to the Planning Authority for prior written approval to address the concern. Additional planting along the northern boundary will ensure that the landscaping reflects the character and appearance of the area whilst providing a complementary setting that is compatible with the contemporary development. Furthermore, the additional planting will contribute towards the character and appearance of the SLA and conservation area.
- 8.20 Overall, it is considered that the introduction of a contemporary dwellinghouse finished in contrasting materials is considered to be an acceptable approach which respects the historic character and appearance of Crichton Village.

Impact on Amenity

- 8.21 The rear elevation of the closest neighbouring dwellinghouse, The Old Joiners Shop no.9 Crichton Village, is approximately 28 metres south of the application site and a further 15 metres away from the proposed new dwellinghouse. This scale of separation combined with the site's relatively flat topography means that there will be no loss of amenity to neighbouring properties.

Access/Road Safety

- 8.22 The proposed development provides a parking and turning area between the application dwelling and the B6367 road. Vehicle access to the application site is to be afforded by a new vehicle access from the B6367 road. The Policy and Road Safety Manager offered no objection to the development proposal, in terms of road safety, subject to a condition being attached requiring further details of the proposed access to be submitted.

Archaeology

- 8.23 The Council's Archaeological Advisor has recommended some survey work be carried out to ensure that the site is surveyed and any archaeological finds are recorded. The controls identified by the Council's Archaeological Advisor can be secured by condition.

9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

The proposed development accords with the adopted Midlothian Local Development Plan (2017) and Historic Environment Scotland's policy and guidance. The layout and detailed appearance of the development will contribute and add visual interest to Crichton Village and it will not have an adverse impact on the amenity of nearby properties. The presumption for development is not outweighed by any other material consideration.

Subject to the following conditions:

1. Development shall not begin until a revised scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii proposed new planting including trees, shrubs, hedging and grassed areas;
 - iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the house is occupied; and
 - vii drainage details and sustainable urban drainage systems to manage water runoff.

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 (vi). 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 the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RD1, ENV6, ENV19 and DEV7 of the adopted 2017 Midlothian Local Development Plan 2017 and national planning guidance and advice.*

2. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *In the interest of protecting the character and appearance of the conservation area so as to comply with ENV19 and ENV6 of the adopted Midlothian Local Development Plan 2017 and Historic Environment Scotland's policy and guidance.*

3. Development shall not begin until a programme of archaeological work and investigation has been submitted to and approved by the planning authority. The approved programme shall be carried out prior to the commencement of development unless an alternative phasing is agreed as part of the approved programme.

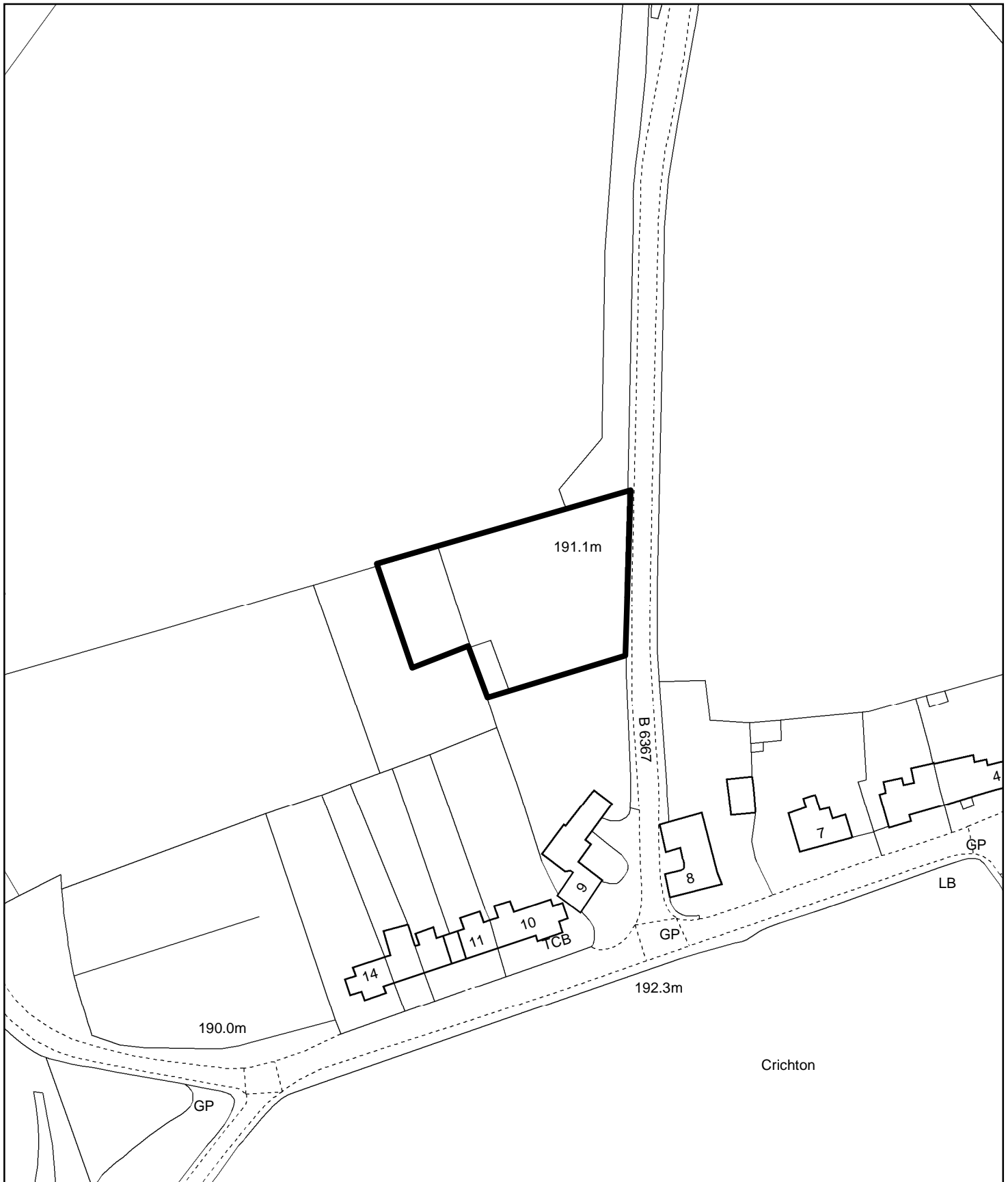
Reason: *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policies ENV24 and ENV25 of the adopted Midlothian Local Development Plan.*

4. Development shall not begin until details of the means of access from the B6367 into the site, including the provision of visibility splays has been submitted to and approved by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure that the proposed vehicle access is adequate and in the interest of road safety.*

Ian Johnson
Head of Communities and Economy

Date:	8 February 2018
Application No:	17/00939/DPP
Applicant:	Mr Martin Street, The Old Joiners Shop, Crichton, Pathhead, EH37 5UZ
Agent:	Gray Macpherson Architects, Tigh Na Geat House, 1 Tigh Na Geat House, Damhead Farm, Lothianburn, EH10 7DZ
Validation Date:	28 November 2017
Contact Person:	Whitney Lindsay
Tel No:	0131 271 3315
Background Papers:	



**Education, Economy
& Communities**
Midlothian Council
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EH22 3AA

Erection of dwellinghouse; garage and stable block; formation of access; areas of hard standing and associated works at Land North Of Crichton Village, Pathhead

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