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**APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE  
13/00780/PPP FOR THE ERECTION OF 60 DWELLINGHOUSES;  
ERECTION OF WAREHOUSE, EXTENSION TO EXISTING PETROL  
FILLING STATION KIOSK AND ASSOCIATED WORKS AT LAND AT  
FORDEL, DALKEITH**

Report by Head of Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1 The application is for planning permission in principle for the erection of 60 dwellinghouses; erection of warehouse; extension to existing petrol filling station kiosk and associated works at land at Fordel, Dalkeith. The application was previously considered by the Committee at its meeting of 27 May 2014 at which the Committee resolved to grant planning permission subject to conditions and a legal agreement to secure developer contributions. To date the legal agreement has not been concluded despite the best endeavours of the Council. The recommendation is that the Committee refuse the application if the legal agreement is not concluded within a further three months (6 September 2017).**

**2 BACKGROUND**

- 2.1 The planning application was reported to Committee for consideration at its meeting of 25 February 2014 (Appendix B). The Committee deferred consideration of the application to enable a site visit to be undertaken and for officers to advise on potential alternative uses for the site.
- 2.2 At its meeting of 27 May 2014 (Appendix A) the Committee resolved to grant planning permission for the proposed development subject to the applicants entering into a legal agreement to secure developer contributions towards essential infrastructure and the provision of affordable housing.
- 2.3 A Heads of Terms (HoT) was agreed with the applicants identifying a need to make a contribution towards primary and secondary school provision and the Borders Railway. The agreement also seeks to secure the provision of affordable housing. Following the agreement of

the HoT between the parties a draft legal agreement was prepared, but unfortunately remains unsigned by the applicants and as a consequence the planning permission has not been issued. The applicants have advised that they are reviewing their position but will not commit to signing the agreement timeously.

- 2.4 Given the clear direction to Councils from Scottish Ministers to resolve legacy cases (Planning applications which remain undetermined after more than a year) it is appropriate to report the application back to Committee in accordance with agreed procedures.

### **3 UPDATED PLANNING POLICY POSITION**

- 3.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Plan (MLP), adopted in December 2008. The Proposed Midlothian Local Development Plan (MLDP) 2014 has been submitted to the Scottish Ministers and is subject to an examination which is likely to be concluded in Summer 2017. As this plan is at an advanced stage of preparation and represents the settled view of the Council it is a material consideration of significant weight in the assessment of the application.
- 3.2 The relevant Midlothian Local Plan 2008 (MLP) policies are set out in the appended Committee report dated 25 February 2014. The relevant Proposed Midlothian Local Development Plan Policies are set out as follows.
- 3.3 Policy **RD1: Development in the Countryside** sets out the general presumption against development unless it is for the furtherance of agriculture, horticulture, forestry, countryside recreation or tourism.
- 3.4 Policy **STRAT2: Windfall Housing Sites** advises that within the built-up areas, housing development on non-allocated sites and including the reuse of buildings and redevelopment of brownfield land, will be permitted provided that: it does not lead to the loss or damage of valuable public or private open space; it does not conflict with the established land use of the area; it respects the character of the area in terms of scale, form, design and materials; it meets traffic and parking requirements; and it accords with other relevant Local Plan policies and proposals, including policies IMP1, IMP2, DEV3 and DEV5 – DEV10.
- 3.5 Policy **DEV3: Affordable and Specialist Housing** sets out the requirements for affordable housing provision within residential developments.
- 3.6 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.

- 3.7 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.
- 3.8 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.
- 3.9 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments.
- 3.10 Policy **ENV11: Woodland, Trees and Hedges** does not permit development that would lead to the direct or indirect loss of woodland which has a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter.
- 3.11 Policy **ENV16: Vacant, Derelict and Contaminated Land** seeks the treatment of vacant and derelict sites. The proposed after use should not conflict with other policies within the Local Development Plan, particularly policy DEV2.
- 3.12 The **IMP** policies in the MLDP identify where there are deficiencies in services, infrastructure and facilities as a result of developments that these should be resolved through those developments.
- 3.13 The policies set out in the MLDP reflect those in the MLP and as such do not change the previous assessment of the application.

#### **4 PLANNING ISSUES**

- 4.1 The Planning Committee at its meeting on 27 May 2014 resolved to grant planning permission for the proposed development subject to the applicant entering into a legal agreement with the Council to secure necessary financial contributions towards;
- Non Denominational Primary School capacity
  - Denominational Primary School capacity
  - Non Denominational Secondary School capacity
  - Denominational Secondary School capacity
  - Borders Rail
  - Affordable Housing (25% provision)
- 4.2 The planning obligation is necessary as the development would; give rise to additional capacity requirements in the catchment primary and secondary schools, is identified as being in the A68/A7/Borders Rail corridor and therefore requires to make a contribution to the Borders Rail and residential developments of the proposed scale are required to make 25% affordable housing provision.
- 4.3 HoT for the legal agreement were agreed with the applicant in March 2015. Since that time a draft agreement has been prepared, however this has not been signed, and there are matters of title to the land for

the applicants to resolve in order for the Council to be satisfied that the agreement is capable of registration with the Registers of Scotland. Circular 02/2013: Planning Obligations and Good Neighbour Agreements sets out the Scottish Government's guidance on Planning Obligations and their use. At paragraph 28 the Circular notes "*Lengthy delays in concluding obligations are not acceptable given the adverse impact this has on delivery of sustainable economic growth and the reputation of the system*".

- 4.4 Given the length of time since it was submitted to the Council this application falls within the classification of a legacy case. Legacy cases are defined by the Scottish Government as those applications which are more than a year old and for which a formal decision has not been issued.
- 4.5 At its meeting in January 2017 the Committee were updated on progress of the Midlothian Planning Performance Framework (PPF) and in particular feedback from the Scottish Government on the Council's submitted PPF for 2015/16. The feedback included 5 areas being identified as 'red' where specific attention is required, two of which are pertinent to this case;
- i. Legal agreements – the time taken to conclude a legal agreement after resolving to grant planning permission; and
  - ii. Legacy cases - reducing the number of applications more than one year old.
- 4.6 On 1 February 2017 the applicants were advised that unless there was a completed legal agreement by 15 April 2017 the application would be reported back to the Committee. At the applicants request the period for completing the agreement was extended further until 15 May 2017. However the agreement has still not been completed and it is considered that it is appropriate for the Committee to consider the application's progress. Given the progress already made it is reasonable that a final additional period of three months is given for the completion of the agreement. If after the three month period (6 September 2017) the Council has not received confirmation of receipt from Registers of Scotland of a satisfactory signed agreement then the application would be refused due to the lack of a necessary obligation being in place to meet the infrastructure needs arising from this development.

## **5 RECOMMENDATION**

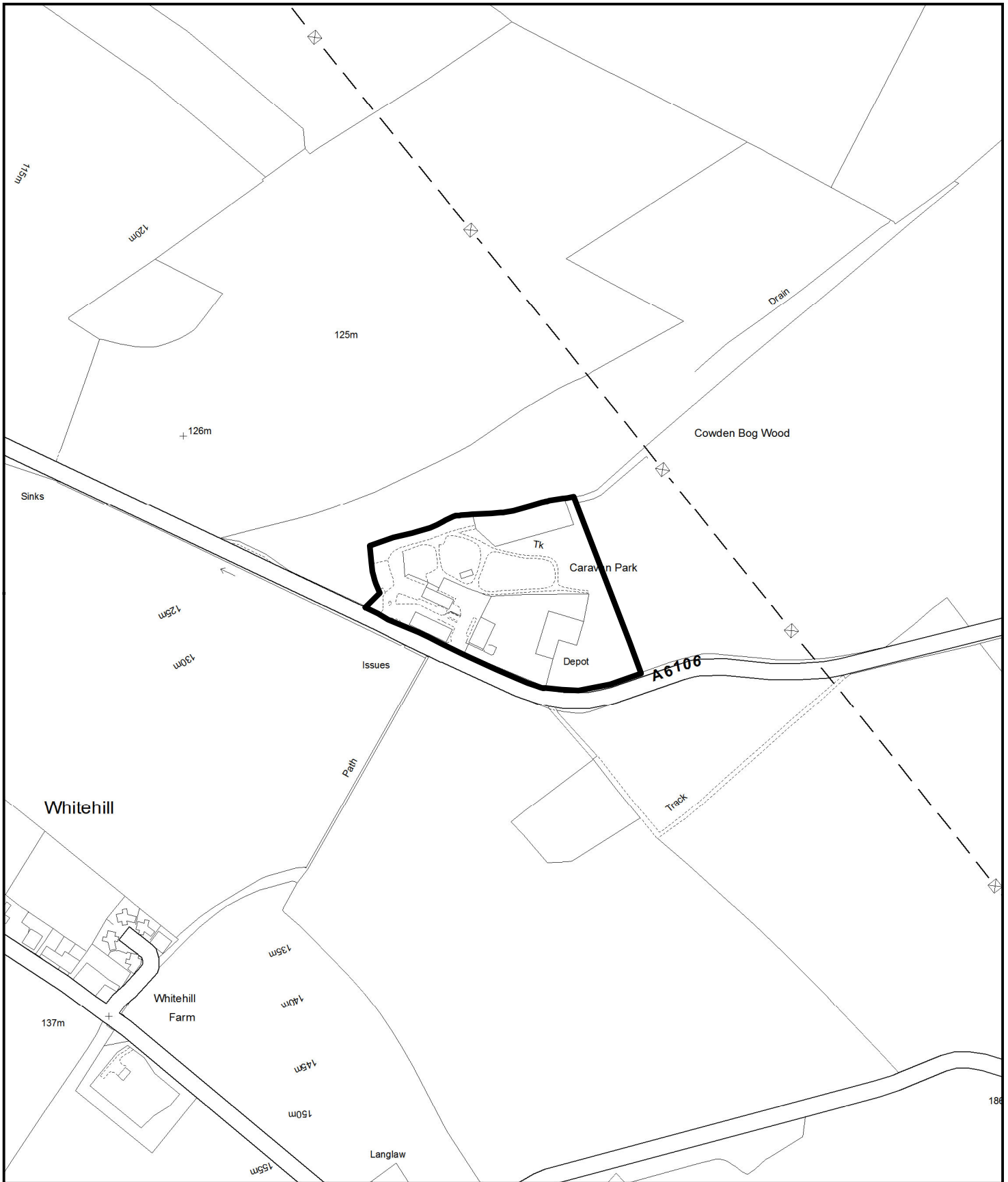
- 5.1 It is recommended that:
- i) unless there is a satisfactory planning obligation completed and registered by 6 September 2017 then the application be refused due to the absence of the required planning obligation to meet the needs and consequences of the proposed residential development and as such the development would be contrary to policies IMP1,

- IMP2 and HOUS4 of the Midlothian Local Development Plan 2008 and Policies IMP1,IMP2 and DEV3 of the Proposed Midlothian Local Development Plan; and
- ii) the Committee be informed at a subsequent meeting of the final decision on this application.

**Ian Johnson**  
**Head of Communities and Economy**

**Date:** 23 May 2017

**Application No:** 16/00780/PPP  
**Applicant:** RH Miller Ltd  
**Agent:** Ferguson Planning  
**Validation Date:** 08.11.2013  
**Contact Person:** Matthew Atkins  
**Tel No:** 0131 271 3027  
**Background Papers:**



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

Application for planning permission in principle for erection of 60 dwellinghouses; erection of warehouse; extension to existing petrol filling station kiosk and associated works at Land At Fordel Dalkeith

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FORDEL, DALKEITH**

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1 The application is for planning permission in principle for the erection of 60 dwellinghouses; erection of warehouse; extension to existing petrol filling station kiosk and associated works at land at Fordel, Dalkeith. There have been five letters of representation and consultation responses from the Scottish Environment Protection Agency, Scottish Water and the Council's Policy and Road Safety Manager and the Head of Education. The relevant development plan policies are RP1, RP7, RP8, RP28, HOUS3, HOUS4, ECON8, TRAN1 and DP1 of the Midlothian Local Plan and policies 1, 5, 7 and 8 of the South East Scotland Strategic Development Plan. The recommendation is to refuse planning permission.**
- 1.2 At its meeting of 25 February 2014 the Planning Committee deferred consideration of the application to enable a Committee site visit to take place. The Committee also asked that it be advised of possible alternative uses for the site.**

**2 SITE VISIT**

- 2.1 A Committee site visit is scheduled to take place on Monday 26 May 2014.

**3 ALTERNATIVE USES**

- 3.1 The site is located within the countryside on the north side of the A6106 (former A68) to the south east of Dalkeith and north east of Whitehill. A significant area of the site can be considered to have been previously developed.

- 3.2 Existing buildings presently in use include the petrol filling station and kiosk; the equestrian/countryside retail outlet, the office building, the gardening retail unit and the warehouse building. Vacant buildings include the cafe and the shower block for the caravan site. The hardstanding around the petrol filling station, retail uses and warehousing is still in use. The hardstanding previously used as a caravan/mobile home storage area is vacant.
- 3.3 Support has already been given to the extension of the existing countryside related retail activities in the granting of planning permission (08/00262/FUL – which has not been implemented), this use would still be supported.
- 3.4 Other uses that could be supported under the current local plan would predominantly fall under policies ECON7: Tourist Accommodation, ECON8: Rural Development and DP1: Development in the Countryside.
- 3.5 Policy ECON7: Tourist Accommodation could potentially support a hotel development and/or self catering tourist accommodation where it can be located in an unobtrusive manner within the landscape and is of a character and scale in keeping with its rural setting.
- 3.6 Policy ECON8: Rural Development permits proposals that will enhance rural economic development opportunities or are businesses best suited to a rural location. Such uses could include an equestrian business (or expansion of the existing business on site), a horticultural business, a cat and dog kennels or agricultural machinery sales. Any such proposal would be permitted provided they accord with other relevant local plan policies, protect residential amenity, and meet normal development management criteria.
- 3.7 Policy DP1: Development in the Countryside permits the redevelopment of non-residential buildings in the countryside, where they have become redundant. In the case of redevelopment, the resulting buildings must make a significant and positive contribution to the landscape; be of a character and scale appropriate to its immediate surroundings; be capable of being served by an adequate and appropriate access; be capable of being serviced at reasonable cost and with no unacceptable discharge to watercourses; and would only exceptionally exceed 5 houses. The redevelopment should have a comparable floorspace to the rural buildings being replaced.

#### **4. FURTHER SUBMISSIONS BY THE APPLICANT**

- 4.1 As a consequence of the deferral by the Planning Committee the applicant has submitted additional information to be considered as part of the application for the erection of 60 dwellinghouses, erection of warehouse and extension of petrol filling station kiosk.



- 4.2 The submission advises that the proposed footpath link to Whitehill (1.3k by road) provides reasonable access to public transport at Whitehill. It also advises that a bus stop would be proposed at the front of the development to facilitate the new bus service that would be required to serve the Fordel View development. This would make the proposed development dependant on another proposed development which has not been granted planning permission.
- 4.3 Foul water drainage from the site will need to be conveyed to the point of discharge on the public network identified by Scottish Water following the Drainage Impact Assessment (DIA) process. A possible gravity outlet has been identified 1km to the west of the site. An alternative pumped solution to Scottish Water's apparatus at Whitehill may be possible.
- 4.4 Surface water drainage from the site will be conveyed to a Sustainable Urban Drainage Systems (SUDS) basin to the western boundary of the site and conveyed off site to the minor watercourse to the north. The basin will attenuate the surface water flows and control the discharge to the watercourse in order that the off-site flows are restricted to green field runoff thereby creating a no net detriment situation. By embracing SUDS and with the appropriate levels of treatment the development could satisfy SEPA's objection and could be resolved by condition.
- 4.5 The applicant has submitted an indicative drawing to demonstrate how 60 units could be accommodated within the site. However, the applicant has offered to reduce the level of housing to 40 dwellings. The principle justification for the development is to provide investment to allow the existing business to continue, supporting the existing 27 jobs. As the application is for planning permission in principle the proposed numbers are only indicative and would be subject to a matters specified in condition application if the Committee is minded to grant planning permission.
- 4.6 Petrol sales from the site have fallen from 7 million litres per annum in 2008, to 2.4 million litres per annum now. This is likely to be further eroded if the Fordel View development goes ahead.

## 5 ADDITIONAL CONSULTATION

- 5.1 **Scottish Environment Protection Agency (SEPA)** initially objected to the application on the grounds of lack of information on proposals for foul and surface water drainage and a lack of information on the ability of this site, once developed, to accommodate these facilities. Following the submission of further supporting information, SEPA agreed to remove the objection (26 March 2014), but this is conditional on it being demonstrated in a matters specified in condition application, that adequate Sustainable Urban Drainage can be accommodated within the site.

## 6 REPRESENTATIONS

- 6.1 One further representation has been received commenting upon the proposed upgrade of the footpath to Whitehill. It states that this path although adopted is privately owned by several parties, not including the applicant; and that these parties would have to be consulted and agree to the upgrading, i.e. drainage, fencing etc. The representation also contends that the number of houses proposed is excessive.

## 7 SUMMARY

- 7.1 The Committee is requested to refer to the report on the application submitted to the meeting on 25 February 2014 which sets out all of the policy matters and offer material considerations. Having considered the further representation from the applicant, the revised response from SEPA, and the additional representation, the recommendation remains that of refusal of the application for the reasons itemised below.

## 8 RECOMMENDATION

- 8.1 That planning permission be refused for the following reasons:
- 1. The redevelopment of the site for residential purposes is contrary to policies RP1 and DP1 of the Midlothian Local Plan as it is not an accepted countryside use and the level of redevelopment far exceeds the existing footprint of development on site.*
  - 2. Notwithstanding reason no.1 above, it is also the case that the proposal is contrary to policy TRAN1 as it would result in a major travel generating use in a location with poor access to public transport and with no immediate prospect of improved services; and is contrary to Strategic Development Plan Policy 8 in that the site is not a sustainable transport location.*
  - 3. The level of development proposed would be contrary to policies RP7 and HOUS3 as the density of housing proposed would not be appropriate to the rural location and it would be out of scale and character with the area to the detriment of the visual amenity of the landscape.*

**Ian Johnson**

**Head of Communities and Economy**

**Date: 20 May 2014**

**Application No: 13/00780/PPP (Available online)**

**Applicant: RH Miller Ltd**

**Agent: Ferguson Planning**

**Validation Date: 08 November 2013**

**Contact Person: Kingsley Drinkwater**

**Tel No: 0131 271 3315**

**Background Papers: 13/00478/PAC**



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- 1.1 The application is for planning permission in principle for the erection of 60 dwellinghouses; erection of warehouse; extension to existing petrol filling station kiosk and associated works at land at Fordel, Dalkeith. There have been five letters of representation and consultation responses from the Scottish Environment Protection Agency, Scottish Water and the Council's Policy and Road Safety Manager and the Head of Education. The relevant development plan policies are RP1, RP7, RP8, RP28, HOUS3, HOUS4, ECON8, TRAN1 and DP1 of the Midlothian Local Plan and policies 1, 5, 7 and 8 of the South East Scotland Strategic Development Plan. The recommendation is to refuse planning permission.**

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The site currently comprises an existing mixed use development including petrol filling station, shop, restaurant, equestrian/agricultural supplies outlet, warehousing, garden shop, offices, caravan/camp site and caravan storage facility.
- 2.2 The site is approximately 3.3 hectares and is located in open countryside, with an area of woodland to the west, north and east (Cowden Bog Wood). The site is on the north side of the A6106 (former A68) to the south east of Dalkeith and north east of Whitehill.

## **3 PROPOSAL**

- 3.1 The application is for planning permission in principle for mixed use development comprising the erection of 60 dwellinghouses; erection of warehouse; extension to existing petrol filling station kiosk and associated works.

- 3.2 It is proposed to retain the petrol filling station and cafe/restaurant building, demolish the remaining buildings, and erect a new retail warehouse building and 60 dwellinghouses. The intention is to create a new "Fordel Village".
- 3.3 The existing access point to the west of the petrol filling station, off the A6106, will be used as the main entrance to the site. The existing exit only point from the petrol filling station will remain and the entrance immediately to the east of the petrol filling station will be closed.
- 3.4 The applicant has submitted a supporting planning statement which sets out the policy context and other material considerations; as well as an indicative layout plan.

## 4 BACKGROUND

- 4.1 Pre Application consultation 13/00478/PAC for residential development, erection of warehouse and extension to petrol filling station kiosk was received in June 2013.
- 4.2 Planning application 10/00163/DPP for erection of a single wind turbine was refused on 18 January 2011.
- 4.3 Planning application 08/00262/FUL for erection of replacement unit for retail sale of equestrian equipment, alterations to warehouse, extension to petrol filling station shop and associated parking and landscaping was granted permission subject to conditions on 10 September 2010.
- 4.4 Outline planning application 02/00421/OUT for the erection of timber wigwams was withdrawn.
- 4.5 Planning application 02/00410/FUL for the extension to equine centre was refused on 04 December 2002 for the reason that the site was not appropriate for a large retail facility and would be detrimental to visual amenity.
- 4.6 Planning application 01/00770/FUL change of use from warehouse to retail sale of equestrian equipment was withdrawn.

## 5 CONSULTATIONS

- 5.1 **Scottish Environment Protection Agency (SEPA)** objects to the application on the grounds of lack of information on proposals for foul and surface water drainage and a lack of information on the ability of this site, once developed, to accommodate these proposals.
- 5.2 **Scottish Water** advises that due to the size of the proposed development it is necessary to assess the impact the resultant demand will have on the existing infrastructure. With development of 10 or more housing units, or equivalent, there is a requirement to submit a fully

completed Development Impact Assessment form. Initial investigations have highlighted there may be a requirement for the developer to carry out works on the local network to ensure there is no loss of service to existing customers.

- 5.3 The **Head of Education** estimates that a development of 60 dwellings would give rise to the following number of pupils:
- Primary Non Denominational 17
  - Primary Denominational 2
  - Secondary Non Denominational 12
  - Secondary Denominational 1
- 5.4 The site lies within the following school catchment areas:
- 5.5 Primary Non-Denominational: An extended new Woodburn Primary School opened in August 2009. All developers of new housing in the Dalkeith area are required to contribute towards the cost of this school.
- 5.6 Primary Denominational: St David's RC Primary School is at or near capacity from committed developments in the Dalkeith area. An extension may be required and a developer contribution would be required towards the cost of any extension.
- 5.7 Secondary Non-Denominational: A significant amount of new housing has already been allocated to Dalkeith High School and an extension to Dalkeith High School would be required. A developer contribution would be required towards the cost of this extension.
- 5.8 Secondary Denominational: Currently, for all housing developments within Midlothian, a contribution of £135 per house for St David's High School is required.
- 5.9 The **Policy and Road Safety Manager** comments that the site is relatively remote from Dalkeith and Whitehill Village and does not form part of any of the current housing groupings. It does not have a direct bus service with the nearest available being the hourly 51 /52 service running through Whitehill Village or the Dalkeith Town Centre services. An adopted footway does run from the site, along the northern side of the A6106, providing a pedestrian link with Dalkeith, however the walk distance from the site to Dalkeith Town Centre is considerable and would be in excess of 2.5km.
- 5.10 Given the remote location and the lack of convenient public transport services it is likely that the majority of trips from this development including travel to and from school would be made by private car and therefore this consultee cannot support a residential development at this location.

## 6 REPRESENTATIONS

6.1 Four representations have been received in relation to the application objecting to the mixed use development. The concerns raised are as follows:

- The site is located in the countryside;
- There is no mains sewer at the site, and the site depends upon a septic tank;
- The site is subject to former mine workings and may be unstable;
- There is a gas pipe on the proposed site;
- Encroachments into woodland will be detrimental to wildlife;
- Increased traffic and adverse impact on road safety; and
- Lack of gas supply;

6.2 One representation has been received in relation to the application supporting the mixed use development. The comments are as follows:

- Brownfield sites such as this should be considered for development before any green field sites;
- There is a need for affordable housing; and
- The site is becoming derelict and development would be of benefit to the local economy.

## 7 PLANNING POLICY

7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) and the Midlothian Local Plan, adopted in December 2008. The following policies are relevant to the proposal:

### Midlothian Local Plan

7.2 Policy **RP1 Protection of the Countryside** advises that development in the countryside will only be permitted if it is essential for the furtherance of agriculture, or other uses appropriate to the countryside. Development complying with the terms of Policy DP1 will also be permitted;

7.3 Policy **RP7 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;

7.4 Policy **RP8 Water Environment** aims to prevent damage to the water environment, including groundwater and requires compliance with SEPA's guidance on SUDs;

7.5 Policy **RP28 Site Assessment, Evaluation and Recording**, protects any potential archaeological resources by ensuring the site is assessed;

- 7.6 Policy **HOUS3 Windfall Housing Sites** advises that within the built-up areas, housing development on non-allocated sites and including the reuse of buildings and redevelopment of brownfield land, will be permitted provided that: it does not lead to the loss or damage of valuable public or private open space; it does not conflict with the established land use of the area; it respects the character of the area in terms of scale, form, design and materials; it meets traffic and parking requirements; and it accords with other relevant Local Plan policies and proposals, including policies IMP1, IMP2, IMP3 and DP2;
- 7.7 Policy **HOUS4 Affordable Housing** requires that on residential sites allocated in this Local Plan and on windfall sites identified during the plan period, provision shall be required for affordable housing units equal to or exceeding 25% of the total site capacity, as follows:
- for sites of less than 15 units (or less than 0.5 hectares in size) no provision will be sought;
  - for sites of between 15 and 49 units (or 0.5 to 1.6 hectares in size) there will be no provision for the first 14 units thereafter 25% of the remaining units will be for affordable housing; and
  - for sites of 50 units and over (or larger than 1.6 hectares in size), there will be a requirement for 25% of the total units to be for affordable housing.
- 7.8 Policy **ECON8 Rural Development** permits proposals that will enhance rural economic development opportunities provided they accord with all relevant Local Plan policies and meet the following criteria: the proposal is located adjacent to a smaller settlement unless there is a locational requirement for it to be in the countryside; the proposal is well located in terms of the strategic road network and access to a regular public transport service; the proposal is of a character and scale in keeping with the rural setting; the proposal will not introduce unacceptable levels of noise, light or traffic into quiet and undisturbed localities nor cause a nuisance to neighbouring residents; the proposal has adequate and appropriate access; it is capable of being provided with drainage and a public water supply, and avoids unacceptable discharge to watercourses; and it is not primarily of a retail nature;
- 7.9 Policy **TRAN1 Sustainable Modes of Transport** states that major travel-generating uses will only be permitted where they are well located in relation to existing or proposed public transport services, are accessible by safe and direct routes for pedestrian and cyclists, and accord with the Council's Local Transport Strategy. All major travel-generating developments shall be accompanied by a Transport Assessment and a Green Travel Plan, setting out what provisions or measures shall be taken to provide for, and encourage the use of, alternative forms of travel to the private car;
- 7.10 Policy **DP1 (Development in the Countryside)** which permits the redevelopment of redundant agricultural and other non-residential

buildings in the countryside to residential uses will not be permitted unless the proposal meets a set of 5 criteria, which are that the resulting buildings will; a) make a significant and positive contribution to the landscape; b) be of a character and scale appropriate to its immediate surroundings; c) be capable of being served by an adequate and appropriate access; d) be capable of being serviced at reasonable cost and there would be no unacceptable discharge to watercourses; and e) only exceptionally exceed 5 houses, unless the site is close to an existing settlement;

### SESplan

- 7.11 Policy **1B: Development Principles**, which has regard to the need for high quality design, energy efficiency and the use of sustainable building materials and the need to improve the quality of life in local communities by conserving and enhancing the natural and built environment to create more healthy and attractive places to live;
- 7.12 Policy **5: Housing Land**, which highlights the need to provide adequate land to accommodate the projected housing need subject to any justifiable allowance for anticipated house completions from 'windfall' sites;
- 7.13 Policy **7: Maintaining A Five Year Housing Land Supply**, Sites for greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying a set of 3 criteria; and
- 7.14 Policy **8: Transportation**, will support and promote the development of a sustainable transport network. It will ensure that development likely to generate significant travel demand is directed to locations that support travel by public transport, foot and cycle; and that new development minimises the generation of additional car traffic, including through the application of mode share targets and car parking standards that relate to public transport accessibility.

## **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.

### The Principle of Development

- 8.2 The site is not an allocated housing site, nor is it within, or adjacent to any existing settlement boundary. The nearest settlement boundary is



Whitehill, at 380 metres (1.3km by road), and the south eastern edge of Dalkeith at 700 metres (by road).

- 8.3 The site is located in the countryside, and policy RP1 does not support the level or type of development proposed. Policy DP1 allows for the redevelopment of an equitable floor space of redundant non-residential buildings. In this case there are two buildings amounting to approximately 1,650 square metres. Policy DP1 supports redevelopment proposals for more than 5 houses in exceptional circumstances. Although the footprint of the buildings to be demolished would at best equate to approximately 20 modest houses, the applicant has not demonstrated that there are exceptional circumstances to justify a number in excess of 5 units.
- 8.4 Sixty dwellinghouses is classified as a major development, and the proposal of a major development on a non-allocated site raises significant concerns. This level of development would under normal circumstances be pursued through a local plan review process. The applicant has submitted the proposal to the Midlothian Local Development Plan Main Issues Report (2013), within which the site has been identified as a potential mixed use development site (site ref VR5).
- 8.5 The site is a mixed use brown field site which the applicant advise has suffered commercially since the re-routing of the A68 trunk road. As a consequence the principal justification for the redevelopment proposals is an economic realisation of the physical and financial resource of the land. While the site falls within the countryside it has many characteristics of an urban development, such that some limited form of redevelopment may be appropriate. The proposed warehouse development and extension to the petrol filling station can be seen as replacing/enhancing existing facilities on the site, and they raise no fundamental planning concerns at this 'planning permission in principle' stage. The residential component is however a new use to the site and it is of a scale that constitutes a major housing development. There is no policy support for this scale of housing development on this site in the adopted local plan, nor in the emerging Midlothian Local Development Plan.
- 8.6 The applicant proposes 60 houses and other forms of development within a site area of 3.3 hectares. The area for the housing element is around 2 hectares. By comparison, the main settlement of Howgate contains 45 dwellings set within 5.7 hectares. Whitehill contains 40 dwellinghouses within 3.6 hectares. This clearly demonstrates a significant overdevelopment which would result in a development completely out of character with its rural location.

### Layout and Form of the Development

- 8.7 Notwithstanding the clear presumption against the principle of this scale of housing development the following comment relates to the submitted indicative layout plan.
- 8.8 The low lying nature of the site within the landscape and the surrounding tree belts, on three sides, means that the existing buildings and proposed redevelopments can be accommodated with minimal impact on the wider landscape. This position does however depend upon the scale and density of the built form. Buildings should not exceed the scale of a traditional two storey dwellinghouse.
- 8.9 In terms of open space and amenity, a village green area should be incorporated into any layout which should be large enough to provide adequate amenity space and a small play facility for younger children. Dense road side planting (hedge incorporating tree planting) and fencing would be necessary for screening, road safety and security. Open space and planting should also be used to provide areas of separation between the different uses which could potential conflict with each other.
- 8.10 The development should not be suburban in character and should appear as if it has evolved around a central point, most likely the village shop and green. Garages should be detached and parking should be between houses on driveways or in small courtyard areas. Front gardens should be minimised and more ground dedicated towards rear gardens.
- 8.11 The environment should be pedestrian friendly with all roads being shared, plus dedicated footpath links.

### Transportation Issues

- 8.12 The site is remote from Dalkeith and has no immediate public transport links. The nearest bus service is the hourly 51/52 service that passes through Whitehill. This significant walk away involves crossing the A6106, and using an unmade path to Whitehill. The applicant is proposing to upgrade this footpath. There is a footpath along the northern side of the A6106, providing a pedestrian link with Dalkeith. However the walk distance from the site to Dalkeith town centre is considerable and would be in excess of 2.5km.
- 8.13 Good pedestrian links could be provided, however, given the site's remote location and the lack of convenient public transport services it is likely that the majority of trips from this development including travel to and from work, school and shopping trips would be made by private car. There are no dedicated cycle routes from the site to the town, and cyclists would have to use the A6106.

- 8.14 The proposed main site access is well located at the point with greatest visibility. The filling station egress remains the same. It would be preferred if one of these egress points could be deleted, firstly to rationalise the number of access points and secondly to strengthen the boundary to the road.

### Other Matters raised by Representors and Consultees

- 8.15 Both SEPA and Scottish Water have highlighted potential drainage issues, with SEPA formally objecting. Roseberry Treatment Works has limited capacity and works may be necessary to the local waste water network. A development impact assessment is required.
- 8.16 SEPA have highlighted that in the absence of a main sewer and any local watercourse, a full soakaway would be required and sufficient land allocated to this purpose. Two levels of treatment would also be required for all surface water run-off. A SUDS pond or basin is a likely requirement. A full drainage assessment should be carried out.
- 8.17 There are no cultural heritage designations in or adjacent to the site, however there is an identified need to carry out a Programme of Archaeological Works (Archive Assessment and Evaluation). The surrounding area contains numerous archaeological cropmark sites recorded from aerial photographs, including several Scheduled Monuments, and accordingly the area is regarded as having potential archaeological significance. The aim should be to preserve archaeological deposits and historical features in situ as a first option, but alternatively where this is not possible, the recording of upstanding historical features and buried archaeological remains may be an acceptable alternative. The area to be investigated should be no less than 5% of the total site area.

## **9 RECOMMENDATION**

- 9.1 That planning permission be refused for the following reasons:
- 1. The redevelopment of the site for residential purposes is contrary to policies RP1 and DP1 of the Midlothian Local Plan as it is not an accepted countryside use and the level of redevelopment far exceeds the existing footprint of development on site.*
  - 2. Notwithstanding reason no.1 above, it is also the case that the proposal is contrary to policy TRAN1 as it would result in a major travel generating use in a location with poor access to public transport and with no immediate prospect of improved services; and is contrary to Strategic Development Plan Policy 8 in that the site is not a sustainable transport location.*
  - 3. The level of development proposed would be contrary to policies RP7 and HOUS3 as the density of housing proposed would not be appropriate to the rural location and it would be out of scale*

*and character with the area to the detriment of the visual amenity of the landscape.*

**Ian Johnson**  
**Head of Communities and Economy**

**Date: 18 February 2014**

<b>Application No:</b>	<b>13/00780/PPP (Available online)</b>
<b>Applicant:</b>	<b>RH Miller Ltd</b>
<b>Agent:</b>	<b>Ferguson Planning</b>
<b>Validation Date:</b>	<b>08 November 2013</b>
<b>Contact Person:</b>	<b>Kingsley Drinkwater</b>
<b>Tel No:</b>	<b>0131 271 3315</b>
<b>Background Papers:</b>	<b>13/00478/PAC</b>