

# Notice of meeting and agenda



## Planning Committee

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

**Date:** Tuesday, 06 June 2017

**Time:** 14:00

**John Blair**  
Director, Resources

**Contact:**

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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**

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## **2 Order of Business**

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

## **3 Declarations of Interest**

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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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No Minutes to be considered at this Meeting.

## **5 Public Reports**

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**5.1** Election of Chair

**5.2** Overview of the Committee – Verbal Report by Democratic Services

**5.3** The Planning System in Scotland: An Introduction for Elected Members – Report by Head of Communities and Economy **5 - 56**

**5.4** Midlothian Local Development Plan Update – Report by Head of Communities and Economy **57 - 60**

**5.4** Planning Performance Report – Report by Head of Communities and Economy **61 - 70**

**5.6** Major Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage – Report by Head of Communities and Economy **71 - 76**

**5.7** Appeals and Local Review Body Decisions – Report by Head of Communities and Economy **77 - 94**

**5.8** Guidance on the role of Councillors in the consideration of Pre-Application Consultations for Major Developments - Report by Head of Communities and Economy **95 - 104**

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|-------------|---|------------------|
| <b>5.9</b>  | Pre-Application Consultation Report regarding proposed residential development at land east of Lawfield Road and north of Ash Grove, Mayfield (17/00296/PAC) - Report by Head of Communities and Economy  | <b>105 - 108</b> |
|             | Application for Planning Permission Considered at a Previous Meeting – Report by Head of Communities and Economy  |                  |
| <b>5.10</b> | Application 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 13/00780/PPP                   | <b>109 - 128</b> |
|             | Applications for Planning Permission Considered for the First Time – Reports by Head of Communities and Economy   |                  |
| <b>5.11</b> | Application for Planning Permission for Residential Development on Land North of Dalhousie Dairy, Bonnyrigg 16/00712/PPP (To Follow)  |                  |
| <b>5.12</b> | Application for Planning Permission for the Erection of 11 flatted dwellings and five dwellinghouses formation of Car Park and Access Road and Associated Works on land at the junction of Bryans Road and Morris Road, Newtongrange 16/00809/DPP | <b>129 - 154</b> |
| <b>5.13</b> | Application for Planning Permission for the Erection of 9 Dwellinghouses; Formation of New Access Road and Car Parking and Associated Works at Land West of the Laird and Dog Hotel, High Street, Lasswade 16/00727/DPP                           | <b>155 - 172</b> |
| <b>5.14</b> | Application for Planning Permission for the partial change of use of land and buildings for wedding events (part retrospective) at 32A Damhead, Lothianburn 17/00219/DPP  | <b>173 - 194</b> |

## **6 Private Reports**

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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](http://www.midlothian.gov.uk).





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## THE PLANNING SYSTEM IN SCOTLAND: AN INTRODUCTION FOR ELECTED MEMBERS

Report by Head of Communities and Economy

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### 1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide an introduction to the planning system for elected members.

### 2 BACKGROUND

- 2.1 Elected members have an important role to play in the planning system through their duties as ward members and through their position on the Planning Committee and Local Review Body.
- 2.2 The Improvement Service has prepared new advice for elected members *'The planning system in Scotland: an introduction for elected members'*, a copy of which is attached to this report.

### 3 THE PLANNING SYSTEM IN SCOTLAND

- 3.1 The attached publication provides guidance with regard:
- Planning – purpose and significance;
  - The planning process – summary;
  - Development plans;
  - Development management;
  - Appeals and reviews;
  - Enforcement;
  - Code of Conduct; and
  - Planning a councillor's perspective

### 4 RECOMMENDATION

- 4.1 It is recommended that the Committee notes the contents of the report.

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

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# The planning system in Scotland: an introduction for elected members

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# Introduction



Elected members have an important role to play in the planning system through their general duties as a ward member, but also through positions on the Local Review Body, Executive Board or full council.



The planning system is concerned with the future development and use of land and buildings. It is about where development should happen, where it should not and how it interacts with its surroundings. The system is undergoing a process of review to strengthen its capacity to nurture our places, our environment and our communities and guide future change so that it benefits everyone. This paper references the change that lies ahead and will be updated as it is implemented.



The planning system raises issues of probity, conflicts of interest and conduct for elected members, and initially can be confusing and complex. It is an area of decision-making in which elected members must be impartial and be seen to be acting impartially.



This guide aims to help you understand what the planning system seeks to achieve and introduces the processes involved in decision-making. It is not intended to turn you into a planning expert, but rather to provide information that will help you deal with planning matters and see the planning system's contribution to delivering great places and in achieving council policy goals.

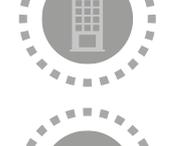


The guide also provides you with links to other sources of information on the planning system. These should give you greater insights into aspects of planning that may be of particular interest to you.



In addition to these sources of information and help, your authority's planning officers will be pleased to answer queries that you may have.





# Planning - purpose and significance

The planning system is established through legislation, which sets out certain actions and activities that planning authorities in Scotland are responsible for. The legislation gives the context for delivering new development in the right places. As such, planning can enable great places though managing change that impacts upon our environment, our communities and our health and wellbeing.

A recent independent review of the planning system, '[Empowering Planning to Deliver Great Places](#)', found that legislation alone cannot enable planning to realise its potential to deliver great places but requires behavioural change from all those with a role and interest in the system.

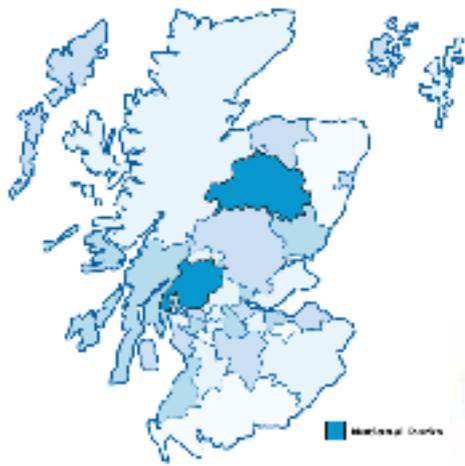
In response to the review recommendations, at the beginning of this year Scottish Ministers consulted on the future of the planning system in '[Places, People and Planning](#)'. The changes proposed confirm the unique contribution the planning system can make to shaping the future of places and communities. Planning can be central to the delivery of great places and homes, enable economic growth and a force for positive, collaborative change in achieving better outcomes for communities.

The consultation contained 20 proposals linked to four key areas for planning change:

- Making plans for the future; a system to lead and inspire change by making clear plans for the future.
- People make the system work; a system to empower people to decide the future of their places.
- Building more homes and delivering infrastructure; a system to help deliver more high quality homes and create better places where people can live healthy lives and developers are inspired to invest.
- Stronger leadership and smarter resourcing; to reduce bureaucracy and improve resources so Scotland's planning system can focus on creating great places.

The [responses](#) to this consultation will now inform a new Planning Bill in late 2017 targeting the legislative changes to review the system. The change required beyond legislation is being brought forward in a programme of planning reform and successful change requires involvement from all who have an interest, expertise or experience in the system and its outcomes.

There are 34 planning authorities in Scotland – the 32 councils and two national park authorities – and they are responsible for the main elements of the system: preparing development plans, deciding applications for planning permission and enforcing planning controls.



Scottish Planning Authorities



These are the Strategic Development Plan Areas which cover Scotland's four largest city-regions, around Aberdeen, Dundee, Edinburgh and Glasgow, covering approximately 32% of the land area of Scotland.

The changes in the system look to strengthen the influence and perception of planning to place it central in the coordination required to deliver great places. At the same time, they look to streamline procedures and reduce bureaucracy.

*“Our people need a planning system that helps to improve their lives by making better places and supporting the delivery of good quality homes.”*

Places, People and Planning: A consultation on the future of the Scottish planning system

It is through the planning system that decisions are made, in the public interest, on how best to meet the needs and requirements for housing, offices and other business premises, retail and leisure opportunities, education and other social facilities and transportation. The aim is to achieve the right development in the right place, protecting valued urban and rural areas and the environment from inappropriate forms of development or use of land.

Consequently the planning system has a significant impact on our quality of life, by shaping the environment in which we live, work, shop, learn, travel and spend our leisure time.

It is through the planning system that councils and others should facilitate development through the management of growth, land use and places whilst protecting and enhancing the natural and built environment in which we live, work and spend our leisure time. Actions taken through the planning system can therefore make a major contribution to councils' corporate objectives.



Development and land use change inevitably creates conflicts between competing interests. Councils, and therefore elected members, must represent the wider public interest and help mediate such conflicts through the planning system. Partnership working, community involvement, co-ordination of activities and meaningful negotiations with developers are essential components of a successful planning system.

For further information about the purpose of the planning system see [www.gov.scot/Topics/Planning](http://www.gov.scot/Topics/Planning).





# The planning process - summary

Public perception of planning is often based on contact with the system through a planning application but the scope of the planning system is much wider. To understand the various individual components it helps to appreciate how those relate to each other.

The two major elements of the planning process in Scotland are development plans and development management.

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*“We want Scotland’s planning system to lead and inspire change by making clear plans for the future.”*

Places, People and Planning: A consultation on the future of the Scottish planning system

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**Development plans** guide the future use of land and the appearance of cities, towns and rural areas. They indicate where development should happen and where it should not. All planning authorities are legally required to prepare a Local Development Plan (LDP) for their area, which must be updated every five years. The LDP will usually be accompanied by supplementary guidance on topics like green network provision, developer contributions, residential development standards etc.

In the four largest city regions (Aberdeen, Dundee, Edinburgh and Glasgow) authorities must also work together to prepare a Strategic Development Plan. Authorities work together through Strategic Development Planning Authorities (SDPAs).

- **Aberdeen City and Shire SDPA**  
– Aberdeen City Council and Aberdeenshire Council
- **TAYplan SDPA** – Angus Council, Dundee City Council, Fife Council and Perth and Kinross Council
- **SESplan SDPA** – City of Edinburgh Council, East Lothian Council, Fife Council, Midlothian Council, Scottish Borders Council, West Lothian Council





- **Glasgow and Clyde Valley SDPA** – East Dunbartonshire Council, East Renfrewshire Council, Glasgow City Council, Inverclyde Council, North Lanarkshire Council, Renfrewshire Council, South Lanarkshire Council, West Dunbartonshire Council.



The law requires that decisions on planning applications are made in accordance with the development plan unless material considerations indicate otherwise. This means that decisions should be made in line with the development plan, but if there are material considerations (considerations which are related to planning and relevant to the application) a different decision may be appropriate. This emphasises the importance of the development plan and maintain an up to date development plan.



**Development management** is the process of deciding planning applications and various other associated activities including enforcement of planning controls.



For the purposes of planning applications, development in Scotland is put into one of three categories – local, major or national. The different categories mean that applications are treated in a way which is suited to the size and complexity of the proposed development and the issues they are likely to raise.



Most applications will be for local developments. Major developments include applications for 50 or more homes, certain waste, water, transport and energy-related developments, and larger retail developments. National developments are specific projects which have been identified in the National Planning Framework because of their national importance.



## Other planning activities



Planning authorities have many statutory powers and other responsibilities linked to the planning system covering diverse topics such as:



- enforcement of planning controls
- Tree Preservation Orders
- identification of public rights of way and
- designation of conservation areas.



The work of the council's planning service also contributes to community planning and regeneration initiatives, and can promote improvements to the local environment and encourage more environmentally sustainable forms of development. Council services such as corporate policy, legal, financial, education, housing, transport, environmental and economic development all have important interactions with planning.

## Role of Scottish Government

The Scottish Government maintains the legislative framework of the system, sets out the strategy for Scotland's future development and policies on key planning



issues, and promotes good practice across the planning system. The Government is also responsible for approving Strategic Development Plans and making decisions on appeals and some other planning applications. It is also involved in promoting the reform of the planning system through the consultation document on the future of the planning system ‘Places, People and Planning’.

## Public bodies and agencies

A wide range of other public bodies and agencies participate in the planning process and decision making. These organisations often have statutory responsibilities for specific topic areas, with implications for planning decisions. They offer specialist advice to the planning authorities. Such bodies include:

### Scottish Natural Heritage (SNH) – [www.snh.org.uk](http://www.snh.org.uk)

SNH is responsible for the conservation and enhancement of natural heritage - the wildlife, the habitats and the landscapes.

### Historic Environment Scotland – [www.historic-scotland.gov.uk](http://www.historic-scotland.gov.uk)

Historic Environment Scotland safeguards the historic environment and promotes its understanding and enjoyment.

### Scottish Environment Protection Agency (SEPA) – [www.sepa.org.uk](http://www.sepa.org.uk)

SEPA is Scotland’s environmental regulator and adviser. In addition to its role in controlling pollution, it works with others to protect and improve our environment.

### Health and Safety Executive (HSE) – [www.hse.gov.uk](http://www.hse.gov.uk)

HSE protects people’s health and safety by ensuring that risks in the workplace are properly controlled and controls substances that are hazardous to health.

### Scottish Water – [www.scottishwater.co.uk](http://www.scottishwater.co.uk)

Scottish Water provides water and waste water services throughout Scotland.

### Transport Scotland – [www.transportscotland.gov.uk](http://www.transportscotland.gov.uk)

Transport Scotland is responsible for delivering the Scottish Government’s transport capital investment programme and overseeing the safe and efficient operation of trunk roads and rail networks.

### Architecture and Design Scotland (A+DS) – [www.ads.org.uk](http://www.ads.org.uk)

A+DS is a non departmental public body, which acts as a national champion for good architecture, design and planning in the built environment.

### Regional Transport Partnerships - [www.transport.gov.scot/our-approach/strategy/regional-transport-partnerships/](http://www.transport.gov.scot/our-approach/strategy/regional-transport-partnerships/)

Regional Transport Partnerships bring together local authorities, elected members and other key regional stakeholders to take a strategic approach to the planning and delivery of regional transport so that it better serves the needs of people and businesses.

### City Region Deals - [www.gov.scot/Topics/Built-Environment/Cities](http://www.gov.scot/Topics/Built-Environment/Cities)

City Region Deals offer the potential for new collaborative regional partnerships, focused on long-term strategic approaches to improving regional



economies.



### Scottish Cities Alliance - [www.scottishcities.org.uk](http://www.scottishcities.org.uk)

The Scottish Cities Alliance is a partnership of Scotland's seven cities and the Scottish Government, the purpose of which is to attract investment and jobs into cities.



A number of voluntary or private organisations, which are often national campaigning bodies, regularly interact with planning authorities. Examples of these include:



- The Royal Society for the Protection of Birds (RSPB) ([www.rspb.org.uk](http://www.rspb.org.uk))



- Friends of the Earth ([www.foe.co.uk](http://www.foe.co.uk))



- The Architectural Heritage Society of Scotland ([www.ahss.org.uk](http://www.ahss.org.uk))



- Local branches of the Scottish Civic Trust ([www.scottishcivictrust.org.uk](http://www.scottishcivictrust.org.uk))



- Homes for Scotland ([www.homesforscotland.com](http://www.homesforscotland.com))

## Community Councils

Community councils are also consultees, and legislation requires that they be invited to comment on planning applications in or affecting their area. They also have the right to comment on the preparation of development plans.



You are likely to have contact with the community councils as well as with members of the public, applicants and objectors to planning applications. If you attend meetings at which particular planning applications are being discussed it is important to avoid being drawn into discussions that could compromise your involvement in subsequent decision-making by the council. Further advice on this subject is given in the following sections.



## Planning Aid for Scotland (PAS)

PAS is a voluntary organisation at which 20% of planning professionals in Scotland volunteer. It offers an independent, free and professional advice service on planning applications and the planning process. It also runs training and education programmes designed to raise awareness and capacity on planning matters with elected members, community groups, seldom heard groups, children and young people ([www.pas.org.uk](http://www.pas.org.uk)).







# Development plans

The development plan process is central to the planning system. If you are a member of the planning committee you should have a high level of involvement in the preparation of the Local Development Plan for your area and, where relevant, the Strategic Development Plan.

Development plans set out how places should change and what they could be like in the future. They set out the preferred locations for new homes, businesses and other land uses and protecting places of value to people or wildlife. Plans may also describe how any new or improved facilities such as roads, schools and parks will be provided. Local authorities can enter into legal agreements with developers about this type of development. The policies in the development plan help to set out what kind of development is acceptable. Your authority's response to a planning application should be based on the plan.

Councils and national park authorities must prepare a development plan for their area at least every five years.

All parts of Scotland have to be covered by a Local Development Plan (LDP) which sets out where most new developments are proposed and the policies that guide decision making on planning applications.

For the four largest city regions (Aberdeen, Dundee, Edinburgh, Glasgow) there will also be a Strategic Development Plan (SDP). The SDP sets out the vision for the long term development of the city region and deals with region wide issues such as housing and transport.

Where there is a Strategic Development Plan, the Local Development Plans in the area must conform to it.

Authorities can also prepare supplementary guidance. This guidance can take a wide variety of forms but the most common types are:

- development briefs or master plans which provide a detailed explanation of how the authority would like to see particular sites or small areas develop;
- strategies or frameworks on specific issues, such as guidance on the location of large wind farms;
- detailed policies, for example on the design of new development or the delivery of affordable housing.

Development plans are not prepared in isolation. Plans are bound by European obligations and national strategies such as the National Planning Framework. The National Planning Framework sets the context for development planning across Scotland and provides a framework for the spatial development of Scotland as a whole. It sets the Scottish Government's development priorities and identifies national developments which support their development strategy.



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## Aligning with Community Planning

Planning authorities have a duty to align spatial planning with Community Planning priorities. The Community Empowerment Act 2015 makes them a statutory community planning partner required to take account of Local Outcome Improvement Plans and locality plans within their development plan.

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Also, under the Environmental Assessment (Scotland) Act 2005, development plans must be subjected to a strategic environmental assessment. When preparing a development plan, authorities must have regard to matters including the resources available to implement the plan, the plans of neighbouring authorities, the regional transport strategy, river basin management plan and local housing strategy, the national waste management plan and issues linked to the Control of Major Accident Hazards regulations, Flood Risk Management (Scotland) Act 2009, Climate Change (Scotland) Act 2009.

Every year your authority will prepare a Development Plan Scheme which sets out the timetable for plan preparation and for how and when people can get involved in plan preparation.

## Plan preparation

Strategic Development Plans and Local Development Plans go through similar preparation processes. The key stages are:

- Main Issues Report;
- Proposed Plan;
- modifications;
- submission to Scottish Ministers;
- examination;
- approval/refusal (Strategic Development Plans) or adoption (Local Development Plans).

## Main Issues Report

The Main Issues Report is the first formal stage in plan preparation. It sets out the authority's general proposals for development in the area and in particular proposals as to where development should and should not occur. It must contain one or more reasonable alternative sets of proposals and it must draw attention to the ways in which the favoured and alternative proposals differ from the current development plan. Main Issues Reports are not draft versions of the plan, but should concentrate on the key changes that have occurred since the previous plan and on the authority's big ideas for future development.



The report must be made publicly available for comment for a minimum six week period. During that time, the council is expected to engage with local communities and other key stakeholders such as the development industry and other public sector organisations to discuss the issues. It is important to recognise that councils are expected to engage in meaningful discussions at this stage of the plan preparation process in order to produce plans that reflect the aspirations of local communities.

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*“Co-ordinated working and including planners as key community planning partners will be essential.”*

Places, People and Planning: A consultation on the future of the Scottish planning system

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Development plans should be fully coordinated with other important strategies from the earliest stage, with key infrastructure providers such as the authority’s roads service, Transport Scotland and Scottish Water signed up to the delivery of the emerging proposals.

### **Proposed Plan**

Having taken into account the representations received on the Main Issues Report, authorities then prepare and publish a Proposed Plan. This shows the authority’s settled view as to what the final adopted content of the plan should be.

The public consultation on the Proposed Plan must run for at least six weeks. The authority will also notify the owners, lessees and occupiers of sites with premises on where development is proposed in the Proposed Plan, and the owners, lessees and occupiers of neighbouring sites.

### **Modifications**

Following the consultation on the Proposed Plan authorities may make modifications to it to take account of representations, consultation responses and minor drafting or technical matters.

Where an authority makes significant modifications, the public must be given a further opportunity to comment. Significant modifications should only occur in exceptional circumstances.

### **Submission to Scottish Ministers**

Authorities must submit their plan to Scottish Ministers, along with the proposed action programme, a report on public participation and, if there are unresolved representations, a request that Scottish Ministers appoint a person to examine the Proposed Plan.

### **Examination**

The purpose of the examination is to independently test the issues arising from



representations on Proposed Plans. The person appointed to examine the plan will be a Reporter or Reporters from the Scottish Government’s Directorate for Planning and Environmental Appeals (DPEA). The examination will only look at issues raised in representations and the authority’s response to these issues. The Reporter will decide if further information is required, who will be asked to provide this information and the method through which the information should be provided. It can be through written submissions, hearing sessions, inquiry sessions or a combination of these.



The outcome of the examination is a report which sets out and gives reasons for conclusions and recommendations. This report will be sent to the planning authority where it relates to a Local Development Plan or to Scottish Ministers where it relates to a Strategic Development Plan. The Reporter’s recommendations are binding on the planning authority, except in a limited number of circumstances.



The cost of the examination of a Local Development Plan is paid by the planning authority. The cost of the examination of a Strategic Development Plan is split between the Scottish Government and the Strategic Development Planning Authority.



### Approval or rejection of a Strategic Development Plan



When they have received the proposed Strategic Development Plan from the SDPA and the examination report, Scottish Ministers will either approve the plan, approve it with modifications or reject it. Proposed modifications will be published and consulted on prior to the final approval of the plan.



### Adoption of a Local Development Plan



Examination reports are largely binding on planning authorities. This means that authorities must follow the Reporter’s recommendations except in a limited number of situations. The authority then publishes the modifications and the plans as they propose to adopt it, and send a copy to Scottish Ministers. This must be done within three months of receiving the examination report.



### Role of elected members in development plan preparation



If you are a member of the planning committee, you will be involved in the approval of Main Issues Reports, Proposed Plans and the final version of Strategic and/ or Local Development Plans prior to their formal adoption by the council. Indeed, even if you are not a member of the council’s planning committee, in some local authorities you will also be involved as these plans are regarded as so important that they will often be presented to the full council for final decision. It is important that development plans are brought forward quickly and that decisions are not delayed except where absolutely necessary.



The real significance of the development plan is that it forms the policy basis for planning decisions on planning applications. The allocation of land for development in local development plans is effectively committing the council to the principle of future development on particular sites. For example, if the Local Development Plan has allocated a site for housing, the council will not be in a position to refuse planning permission in the future for a housing development on



the grounds that it is an inappropriate location for housing. In this type of situation, debate on planning applications should focus on matters such as the design of the development, its layout, phasing and infrastructure like roads and drainage.



As an elected member, key decisions on the content of the development plan will probably arise during the life of a council, and they will rank as some of the most important decisions you will make during your time on the council. The content of the development plan may have a profound effect on the future quality of life for the communities that you represent.



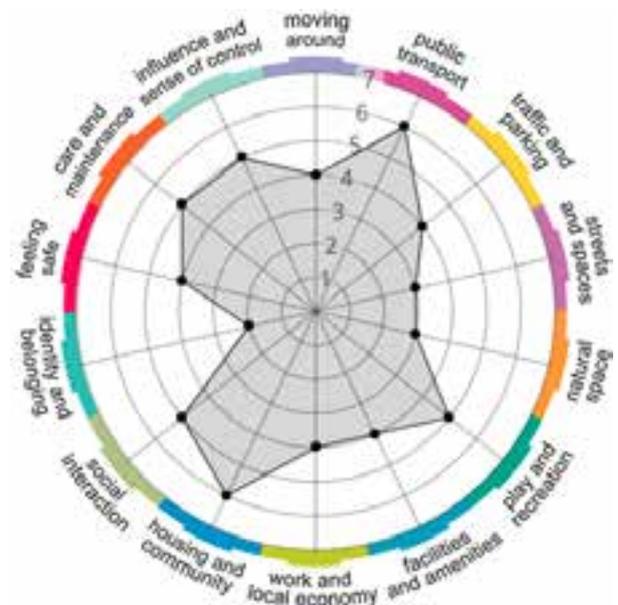
## Community engagement during plan preparation



There are minimum legal requirements for engaging people in the preparation of development plans, but authorities are encouraged to go beyond these to promote wider public awareness and engagement.



The Place Standard, a simple tool that is available for anyone to use, provides an excellent opportunity to involve all people in a structured conversation about the quality and future of a place.



Every year authorities must publish a development plan scheme. This includes a participation statement which sets out how and when people can get involved in plan preparation. Community groups should be encouraged to look at the development plan scheme and provide feedback on proposals for engagement.



The main formal opportunities for public engagement and plan preparation are:

- undertaking widespread consultation, including with community councils, following the publication of the Main Issues Report;
- publicising the publication of the Proposed Plan and the opportunity to make representations on it. Occupiers and neighbours of some specific proposal sites will be notified about the publication of proposed Local Development Plans.



## Agency involvement



Certain public bodies are designated as key agencies in planning legislation. These bodies include Scottish Natural Heritage (SNH), Scottish Environment Protection Agency (SEPA), Scottish Water, Scottish Enterprise, Highlands and Islands Enterprise, Regional Transport Partnerships, Crofters Commission and local Health Boards.



These key agencies have a duty to cooperate with planning authorities when development plans are being prepared. Historic Environment Scotland, Transport Scotland and the Forestry Commission Scotland are expected to engage with authorities in the same way (but are not legally obliged because they are part of the Scottish Government).



The agencies are also involved in the development management process when they are consulted by the planning authority on relevant applications.



## Action programmes



Development plans are most directly implemented through the development management process. However, they should also have a significant influence on many decisions affecting the places in your authority area.



Legislation requires authorities to prepare an Action Programme which sets out how the authority proposes to implement the plan. . The actions are not limited to those that will be carried out by the planning authority. When preparing their action programme, authorities must consult the key agencies, Scottish Ministers and anyone the authority proposed to specify by name in the Action Programme.



An Action Programme must be prepared within three months of plan approval or adoption and must be kept under review at least every two years.







# Development management

As an elected member, development management is the part of the planning system that you are likely to encounter most regularly.

There are three main elements to a planning authority’s development management responsibilities:

- applications for planning permission and other related consents;
- appeals and reviews;
- enforcement.

## When is planning permission needed?

Planning legislation defines what development activities require planning permission. Development is defined in the legislation as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”. This means that anyone wanting to carry out an activity which is covered by the definition will need to obtain planning permission prior to work beginning. It is important to note that in addition to the more obvious requirement to obtain planning permission for the construction of new buildings such as houses, shops, offices and similar, the second half of the definition refers to changes of use which may not involve physical building work. The major exception to this is that ‘permitted development rights’ have been created to remove the need to apply for planning permission for certain developments.

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*“We want to simplify, streamline and clarify procedures so that planners can focus on activities that add most value.”*

Places, People and Planning: A consultation on the future of the Scottish planning system

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Where an application for planning permission is required, legislation divides development into three categories. This is known as the hierarchy of development. The three categories are national, major and local. There are different procedures in place for determining applications for the different categories of development.

**National developments** are large scale developments which are identified in the National Planning Framework. Whilst national development status establishes the need for a project, it does not grant development consent. There are currently 14 national developments including projects such as the Former Ravenscraig steelwork, National Long Distance Cycling and Walking Network and the Central Scotland Green Network Partnership.



Pre-application consultation plus a Design and Access Statement for national and major developments. Design statement for some local developments.

**Submission of an application**

**Validation by the planning authority**

Publicity

Neighbour Notification

**Consultation**

**Consideration and the preparation of a Report of Handling**

Enhanced scrutiny  
(national and some major developments)

**Determination and issue of Decision Notice**

Notice of Initiation of Development

Review/Appeal



**Major developments** are defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. There are nine classes of major development including developments of 50 or more houses, business space over 10,000m<sup>2</sup> and wind farms with a generating capacity of more than 50MW.



**Local developments** are all types of development which do not fall into the national or major categories.



## Different types of consent



There are two types of planning permission – planning permission in principle and full planning permission. There are also other types of consent related to development including listed building consent, conservation area consent, advertisement consent and hazardous substances consent.



Planning permission in principle (PPiP) establishes the acceptability of a particular type of development on a site without requiring a significant level of detail about the proposed development. This is usually used where the likelihood of planning permission being granted is uncertain or in the case of major development proposals to avoid the initial high costs of detailed design work. Planning permission in principle will have conditions attached which require the submission of further details of the proposal to the planning authority for their approval. This type of application is referred to as an application for approval of matters specified in conditions (AMSC)



Applications for full planning permission relate to the full details of the proposed development. Planning permission can be granted, granted subject to conditions or refused.



## Planning applications



The majority of planning applications are now made through the edevelopment portal.



If the proposal is for a major or national development the applicant will need to submit a Proposal of Application Notice to the local authority 12 weeks prior to the submission of any planning application. This involves:



- carry out pre-application consultation with the community – this includes developers sending details of the proposal to the council and to local community councils and consulting the wider community using at least one locally advertised public event;
- prepare a design and access statement (where required) setting out information about the design of the proposal and how the needs of disabled people have been considered.

In addition, applications for national and major development proposals may also be accompanied by more extensive documentation including Planning Statements, Environmental Statements, Retail Impact Assessments for large retail projects, Transport Impact Assessments and, increasingly, Education Impact Assessments.



These all provide additional information to facilitate better informed decision-making. Certain European obligations, for example a requirement to undertake an Environmental Impact Assessment or Habitats Regulations Appraisal, may also apply to individual applications. These are legal requirements and may apply to local, major or national applications, depending on the likely environmental impact of the proposed development.



## The decision-making process — elected members' role

The way in which a decision is made depends on the type of application.



All authorities have a Scheme of Delegation in place which determines the decision route for the application whether it will be determined by officers or by elected members. The Scheme of Delegation differs between authorities.



The statutory period for deciding valid planning applications is two months for local developments and four months for national and major developments unless the applicant agrees to an extension of that time. An application will only be considered valid if it is accompanied by all the legally required documents and the fee charged for that category of development.



At the time of registration, the application will appear on a list of planning applications and pre-application consultations received during that week, which is widely distributed and published in local newspapers and on council websites and the public information notices for Scotland website, [www.tellmesScotland.gov.uk](http://www.tellmesScotland.gov.uk). Most authorities send a copy of the weekly list to elected members. Further publicity for planning applications may be given for certain types of development through public notices published in local newspapers and neighbours are notified directly by the council about applications adjacent to their property.



Information on planning applications is available from the council and all key documents and plans or drawings are available, either online or in person at council offices.



Members of the public may make written representations to the planning authority outlining their views on proposed developments. Normally these should be made within 14 to 21 days of an application being registered by the council. In the case of objections, the reasons for objection must be clearly stated. Anonymous letters of objections or support will not be taken into account.



The planning authority undertakes consultations on planning applications with other departments of the council and external bodies known as statutory consultees. The range of bodies consulted varies according to the nature of the development proposals. The statutory consultees are primarily those bodies listed within the planning process section above.



Consultations with other departments of the council can include Transportation/ Roads, Environmental Health, Housing, Education, Social Work and Leisure and Recreation, depending on the nature of the development proposed. Such consultations have an important role within the authority in bringing together various functions or services to provide a single response. This helps achieve the



objectives of your council’s corporate agenda in a consistent and coherent way.



For national developments and for major developments which are ‘significantly contrary to the development plan’, the applicant and people who have made comments must get the opportunity to attend a hearing before a council committee, then a meeting of the full council will decide on the application.



## Material considerations

There is no statutory definition of what constitutes a material consideration but there are two main tests for deciding whether a consideration is material and relevant:

- it should serve or be related to the purpose of planning. It should therefore be related to the development and use of land; and
- it should fairly and reasonably relate to the particular application.



Generally a material consideration is a planning issue which is relevant to the application and can include national, European and council policies, comments by the public and by organisations the council has consulted, the design of the proposed development, and the effect of the plan on the environment.



In many respects it is easier to identify what is not a material consideration or is not relevant to planning, and therefore what should not form the basis of a decision on a planning application. The matters below are not considered to be material considerations:



- the protection of private interests, e.g. loss of views or competition between businesses;
- the personal circumstances of the applicant;
- moral considerations, e.g. sex shops, betting offices or religious objections to licensed premises;
- political considerations or ideological dislikes, e.g. construction of private schools or hospitals;
- the cost of the development;
- the applicant’s lack of ownership of the site (note that planning permission relates to the land and not to the person seeking planning permission);
- issues covered by other legislation, e.g. building safety which is the responsibility of building standards.



Valid planning matters that should be taken into account include:



- the Development Plan;
- national planning policy;
- emerging policies in a development plan that is not yet approved or adopted;





- the planning history of the site, particularly any recent appeal decisions relating to the same land;



- the suitability of the site for the proposed development;
- the suitability of the type of development proposed in terms of compatibility with neighbouring property and the locality;



- design issues including the use of materials, the height, scale, bulk and layout of the development;

- potential loss of privacy or overshadowing of adjoining properties;



- the potential adverse impacts on adjoining property from noise, odours, fumes, etc;

- the economic benefits of the development through the creation of new jobs or possibly loss of local employment;



- meeting identified local needs such as affordable housing, or the creation of leisure facilities;



- the adequacy of the service infrastructure to accommodate the development, including the access arrangements to the site and level of parking provision;

- the impact of the development on the built or natural heritage of an area;

- the creation of a precedent, which might make it difficult to resist similar proposals elsewhere.



This list is not exhaustive but it does represent the considerations taken into account in most planning decisions. The relative weighting given to these various considerations is a matter for judgement in each case. Arguably, the most difficult planning decisions are those where the planning merits of the case are in favour of granting permission, but there are large numbers of local public objections to the proposed development. It is for you as an elected member to decide how important these material considerations are, bearing in mind the provisions of your development plan.



## Conditions



Many applications are granted permission subject to conditions. Conditions enable developments to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable and meet the terms of the use of Conditions Circular. Planning conditions should only be imposed where they are:



- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise;



- reasonable in all other respects.



Application of these criteria creates an effective basis for the control and regulation of development, which does not place unreasonable or unjustified burdens on applicants and the current or future owners of application sites. The sensitive use of conditions can also improve the effectiveness of development management and enhance public confidence in the planning system. Planning officers and your council’s legal advisors will assist you in the effective use of planning conditions.



Further information can be found in *Circular 4/1998 The Use of Conditions in Planning Permissions* on the Scottish Government website ([www.scotland.gov.uk/Publications/1998/02/circular-4-1998/circular-4-1998-](http://www.scotland.gov.uk/Publications/1998/02/circular-4-1998/circular-4-1998-)).



## Developer contributions



Developer contributions (sometimes referred to as planning gain) are, on some occasions, important within the decision-making process. The rationale for seeking such contributions from developers is that they should contribute to mitigating the impacts of their development on infrastructure and other public services (schools, for example).



The subject of developer contributions requires to be approached with extreme caution as the potential borderline between seeking reasonable contributions and the “sale” of a planning permission can be very fine. The potential impacts on the viability of the development and consistency between developments are also important considerations. Contributions are usually secured through legal mechanisms such as a legally binding agreement (Section 75 agreement) between the developer and the planning authority or Section 69 agreement. There is a formal process whereby a party to a planning agreement can seek to have it modified or discharged should it not meet the relevant criteria and be reasonable and proportionate to the development. There is an associated right of appeal to Scottish Ministers.



Further information can be found in *Circular 1/2010 Planning Agreements* on the Scottish Government website ([www.gov.scot/Publications/2010/01/27103054/0](http://www.gov.scot/Publications/2010/01/27103054/0))



## Officer recommendations



Council planning officials prepare a report with a recommended decision for each planning application that appears on a planning committee agenda. Committees do not always accept the advice being offered by the planning officers. On these occasions it is essential that the committee clearly states the reasons for its course of action and that these are explained in the decision notice which is issued to the applicant.

In the event of an appeal against a refusal of planning permission, the members who proposed and seconded a motion to refuse consent contrary to officer recommendation may be called as council’s witnesses. In this situation it is important to appreciate that assistance from your planning officials will not always be available. They are normally subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct that precludes further involvement in cases



where their professional opinion has not been accepted. In such circumstances, assistance and advice will normally be available from council lawyers, and/or through the engagement of private planning consultants. In some authorities planning officials prepare the case for written submission appeals based on the committee's decision even if it is against their recommendation.



## Example of a Planning Application Scenario

The following example sets out what might happen if the council refuses a planning application against officer recommendation:

- The existing Local Plan is several years old, making its policies for a particular site outdated and the new Local Development Plan has not reached the examination stage.
- An important local employer (a large golf course) has submitted a planning application to develop a hotel on an existing informal car park within the complex, claiming the development is needed to support business survival and growth.
- Planning officers recommend approval of the application because, although it does not directly meet existing Local Plan policies, there are policies in the emerging Local Development Plan which support this type of project.
- Objectors bring your attention to issues with the proposed development such as potential for noise, increased traffic, loss of open space, etc. which you consider outweigh your officer's recommendations. You and your colleagues on the committee vote to refuse planning permission.
- The applicant appeals the decision. Council planning officers cannot support your position, and you as a councillor have to defend your decision at the appeal.





# Appeals and reviews



There are two routes for appealing a planning application.



Where a planning application is decided at the planning committee or by the full council, applicants have the right to appeal against a refusal or conditions attached to a planning consent. These appeals are made to the Scottish Government and dealt with by the Directorate for Planning and Environmental Appeals (DPEA).



This route of appeal also applies where an authority has not made a decision on a planning application within the statutory period or if a Local Review Body fails to give a decision on a review against the non-determination of a planning application by officers.



Where a planning application for a local development is decided by officers under delegated powers, applicants have the right to have the decision to refuse permission or impose conditions on a consent reviewed by the Local Review Body or where the application is not determined within the statutory time period.



## Local Review Bodies

Each authority will have different arrangements for their Local Review Body (LRB). If you are selected as a member of the LRB you will receive specific training prior to your involvement in the determination of any case.



Key features of Local Review Bodies are:



- It will consist of at least three elected council members. There will also be a planning advisor (either internal or external) and the LRB may request advice from experts on particular subjects when and if needed.
- Meetings must be in public.
- Method of determination (i.e. written submissions or hearing) is at the discretion of the LRB.
- There is no automatic right for the applicant or others to be make oral representation.
- The process must be fair and transparent.
- Where an application has not been determined within two months and a 'Notice of Review' is served by the applicant, but the review is not carried out within two months, the applicant may then appeal to the Scottish Ministers.



Key features of the review process:

- A 'Notice of Review' must be served by the applicant on the planning authority within three months of the delegated decision, or the date of expiry of period allowed for determining application (two months unless period for determination has been extended by agreement).
- Applicants must include their reasons for requiring review, their preferred



method of review, the matters to be raised and documents to be used.



- The LRB will make interested parties aware – statutory consultees and objectors.
- Fourteen days is the period for further representations. The applicant may see these and make further comment after that period.
- LRB may then determine the review or hold a pre-examination public meeting – giving notice to interested parties as they consider reasonable.
- At the pre-examination meeting, the LRB may request further information by way of written submissions or hearings and/or a site visit, decide matters to be discussed and which procedure to follow. Regulations cover these matters and how to deal with new evidence.
- The decision notice must include the issues considered and the reasons for the decision including any planning conditions.
- If the applicant wishes to question the validity of the decision, an application may be made to the Court of Session within six weeks.



## Appeals to Scottish Ministers

The Directorate for Planning and Environmental Appeals (DPEA) handles all planning appeals that are submitted to Scottish Ministers. Appeals must be submitted within three months of the planning authority's decision or, in the case of non-determination, within three months of the date by which the decision should have been made under the statutory timescales.



The decisions on most appeals are made by a Reporter from the DPEA. In a small number of cases Scottish Ministers make the final decision following the submission of the report and recommendation from a Reporter. The decision by the Reporter or Scottish Ministers is final, subject only to challenge in the Court of Session by an aggrieved party.



Detailed provisions are made in the legislation in relation to how the different types of appeal processes are to be conducted. The decision on the format of the appeal is made by the Reporter. Appeals can be determined using one of three main types of procedure:



- **Written representations** - in which the arguments of all parties are submitted to the DPEA in writing and the decision is made by the Reporter solely on the basis of these submissions. This is the most commonly used method.
- **Hearing** – This combines many of the advantages such as speed and relative informality of written representations but with the benefit of a hearing conducted by the reporter prior to any decision being taken. This provides an opportunity for the appellant, the council and objectors to discuss the issues raised in the appeal in more detail than will be the case with written submissions. It takes the form of a meeting chaired by the Reporter.
- **Public inquiry** – This is the most formal method of determining an appeal and is normally used for complex or relatively large scale developments as it



is expensive for both the appellant and the planning authority. The format of a public inquiry allows each party to present evidence using witnesses with cross-examination of those witnesses' evidence by other parties. Solicitors or barristers often represent appellants and councils at public inquiries.



## Awards of expenses



Normally all parties meet their own costs. Expenses can sometimes be awarded against a party taking part in the appeal if they have behaved unreasonably, and this unreasonable behaviour has resulted in unnecessary expenditure. Expenses are not awarded simply because an appeal has been 'won' or 'lost'. If another party has behaved unreasonably, be it the applicant or the council, a claim can be made against them for certain expenses. You can find further guidance on this in SEDD Circular 6/1990.



Elected members on planning committees and Local Review Bodies should always bear in mind the possibility of an appeal or legal challenge when considering planning applications and reviews, especially because the costs of an appeal can be awarded against any of the parties who are shown to have acted unreasonably. Particularly where a public inquiry is involved, the potential cost of a "frivolous" decision by a council could be very expensive for the public purse. In the case of a legal challenge, costs are normally awarded.



## Examples of unreasonable behaviour



Unreasonable behaviour on the part of the planning authority may include:



- failing to give complete, precise, and relevant reasons for refusal of an application;
- reaching their decision, without reasonable planning grounds for doing so;
- refusing an application for planning permission solely on the grounds that it does not accord with the provisions of the development plan and without having had regard to other material considerations;
- refusing an application because of local opposition, where that opposition is not founded upon valid planning reasons;
- refusing an application if an earlier appeal against the refusal of a similar application in respect of the site has been dismissed, where it is clear from the decision on that appeal that no objection would be seen to a revised application in the form submitted;
- failing to take account of relevant statements of government policy or of relevant precedents of which the planning authority were aware;
- imposing conditions on a grant of planning permission which clearly fail to meet the criteria set out in Circular 4/1998 or which so limit an appellant's freedom to dispose of his property as to amount to an unreasonable restriction;
- serving an enforcement notice without undertaking reasonable investigations to establish whether there has been a breach of planning control or without taking account of case law and of policy and advice set out in Circulars.





Unreasonable behaviour on the part of either party may include:

- introducing a new matter (e.g. a new reason for refusal or new ground of appeal) at a late stage in the proceedings;
- refusing to supply adequate grounds of appeal or to co-operate in settling agreed facts or supplying relevant information which unnecessarily prolongs the proceedings;
- refusing to co-operate in setting a date for an inquiry or accompanied site inspection;
- failing to comply with the requirements of any statutory procedural rules;
- failure to comply with procedural requirements to the serious prejudice of the other party and leading to the adjournment of the inquiry.







# Enforcement



Planning authorities have an extensive range of discretionary powers to deal with circumstances where planning regulations have not been followed, planning conditions have not been fulfilled or where there is a suspicion that this may have occurred.



Members of the public may often bring breaches of planning control to the attention of councillors or the planning service. However, it is important to appreciate that many such cases are not straightforward and are often based on genuine misunderstandings, particularly relating to conditions attached to planning permissions.



In considering whether to take enforcement action the council has to decide if a breach of planning control would have an unacceptable impact on public amenity. Enforcement is intended to achieve acceptable development and not as a punishment for the person responsible for the breach. Given that it is not always apparent if a breach of planning control has been deliberate or based on a misunderstanding, the use of enforcement powers is regarded as a last resort. An owner/developer may be given the opportunity to rectify the breach through “retrospective” application for planning permission. If a “retrospective” application is made, it will then be decided in the same way as all other planning applications. If the council grants planning permission, there may be conditions attached.



Councils also have powers to serve notices asking for more information about a development. They can stop development that does not have permission or where the development does not follow the conditions attached to the permission which was granted.



The council can issue a fixed penalty or prosecute the responsible people if the development continues. Only when all other mechanisms have been exhausted the final option available to councils may be to demolish the illegal development and to recover the cost of this from the developer.



All councils publish a planning enforcement charter setting out how the enforcement system works, the council’s role in enforcement and the standards it has set itself and this is updated every two years.



Further information can be found in *Circular 10/2009 Planning Enforcement* on the Scottish Government website ([www.scotland.gov.uk/Publications/2009/09/16092848/0](http://www.scotland.gov.uk/Publications/2009/09/16092848/0)).

There are some rights of appeal to Scottish Ministers against an enforcement notice served by a planning authority. An appeal can be made where the notice is incorrectly served or where the action required by the notice is considered excessive in relation to the breach. Appeals must be submitted before the date on which the notice takes effect.





# Code of Conduct



The Councillors' Code of Conduct explains the responsibilities of elected members ([www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct](http://www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct)). It provides a positive framework for your decision making as a councillor, helping you to navigate a maze of potential conflicts of interest. The Standards Commission was established under the terms of the Ethical Standards in Public Life etc (Scotland) Act 2000 and it publishes the Code.



The Code of Conduct is particularly relevant to planning, as consideration of planning matters can generate pressures for you from many directions, which will be much stronger than those you will encounter on most other council business. This section deals directly with issues, concerns and conflicts that you may encounter dealing with planning matters.



## Key issues



Public perception and its relationship to probity, openness and accountability is the most important factor for you to be aware of constantly. The Code of Conduct highlights the “objective test” which is *whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making in your role as a councillor*. In other words, it’s up to you to assess how your decisions may be interpreted and to ensure that you do not create an adverse public perception of your behaviour or engage in inappropriate or illegal actions.



Whether you are a member of the planning committee, Local Review Body or full council considering applications or a local member putting forward an opinion about a particular application, it is essential that your conduct is directed by the Code. The Code is realistic however, and recognises that some decisions that you take may prove unpopular with the public.



When you attend a planning committee, Local Review Body or full council meeting, the considerations will be:



- Do you need to declare an interest - yours or any other party’s?
- If you do declare an interest, should that interest prevent you from taking part in the discussion and/or the decision-making?
- Have you pre-empted your involvement in the debate over a planning application by stating your position in support of/against a particular application or a Local Development Plan proposal in advance of formal consideration of that application or proposal?



This third point is also relevant to councillors who have publicly declared their support for, or opposition to, a particular project during their election campaign that may subsequently come before them at committee as a planning application or Local Development Plan proposal.



When deciding whether you should declare an interest and take part in a committee discussion or the wider consideration of a particular planning application or Local Development Plan proposal bear in mind that interests are not just financial or business. They can also be personal or social.



Consequently a conflict of interest could be as obvious as you and a relative owning land that is the subject of a planning application or, less clear cut, one of your close friends being a leading objector to a controversial proposal. It is important therefore to recognise that potential conflicts might arise in circumstances that are not explicitly dealt with by the Code.







# Planning - a councillor's perspective

A wide range of individuals, groups and businesses will lobby you on planning matters. Each representation should be considered carefully. Weigh them in terms of relevance to the issues involved and use this information alongside the impartial advice from council planning officers. You must be seen to reach your decisions in an open, objective manner.

Developers will sometimes subject you to a sustained campaign, feeding you information and attempting to persuade you of the merits of their case. This lobbying may be highly professional. This can also be true of objector's groups.

The often competing interests of the different groups and individuals that may contact you must also be considered in terms the overall aims of the council as well as planning policy, as the planning function does not exist in isolation from the wider corporate agenda of the local authority. This does not, however, override the legal requirement to make decisions based on the development plan. For example, a planning application for a new superstore may be part of a wider economic regeneration effort, led by the council with other partners; or a housing development that includes a higher than normal percentage of social housing may form the lynchpin for a localised housing strategy to enable young families and key workers to afford a home.

Planning applications should be decided on their planning merits but the context can be shaped by many dynamic factors. Indeed, the development plan, against which applications are judged, is the result of you and your colleagues' or predecessors' previous consideration of these factors, ranging from social inclusion to sustainability. It is important to consider applications in this context and not simply to only judge it against the often fixed provisions of a Local Development Plan.

Inevitably, people will have many different expectations of you in your role as an elected member. A community council from your ward may expect you to support whatever position they have taken on big or controversial applications, or even to defend their stance on a small, but to them significant, application for a house extension. Commercial interests might expect you to promote development generally as a 'good thing for your area'. Individual interest groups, such as local conservation societies, will assume that you share their concern about existing buildings or places.

The responsibility for your actions, for the positions you take, for your decisions lies entirely with you. Negotiating this complex array of interests and pressures can be a daunting task, especially when dealing with planning issues and the possibility of conflicts of interest. The Code is an invaluable tool for determining the parameters of your involvement in the decision- making process.



Planning is a large and dynamic local government responsibility. You should work with planning officers in a positive partnership to make your council's planning service the best it can be. Ask officers for advice when you have queries or problems, give them support when they are under pressure from angry objectors or planning applicants, and keep them informed of what is happening in your ward that might be relevant to their work. You will find this relationship mutually rewarding and that it will help generate benefits for your ward.

In common with many local government services, the overall performance of each planning authority is monitored annually by Audit Scotland. Quarterly performance statistics are provided to the Scottish Government. In addition, it is each planning authorities' responsibility to improve their own performance and this is evidenced in their annual Planning Performance Framework. Scottish Government continues to pursue an improved planning service particularly to accompany proposals to increase planning fees. As an elected member, you have shared responsibility for the performance of your council. This means you should be aware of the potential impact of your influence on meeting these targets. If, for example, you might wish to put a motion to the planning committee to postpone a decision on a planning application to allow you longer to think about it, this could result in a failure to meet the performance target for deciding that application. The changes being made to the planning system are intended to enhance the effectiveness of the system, and as such, particular attention will be focussed on performance issues over the next few years.

## Public involvement and councillor probity

The following scenario illustrates the potential pitfalls and complex issues that may confront councillors in their interaction with the public, the planning system and wider council policies.



A major new road may improve access to jobs for the residents of a community that was previously isolated by poor road links and where unemployment is high. The same road might have to be partly built in an Area of Great Landscape Value and involve the compulsory purchase and demolition of several houses and small business premises. The council and your party support this project for the greater good and to reduce social exclusion but there are hundreds of objections from your constituents and some from environmental pressure groups who don't like the loss of landscape and are opposed to new roads. Planning policies support the road and a vociferous part of the public oppose it. Council policies make regeneration of this isolated community a priority.

The Councillor Code of Conduct does not prohibit a councillor, either as a member of a planning committee, Local Review Body or as a local elected member, from discussing the details of any planning application with anyone. Applicants, their agents (planning consultants, architects, engineers, etc.), neighbours, local community groups and campaigners all have a legitimate voice that should be heard by councillors.



The Code is clear that councillors can discuss the merits of, or concerns about, an application with anyone but you must be seen to be acting with due propriety at all times. It may be advisable to have a council officer in attendance when discussing a planning application with interested parties. At all times the role of campaigning councillor and committee member must be separated. If you want to express an opinion prior to a planning issue coming before committee then the Code offers the following advice:

*“A councillor should not organise support or opposition, lobby other councillors or act as an advocate to promote a particular recommendation on a planning application, where the councillor has a responsibility for dealing with the planning application. If the councillor does so, then s/he should declare an interest and not take part in the debate and withdraw from the meeting room.”*

Each council has its own process for dealing with public engagement, some offer an opportunity for objectors and supporters to address the planning committee directly, others operate a hearing system, and committee site visits can also be used for listening to alternative viewpoints. The common thread is that you must not be seen to prejudge a planning application or development plan matter if you sit on the planning committee.





# Glossary of planning terms



## Adoption

Bringing a Local Development Plan into force.



## Appeals and local reviews

Where applications for major or national development are determined and the planning authority refuses consent or grants consent subject to conditions, the applicant has the right of appeal to the Scottish Ministers. Where applications for local development are determined by council members rather than delegated for decision to officers, the applicant will have a similar right of appeal. Where applications for local development are delegated for decision to an appointed officer, and he or she refuses or grants consent subject to conditions, the applicant has the right to require a local review of the decision by a local review body made up of council members.



## Environmental Impact Assessment (EIA)

An important statutory procedure for ensuring that the likely effects of new development on the environment are fully understood and taken into account before planning permission is granted.



## Local Review Body

Made up of local councillors, a Local Review Body determines reviews of applications for local developments refused or approved subject to conditions under delegated authority by a planning officer. Reviews are requested by the applicant, and should be determined within two months. A review can also be requested where officers have not determined an application for local development within the statutory time period.



## Major development

Developments not considered to be of national strategic importance but nonetheless are of a size and scale to be considered of major importance. Examples might be a retail unit of over 10,000m<sup>2</sup>, a business park or a large scale housing development of 50 or more dwellings.



## Material considerations

A planning matter which is relevant to a planning application can include national policies, comments by the public and other people the planning authority has consulted, and issues such as the design of a proposal or its effect on the environment. Details of what constitutes a material consideration can be found in Appendix A of Circular 4/2009 Development Management Procedures.





**National Park Authority**

There are currently two designated National Park Authorities in Scotland - Loch Lomond and the Trossachs and the Cairngorms.



**Neighbour notification**

A means by which people with an interest in neighbouring land or property in the immediate physical proximity to development proposals are informed by the planning authority that a development plan identifies that site or that a planning application has been submitted, allowing neighbours to make comments.



**Planning agreement**

An agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 between a planning authority and an applicant to regulate or restrict development.



**Planning committee**

A group of elected members, councillors, in a local authority who have the responsibility of taking decisions on planning applications or planning policy, including development plans.



**Policies**

Statements by planning authorities or Scottish Ministers of their attitudes or intentions towards existing or future situations which require action. Land use planning policies relate solely to physical land use development, for example, the location of housing or the improvement of the environment. They are limited to those which can be applied by the planning authority itself, or by other public bodies after full consultation and agreement.



**Representations**

A comment made on a planning issue by a member of the public, statutory consultee or other stakeholder. Representations include objections and letters of support.



**Scottish Government Directorate of Planning and Environmental Appeals (DPEA)**

A department of the Scottish Government, whose reporters will assess objections to development plans and take decisions on most planning appeals on behalf of Scottish Ministers.



**Strategic Development Planning Authorities**

A group of planning authorities acting jointly to prepare a strategic development plan (SDP). The SDPs which will be created by the new Planning Act will not cover the whole country, only the four main cities and their surrounding areas, i.e. Aberdeen, Dundee, Edinburgh and Glasgow.





## Strategic Environmental Assessment (SEA)

A process for identifying and assessing the significant environmental effects of a strategy, plan or programme so that they may be taken into account before the plan is approved or adopted. All development plans must meet the requirements for SEA.



# Sources of information



## Scottish Planning Law 3/ed, Raymond McMaster, Alan Prior and John Watchman, Bloomsbury

Summary: The new edition has been updated throughout to take full account of all significant developments in recent planning law and a wealth of new case law. It is an ideal reference book for practitioners in the disciplines of planning, surveying and law



**Planning** - the official journal for the Royal Town Planning Institute (RTPI) and is widely regarded as the number one magazine serving the natural and built environment.



## Royal Town Planning Institute (RTPI)

[www.rtpi.org.uk](http://www.rtpi.org.uk)

- *The Role of Planning in Local Government*, Robert Cowan, 1999
- *RTPI Code of Professional Conduct*, 2016 ([www.rtpi.org.uk/media/1736907/rtpi\\_code\\_of\\_professional\\_conduct\\_-\\_feb\\_2016.pdf](http://www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf))
- *Professional Practice and Maladministration*, RTPI Practice Advice Note No. 7
- *Personal Safety at Work: risk assessment, avoiding conflict and carrying out safer site visits and meetings*, RTPI, Good Practice Note 3 Nov 2006
- *Guidelines on Effective Community Involvement and Consultation*, RTPI, Good Practice Note 1 (November 2005)



## Royal Town Planning Institute in Scotland

[www.rtpi.org.uk/the-rtpi-near-you/rtpi-scotland/](http://www.rtpi.org.uk/the-rtpi-near-you/rtpi-scotland/)

*The Scottish Planner* is the bi-monthly journal of the Institute in Scotland and is distributed to all RTPI members in Scotland free of charge, as well as a number of relevant organisations, the media and members of the Scottish Parliament.



## PAS (Planning Aid Scotland)

[www.pas.org.uk](http://www.pas.org.uk)

PAS is a national charity that delivers free and independent advice, information, support and training on planning and environmental matters to members of the general public and community organisations. Advice and training is given through qualified and experienced town planners and trainers.



## Architecture and Design Scotland (A+DS)

[www.ads.org.uk](http://www.ads.org.uk)

Architecture and Design Scotland (A+DS) is a non departmental public body, established by the Scottish Government in April 2005 as the national champion for good architecture, design and planning in the built environment.



## Scottish Government [www.scotland.gov.uk/topics/built-environment/planning](http://www.scotland.gov.uk/topics/built-environment/planning)

The Scottish Government has overall responsibility for the law on planning. It provides advice and establishes national planning policy and advice on best practice.



**Scottish Parliament**      [www.scottish.parliament.uk/business/research/index.htm](http://www.scottish.parliament.uk/business/research/index.htm)

The Scottish Parliament produces research briefings and fact sheets for use by MSPs in support of parliamentary business. These are prepared by the Scottish Parliament Research Centre (SPICe) and offer an impartial insight into a range of planning and related matters.



**Local authority websites**

These will all have links to the planning service for the authority and usually contain copies of the development plan, development briefs, supplementary planning guidance and other relevant council planning policy and guidance. Planning committee agendas and reports are also available online.



Improvement Service

iHub

Quarrywood Court

Livingston EH54 6AX

T. 01506 282012

E. [planningskills@improvementservice.org.uk](mailto:planningskills@improvementservice.org.uk)

[www.improvementservice.org.uk/planning-skills.html](http://www.improvementservice.org.uk/planning-skills.html)



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## MIDLOTHIAN LOCAL DEVELOPMENT PLAN UPDATE

Report by Head of Communities and Economy

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### 1 PURPOSE OF REPORT

- 1.1 This report provides an update on the current stage reached in the preparation of the Midlothian Local Development Plan, and advises on the remaining stages to the point of final adoption by the Council.

### 2 BACKGROUND

- 2.1 The preparation of a development plan is a statutory requirement on all Councils. The Planning, etc. (Scotland) Act 2006 introduced new Strategic and Local Development Plans (SDPs and LDPs). Strategic Development Plans cover the main city regions in Scotland (Edinburgh, Glasgow, Dundee and Aberdeen). Local Development Plans are prepared for each Council area. Within Strategic Development Plan Areas the SDP provides a long term vision, spatial framework and policy direction to LDPs as well as the proposed land requirements, particularly housing and employment land. The LDPs must be consistent with the SDP.
- 2.2 Development plans are important documents as they inform the development and change of use of land within an area over a prescribed period – SDPs cover a 20 year period and LDPs cover a 10 year period. Each is subject to a review every five years. They provide a policy framework within which planning applications can be considered and determined and appeals against refusal of planning permission defended. They are accompanied by an Action Programme which identifies the infrastructure and facilities required to support the development strategy of the plan (roads, schools, health, leisure, transport etc) and how this can be delivered. Each year the Council prepares a Development Plan Scheme (DPS) which outlines the progress of the development plan in terms of preparation and review and a participation statement indicating when and how any consultation on the plan may take place and who can expect to be involved. The DPS is available to view on the Council's web site.
- 2.3 Midlothian forms part of the Edinburgh City Region strategic planning area (comprising City of Edinburgh, West Lothian, Midlothian, East Lothian, Scottish Borders Councils and the southern part of Fife

Council. The development plan for Midlothian therefore consists of the Strategic Development Plan for South East Scotland (approved June 2013) and the Midlothian Local Plan (MLP) 2008 – currently subject to review. The emerging Midlothian Local Development Plan (MLDP) will replace the current MLP once adopted – anticipated later this year or the start of next year.

- 2.4 The process of preparing a development plan is broken down into key stages and project managed accordingly. The stages include -

Stage	Activity
Preliminary stage and evidence gathering	Prepare Monitoring Statement
Main Issues Report (MIR) Stage	Prepare MIR/Environmental Report (ER)
MIR Consultation	Main opportunity for engagement in plan process
Proposed Plan (PP)	Prepare Proposed Plan, Action Programme and Revised ER if required
Proposed Plan Deposit Period	Opportunity to make representations to PP
Post Deposit Period	Consideration of Representations/Propose Modifications or not
Submission to Ministers	Submit plan and unresolved issues to Ministers
Examination	Reporter considers unresolved issues and makes recommendations to Council
Examination Report	Consider recommendations/publish modifications & proposed plan as modified/Revise ER if required
Adoption	
Publish Action Programme	Within 3 months of adoption date of the plan

### 3 MIDLOTHIAN LOCAL DEVELOPMENT PLAN

- 3.1 All local planning authorities in Scotland are required by legislation to prepare local development plans for their respective areas. In Midlothian the emerging Midlothian Local Development Plan (MLDP) will, on adoption, supersede the current Midlothian Local Plan (2008). The Main Issues Report of the MLDP was published for public consultation in 2013 and, following consideration of responses received, the Council published the MLDP Proposed Plan in 2015, with a notification period for the receipt of representations ending on 26 June 2015.
- 3.2 A report advising on the scale and nature of the representations received was considered by Committee in November 2015, with two workshops and a drop-in session for Members provided in February

2016. An update report on progress was presented to the Committee on 19 April 2016 which explained the remaining statutory stages of plan preparation, noting that the next major stage is the consideration of objections to the Plan by an independent Scottish Government Reporter at an Examination in Public.

- 3.3 The Council submitted its MLDP Proposed Plan to Scottish Ministers on 9 September 2016. The submission included the Council's consideration of all of the representations received following publication of the Proposed Plan. Along with the Proposed Plan the Council sent to Scottish Ministers copies of all unresolved objections to the Proposed Plan together with the Council's written responses, these being known as 'Schedule 4' documents. The Scottish Government's Department of Planning and Environmental Appeals (DPEA) appointed a Reporter/s to conduct an Examination in Public into the unresolved objections to the Plan.
- 3.4 The examination has reached an advanced stage. The DPEA has set a target date of 9 July 2017 to conclude the examination and submit the report of the Examination to the Council.
- 3.5 The Reporters appointed to conduct the examination have:
- Finalised the examination of conformity with the participation statement (checking the Council has followed the correct procedures);
  - Carried out a comprehensive set of unaccompanied site inspections of sites, proposals, and alternatives;
  - Issued 8 further information requests on topics including housing land; education capacity; health provision; transportation; site appraisal; and the Pentland Film Studio proposals;
  - Held a hearing session on housing land supply matters (including education capacity and provision);
  - Finalised around half of the report of examination with drafting on-going on the remaining Issues
- 3.6 It is interesting to note at this stage of the examination that:
- No further site inspections are required;
  - No further oral sessions are anticipated;
  - Further written information requests are currently on-going in relation to transportation matters and the Pentland Film Studio proposals; and
  - No further written submission requests are anticipated.
- 3.7 Updates on the progress of the Examination are available on the DPEA's web site - <http://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=117629>
- 3.8 Assuming the examination is concluded by the target date of 9 July 2017 then it is anticipated that a report will be presented to Council around September/October seeking approval to undertake the necessary steps to adopt the Proposed MLDP as may be Modified by

the Reporter's recommendations. The MLDP identifies a requirement for Supplementary Guidance (SG) and Planning Guidance (PG) to be prepared on a range of policy topics including, amongst others, developer contributions, community heating, Midlothian Green Network and resource extraction. SG and PG provide a level of additional information and detail (not appropriate to be included in the plan) as to how a particular policy or proposal will be implemented. SG is statutory and has to be subject of consultation and submission to Scottish Ministers, PG is not. SG can be a material consideration in determining planning applications. Work is underway to prepare draft SG to coincide with receipt of the report of examination and to ensure any changes arising from the report can be incorporated into the SG and enable publication in tandem with the adoption of the MLDP.

- 3.9 The current SDP is under review and a replacement Proposed SDP2 has been published, representations received and unresolved issues considered by the SESplan (the Strategic Planning Authority) Joint Committee. Subject to approval at the next Joint Committee meeting on 26 June 2017 it will be submitted to Ministers thereafter with a request to have a Reporter/s appointed to hold an examination in due course.
- 3.10 The submission of SDP2 to Ministers will trigger the start of early engagement work for the Council on MLDP2 at the beginning of 2018.

#### **4 RECOMMENDATION**

- 4.1 The Committee is recommended to note the content of this report.

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

**Date:** 23 May 2017  
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**Background Papers:** The Midlothian Local Development Plan



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## PLANNING PERFORMANCE REPORT

Report by Head of Communities and Economy

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### 1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to update the Committee on planning applications, planning appeals and reviews, enforcement and planning customer service performance against key outcome indicators for the period 2016/17.

### 2 BACKGROUND

- 2.1 The Planning Service is a key regulatory Council function delivering an effective customer focussed planning service, responsible for the assessment and processing of planning applications including the provision of pre application and post application information and advice to applicants, developers and other interested parties, the handling of planning reviews and appeals, the enforcement of planning legislation, the preparation of strategic and local development plans, planning policy and guidance; together with the development and implementation of policy and practice in respect of the conservation of natural and heritage resources, biodiversity, environmental sustainability and climate change.
- 2.2 The primary performance measure is the speed with which applications are determined. To monitor this, the Scottish Government has established statutory performance indicators, the terms of which are set out in section 3 of this report.
- 2.3 At its meeting of 11 May 2010 the Planning Committee instructed that it be provided with regular updates with regard to planning application performance. From February 2015 the Development Management and Planning Policy and Environment teams have been conjoined into a single Planning team.

### 3 DETERMINATION OF PLANNING APPLICATIONS

- 3.1 Table A, '*Planning Performance in the Handling of Planning Applications for the Period 01/04/16 to 31/03/17*' shows Planning performance with regards the processing of planning applications. While it is acknowledged that quality and speed in decision-making are not necessarily synonymous, speed is one measure of efficiency.
- 3.2 The Statutory Performance Indicators (SPI's) for the determination of planning applications are set by the Town and Country Planning (Scotland) Act 1997 (as amended by the 2006 Act). The target is for local planning

authorities to determine 90% of householder applications within 2 months, 80% of other local applications within 2 months and 80% of major applications within 4 months. Overall, the target is to determine 80% of applications within target.

3.3 Overall performance (how many applications have been determined within target) continues to be maintained at a high level. In 2016/17 81% of planning applications have been determined within target. This compares to 81% in 2015/16, 82% in 2014/15, 84% in 2013/14, 73% in 2012/13, 70% in 2011/12, 65% in 2010/11 and 55% in 2009/10.

3.4 A comparison between Midlothian’s performance and the Scottish average for 2013/14, 2014/15 and 2015/16 are shown in the following table:

	Midlothian	Scottish Average	Midlothian	Scottish Average	Midlothian	Scottish Average
	2013/14	2013/14	2014/15	2014/15	2015/16	2015/16
Householder Applications determined within target	94%	86%	92%	86%	92%	86%
All Local Development Applications within target	84%	73%	82%	72%	81%	73%

The table shows that Midlothian’s performance with regard householder and other local applications is above the Scottish average. The data for 2016/17 has not yet been collated and published by the Scottish Government.

3.5 With regard those applications which are not determined within target there are four main reasons why this is the case. These are:

- a) Planning Officers and the applicants are negotiating improvements/amendments to the proposal;
- b) The Planning Authority is awaiting amended plans/additional information from the applicants;
- c) The Planning Authority is awaiting responses and technical expertise from internal and external consultees; and
- d) Negotiating and concluding a planning obligation to secure developer contributions towards infrastructure.

3.6 Changes to the way planning performance is being measured came into effect in 2012/13. The introduction of a new Planning Performance Framework (PPF) provides a “balanced scorecard” approach to performance with the objective of giving a more rounded view of overall service quality. Performance measures will be both qualitative and quantitative. The qualitative assessment comprises a statement with regard the quality of development, customer service and efficient and effective decision making; and the quantitative assessment measures the average planning application determination times (rather than the percentage of applications determined within a set target time). The Council’s PPF for 2015/16 was submitted to Scottish Government in July 2016. Given its size a copy of the document was placed in the Members’ Library. Feedback from Scottish Government on the Council’s submission was reported to the Committee at its meeting of

January 2017. The 2016/17 PPF is being prepared and will be submitted to the Scottish Government in July 2017.

- 3.7 Planning performance with regards the processing of planning applications is also measured by the average time (weeks) to deal with major and local planning applications. Table B, *‘Planning Performance in the Handling of Planning Applications for the Period 2013/14, 2014/15 and 2015/16: The Average Time (weeks) to deal with Major and Local Planning Applications.’* shows Planning performance with regards the processing of planning applications using this new measure.
- 3.8 Table A shows that in 2016/17 912 applications were received, this is compared to 968 in 2015/16, 993 in 2014/15, 883 in 2013/14, 716 in 2012/13 and 619 in 2011/12. The increase in application numbers during this period reflects the increasing construction and development activity taking place in Midlothian.

**Table A****Planning Performance in the Handling of Planning Applications for the Period 01/04/16 to 31/03/17**

Performance Indicator	April – June 2016  Q1 2016/17	July – Sept 2016  Q2 2016/17	Oct – Dec 2016  Q3 2016/17	Jan – March 2017  Q4 2016/17	<b>Total for year 2016/17</b>	Total for year 2015/16
% of all local applications determined < 2 months	80% (133 from 166)	83% (106 from 127)	88% (125 from 142)	85% (123 from 145)	<b>84%</b> <b>(487 from 580)</b>	82% (548 from 668)
% of householder applications determined < 2 months	91% (68 from 75)	92% (54 from 59)	89% (48 from 55)	95% (54 from 57)	<b>91%</b> <b>(225 from 246)</b>	92% (243 from 264)
% of other local applications determined < 2 months	71% (50 from 70)	72% (41 from 57)	82% (51 from 62)	73% (48 from 66)	<b>75%</b> <b>(190 from 255)</b>	70% (230 from 328)
% of major applications determined < 4 months <sup>1</sup>	0% (0 from 2)	0% (0 from 2)	0% (0 from 2)	0% (0 from 4)	<b>0%</b> <b>(0 from 10)</b>	0% (0 from 13)
% of non planning applications determined < 2 months <sup>2</sup>	71% (15 from 21)	100% (11 from 11)	100% (25 from 25)	95% (21 from 22)	<b>91%</b> <b>(71 from 79)</b>	99% (75 from 76)
Number of Pre Application Consultation applications	2	0	1	0	<b>3</b>	8
Number of recorded pre-application enquiries <sup>3</sup>	63	59	52	56	<b>230</b>	223
Number of applications received <sup>4</sup>	233	198	239	242	<b>912</b>	968

The figures in (*brackets*) are the actual numbers of applications.

<sup>1</sup> A major application can only be submitted after the completion of a Pre Application Consultation (PAC) process.

<sup>2</sup> Non planning applications comprise; works to trees applications, high hedges applications and prior notification applications.

<sup>3</sup> Since June 2010 formal requests for pre application advice have been recorded in the back office database (see paragraphs 6.1 and 6.2 below)

<sup>4</sup> Figures include planning applications, listed building consents, advert consents, applications under the prior notification procedures, certificates for lawful development, works to trees applications, high hedges applications and formal pre application enquiries.

## **Table B**

Planning Performance in the Handling of Planning Applications for the Periods 2013/14, 2014/15 and 2015/16:

The Average Time (weeks) to deal with Major and Local Planning Applications.

Performance Indicator	Midlothian Total for 2013/14	Scottish Average 2013/14	Midlothian Total for 2014/15	Scottish Average 2014/15	Midlothian Total for 2015/16	Scottish Average 2015/16
Householder applications. Average weeks for those applications determined within 2 months.	6.6	6.6	6.2	6.5	6.2	6.5
Householder applications. Average weeks for those applications determined over 2 months.	11.3	14.2	11.5	13.6	15.7	13.4
Householder applications overall average	6.9	7.7	6.7	7.5	6.9	7.5
All Local applications. Average weeks for those applications determined within 2 months.	6.7	6.8	6.5	6.7	6.6	6.7
All Local applications. Average weeks for those applications determined over 2 months.*	45.5	23.0	21.4	19.7	18.9	19.3
All Local applications overall average	12.7	11.3	8.4	10.3	8.7	10.0
Major applications. Average weeks for all major applications.*	60.5	53.8	77.4**	46.4	47.8	38.8

\* The determination time of applications also includes the time periods to negotiate developer contributions and conclude Section 75 legal agreements.

\*\*This figure includes the time taken to conclude the legal agreement and issue the Shawfair planning permission (4,000 houses, schools, town centre and employment opportunities). If this application was excluded from the measure the average time to deal with a major application would drop to 20.8 weeks, significantly below the Scottish Average.

The data for 2016/17 average time (weeks) to deal with major and local planning applications has not yet been collated and published by the Scottish Government

## 4 Planning Appeals and Reviews

4.1 For the period April 2016 – March 2017 the Scottish Government Directorate for Planning and Environmental Appeals determined five appeals in Midlothian. The appeal decisions were as follows:

- An appeal against a refusal to grant planning permission (15/00737/DPP) for the formation of a hot food takeaway and installation of a flue at 5 Staiside Court, Bonnyrigg was upheld. The application was refused on grounds of its impact on the vitality of the local centre, its impact on the amenity of nearby local residents and it being contrary to the Council's healthy eating objectives. The Scottish Government Reporter upheld the appeal on the basis that the proposed development did not have a detrimental impact on the vitality of the local centre or on local residents' amenity and that the Council's healthy eating objectives were not a material consideration in the assessment of a planning application. An application for costs, submitted by the applicant, was not awarded. A copy of the appeal decision was presented to the Planning Committee at its meeting of May 2016.
- An appeal against a refusal of a planning permission in principle application (15/00546/PPP) for residential development and associated infrastructure on land west of the Cottage, Hardengreen, Dalkeith was dismissed. The application was refused by the Planning Committee at its meeting of 17 November 2015. The Scottish Government Reporter dismissed the appeal after considering the proposed development would be inappropriate in the green belt/countryside and would lead towards coalescence between settlements. A copy of the appeal decision was presented to the Planning Committee at its meeting of August 2016.
- An appeal against a refusal of advert consent (16/00407/ADV) for display of non-illuminated signage (retrospective) at 21 The Square, Penicuik was upheld and consent granted. The Scottish Government Reporter upheld the appeal after considering the advert preserves the character and appearance of the conservation area, does not detract from the special interest of any nearby listed building and it is not harmful to amenity. A copy of the appeal decision was presented to the Planning Committee at its meeting of January 2017.
- An appeal against a refusal of a Certificate of Lawful Use (16/00368/CL) for the use of outbuilding and adjacent outdoor space as boarding kennels at The Smithy, Mossend, Gorebridge was dismissed and a Certificate of Lawful Use was not issued. The Scottish Government Reporter dismissed the appeal after considering there was not sufficient evidence to support the applicant's assertion that the stated use had been in operation for at least ten years. A copy of the appeal decision was presented to the Planning Committee at its meeting of January 2017.
- An appeal against a refusal of an application to discharge a legal agreement (16/00020/LA) for Borders Rail contributions at Hopefield Farm, Bonnyrigg has been dismissed and the requirements of the legal agreement upheld. The Scottish Government Reporter dismissed the appeal after considering it is appropriate to request developer contributions towards the Borders Rail despite the site's original allocation in 2003 as this plan has been superseded by the adoption of the Midlothian Local Plan 2008 and the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) which sets

out a requirement for sites within the rail corridor to make a contribution. A copy of the appeal decision was presented to the Planning Committee at its meeting of February 2017.

- 4.2 Changes in the planning system introduced by the Scottish Government in 2009 required each local planning authority to establish a local review body (LRB) to review planning decisions made under delegated powers. In the period April 2016 – March 2017 a total of 18 cases were determined, details of which are attached at Appendix A. Prior to the changes introduced by the new planning act all of these ‘appeals’ would have been determined by Scottish Ministers.

## 5 Planning Enforcement

- 5.1 In addition to the determination of planning applications and appeals, the Planning service is responsible for the enforcement of planning legislation. The Council has an adopted Enforcement Charter which outlines the Council’s approach to investigating and resolving alleged breaches of planning control. The table below outlines the number of formal notices issued and the number of cases which have been/are subject to investigation.

Performance Indicator	Total for year 2014/15	Total for year 2015/16	Total for year 2016/17
Number of notices issued*	4	7	4
Number of enforcement cases lodged**	155	147	177

\* The full range of notices which the planning authority could issue is outlined in the Council’s adopted Enforcement Charter.

\*\* Many enforcement enquires are resolved without developing into ‘cases’ and are therefore not counted against this performance measure.

## 6 Customer Services

### 6.1 The ‘Duty Officer’ Service

In addition to the handling of planning applications and planning appeals, enforcement of planning control and the preparation of development/design briefs the team responds to a wide range of associated enquiries giving planning advice to the public and others. Such enquiries include giving pre application advice, advising whether planning permission is required for a particular development and giving specialist tree and landscape advice. Each month the Planning duty service receives over 400 phone calls, an estimated 100 written enquiries and 150 visits to the reception (these statistics do not include the contact made directly to planning application case officers).

### 6.2 Pre Application Advice

In June 2010 a formal pre application advice service was introduced. This service supplemented the more informal advice given on a daily basis by the ‘duty office’. Pre application advice requested in writing is recorded in the Council’s back office database and the responses are monitored. This has

helped to improve the management of this service and the advice given. A total of 230 formal pre application enquiries were submitted in 2016/17, this compares to 223 submitted in 2015/16, 229 submitted in 2014/15, 189 submitted in 2013/14, 153 submitted in 2012/13, 140 submitted in 2011/12 and 91 submitted in 2010/11.

### 6.3 E-planning

Following the successful implementation of the Council's Online Applications and Appeals (OAA), Online Planning Information Systems (OPIS) and eConsultations (eCONS) work streams the Council's Planning service went live on 29 April 2009 and all planning applications submitted following this date have been made available online. In addition to these applications being available online a programme of back scanning has been undertaken and in total 7,950 (on 1 May 2017) planning applications can be viewed online. The Council's stakeholders are actively engaged with the online services, and the public access terminals located in Fairfield House reception are widely used by members of the public for viewing planning applications. Since 29 April 2009, 2,603 planning applications (representing 37% of the total number received) have been submitted using the online services and some 9,964 comments (45% of all comments) have been received from members of the public via the web; objecting to or supporting planning applications. Since April 2009 (and as at 1 May 2017) 971,185 planning application searches have been performed via the Council's website.

## 7 Recommendations

7.1 It is recommended that the Committee:

- (i) notes the content of this report; and
- (ii) continues to receive an annual Planning performance report.

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

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### **Background Papers**

- (a) Planning (Scotland) Act 2006
- (b) Planning Regulations and Circulars
- (c) Previous Planning performance reports

## Appendix A

### Table of Local Review Body Decisions (April 2016 to March 2017)

	<b>Application Reference</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>Status of Review</b>
<b>1</b>	15/00794/DPP	Land north of 22 Tipperwell Way, Howgate	Change of use of agricultural land to residential garden	Permission granted at LRB meeting of 26.04.2016
<b>2</b>	15/00948/DPP	Land adjacent Rosebank North Cottage, Roslin	Demolition of outbuilding and erection of new building	Permission granted at LRB meeting of 26.04.2016
<b>3</b>	15/00939/DPP	Gourlaw Farm, Rosewell	Change of use of outbuildings to dog day centre	Permission granted at LRB meeting of 07.06.2016
<b>4</b>	15/00994/DPP	Land west of Springfield House, Lasswade	Erection of 5 dwellinghouses	Permission refused at LRB meeting of 07.06.2016
<b>5</b>	16/00044/DPP	1 Galadale Drive, Newtongrange	Erection of extension to dwellinghouse	Permission granted at LRB meeting of 07.06.2016
<b>6</b>	15/00995/DPP	Cherrytrees, Fala, Pathhead	Erection of dwellinghouse	Permission granted at LRB meeting of 07.06.2016
<b>7</b>	16/00213/DPP	47 Arthur View Terrace, Danderhall	Erection of extension to dwellinghouse	Permission granted at LRB meeting of 06.09.2016
<b>8</b>	16/00193/DPP	Lothian Cottage, Dalkeith	Erection of two storey and single storey extension to dwellinghouse	Permission granted at LRB meeting of 06.09.2016
<b>9</b>	16/00470/DPP	Grange Dell Lodge, Penicuik	Subdivision of single dwellinghouse to form two dwellinghouses and associated extension and alterations.	Permission granted at LRB meeting of 26.10.2016
<b>10</b>	16/00474/DPP	2 Lamb's Pend, Penicuik	Change of use office to residential (5 flats) and associated external alterations	Permission granted at LRB meeting of 26.10.2016
<b>11</b>	16/00429/DPP	Land at Howgate Restaurant, Howgate	Erection of 3 dwellinghouses	Permission granted at LRB meeting of 29.11.2016
<b>12</b>	16/00575/DPP	5 Thornyhall, Dalkeith	Alterations to roof of conservatory	Permission granted at LRB meeting of 29.11.2016
<b>13</b>	16/00568/DPP	7 Cochrina Place, Rosewell	Erection of extension to dwellinghouse	Permission granted at LRB meeting of 29.11.2016
<b>14</b>	16/00508/DPP	66 Newbattle Abbey Crescent, Dalkeith	Erection of timber building and fencing	Permission granted at LRB meeting of 24.01.2017
<b>15</b>	16/00758/DPP	Land at Hardengreen House, Dalhousie Road, Dalkeith	Erection of nursery building and formation of car park	Permission granted at LRB meeting of 07.03.2017

<b>16</b>	16/00762/DPP	1D Dalhousie Avenue, Bonnyrigg	Erection of porch	Permission granted at LRB meeting of 07.03.2017
<b>17</b>	16/00460/PPP	Land south west of Wellington School, Penicuik	Planning permission in principle for the erection of a single dwellinghouse	Permission refused at LRB meeting of 07.03.2017
<b>18</b>	15/00952/DPP	Airybank House, Cousland Kilns Road, Cousland	Erection of 8 dwellinghouses	Permission refused at LRB meeting of 07.03.2017



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

Report by Head of Communities and Economy

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### **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 PREMATURE APPLICATIONS**

- 3.1 A consequence of the Midlothian Local Development Plan: Proposed Plan being at an advanced stage is premature planning applications being submitted by a number of applicants on a number of sites. These are identified in Appendix A by the statement "Subject to progress on Midlothian Local Development Plan" and relate to sites which are not currently allocated for development in the adopted 2008 Midlothian Local Plan but are proposed in the Midlothian Local

Development Plan (MLDP). These sites are subject to representations from local communities and interested parties and are subject to examination by Scottish Government Reporters.

- 3.2 In the interests of fairness and transparency it is proposed not normally to report these applications to Committee until the proposed MLDP has progressed through the examination process and the Council has adopted the plan, unless the Committee wish to consider an application in advance of the adoption of the MLDP or there are extenuating circumstances. At its meeting in January 2016 the Committee expressed a preference to determine those applications where there is a risk that applicants may appeal against non determination, an option open to applicants if an application is not determined within the set timeframe (four months from the date of validation for a major application) or an agreed extended time period.
- 3.3 If an appeal against non determination is submitted it would be determined by Scottish Ministers after consideration of relevant planning policies and other material considerations. Paramount in the consideration would be the potential for an application to undermine the development plan process if considered in advance of the adoption of the MLDP and whether Midlothian has a sufficient housing land supply as defined in Scottish Government Planning Policy.

#### **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 2017 and 2018 and the updates for each of the applications.

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

**Date:** 23 May 2017  
**Contact Person:** Peter Arnsdorf, Planning Manager  
peter.arnsdorf@midlothian.gov.uk  
**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
14/00910/PPP	Land at Cauldcoats, Dalkeith	Application for Planning Permission in Principle for residential development, erection of a primary school and mixed use developments.	Subject to progress on Midlothian Local Development Plan	Pre-Application Consultation (14/00553/PAC) carried out by the applicants in October/November 2014.
16/00134/DPP	Land north of Oak Place, Mayfield	Erection of 169 dwellinghouses, 30 flatted dwellings and associated works	See comment	Pre-Application Consultation (13/00522/PAC) carried out by the applicants in August/September 2013. This application has been significantly amended during its assessment and as such a new planning application is required.
16/00712/PPP	Land north of Dalhousie Dairy Bonnyrigg	Application for Planning Permission in Principle for residential development	Subject to determination by the Scottish Ministers	Pre-Application Consultation (16/00157/PAC and 16/00161/PAC) carried out by the applicants in March/April 2016. This application is subject to an appeal against non determination and is reported to this meeting of the Committee.
16/00861/DPP	Land west of Corby Craig Crescent Seafield Moor Road, Bilston	Erection of 176 dwellinghouses, 36 flatted dwellings and associated works	Subject to progress on Midlothian Local Development Plan	Pre-Application Consultation (15/00936/PAC) carried out by the applicants in November and December 2015 and January 2016.
16/00893/PPP	Land At Salter's Park, Dalkeith	Application for Planning Permission in Principle for residential development, employment uses and associated works	Subject to progress on Midlothian Local Development Plan	Pre-Application Consultation (14/00833/PAC) carried out by the applicants in November and December 2014 and January 2015.

17/00068/DPP	Land Between Deanburn and Mauricewood Road Penicuik	Erection of 552 residential units; formation of access roads, SUDs features and associated works	October 2017	<p>Pre-Application Consultation (15/00987/PAC) carried out by the applicants in February/March 2016.</p> <p>This application will supersede applications 05/00784/FUL, 06/00474/OUT and 06/00475/FUL which are for residential development across the site. The applicant will withdraw these applications as and when permission has been granted for this application.</p>
17/00273/S42	Land between Loanhead Road and Edgefield Industrial Estate Loanhead Road	Section 42 application to amend condition 1 of planning permission in principle 09/00354/OUT	August 2017	<p>Condition 1 of planning permission 09/00354/OUT relates to the time period to implement the permission and to submit subsequent Matters Specified in Conditions (MSC) applications to seek approval for the details of the scheme.</p> <p>This application replaces application 16/00800/S42</p>
17/00298/PPP	Land north of Dalhousie Dairy Bonnyrigg	Application for Planning Permission in Principle for residential development	Subject to progress on Midlothian Local Development Plan and/or determination of the appeal against 16/00712/PPP	<p>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 submitted to continue negotiations with the Planning Authority whilst the appeal against 16/00712/PPP is being considered.</p>

**APPENDIX B**

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

<b>Ref</b>	<b>Location</b>	<b>Proposal</b>	<b>Date of receipt of PAC</b>	<b>Earliest date for receipt of planning application and current position</b>
13/00609/PAC	Housing Site B, land at Newbyres, River Gore Road, Gorebridge	Residential Development	19 August 2013	12/11/13 - no application yet received. The applicants have started discussing possible layouts for this site and an application is anticipated in 2017.
14/00451/PAC	Land at Newton Farm and Wellington Farm, Old Craighall Road, Millerhill, Dalkeith	Residential development and associated developments	10 June 2014	03/09/14 - no application yet received. The applicants have started discussing possible layouts for this site and an application is anticipated in 2017.
15/00774/PAC	Site Hs14, Rosewell North, Rosewell	Residential development	22 September 2015	15/12/15 - no application yet received. A pre-application report was reported to the November 2015 meeting of the Committee.
16/00266/PAC	Land At Rosslynlee Hospital Roslin	Residential development	08 April 2016	04/07/16 - no application yet received. A pre-application report was reported to the May 2016 meeting of the Committee.
16/00267/PAC	Land At Rosslynlee Hospital Roslin	Residential development - change of use, alterations, extensions and partial demolition of the former hospital, including new build development.	08 April 2016	04/07/16 - no application yet received. A pre-application report was reported to the May 2016 meeting of the Committee.
16/00830/PAC	Land east of junction with Greenhall Road Barleyknowe Road Gorebridge	Residential development	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	19 April 2017	06/07/17





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## APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

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### 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 March 2017; and an appeal decision 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 a decision on appeal which has been considered by Scottish Ministers.

### 3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 7 March 2017 the LRB made the following decisions:

	<b>Planning Application Reference</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>LRB Decision</b>
1	16/00758/DPP	Land at Hardengreen House, Dalhousie Road, Dalkeith	Erection of nursery building and formation of car park	Permission granted at LRB meeting of 07.03.2017
2	16/00762/DPP	1D Dalhousie Avenue, Bonnyrigg	Erection of porch	Permission granted at LRB meeting of 07.03.2017

3	16/00460/PPP	Land south west of Wellington School, Penicuik	Planning permission in principle for the erection of a single dwellinghouse	Permission refused at LRB meeting of 07.03.2017
4	15/00952/DPP	Airybank House, Cousland Kilns Road, Cousland	Erection of 8 dwellinghouses	Permission refused at LRB meeting of 07.03.2017

#### 4 APPEAL DECISION

- 4.1 An appeal against non determination for planning permission in principle for a mixed use development comprising film and TV studio including backlot complex, mixed employment uses retail/office/commercial, hotel, gas and heat power plant/energy centre, film school and student accommodation, studio tour building, earth station antenna and associated infrastructure (15/00364/PPP) has been upheld subject to securing developer contributions and conditions, most notable being the safeguarding of the proposed realignment of the A701 identified in the proposed Midlothian Local Development Plan. The Scottish Ministers reached their decision after considering the economic benefits of the proposed development would outweigh any development plan objections or environmental impacts. 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 March 2017 and the appeal decision by Scottish Ministers.

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

**Date:** 23 March 2017  
**Contact Person:** Peter Arnsdorf, Planning Manager  
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**Background Papers:** LRB procedures agreed on the 26 November 2013.



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Calum Glen  
Keppie Design

[Cglen@keppiedesign.co.uk](mailto:Cglen@keppiedesign.co.uk)

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Our ref: PPA-290-2032  
3 April 2017

Dear Mr Glen

### **NOTICE OF INTENTION**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
PLANNING PERMISSION IN PRINCIPLE FOR A MIXED USE DEVELOPMENT  
COMPRISING FILM AND TV STUDIO INCLUDING BACKLOT COMPLEX; MIXED  
EMPLOYMENT USES RETAIL/OFFICE/COMMERCIAL; HOTEL; GAS AND HEAT  
POWER PLANT/ENERGY CENTRE; FILM SCHOOL AND STUDENT  
ACCOMMODATION; STUDIO TOUR BUILDING; EARTH STATION ANTENNA  
and ASSOCIATED INFRASTRUCTURE INCLUDING CAR PARKING; SUDS  
FEATURES AND LANDSCAPING ON LAND TO THE NORTH & SOUTH OF  
PENTLAND/DAMHEAD ROAD, STRAITON, MIDLOTHIAN) (PLANNING  
AUTHORITY REF: 15/00364/PPP)**

1. This letter contains Scottish Ministers' proposed decision on the application for planning permission in principle for the above-mentioned development. Scottish Ministers are minded to grant planning permission in principle for this proposed development, subject to conditions and the completion of a planning obligation.

2. The application for planning permission in principle was made to the planning authority, Midlothian Council, in May 2015. As a result of the planning authority not having given notice of their decision on the application an appeal was made to the Scottish Ministers under section 47(2) of the Town and Country Planning (Scotland) Act 1997 ("the Act") in December 2015. Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2010 the appeal came into a class to be determined by a person

appointed by Scottish Ministers, rather than by Scottish Ministers themselves. However, in exercise of the powers under paragraph 3(1) of Schedule 4 to the Act, Scottish Ministers directed, on 10 December 2015, that they would determine the case themselves. This was because Scottish Ministers recognised the potential economic and cultural benefits associated with the proposal to be an issue of national importance.

3. The application was considered by written submissions by reporter David Buylla BA(Hons) MRTPI appointed by Scottish Ministers for that purpose. The reporter sought further information via two procedure notices issued on 25 January 2016. On 5 April 2016, the reporter made a formal request for further environmental information under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. The reporter conducted unaccompanied site inspections on 12 February and 20 June 2016. A copy of David Buylla's report to Scottish Ministers is enclosed for your information.

4. Concerns have been raised that the appeal under section 47(2) of the Act was not properly made due to a discrepancy between the identities of the applicant and the appellant. It is not considered that any such discrepancy has undermined the substantive consideration of the application or has given rise to any unfairness to any parties to the process. In order to remove any doubt that Scottish Ministers do not have the necessary jurisdiction to consider the case, Scottish Ministers have given a direction under section 46 of the Act. A direction under section 46 operates to refer the case to Scottish Ministers for determination.

## **The Reporter's Report**

### The Report

5. Chapter 1 of the report provides relevant background, chapter 8 considers the proposed local development plan and chapter 10 sets out the reporter's overall conclusions and the recommendation that planning permission in principle be refused. Due to the presence of protected species within the ecological study area that are liable to persecution, certain parts of the reporters report have been redacted in public copies of the report.

## **Scottish Ministers' Decision**

6. Scottish Ministers have carefully considered all the evidence presented by the written submissions and the reporter's conclusions and recommendations and do not support the reporter's recommendation to refuse this application. For the reasons set out below, Scottish Ministers are minded to grant planning permission in principle for the proposed development, subject to:

(a) conditions as set out in the Annex to this notice, including conditions in relation to the proposed location of the A701 Relief Road; and

(b) the completion and registration of a planning obligation to make a financial contribution to the A701 relief road and to fund improvement of the A701 / B702 / A720 westbound off-slip / A720 eastbound on-slip junction.

## Development plan

### *Midlothian Local Plan*

7. The development plan comprises the Midlothian Local Plan (“MLP”) adopted in 2008, and the South East Scotland Strategic Development Plan (“SESplan”) approved in June 2013. The proposed Midlothian Local Development Plan (“Proposed LDP”) is currently at examination, submitted 9 September 2016, with a target date of 9 July 2017. SESPlan 2 (2016) was issued for formal consultation from 13 October to 24 November 2016. All representations made during this period are now being considered by the Strategic Development Planning Authority.

8. The MLP identifies the application site to be within the Green Belt in a countryside location, and partly on prime agricultural land, where restrictive policies apply in relation to new development. In terms of the loss of prime agricultural land, Ministers accept the reporter’s overall conclusion in paragraph 10.11 that the proposal’s socio-economic benefits and (from a developer’s point of view) the suitability of this site for the proposed development, outweigh the value of retaining this small area of prime agricultural land in productive agricultural use. The reporter does not regard this conflict with local plan policy as a significant concern and Ministers agree with this consideration.

9. The MLP identifies a safeguarded road scheme, the line of which is shown to pass through the middle of Site B. The report states in paragraph 10.5 that the safeguarded route has been abandoned in favour of revised proposals in the proposed LDP. As such, Ministers accept the reporter’s conclusion that the safeguarded route as identified in the MLP is not a constraint upon the proposed development.

10. Ministers accept that the proposal is contrary to the provisions of the MLP in terms of development in the greenbelt/countryside location in that it doesn’t meet the necessary criteria. However, Ministers note the reporter’s consideration in paragraph 10.12 of the report, that the fact that the MLP is out of date may increase the weight to be given to other material considerations, which could justify a decision that was contrary to the MLP. Ministers consider there are material considerations, relating to the socio economic benefits of the proposal on a local and national scale, that carry sufficient weight to justify a decision that is not in accordance with the MLP.

### *SESplan*

11. The most up-to-date component of the development plan is SESplan. This identifies the A701 corridor as Strategic Development Area 10 (“SDA 10”). The spatial strategy in SESplan for SDA 10 requires 1,600 residential units and over 15 hectares of additional employment land within the A701 corridor. While the A701 relief road is not specifically referenced in SESplan, the reporter concludes in paragraph 8.33 of the report that the relief road is intended to form an integral part of the improved infrastructure investment that is referred to in SESplan, and that a significant element of the proposed LDP’s development strategy will be reliant upon

the relief road being delivered. The A701 Relief Road and A702 Link are identified as strategic projects in the proposed SESplan 2.

12. In assessing the merits of the proposal in paragraph 10.15 of the report, the reporter concludes that the fact that this general area (SDA 10) has been identified as one of the most suitable locations in the SESplan area for focussing significant levels of development provides a limited amount of support for the proposed development. This is on the basis that the proposal could undermine the proposed LDP's attempt to deliver the housing and employment sites in the A701 corridor, including bio-technology and knowledge-based industries, that are required by the SDA 10 designation. While Ministers accept the strategic importance of this area in SESplan, they do not accept the reporter's conclusions that the proposal would threaten the delivery of those SDA 10 requirements for the reasons set out in paragraphs 16-25 below.

13. The reporter's overall view that the proposal is contrary to the development plan is accepted by Ministers. However the MLP is over 5 years old and there is support in SESplan for a mixed use development of this nature within the A701 corridor. Ministers consider that, with the use of a Grampian condition to secure the delivery of the A701 relief road (see paragraphs 17-19 below), the potential for significant socio-economic benefits arising from the proposed development outweighs any dis-benefits of the development. Ministers therefore consider that planning permission should be granted notwithstanding that the proposed development is contrary to the development plan.

#### *Proposed Midlothian Local Development Plan*

14. Paragraph 8.43 of the report sets out that the proposed LDP's proposals map identifies six strategic housing land allocations, two strategic affordable housing allocations and six strategic employment land allocations in this area. This equates to approximately 1460 units and 90 hectares of employment land allocations (including three sites totalling 14.54 hectares for bio-technology / knowledge-based development).

15. Paragraph 10.17 of the report sets out that the proposed LDP allocates all of Site B for development, with approximately 80% of Site A designated countryside and prime agricultural land and the remainder staying within the green belt. Site A also contains two potential through routes for the proposed A701 relief road. At this stage, the reporter considers that in the proposed LDP only Site B could realistically be described as falling within and contributing to SDA 10. Ministers do not accept that only site B contributes to the aspirations of SESplan, for the reasons set out in paragraphs 16-25 below.

#### *Prematurity in Relation to the Proposed Local Development Plan*

16. The reporter gives significant weight to paragraph 34 of SPP and concludes in paragraph 8.50 of the report, that to grant planning permission for the proposed development would undermine the plan-making process by predetermining decisions about the scale, location and phasing of new developments that are central to the proposed LDP. It is noted that the reporter's principle concerns relate firstly to the

proposal's potential impact on the delivery of A701 relief road (paragraph 8.41 of the report) and secondly, the potential for the proposed development to have unacceptable cumulative effects with the extensive level of development that the proposed LDP intends to allocate in the A701 corridor (paragraph 8.42). Ministers agree these are the main issues to consider.

#### *A701 Relief Road*

17. In paragraph 8.39 of the report, the reporter considered the option of granting planning permission in principle with no specific reservation provided for the relief road, but with a requirement that the development accommodate the road, once its existence and subsequently its alignment has been confirmed. However, due to uncertainty in that approach, and the concerns raised by the developer over the potential for a road through the site to render the land unsuitable for the proposed development, this was not considered as a feasible option by the reporter. The reporter also considered the planning authority's concerns (paragraph 8.35 of the report) that defining a narrow route corridor for the road at this stage would threaten the deliverability of the relief road due to the constraint it would impose on the remaining sections of the route, some of which would have to cross (or preferably avoid) challenging ground conditions.

18. The significance of the proposed A701 Relief Road for the proposed allocations in the emerging LDP is not disputed. Given the uncertainty around the precise location and land uptake required for the proposed A701 relief road, and to address the reporter's concern regarding the impacts of this proposal upon its delivery, Ministers determine that a Grampian (suspensive) condition be attached to the grant of consent. This condition would prevent the proposed development from commencing until an appropriate location for the A701 relief road has been approved in writing by the planning authority and safeguarded. This would ensure that the mixed use film studio proposal would not prejudice the aspirations for a relief road in the local development plan.

19. Ministers consider that the use of a Grampian condition could secure the route of the A701 relief road within the site, so that its planned delivery through the proposed LDP or the spatial strategy of SESPlan would not be compromised. Ministers recognise that the location of the route of the A701 relief road has potential to impact on the proposed development but consider that as the route is yet to be established this is not sufficient grounds to refuse to grant planning permission in principle.

#### *Cumulative effects with proposed developments in LDP*

20. The reporter's second principal concern with regard to the development plan, is the potential for the proposal to have unacceptable cumulative effects with the extensive level of development that the proposed LDP intends to allocate in the A701 corridor. In paragraph 8.42 of the report the reporter considers that even if the proposed development did not affect the delivery of the relief road, it is possible that there could be cumulative effects with this other development and is a separate issue that requires to be addressed. This is one of the grounds on which the reporter has recommended refusal of the application.

21. The reporter sets out in paragraph 8.44 of the report that the cumulative road and traffic effects of the proposal with the proposed allocations in the proposed LDP have not been quantified because the developer declined to model them. Ministers acknowledge that due to this lack of appropriate information on cumulative effects, there are uncertainties about the degree to which development that may emerge from the LDP process can be accommodated in addition to the proposed development. On this basis Ministers accept that there is a degree of prejudice to the proposed LDP process.

22. While the cumulative impacts of the proposal with the proposed allocations in the proposed LDP have not been quantified, Ministers have given significant consideration and weight to the strategic planning aims for the A701 corridor as a primary development location for growth and investment, together with the significant economic and tourism benefits on a national scale that this specialist use would bring to the area.

23. In terms of strategic aspirations, it is not considered that the proposed development's mix of uses, scale and location would run strongly counter to the delivery of the spatial strategy that the emerging plan is seeking to set out within the A701 corridor, as required by SESplan. In this particular circumstance, and in the context of the aspirations for significant growth in this area and the limited development potential of Site B (due to ground conditions), it is considered that the likelihood of substantial adverse impacts on the delivery of SESplan spatial strategy, as reflected in the proposed LDP, are not high. In addition to this, the report recommends a planning obligation to commit the developer to make a financial contribution to the A701 relief road and to fund improvement of the A701/B702/A720 westbound off-slip/A720 eastbound on-slip junction. Ministers agree this appears to be an appropriate means of mitigating the impact of this proposal on these roads and the proposed A701 relief road.

24. Ministers are aware that granting consent for the application while the Proposed LDP is at examination will alter the planning position and so require to be taken into account in the consideration of the proposed LDP through the examination process. Ministers have considered the potential for the grant of planning permission to prejudice the emerging LDP and whether to do so would undermine the plan-making process. On balance, Ministers do not consider that the granting of planning permission for the proposed development would significantly undermine the strategic aspirations of SESPlan. Ministers consider that the special nature of the development and socio-economic benefits of national scale arising would outweigh the prejudice to the plan making process.

25. Site B is identified for development in the proposed LDP. It is considered that the remaining proposals in Site A are not out of scale with other proposed employment sites and are consistent with the nature of development proposed along the A701 corridor. Site B is located within site Ec3 of the proposed LDP. The LDP states that site Ec3 cannot be developed before the A701 relief road has been provided. It is noted that the developer intends to build the proposal in two phases, Site A being the first phase and Site B the second phase. The use of the Grampian condition means the development cannot proceed until the route of the A701 relief

road is secured. For these reasons it is not considered that the proposal would detrimentally affect the phasing of any future development sites along the A701 corridor.

### Material considerations

#### *Socio-economic*

26. Paragraphs 7.16-7.21 of the report set out predicted employment figures associated with the development. It is predicted that 600 staff would be employed at the peak of the construction period and 320 employed full time during the operational phase of the development. A further 580 staff are predicted to be employed by production companies carrying out individual productions at the site, a total of 900 full time equivalent staff. The developer indicates that if the operator also chose to operate the site as a tourism venue in its own right then it could be expected that additional socio-economic benefits would arise. Ministers accept the reporter's conclusions at paragraph 7.39 that the proposal's net economic effect would be significantly positive at both the local and national level.

#### *Ecology & Noise, Vibration and Air Quality Effects*

27. Ministers accept the reporter's consideration that noise issues, concerns over ground conditions within the site and effects on ecological interests could be adequately controlled by conditions. It is noted that no objections were received relating to air quality effects.

#### *Landscape and Visual Effects*

28 It is noted that while the reporter considers the proposal would cause significant adverse effects on the character of the local landscape and on the visual amenity of those who live, work and travel nearby, he states these would be confined to a small radius around the site and would not involve any landscape that is recognised as having particular value. Scottish Ministers accept the reporters consideration that visual effects beyond the immediate environs of the site would be insignificant.

#### *Transport*

29. It is noted that no objections were received from either the Council's Roads Authority or Transport Scotland. Scottish Ministers agree with the reporter's conclusion that the additional traffic generated by the proposal could be accommodated within the road network without unacceptable delay or safety effects. However, the reporter still has concerns regarding potential cumulative effects with the substantial level of development that the proposed LDP intends to allocate along the A701 corridor.

#### *Energy*

30. The proposed development includes a gas powered CHP plant/energy centre. The report notes that there has been some confusion from parties over the size and

generating capacity of the proposed energy centre. The reporter sought further environmental information on this matter which confirmed that the proposed energy centre would have a power output well below the 50 megawatt threshold (the point at which such proposals require consent under the Electricity Act). The report advises that should Ministers be minded to grant planning permission in principle, it would be possible to use conditions to restrict the details of the energy centre to those specified in the further environmental information provided by the developer. Ministers have noted this advice and a condition has been attached to the proposed permission.

## **Summary**

31. Ministers consider that use of a Grampian condition, to require prior agreement of the route of the A701 relief road before development can commence, would secure the prospect of both the proposal and the relief road being appropriately delivered. It is considered that the proposal is in line with the spatial strategy of SESplan and the aspirations that the Proposed LDP is seeking to set out within the A701 corridor. On this basis Ministers do not consider that the proposal would significantly prejudice the delivery of housing and employment sites identified in the proposed LDP. While it is accepted that the proposal is not in accordance with the development plan overall, it is considered that the anticipated significant socio-economic benefits of this specialist mixed use proposal, on a local and national scale outweigh any potential negative consequences to the development plan including loss of greenbelt, localised impacts on amenity and uncertainty around cumulative road and traffic impacts.

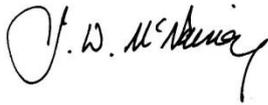
32. For the reasons given above, Scottish Ministers hereby give notice that they are minded to grant planning permission in principle for a mixed use development comprising: film and television studio including backlot complex; mixed employment uses; hotel; gas and heat power/energy centre; film school and student accommodation; studio tour building; earth station antenna and associated infrastructure including car parking; SUDS features and landscaping on land to the north and south of Pentland / Damhead Road, Straiton, Midlothian.

33. Section 59 of the Act provides for a 3 year time limit for the submission of applications for approval of certain matters where approval of the planning authority is required by a condition before the development in question may be begun. Ministers consider that in this case this period be extended to 5 years to allow the necessary requirements of the permission to be agreed and met.

34. Ministers consider that a planning obligation should be completed to secure payment of contributions towards the financing of the A701 relief road and to fund improvement of the A701 / B702 / A720 westbound off-slip / A720 eastbound on-slip junction. Scottish Ministers, therefore, propose to defer their decision on the planning application, in the first instance for a period of 6 months to enable the relevant planning obligation to be completed and registered or recorded, as the case may be. If, by the end of the that period, a copy of the relevant planning obligation with evidence of registration or recording has not been submitted to Ministers, they will consider whether planning permission should be refused or granted without such a planning obligation.

35. A copy of this letter and the reporter's report has been sent to Midlothian Council and parties who participated in written submissions. Other interested parties have been sent a copy of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read "J. W. McNairney". The signature is written in a cursive style with a large initial 'J'.

John McNairney  
**CHIEF PLANNER**

## ANNEX: REVISED CONDITIONS AND PLANNING OBLIGATION

### Planning obligation

A planning obligation should commit the developer to make a financial contribution to the A701 relief road and to fund improvement of the A701 / B702 / A720 westbound off-slip / A720 eastbound on-slip junction.

### Planning conditions

1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval. If phasing of the development is proposed, then these matters may be approved individually in respect of each phase.

#### Approval of Matters:

- (a) siting, design, slab levels and the height of all built structures, including the design of all external features and glazing specifications and acoustic capabilities;
- (b) detailed site layout including the layout of all buildings, roads, footpaths and cycle routes;
- (c) design and configuration of open spaces, including all levels, materials and finishes;
- (d) car and cycle parking,
- (e) waste management and recycling facilities;
- (f) surface water and drainage arrangements including SuDS;
- (g) existing and finished ground levels in relation to Ordnance Datum for the entire development;
- (h) full details of sustainability measures;
- (i) hard and soft landscaping details, including:
  - i) existing trees, landscaping features and vegetation to be retained, removed, protected during development and in the case of damage, restored;
  - ii) proposed new planting in communal areas and open space, including trees, shrubs, hedging and grassed areas;

- iii) location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- iv) schedule of plants to comprise species, plant sizes and proposed numbers/density;
- v) 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 on adjoining plots are occupied;
- vi) drainage details and sustainable urban drainage systems to manage water runoff;
- vii) proposed car park configuration and surfacing;
- viii) proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- ix.) areas of the site that will provide habitats that are recognised as important in the Midlothian Local Biodiversity Action Plan; and
- x) proposed cycle parking facilities;

(Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.)

2. All hard and soft landscaping proposals approved pursuant to condition 1 shall be carried out in accordance with a scheme that has been approved in writing by the planning authority as the programme for completion and subsequent maintenance. Thereafter, any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required. (Reason: to ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP20 of the Midlothian Local Plan and national planning guidance and advice.)

3. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained and around any trees outwith the site boundary where the canopy of the tree overhangs the site boundary. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the trees canopy unless otherwise agreed in writing with the planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

(Reason: to ensure the development does not result in the loss or damage of a tree which merits retention in accordance with policies RP5 and RP20 of the Midlothian Local Plan and national planning guidance and advice.)

4. No trees within the site shall be lopped, topped or felled unless otherwise agreed in writing with the planning authority.

(Reason: to ensure the development does not result in the loss or damage of a tree which merits retention in accordance with policies RP5 and RP20 of the Midlothian Local Plan and national planning guidance and advice.)

5. No development shall take place on any phase of the development until a ground contamination survey and associated remediation strategy for that phase has been submitted to, and approved in writing 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.

Any works of remediation and any other requirements that are identified in the approved remediation strategy shall be completed to the written satisfaction of the planning authority in accordance with a timetable that has also been agreed in writing with that authority.

(Reason: to ensure that construction workers and future users of the site are not at risk from ground contamination).

6. Development shall not begin until details of the access arrangements and haulage routes for construction traffic accessing and leaving the site have been submitted to and approved in writing by the planning authority. Thereafter all construction traffic shall access and leave the site in accords with the approved details.

(Reason: to ensure the safety and convenience of existing local residents and those visiting the development site during the construction process.)

7. No development shall take place on the proposed site until the applicant has undertaken and reported upon a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the developer 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 Policy RP28 of the Adopted Midlothian Local Plan.)

8. No construction, engineering or other works or the operation of machinery shall take place outwith the hours of 8.00 am to 7.00 pm on Mondays to Fridays and 8.00 am to 1.00 pm on Saturdays unless otherwise agreed in writing with the planning authority.

(Reason: to minimise disturbance to nearby residential properties from noise, construction traffic and other pollution.)

9. Prior to the commencement of any phase of this development, the physical suitability of the ground on which that phase would be built shall be investigated and a report submitted to and approved in writing by the planning authority. This report will deal with issues including ground stability, former mine workings and the risk to the development from ground gas. Development shall not proceed except in accordance with any approved mitigation measures.  
(Reason: to ensure that the development pays proper regard to ground conditions.)

10. The development hereby approved shall not include any element of retail or office accommodation unless such accommodation has been confirmed in writing by the planning authority to be of a scale and form that is incidental to the studio use.  
(Reason: the effect on the vitality and viability of town centres of incorporating town centre uses within this out of centre development has not been assessed.)

11. The generating capacity, fuel source and other details of the energy centre hereby approved shall be in accordance with the details set out in the Energy Strategy Summary Revision A, dated 20 May 2016 by Hoare Lea.  
(Reason: to ensure that the development accords with the environmental that informed the decision to grant planning permission in principle.)

12. No building or other site structure shall exceed 28.6 metres in height above its slab level or above the level of the existing ground in the location where that building or structure would be built.  
(Reason: to ensure that the development accords with the environmental information that informed the decision to grant planning permission in principle.)

13. (1) No development shall be commenced unless and until a reserved area map has been submitted to and approved by the planning authority.

(2) No development shall be carried out on the area of land shown on the approved reserved area map.

(3) In this condition-

“reserved area map” means a map showing the reserved A701 relief road area;

“reserved A701 relief road area” means the area of land which is to be reserved for the construction of the proposed A701 relief road and associated works and upon which there is to be no development in accordance with this planning permission;  
and

“proposed A701 relief road” means a relief road, between the A720 Straiton Junction and the A703 road, and linking to the A702.

(Reason: to ensure that the development makes adequate provision for the A701 relief road.)

14. Prior to development commencing a Construction Noise and Vibration Management Plan shall be submitted to and approved in writing by the planning

authority. Construction work shall not proceed except in accordance with the approved plan.

(Reason: to ensure that construction activity has an acceptable impact in terms of noise and vibration.)

15. Prior to development commencing a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the planning authority. The CEMP shall include the following details:

- Signage for the construction traffic, pedestrians and other users of the site,
- Controls on the arrival and departure times for the construction vehicles and for site workers;
- Piling methods ( if employed)
- Earthworks;
- Control of emissions,
- Waste management and disposal and material re use,
- Prevention of mud / debris being deposited on public highway;
- Materials storage; and hazardous material storage and removal.

Construction work shall not proceed except in accordance with the approved plan. (Reason: to ensure that construction activity has an acceptable impact in terms of noise and vibration.)

16. During the operational phase of all parts of the development, plant noise from all sources will be controlled such that the 'Rating Level' at any noise sensitive receptor location shall not exceed the low background levels established by baseline noise survey\*. *\*Note: The target Rating Levels are given in Table 10.17 'Environmental Noise Criteria' of the Noise & Vibration chapter Environmental Statement (WSP/BP).* The design and installation of all plant and machinery shall be such that any associated noise complies with NR25, or NR20 if there are noticeable acoustic features present.

(Reason: to ensure that plant noise has an acceptable effect on sensitive receptors.)

17. Prior to commencement of works, the detailed site layout, buildings orientation and design shall be submitted for approval, along with an acoustic report demonstrating that breakout, emissions and propagation from such sources are mitigated to an acceptable level.

(Reason: to ensure that noise from buildings has an acceptable effect on sensitive receptors.)

18. No filming activity shall be undertaken until a Noise Management Plan has been submitted to and approved by the planning authority. This Noise Management Plan shall include sections to address the following matters:

- Identifying appropriate hours of operation restrictions in relation to the full range of operational activities resulting in sound which can be heard beyond the site boundary;

- Identifying appropriate noise level criteria in relation to the full range of operational activities resulting in sound which can be heard beyond the site boundary, having regard to their associated hours of operation;
- Processes and procedures for internal and external lines of communication, identifying personnel roles, responsibilities and appropriate levels of decision making;
- The implementation and regular review of a policy to ensure a high standard of community engagement, neighbour liaison and dissemination of information;
- The Implementation and regular review of a complaint management policy.  
(Reason: to ensure that noise from filming has an acceptable effect on sensitive receptors.)

19. Prior to the commencement of development a remediation scheme, including a scheme of intrusive site investigations, to afford public safety and the stability of the proposed dwellings from the risks posed by the recorded mine entries (adits) shall be submitted to and approved in writing by the planning authority. Once approved, the scheme of intrusive site investigations shall be completed and the report of its findings shall be submitted to and approved in writing by the planning authority before any works commence on site.  
(Reason: to ensure public safety in regard to former mine workings.)

20. Prior to works commencing, a mitigation scheme for effects on bats and barn owls shall be submitted to and approved in writing by the planning authority. The approved mitigation measures shall be followed in full as part of the site redevelopment.  
(Reason: to ensure that predicted effects on these protected species are adequately mitigated.)

21. Prior to development commencing, a scheme setting out maximum scale parameters for any temporary built development on the backlot areas of the site shall be submitted to and approved in writing by the planning authority. Once approved, temporary built development may take place within the backlot areas without further approval from the planning authority, provided that this development is removed within 12 months of erection. No temporary built development shall take place within the backlot areas that would exceed the agreed scale parameters or would be retained for more than 12 months shall take place unless it has been approved in writing by the planning authority.  
(Reason: to provide an appropriate balance between regulatory freedom and the control of adverse effects on those parts of the site where regular changes in built form are to be expected.)





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## **GUIDANCE ON THE ROLE OF COUNCILLORS IN THE CONSIDERATION OF PRE-APPLICATION CONSULTATIONS FOR MAJOR DEVELOPMENTS**

Report by Head of Communities and Economy

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### **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise the Committee of the recommended procedures for Councillors in the pre-application process.

### **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 (a copy is appended to this report), was first reported to the Committee at its meeting of 27 May 2014 with further guidance being reported to the Committee at its meeting of 07 October 2014. The guidance clarifies the position with regard Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 The Planning team of the Communities and Economy Service manages the process of applying for planning permission, and offers an advice service to anyone considering making an application. Giving pre-application advice helps applicants to gain clear, impartial and professional advice at an early stage regarding any key issues that need to be addressed prior to submitting a formal development proposal. Advice can be provided for developments requiring planning permission, advertisement consent, conservation area consent or listed building consent.
- 2.3 The Planning team provides free pre-application advice on over 200 projects each year, the vast majority of which is with regard local developments. However a small number of requests relate to major developments and are subject to a formal process as defined by regulations. 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.

- 2.4 With regard to the role of Councillors in the pre-application process, the Councillors' Code of Conduct states the following at paragraph 7.8:

*'7.8 You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.'*

- 2.5 It is reasonable for constituents to expect their local elected representatives to have a provisional view on a major planning application proposal within their locality. The above guidance provides for this within specific terms. The further guidance and recommended procedures identified below seek to enable Members to be confident about expressing a provisional view whilst being safeguarded from challenge on grounds of partiality. It also remains the case that Members can at any time contact the Council's planning officers for advice and guidance.

### **3 PROCEDURES**

- 3.1 The Councillors Code of Conduct enables Councillors to express a 'without prejudice' view and to raise material considerations with regard to a major application.

#### Report Pre-Application Consultations to Committee

- 3.2 To enable Councillors to express an early view on a major application it is proposed to report to the Committee details of formal pre-application consultations by prospective applicants. The report will outline the proposal, identify the key development plan policies and material considerations and state a provisional without prejudice planning view regarding the principle of development.
- 3.3 Reports on individual sites will supplement the existing major developments report which updates the Committee on applications being assessed and other developments at pre-application consultation stage.
- 3.4 The Committee will be 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.

### Meetings and Site Visits

- 3.5 Outwith the Committee process elected members may be invited to attend meetings or site visits with prospective applicants as part of the pre-application consultation process. When attending a meeting or site visit in connection to a major application, it is recommended that the elected member request a planning officer to attend. Any planning issues raised at the meeting can then be noted by officers.
- 3.6 Prior to the submission of a major planning application it is a statutory requirement on the prospective applicants to undertake public consultation in the locality including at least one 'public event' (usually a public exhibition). 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) not offer views, as the forum for doing so will be at the meeting of the Planning Committee referred to in paragraphs 3.2 to 3.4 above.
- 3.7 Members will be aware that from time to time they are approached unsolicited by phone, e-mail or face to face contact (e.g. at surgeries), by applicants, supporters and objectors to applications. Clearly, a planning officer will not be present on such occasions but it would be reasonable for the Elected Member to note that s/he had raised (or was intending to raise) the following material considerations at the appropriate meeting of the Planning Committee.

### Determining a Subsequent Application

- 3.8 In terms of handling individual applications once they have been submitted, the Councillors' Code of Conduct seeks to reinforce the principles of fairness and impartiality in relation to the determination of any statutory application including planning applications. Councillors must not be, or be seen to be biased, predetermined or have a closed mind or to have been influenced by improper or irrelevant considerations.
- 3.9 Councillors are expected to approach their decision-making with an open mind in the sense 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.
- 3.10 In reporting a major application to the Committee for consideration, reference will be made to any pre-application advice given.

## **4 RECOMMENDATION**

- 4.1 It is recommended that the Committee:
  - a) notes the established guidance and Committee procedures set out in this report; and

- b) agrees to receive a regular report regarding any formal pre-application consultations by prospective applicants.

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

**Date:** 23 May 2017  
**Contact Person:** Peter Arnsdorf, Planning Manager  
**Tel No:** 0131 271 3310



**The Scottish  
Government**  
Riaghaltas na h-Alba

# Guidance on the Role of Councillors in Pre-Application Procedures



Commissioner for Ethical Standards  
in Public Life in Scotland



**COSLA**



**To:- All local authorities in Scotland**

## **GUIDANCE ON THE ROLE OF COUNCILLORS IN PRE-APPLICATION PROCEDURES**

### **1.0 Introduction**

- 1.1 The Scottish Government is keen to ensure that councillors are confident in engaging at the pre-application stage on substantial development proposals, adding value to the process, while continuing to act within the terms of the Councillors' Code of Conduct. Their involvement at this stage in the planning process is not a substitute for formal consideration and decision-making on development proposals. But this early engagement is intended to better inform councillors of proposals that may subsequently come before them, support a degree of certainty by enabling an early exchange of views and discussion of key issues that councillors want to see addressed, and assist officers of the authority in negotiating on those issues.
- 1.2 We are seeking a consistency of approach across Scotland that will both support certainty from strong early engagement and also enable councillors to participate confidently, backed by a clear remit and procedure to do so. We wish to ensure that councillors, and other parties, are clear of their roles and responsibilities through procedures set out by their own authority.
- 1.3 This guidance should form the basis of agreed and adopted local procedures for pre-application discussions which should be prepared as a matter of priority. Considerations to be taken into account in producing those procedures are set out in section 4 below.
- 1.4 In producing this guidance, the Scottish Government has worked closely with the Commissioner for Ethical Standards in Public Life in Scotland and received endorsement for the relevant sections of its contents.

### **2.0 Context**

- 2.1 The responsibility which councillors have to make proper and reasoned decisions on planning matters in terms of the Councillors' Code of Conduct ("the Code") provides the context for this subject.
- 2.2 Amendments to legislation arising from the Planning etc (Scotland) Act 2006 changed some aspects of the roles of councillors. In addition to councillors being responsible for decisions both on policy and strategic issues and also individual planning applications (unless delegated), additional measures were introduced regarding enhanced scrutiny of applications and the authority's Local Review Body.

- 2.3 One of the policy drivers for change was the introduction of more "front-loading" of engagement. It was also recognised that through early councillor involvement and expression of provisional views; more certainty and confidence would come from informing the process and avoiding unexpected issues emerging at a late stage.

### **Policy and Strategy**

- 2.4 The Code explicitly allows councillors to discuss or debate matters of policy or strategy, even though these may provide the framework within which individual applications will in due course be decided.
- 2.5 As noted at section 7.7 of the Code *"...in your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority's area and to briefs and masterplans prepared for specific sites in anticipation of planning applications."*

### **Individual Applications**

- 2.6 In terms of handling individual applications once they have been submitted, the Code seeks to reinforce the principles of fairness and impartiality in relation to the determination of any statutory application including planning applications. Councillors must not be - or be seen to be - biased, predetermined or have a closed mind or to have been influenced by improper or irrelevant considerations.
- 2.7 Councillors are expected to approach their decision-making with an open mind in the sense 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.

## **3.0 Pre-application Discussions**

- 3.1 Paragraph 7.14 of the Code makes it clear that it is entirely appropriate for councillors, to attend public meetings/events (including those relating to statutory pre-application consultation). Pre-application consultation was introduced as one of the measures to improve early engagement with the community on prospective applications for national and major developments.
- 3.2 As a matter of Scottish Government policy the early engagement of councillors in pre-application discussions has been encouraged as part of the wider reform of the planning system. As already indicated this early engagement is intended to better inform members of proposals that may later come before them formally, enable an early exchange of views and discussion of key issues that councillors want addressed and to assist officers in negotiating on those issues. This is helpful to prospective

applicants, aiding their understanding of local issues and informing the development of their plans before submitting applications.

3.3 The Code includes a key provision in this regard at paragraph 7.8:-

*'7.8 You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.'*

3.4 It is not only appropriate and acceptable for councillors to engage and provide a provisional view at the pre-application stage; it can also be a helpful and responsible thing to do, contributing towards greater certainty and more efficient processing of subsequent applications.

3.5 Any opinions or views expressed by councillors at that stage must be made mindful of the overarching requirements of fairness and impartiality and of keeping an open mind. This will be particularly important as any conduct inconsistent with these requirements may compromise the determination of any subsequent planning application.

## **4.0 Pre-Planning Application Procedures**

### **Key Considerations for Pre-application Discussions**

4.1 The following considerations should be applied by local authorities in drawing up procedures for councillors to engage in pre-application discussions:

- Emphasis should be given to providing meaningful guidance and a helpful service that adds value to the preparation of applications.
- Councillors should be able to air points of view at the pre-application stage on the understanding that the general issues aired in, or the outcomes of, the discussions will be placed into the public domain.
- Any procedures must be compliant with the requirements of the Councillors' Code of Conduct.
- Local authorities should consider their own procedures in implementing this guidance and set out which councillors are to be involved in pre-application discussions. This could be the relevant committee which determines planning applications or could be the members of that committee setting in a consultative forum (rather than as a formal committee).
- Procedures should be conducted in a consistent and transparent manner to avoid suspicions that councillors may have prejudiced their positions.

### **Key Provisions for Pre-application Procedures**

- 4.2 The considerations referred to in paragraph 4.1 above apply to the establishment of any forum in which a provisional view is to be considered and generated.
- 4.3 The forum in which discussion is to take place (committee, panel, other grouping) should be identified. Discussions should usually be held in public. However, where seen as appropriate or necessary, local authorities should carefully consider if they should be held in private. Guidance in paragraph 4.7 should continue to be followed.
- 4.4 The status and purpose of the process should be clear, articulate and publicly available. It is essential to make it clear that persons who may wish to comment on the application if it comes to be submitted will - at the appropriate time - have a full right to make representations.
- 4.5 The unique status of pre-application proposals should be clearly identified in the agenda for any meeting, including covering reports and any other introductory material prepared by officers. Such items should be clearly distinguished from other development management issues.
- 4.6 To avoid any misunderstanding (for councillors, interested parties and members of the public) it may be appropriate for the committee clerk to introduce the item in sufficient detail to allow participants to understand the purpose of the event, the broad nature of the proposals and to emphasise that the outcome is limited to the generation of a provisional view.
- 4.7 Officers should take a note of the meeting and prepare a minute which should be made publicly available in accordance with the requirements of good practice and the council's established conventions.

### **Training for Councillors**

- 4.8 To assist in enhancing public confidence, authorities should consider the need for further councillor training so that members can demonstrate objective levels of competence in planning generally and in the pre-application and development management processes, in particular.

### **Review of Procedures**

- 4.9 Procedures should be kept under review by cross council, planning and professional networks to ensure the dissemination of best practice.

## **5.0 Timescales for Introduction of the Procedures**

- 5.1 Each local authority should establish its own pre-application procedures as a matter of priority.

February 2014



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**PRE - APPLICATION REPORT REGARDING A PROPOSED  
RESIDENTIAL DEVELOPMENT AT LAND TO THE EAST OF LAWFIELD  
ROAD AND TO THE NORTH OF ASH GROVE, MAYFIELD  
(17/00296/PAC)**

Report by Head of Communities and Economy

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## **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise the Committee of a pre application consultation submitted regarding a proposed residential development at land to the east of Lawfield Road and to the north of Ash Grove, Mayfield (17/00296/PAC).
- 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 27 May 2014 and subsequent procedures were reported to the Committee at its meeting of 7 October 2014. 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 a residential development at land to the east of Lawfield Road and to the north of Ash Grove, Mayfield was submitted 19 April 2017.
- 2.3 As part of the pre application consultation process the applicants are to hold a public exhibition at Mayfield Leisure Centre on Thursday 1 June (3pm - 7pm). On the conclusion of the public event and the 12 week pre application consultation engagement period the applicant could submit a planning application for the proposal. It is anticipated that an application for planning permission in principle would be submitted. It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member (in

accordance with the Commissioner's guidance) should not offer views, as the forum for doing so will be at this meeting of the Planning Committee.

- 2.4 A copy of the pre application notice has been sent by the applicant to Mayfield & Easthouses Community Council.

### **3 PLANNING CONSIDERATIONS**

- 3.1 The main planning issue to be considered in providing a provisional view is whether the proposal 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 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.
- 3.3 The proposed development is an agricultural field situated on land to the immediate east of Lawfield Primary School and to the north of Ash Grove and the houses in Confer Road. The site area is approximately 11.12 hectares.
- 3.4 The MLP identifies the site as being in the countryside and any subsequent planning application will be subject to assessment against policy RP1: Protection of the Countryside. A provisional assessment against this policy does not support the proposed housing development on the basis that it is in the countryside and not necessary for agriculture or for any other rural business. Policy RD1 of the MLDP reflects this position.
- 3.5 In June 2015 the applicant made a representation to the Council's proposed Midlothian Local Development Plan (MLDP) on behalf of Lawfield Estates. The representation objected to the non-inclusion of the site for residential development. The site was not identified in the preferred development strategy or as a "reasonable alternative". Subsequently the site was not selected as part of the development strategy in the proposed plan.
- 3.6 The site is not allocated for housing in the MLP or identified for housing in the MLDP and as such is contrary to the Council's planning policy. No material considerations have been identified which outweigh this fundamental planning objection to the proposed development.

## **4 PROCEDURES**

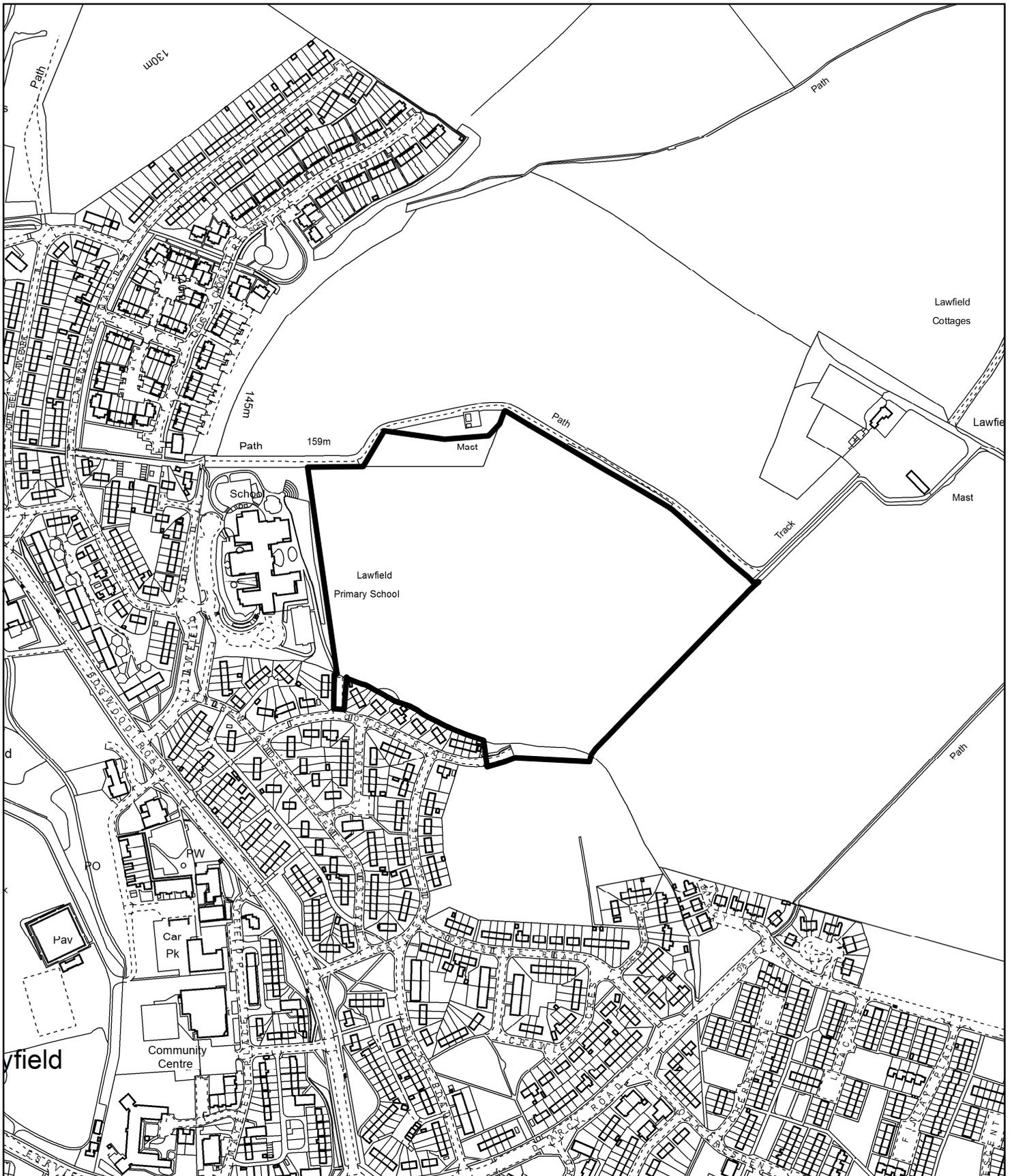
- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' 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:** 23 May 2017  
**Contact Person:** Peter Arnsdorf, Planning Manager  
**Tel No:** 0131 271 3310



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

Land to the East of Lawfield Road and to the North of Ash Grove, Mayfield

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File No. 17/00296/PAC

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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**

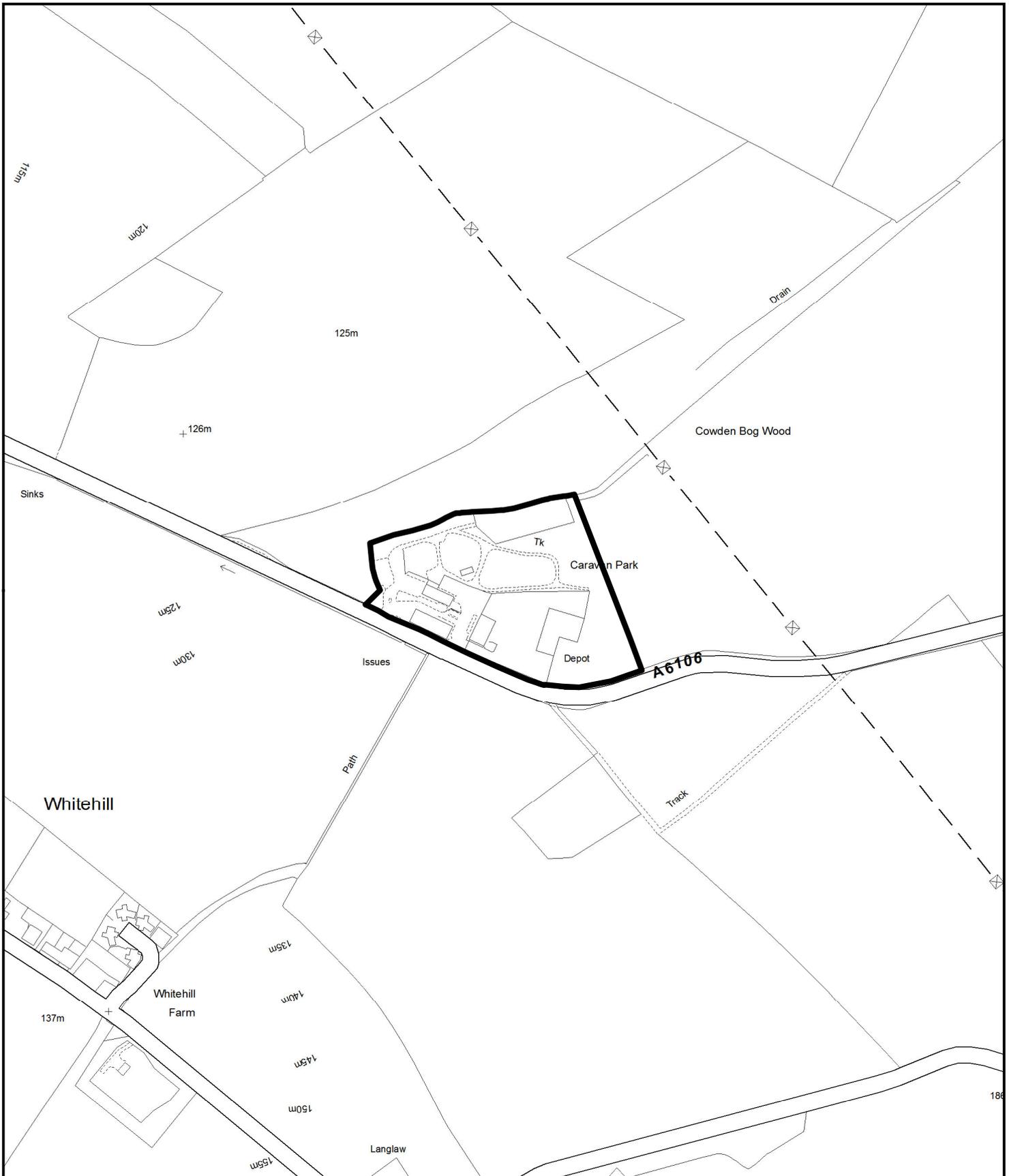
- 5.1 It is recommended that:
- i) unless there is a satisfactory planning obligation completed and registered by 6 September 2017 then the application be refused due to the absence of the required planning obligation to meet the needs and consequences of the proposed residential development and as such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

---

## **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.**

## **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>



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**APPLICATION FOR DETAILED PLANNING PERMISSION (16/00809/DPP)  
FOR THE ERECTION OF 11 FLATTED DWELLINGS AND FIVE  
DWELLINGHOUSES, FORMATION OF CAR PARK AND ACCESS ROAD  
AND ASSOCIATED WORKS ON LAND AT THE JUNCTION OF BRYANS  
ROAD AND MORRIS ROAD, NEWTONGRANGE**

Report by Head of Communities and Economy

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## **1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

**1.1 The application is for detailed planning permission for 11 flatted dwellings and five dwellinghouses on land within the built-up area of Newtongrange, as identified in the adopted Midlothian Local Plan. There has been 60 representations and consultation responses from the Council's Head of Education, the Policy and Road Safety Manager, the Council's Archaeological Advisor and the Coal Authority. The relevant development plan policies are RP20, RP28, RP31, HOUS3, HOUS4, IMP1, IMP2 and DP2 of the Midlothian Local Plan (2008). Policies STRAT2, DEV 2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN5, IT1, ENV 10, ENV24, ENV25, IMP1 and IMP2 of the proposed Midlothian Local Development Plan are material considerations. The recommendation is to grant planning permission subject to conditions and securing developer contributions.**

## **2 LOCATION AND SITE DESCRIPTION**

**2.1 The application site comprises of a an 'L' shape plot of land which is located on the corner of Bryans Road and Morris Road, Newtongrange and is primarily a residential area with a mixture of other building uses such as the Police Station and some commercial units in close proximity. The character of the dwellings and buildings within the local area vary in scale, form, design and material finish. There is no particular or dominant architectural style in the locality.**

**2.2 To the north-east of the site is the police station and beyond this there are residential dwellings. The police station is a single storey flat roofed building which is attached to residential dwellings. The residential dwellings are two storey flat roofed buildings with a three storey mono-pitch roof elements. These dwellings are finished in dry dash with timber detailing.**

- 2.3 To the east of the application site, to the other side of Morris Road, is an area which is predominantly covered by self seeded trees.
- 2.4 The application site wraps around the north-east and south-east boundaries of Bryans Farmhouse. Bryans Farmhouse is a two storey traditional dwellinghouse which is finished in natural stone with a slate pitched roof and is enclosed by boundary walls and fencing. The dwellinghouse has been extended to the south-east and north-east. There are a range of ancillary structures located within the curtilage of the dwellinghouse which includes a single storey outbuilding/garage to the north-east of Bryans Farmhouse. On the eastern elevation of the roof of the outbuilding there are solar panels.
- 2.5 To the north-west of the application site is residential flatted dwellings on Reed Drive which primarily comprises of two storey, 4 in a block flats. These buildings are finished in reconstituted stone, painted wet dash with hipped roofs either finished in clay pan tiles or slate.
- 2.6 Up until January 2015 the application site comprised of a collection of buildings which had been used as workshops and offices. These buildings visually read as agricultural outbuildings located in a prominent position close to Morris Road. The buildings had no statutory protection and were demolished in 2015. The site is currently vacant other than two caravans. The plot of land is enclosed by security fencing.

### **3 PROPOSAL**

- 3.1 Planning permission is sought for the erection of five terraced dwellinghouses and 11 flatted dwellings. A similar proposal was refused in 2015 by the Committee and then refused at appeal. However, the applicant now considers that the previous concerns have been addressed by reducing the number of flats proposed, reducing the height of part of the flatted building and increasing the number of available parking spaces.
- 3.2 The block of flats is to be located to the south-east side of the site, with the side elevation being set back from Bryans Road. The building will run alongside Morris Road. The five terraced dwellinghouses are to be located to the north-west side of the site and will back onto the rear of the two storey flatted dwellings at Reed Drive.
- 3.3 The block of flats comprises of a three storey element closest to the Bryans Road and Morris Road junction with the remainder of the flatted building being two storeys high. The three storey element of the flatted building is some 8.6metres high with the two storey element being some 5.6metres high. The flatted building is located to the south-east of Bryans Farmhouse. The ground levels within the application site vary; the land of which the flats are to be located sits some 0.3 metres above the site which Bryans Farmhouse is located.

- 3.4 The 11 flats will comprise of one three bedroom flat which includes a balcony, en-suite, bathroom and an open plan kitchen cum living room and 10 two bedroom flats; one of which includes a balcony, bathroom and open plan kitchen and living room; and the other nine comprise of an en suite, bathroom and an open plan kitchen cum living room. The flatted building will also house bin storage at ground floor level to the eastern side of the building at the other side of the vehicle pend.
- 3.5 The flatted building is to be finished in a facing brick with timber clad elements. The proposed fenestration has a strong vertical emphasis aligning windows and the timber cladding creating a contemporary design.
- 3.6 The five terraced dwellinghouses visually read as two storey dwellings, but include accommodation within the roof space afforded by the 35° roof pitch and rooflights. The dwellinghouses measure some 5.4 metres to the eaves and 9.1 metres to the ridge. Each house will comprise of 4 bedrooms, 1 en-suite, 2 bathrooms, a kitchen with open plan dining room and a living room. The land to the front of the dwellinghouses sits some 0.3 metres above the land which Bryans Farmhouse sits and the land to the rear of the dwellinghouses is some 0.45 metres above the land which the Bryans Farmhouse sits.
- 3.7 The five terraced dwellinghouses are of a traditional form with a pitched roof. The two end dwellings are to be finished in facing brick and the three central dwellings in a smooth painted render. The material finish and strong fenestration arrangement give the dwellings a contemporary design.
- 3.8 Between the buildings proposed for the flatted dwellings and terraced houses, there is an area of car parking which will provide 30 parking spaces. The car park will be accessible via a pend which connects to Morris Road. Within this area, a small building is proposed as a bicycle store which will contain 'sheffield' racks and a lockable door.
- 3.9 To the north-east boundary from the front elevation of the terraced dwellinghouses to the rear of the application site there will be a 1.8 metre high timber fence. To the south-west boundary there will be a 1 metre high railing which will connect to the neighbouring boundary treatment and will then connect to the rest of the boundary treatment which will comprise of a 0.5 metre high brick wall with 0.5 metre high railings above which will continue around the site boundary from the south-west around the corner of the site to the southern side of the vehicle access pend at the eastern side of the application site.
- 3.10 No details have been submitted with regards to affordable housing.
- 3.11 A coal mining risk assessment was submitted with the application due to the application site being located within a high risk area.

## 4 BACKGROUND

- 4.1 There have been a number of planning applications submitted for residential development on the site in recent years. Two applications were submitted in 2007, an application in 2015 and another in 2016.
- 4.2 Planning permission was sought in 2007 for the erection of 24 flatted dwellings, ref: 07/00078/FUL. This application was refused by the Committee as it would result in the over-development of the site. The Planning Authority were concerned that the site had been considered in isolation, with little respect to the other buildings in the area. It was also considered that the building would have been overly dominant in the street scene.
- 4.3 Based on the outcome of the above-mentioned planning application, and the obvious appetite to develop the site, the Planning Authority drew up an informal development brief for the site. The brief was to be used as guidance in order to achieve an appropriate scheme.
- 4.4 Planning permission was sought in 2007 for a reduced proposal for 20 dwellings comprising of 15 flats and 5 houses, Ref: 07/00333/FUL. Again, this scheme was considered, by the Planning Authority, to be over development of the site. Before the application was reported to the Committee for refusal the applicant decided to withdraw the application.
- 4.5 In 2015 planning application 15/00029/DPP for the erection of 18 dwellings comprising of 13 flats and five houses was refused. This scheme was refused by the Committee for the following reasons; the flat roof design of the flatted residential block would significantly detract from the character and appearance of the area; the three storey building would be overly dominant of the street scene in terms of scale, height and position of a prominent site; the proposed development would not benefit from sufficient garden ground for residential properties and would result in inadequate levels of amenity for future residents; the proposed development would not benefit from adequate vehicle parking spaces which would result in inconsiderate, and potentially illegal, overflow parking on Morris Road which along with concerns over the accessibility of the site for services vehicles raises road safety concerns; the proposal represented an overdevelopment of the site and was, therefore, contrary to the terms of policies RP20, HOUS3 and DP2 of the adopted Midlothian Local Plan.
- 4.6 In July 2015, the applicant submitted an appeal to the Planning and Environmental Appeals Division of the Scottish Government (DPEA) and was assessed by a reporter whom was appointed by the Scottish Ministers. The main issues considered at appeal were the adequacy of car parking and impact on road safety; the design, appearance and layout of the development including adequacy of garden space; and the development's effect upon residential amenity.

- 4.7 With regards to the design, appearance and layout of the development including adequate garden space the reported concluded that “*there was no particular or dominant architectural style in the locality*”. The reporter did not consider the design of the development to be unacceptable. Furthermore, in reference to the flat roof design of the proposed flats it was noted that both the adjacent police station and residential properties on Morris Road utilise flat roofs on parts of these buildings. It was detailed that the use of a flat-roofed building at this application site is not detrimental to the character and appearance of the area. The visual scale and siting of the development was not considered to be overbearing within the wider streetscape. It was also noted that the choice of materials were appropriate and reflected the materials used within the area. In relation to the gardens sizes for the houses and communal private open space for the flats it was not deficient to such an extent that would be contrary to policy DP2.
- 4.8 In relation to the effect upon residential amenity it was concluded that the development would not result in a significant or unacceptable loss of residential amenity at Bryans Farmhouse or other residential properties. Although the proposal did not fully comply with the separation distances specified by policy DP2, overlooking would not result and therefore the minor departure from the policy would be acceptable in this instance.
- 4.9 The conclusion reached by the reported found “*the proposed car parking to serve the development is deficient to an unacceptable degree. This would result in both residents and visitors to the properties being forced to find alternative locations to park, and this would most likely result in on-street parking on Morris Road which would have an adverse impact upon road safety and impede traffic flow.*” The reporter concluded “*in terms of design, appearance, layout, amenity ground, effect upon residential amenity and all other material planning considerations the reporter did not find the proposal to be unacceptable.*”
- 4.10 Planning application 16/00207/DPP, for the erection of 12 dwellinghouses was granted planning permission subject to conditions and a planning obligation to secure developer contributions. This application was circulated on the 27 September 2016 and was not called in for determination at Committee.
- 4.11 In March 2017 the application which is the subject of this report was called to Committee by a local ward Member due to concerns relating to the highway impacts and the design and density of the development proposal; and also suggesting that the proposal was not significantly different from a previous refused proposal for 18 units (15/00029/DPP).

## 5 CONSULTATIONS

- 5.1 The Council's **Head of Education** estimates that 16 dwellings would give rise to five primary school pupils and four secondary school pupils. The Council's Head of Education has advised that the applicant will be required to make a developer contribution towards non-denominational primary school provision towards an extension to a school. A developer contribution will also be required towards secondary non-denominational provision and towards denominational secondary school capacity.
- 5.2 The Council's **Policy and Road Safety Manager** has not objected to the planning application but has requested further details regarding access and parking be submitted. It is noted that as part of the ongoing Newbattle High School redevelopment, Bryans Road/Morris Road junction was to be changed to a traffic controlled junction with the extension of the current traffic calming at the school frontage to the junction. Traffic lights have since been installed at the Morris Road/Bryans Road junction. This will see a reduction in vehicle speeds and has provided an improved pedestrian crossing at this location. The proposed building is setback sufficiently from the junction and would not obstruct the existing visibility splay at the road junction.
- 5.3 The Council's **Archaeological Consultant** noted that the application site is located on the site of a medieval chapel and graveyard dedicated to St Briox in the 12<sup>th</sup>/13<sup>th</sup> century and therefore has potential to be a site of archaeological significance. Historically the churchyard was defined by large trees, which have since been felled, and described as being to the north-west of Bryans Farm. In 1903 a stone font was recovered from the farm. 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 the historical remains and to determine whether the development will disturb any buried archaeological deposits.
- 5.4 The **Coal Authority** confirmed that the application site is located within the development high risk area and advised that the comments provided in relation to a planning application 16/00207/DPP on the 19 April 2016 for the application site remain valid in respect of this application. The response provided concurs with the recommendations of the applicant's report, that coal mining legacy potentially poses a risk to the proposed development and that further intrusive site investigation works are required. The Coal Authority recommended that, if approved, a planning condition be secured which requires the submission of a further report on the exact position regarding coal mining legacy and that remedial works are undertaken.
- 5.5 **Newtongrange Community Council** has objected to the planning application on the basis of objections received from within the

community. The Community Council have noted that the site should be developed in a sympathetic way, giving consideration to existing historic properties and be in keeping with the look and feel of the village. The Community Council are concerned about the proposals being overdevelopment of the site, the lack of detail provided with regards to the archaeological investigation and the development's impact on the immediate neighbours.

5.6 **Scottish Water** made no comments regarding the proposal.

5.7 The Council's **Environmental Health Manager** made no comments regarding the proposal.

## 6 REPRESENTATIONS

6.1 There have been 60 representations objecting to the application; 54 standard format/template letters and six separate letters, two of which were received from one household. All representations can be viewed fully online. The representations raised concerns which can be summarised as follows:

- The proposed development is similar to a previously refused proposal (15/00029/DPP);
- The proposed development, as a result of its size, height and position, will be out of character and overly dominant;
- The building will detract from Bryans Farmhouse, which is a historic focal point;
- The proposed development is out of character with the area in terms of form, density and design. The flat roof does not relate to nearby buildings which are of a traditional design;
- The proposed development projects towards the Morris Road/Bryans Road junction and will restrict visibility increasing risks to pedestrians and motorists. It was also noted that this is a designated school route. It is suggested that the development is sited further back from this junction;
- The proposed development will result in an increase in residential traffic onto Morris Road which raises concerns regarding visibility from the bend and the increased risk to pedestrians on this designated school route;
- The proposed development may not be adequate for refuse vehicles;
- The proposed development is an overdevelopment of the site and may not meet the recommended guidelines;
- Concerns about archaeological potential of the site and whether it will be recorded;
- The proposed development is too close to Bryans Farmhouse and may impact on the amenity as a result of overshadowing and privacy;
- The proposed development would have an adverse impact on the childminding business being operated from Bryans Farmhouse.

The community do not want to see a local business negatively impacted;

- The objectors highlight the Scottish Government's aspirations with regards to energy regeneration from renewable resources and suggest that this development should take that into consideration; and
- The objectors consider the proposal to be an overdevelopment of a plot of this scale and, consider the proposal not to meet the requirements of policies DP2, HOUS3 and RP20 of the adopted Midlothian Local Plan and paragraph 184 of the Scottish Planning Policy (renewable energy). In particular the proposal is considered to materially detract from the existing character and amenity of the area.

6.2 The representations which are not of a standard letter template format raise similar issues to those noted above. One objector raises concerns with regards to fire vehicle accessibility to the site stating that, this does not appear to meet the minimum requirement in terms of the height of the vehicle access pend. Another objector raised concerns with regards to loss of sunlight and security concerns in relation to the proposed flats, houses and parking area in relation to the rear garden of a property at Reed Drive.

6.3 The neighbour at Bryans Farmhouse has submitted a representation which included an appendix along with two emails to further clarify concerns. The letter of representation largely raises similar concerns which are noted above. Other concerns raised within the representation can be summarised as follows:

- Concerns about how the development may impact on her property and business;
- Noted that the submitted plans do not detail the existing conservatory to the south-east side of her property which results in the flats being a further 2 metres closer to her property and which is not considered to be a reasonable separation distance;
- States that the land rises to the south and so any building erected will dominate and impose upon Bryans Farmhouse which raises further concerns that the proposed development will impact on her amenity, as a result of overshadowing and a reduction in privacy;
- Concerned that the development will also impact on the solar panels which she has attached to her outbuilding;
- Claims that the proposed development will adversely impact her childminding business as it will reduce privacy;
- Claims that previous buildings were unsympathetically demolished without a bat assessment and no longer see any bats;
- States that the development does not meet the fire & rescue vehicle accessibility requirements due to height restrictions of the pend and houses being more than 45 metres from nearest road access;

- States that under previous demolition warrant the structural engineers required supporting legs on the back wall of the now demolished building which results in parking spaces 24 – 28 and the bike store being unviable;
- Concerned that the bin storage is not adequate;
- Concerned that the amenity garden ground does not meet the required amount for the flats or dwellings; and
- Concerns over the loss/lack of the trees along boundaries.

The concerns noted above will be addressed within the planning issues section of this report.

## 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 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. With regard this application the policies in the MLDP are reflective of those in the MLP. The following policies are relevant to the proposal:

### Midlothian Local Plan 2008 (MLP):

- 7.2 Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area.
- 7.3 Policy **RP28: Site Assessment, Evaluation and Recording** states that where any development proposal 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 impact of the proposal on the archaeological resource.
- 7.4 Policy **RP31: Open Space Standards** advises that the Council proposes to bring forward supplementary planning guidance based on the open space strategy outlining the minimum open space standards in respect of all new development, and until that is available the requirements for open space provision are as set out in policy DP2.
- 7.5 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.

- 7.6 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
  - 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.
- 7.7 Lower levels of provision, or a commuted sum, may be acceptable where this has been fully justified. Supplementary planning guidance for the affordable housing provision shall provide advice on: the acceptable tenure split between social and low cost housing; possible delivery mechanisms; the scope for commuted sums; and other relevant matters as necessary.
- 7.8 Policy **IMP1: New Development**, this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are transport infrastructure, landscaping, public transport connections, including bus stops and shelters, parking in accordance with approved standards, cycling access and facilities, pedestrian access, acceptable alternative access routes, access for people with mobility issues, traffic and environmental management issues, protection/management/compensation for natural and conservation interests affected, archaeological provision and 'percent for art' provision.
- 7.9 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 requirements, related to the scale and impact of the proposal. This includes education provision, essential roads infrastructure, protecting valuable environmental assets within or adjacent to the site and compensation for any losses including alternative provision where appropriate. In this case the need to upgrade junctions and access arrangements will come through a Traffic Assessment and specific requirements may arise from water and drainage and flood risk assessments.

- 7.10 Policy **DP2: Development Guidelines** sets out Development Guidelines for residential developments. The policy indicates the standards that should be applied when considering applications for dwellings.

Midlothian Local Development Plan (MLDP)

- 7.11 Policy **STRAT2** supports development on windfall sites where it does not result in the loss of valuable open space; does not conflict with established land uses in the area; its design is compatible with the character of the area and it meets the required traffic and parking standards.
- 7.12 Policy **DEV2** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.13 Policy **DEV3** seeks an affordable housing contribution of 25% form sites allocated in the MLDP.
- 7.14 Policy **DEV5** sets out the requirements for development with regards to sustainability principles.
- 7.15 Policy **DEV6** sets out design guidance for new developments.
- 7.16 Policy **DEV7** sets out the requirements for landscaping in new developments.
- 7.17 Policy **DEV9** sets out the necessary open space for new developments.
- 7.18 Policy **TRANS5** seeks the provision of electric vehicle charging points in new developments.
- 7.19 Policy **IT1** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.20 Policy **ENV10** requires that new development pass surface water through a sustainable urban drainage system (SUDS).
- 7.21 Policy **ENV24** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting and policy **ENV25** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.

- 7.22 Policy **IMP1 and 2** identify the need to make provision, or contribute towards a provision, of infrastructure and facilities needed to deliver a service, which arise from the proposed development.
- 7.23 The Council has prepared **Supplementary Planning Guidance on Affordable Housing and Developer Contributions**. The SPG on Developer Contributions sets out guidance on when and where developer contributions are payable.

#### National Policy

- 7.24 **The Scottish Planning Policy (SPP)** in respect of housing is also a material consideration. In the interest of sustainability it is good practice to make best use of brownfield sites within towns subject to the protection of the character of the area and amenity of existing residents. This reflects the advice contained within the SPP (para 80) which seeks more efficient use of land and buildings. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. The individual and cumulative effects of infill must be sustainable in relation to the social and economic infrastructure of a place, and must not lead to over-development;
- 7.25 The SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of the SPP are developed within the local plan policies, in particular policy DP2.
- 7.26 The SPP clearly states that design is a material consideration in determining planning applications and that planning permission may be refused and the refusal defended at appeal or local review solely on design grounds.
- 7.27 The Scottish Government policy statement, **Creating Places**, emphasises the importance of quality design in delivering good places.

## **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 located within the built up area of Newtongrange where there is a presumption in favour of appropriate development. The application site is situated within a primarily residential area and as such the site is not inherently unsuitable for residential development and the consultations carried out have not highlighted any overriding reasons as to why the site could not be redeveloped for residential purposes. The objectors to the residential scheme do not object to the principal of a residential development on the site. Generally, it is considered that a residential use of the site is compatible with the character of the area.
- 8.3 The principal planning issues relate to the assessment of the appropriateness of the scale, mass and proportions of the development, the elevation design, material finish, layout, amenity space, access and parking, impact on local amenity. With regards to the application consideration must also be given to the possibility of significant archaeological interest within the site and whether there are any legacy coal mining issues that require remediation.

### Site Layout

- 8.4 The shape of the application site along with the neighbouring properties limit the viable layout options, consideration must be given to good urban design principles and to ensuring any adverse impact on amenity of the area is limited.
- 8.5 The applicant has sought to use the building lines established by the neighbouring properties. Therefore, the south-west side of the flatted dwellings do not project forward of the existing dwelling known as Bryans Farmhouse, which ensures that the Bryans Farmhouse remains visible and is not visually dominated. The flatted building continues along part of Morris Road and reflects the positioning of the Police Station building to the north-east of the flats which is located close to Morris Road.
- 8.6 There is an area of land to the south-west side of the site which sits between the building and Bryans Road and an area of land to the south-east of the flats that will serve as amenity space for the residents of the flats. Policy DP2 of the adopted local plan requires that each flat is to be provided with 50sqm of communal amenity space. The area of the application site allocated for gardens for the flats meets the requirements in size and means there is an adequate level of amenity provided.
- 8.7 In between the block of flats and the terraced dwellings there is an area of car parking space and a vehicle access road which is taken from Morris Road. A bike store and pedestrian footpath are also located within this area. The footpath is taken from the pedestrian footpath at

Morris Road and leads to the flats, around the car park and to the terraced dwellings.

- 8.8 The terraced dwellings are located within the interior of the site and therefore have no requirements to reflect nearby building lines. However the layout and orientation of these houses are important factors to consider. The houses front on to the car parking area and each have an area of private garden ground to the rear.
- 8.9 The policy DP2 standards require private amenity space of 100sqm for each of the terraced dwellings. However, compliance with the standard means, for terraced dwellings, very long and narrow gardens which are of limited use. For this reason the Council has previously supported smaller private gardens than required by the DP2 standards for terraced houses. It would be appropriate, in the circumstances, to allow for a relaxation of the private garden standards, particularly as the houses comply with the standard for minimum rear garden length.
- 8.10 The form of development and the size of the site do not lend itself to the provision of children's play equipment on site. There are playing fields and public parks located within walking distance of the application site which are accessible to the public; Welfare Park, Newtongrange is located some 500 metres south-west of the application site, Mayfield Public Park is some 560 metres north-east of the application site and Easthouses Public Park is some 630 metres north of the application site. A contribution towards the provision of children's play facilities within Newtongrange will be required to enhance these existing facilities.
- 8.11 The proposed layout of the residential development maximises the potential of the site whilst responding to the constraints. The proposed development presents a solution which generally complies with the policies of the local plan.

### Design

- 8.12 Much comment has been made in the letters of representation about the design and scale of the proposed development, and it being 'out of character' with the local area. The objectors have mainly focussed on the inappropriate massing, design and siting of the proposed flatted block. However, consideration must be given to the development as a whole and whether the design is appropriate in this location and context.
- 8.13 The application site is currently vacant and contributes little to the character and appearance of the area. In addition, should the site remain vacant and in this condition it is likely that it will have a long term negative impact on the character and amenity of the local area. Even prior to the clearance of the site it contributed little to the appearance of the area, as it comprised a number of poorly maintained

buildings of varying quality, in uses which were not entirely compatible with the surrounding residential area.

- 8.14 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 urban realm. Development which is of a strong modern design and reflects the locale is likely to be supported, provided all other matters have been successfully resolved. Flat roofs are often used to create a contemporary building form which in turn reduces the scale of the proposal in terms of height.
- 8.15 In locations where the character of the area and adjacent buildings is of particular importance, such as within a conservation area, it is more important to conserve and protect that character. However, where an area has not been designated as a conservation area, or has no overriding defining character, it provides more scope to introduce innovative and distinctive design solutions.
- 8.16 With regards to the proposed development the applicant has taken the character of the locale into consideration and demonstrated this through a considerate design. The historic core of Newtongrange comprises of rows of single storey facing brick built former miners' cottages, with two storey facing brick-built buildings located at prominent positions along Main Street and at The Square. This is such a strong character that it has influenced the layout and form of the ongoing residential development to the south-east of the application site. The scale, siting and material finish of the development proposal have clearly been influenced by the historic centre of Newtongrange. The residential development further evolves the historic layout, form and design and is a modern interpretation of the original core of Newtongrange.
- 8.17 The applicant has designed the residential development so as to refer to the wider context which includes increasing the height of buildings within more prominent locations in the area. While three storey buildings are not widespread in the area they are not uncommon. There are a number of buildings over two storeys in prominent locations in close proximity to the application site, such as the flats on the former cinema site in Newtongrange (three storeys), the flats on St Luke's Way (three storeys) and the flats on Blackcot Road, Mayfield (four storeys). The flatted development comprises a three storey element to the south-east corner of the site and steps down to two storeys to the south-east side (closest to Bryans Farmhouse) and the north-east (towards the police station) which visually respects the surrounding buildings.
- 8.18 The use of facing brick as the primary building material on the block of flats visually links the development proposal to the characteristics of

Newtongrange. Although flat roof buildings are not common within the immediate locale there are a number of flat roofed buildings within the area which demonstrate that they are not non-existent. Both the nearby existing Newbattle High School, and its replacement, are flat roof buildings, along with both the adjacent police station and residential properties on Morris Road which also utilise flats roofs on parts of these buildings. There are no planning policies that dictate against the use of flat roof buildings and the Scottish Government website on 'Inspirational Designs' highlights numerous examples of modern flat roof buildings successfully contributing to their surroundings.

- 8.19 The visual scale and siting of the flatted building is not considered to be overbearing of the streetscape. The primary use of brick is appropriate and reflects the materials used within the locale. Overall, in terms of design, the proposed flats make a distinct, positive contribution towards the locale with a design which draws from historic characteristics of Newtongrange.
- 8.20 The proposed row of terraced houses appears to cause less concern to the objectors in terms of design, despite the roof design of these units also not matching that of the buildings immediately adjacent on Reed Drive. The houses are traditional in form but with a contemporary design. These houses will not detract from the character or appearance of the area.
- 8.21 The development proposal includes details of boundary treatments so as to clearly define the site. To the north-east boundary from the front elevation of the terraced dwellinghouses to the rear of the application site there will be a 1.8 metre high timber fence. To the south-west boundary there will be a 1 metre high railing which will connect to the neighbouring boundary treatment and will then connect to the rest of the boundary treatment which will comprise of a 0.5 metre high brick wall with 0.5 metre high railings above which will continue around the site boundary from the south-west around the corner of the site to the southern side of the vehicle access pend at the eastern side of the application site. The proposed boundary treatment reflects the character of the residential development and defines the site.

#### Impact on Amenity

- 8.22 In addition to contributing to the contemporary design of the block of flats, the flat roof reduces the mass and height of the building and helps protect the amenity of the adjacent dwellinghouse.
- 8.23 The overshadowing of the Bryans Farmhouse property is calculated by using the 'sun on ground indicators'. This calculation shows that the shadow cast by the proposed block of flats is likely to fall on to the southern and eastern elevation of the house each morning until around 9.30am. By approximately 10am each day the shadow will fall on to the existing outbuilding. Between approximately 10am and 1pm the

shadow cast from the proposed block of flats will fall on to the outbuilding, thereby reducing the effectiveness of the solar panels which the neighbour has installed on the roof of this structure.

- 8.24 As mentioned above, the shadow cast by the block of flats is likely to impact on the kitchen window of the house until around 9.30am. The windows of the first floor bedrooms should be largely unaffected. In addition, it is likely that the impact of the three storey building, as proposed, would be similar to a more traditional two storey building with a pitched roof.
- 8.25 The two storey section of the block of flats is approximately 15 metres away from the closest windows on Bryans Farmhouse and approximately 13 metres from the small conservatory located on the southern elevation of Bryans Farmhouse. The three storey element of the flatted building is approximately 21m away from the closest windows on Bryans Farmhouse and 19 metres from the small conservatory on the southern elevation. The windows of the block of flats closest to Bryans Farmhouse serve a stairwell, en-suite toilets, kitchens and bedrooms. It is proposed to glaze some of the windows with obscured glass and direct some windows so that they are at an oblique angle to the farmhouse. It is recommended that obscured glazing be secured in the en-suite windows by condition and that it cannot be replaced at a later date with clear glass, in order to protect the privacy of the neighbouring property.
- 8.26 The windows of the terraced houses will not directly overlook the property at Bryans Farmhouse to a significant effect due to a combination of their orientation, the proposed erection of a fence and the use of obscured glazing. It is recommended that obscured glazing be secured in the bathroom windows by condition and that it cannot be replaced at a later date with clear glass, in order to protect the privacy of the neighbouring property. Some of the rear windows of this block have the potential to impact on the privacy of the properties to the rear, but the properties are located the requisite distance from the site boundary so as to comply with policy DP2 of the local plan. The rear gardens of the terraced houses are enclosed by a 1.8metre high fence which further reduces any overlooking concerns.
- 8.27 Bryans Farmhouse benefits from a large area of garden ground, most of which would be materially unaffected by the proposed development. The impacts on the amenity of the property at Bryans Farmhouse are not so sufficient to merit refusal of this planning application.
- 8.28 The same conclusion can be reached for the residential properties on Reed Drive. While there will be some overshadowing of the rear gardens of these properties early in the morning this will not last for long and does not result in such a poor level of amenity so as to warrant refusing the planning application.

- 8.29 The resident at Bryans Farmhouse has raised concerns regarding the potential impact of the development on the childminding business which she operates from the property. She is concerned that there will be an adverse impact on privacy. Given that the planning status of the property at Bryans Farmhouse is a dwellinghouse it has been assessed as such already within this report. Any use of the property as a childminding facility should be ancillary to the main use of the building as a house.
- 8.30 A large bin store has been located immediately adjacent to the vehicle access pend. This bin store should be of sufficient size to ensure that it can accommodate all bins related to this development. The bin store should be lockable, in the interests of security and safety.

#### Access and Transportation Issues

- 8.31 As part of the ongoing Newbattle High School redevelopment, the existing Bryans Road/Morris Road junction has been changed to a traffic signal controlled junction with additional traffic calming. These works will reduce vehicle speeds and provide improved pedestrian crossing facilities at this location. The proposed building is set back sufficiently from the junction and would not obstruct the existing visibility splay at the road junction.
- 8.32 The proposed development provides 30 off-street car parking spaces, which complies with the standards required. In addition, the developer proposes the provision of a cycle storage building for residents.
- 8.33 There is insufficient space within the parking and vehicle access area to accommodate a vehicle turning area. As a result larger vehicles, such as refuse vehicles will not be able to use the internal parking area. In any event the height of the access pend will restrict access by larger vehicles. Given the close proximity of the bin store to Morris Road the restricted access is unlikely to be an issue. While the pend height will restrict access for emergency vehicles it will be possible for fire crews to access the site.
- 8.34 The internal parking area and footpaths are to be illuminated by bollard-style lighting. The bollards within the parking area will not provide sufficient levels of light to ensure pedestrian safety. As a consequence the applicant will be required by condition to submit an amended lighting scheme.
- 8.35 There are bus stops located within close proximity to the application site on Bryans Road, where Lothian buses provide a no.33 and N3 (a night bus service). The available services provide transport to Edinburgh City Centre and to other parts of Midlothian. This is a regular bus service which runs 7 days a week.

### Sustainable Urban Drainage System (SUDS) and Flooding

- 8.36 The applicant has suggested that there will be two levels of treatment with regards to drainage. While it has been stated that there will be permeable paving over the car parking area and an attenuation storage/soakaway in the amenity area for the flats there is little supporting information which satisfies the Planning Authority that this would be sufficient. It is not clear where any drainage would flow to after attenuation; and whether it would be linked to the public drainage system. It can be made a condition of a grant of planning permission that details of SUDS be submitted for the prior approval of the Planning Authority.

### Coal

- 8.37 The Coal Authority has not objected to the application but has requested that additional information be submitted for assessment and approval. This can be secured by condition.

### Archaeology

- 8.38 It is noted that objectors have raised concerns regarding the impact that the development may have on any archaeological potential which the site may possess. 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.

### Developer Contributions

- 8.39 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.
- 8.40 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements are set out in the Midlothian Local Plan (2008), the

proposed Midlothian Local Development Plan and Midlothian Council Developer Contributions Guidelines (Supplementary Planning Guidance) and Supplementary Planning Guidance on Affordable Housing both approved in March 2012. The following contributions are sought in respect of this application (*All contributions are based on BCIS TPI Q3 2015 (268) figures and are subject to indexation unless otherwise stated*):

- A financial contribution towards the provision of additional capacity at Newtongrange Primary School;
- A financial contribution is sought towards the additional capacity at Newbattle High School or another secondary high school in the event of a provision review;
- A financial contribution towards the provision of additional denominational capacity at the Dalkeith Schools Community Campus;
- A financial contribution towards the provision of community facilities;
- A financial contribution towards Border Rail;
- A contribution towards the provision of children's play facilities within Newtongrange;
- The provision of 25% affordable housing (on units 15 and 16) by means of commuted sum;

#### Biodiversity

- 8.41 Unfortunately all the existing buildings on site were demolished before the submission of this planning application or any biodiversity report was carried out with regards to assessing the buildings for bat roost potential. Ultimately it is the developer's responsibility to ensure that no bats, or their habitat, are harmed.

#### Other Matters

- 8.42 All material planning considerations raised by the representors are addressed above or as follows:.
- 8.43 One objector has raised concerns regarding the stability of a retaining wall. Although this is not a planning matter, it is detailed on the submitted plans that the existing stone wall is to be retained and tied up (secured).
- 8.44 An objector has requested that the row of trees along the boundary with the properties on Reed Drive be retained. A condition will be used requiring landscaping details to be submitted to the Planning Authority for written approval and it is noted that the retention of trees is encouraged.
- 8.45 It is noted that concerns were raised in relation to the impact upon the solar panels attached to the south-east facing roof plane of an outbuilding at Bryans Farmhouse. The solar panels will see reduced

periods of direct sunlight which will reduce their efficiency for part of the day, however, this does not warrant the refusal of planning permission for the development proposal.

- 8.46 Overall, all relevant matters have been taken into consideration in determining this application. It is noted that planning application 15/00029/DPP was refused and dismissed at appeal in 2015. However, the applicant has amended the proposal so as to address the outstanding concerns raised by the Reporter appointed by the Scottish Ministers which justified the dismissal of the appeal. Therefore, it is concluded that in terms of design, appearance, layout, amenity ground, parking provision, effect upon residential amenity and all other material planning considerations that the proposal accords with the principles and policies of Midlothian Local Plan and is acceptable in terms of all other applicable material considerations. Therefore, it is recommended that the application is approved subject to conditions and the securing a legal agreement.

## **9 RECOMMENDATION**

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

*The proposed development accords with the Midlothian Local Plan (2008) and the proposed Midlothian Local Development Plan. The layout and detailed appearance of the development will add interest to the street scene and it will not have a significant adverse impact on the amenity of nearby properties. The presumption for development is not outweighed by any other material consideration.*

Subject to:

- i) the prior signing of a legal agreement to secure the provision of affordable housing, and contributions towards education provision, the Borders Rail line, children's play provision and maintenance of play equipment and community facilities. The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application may be referred back to Committee for reconsideration.
- ii) the following conditions:
  1. Development shall not begin until details of a 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, 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;
- 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 are occupied. 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 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 RP20 and DP2 of the adopted Midlothian Local Plan, policies DEV2, DEV6 and DEV7 of the proposed 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 RP20 and DP2 of the Midlothian Local Plan, policies DEV2 and DEV6 of the proposed 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.

**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 Policy RP28 of the adopted Midlothian Local Plan and policies ENV24 and ENV25 of the proposed 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 Plan and the Proposed 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 dwellinghouse. 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 Proposed 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 Proposed 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 Proposed Midlothian Local Development Plan.*

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

**Date:** 23 May 2017

**Application No:** 16/00809/DPP

**Applicant:** T and V Builders Ltd, 25 Lanark Road, Edinburgh,  
EH14 1TG

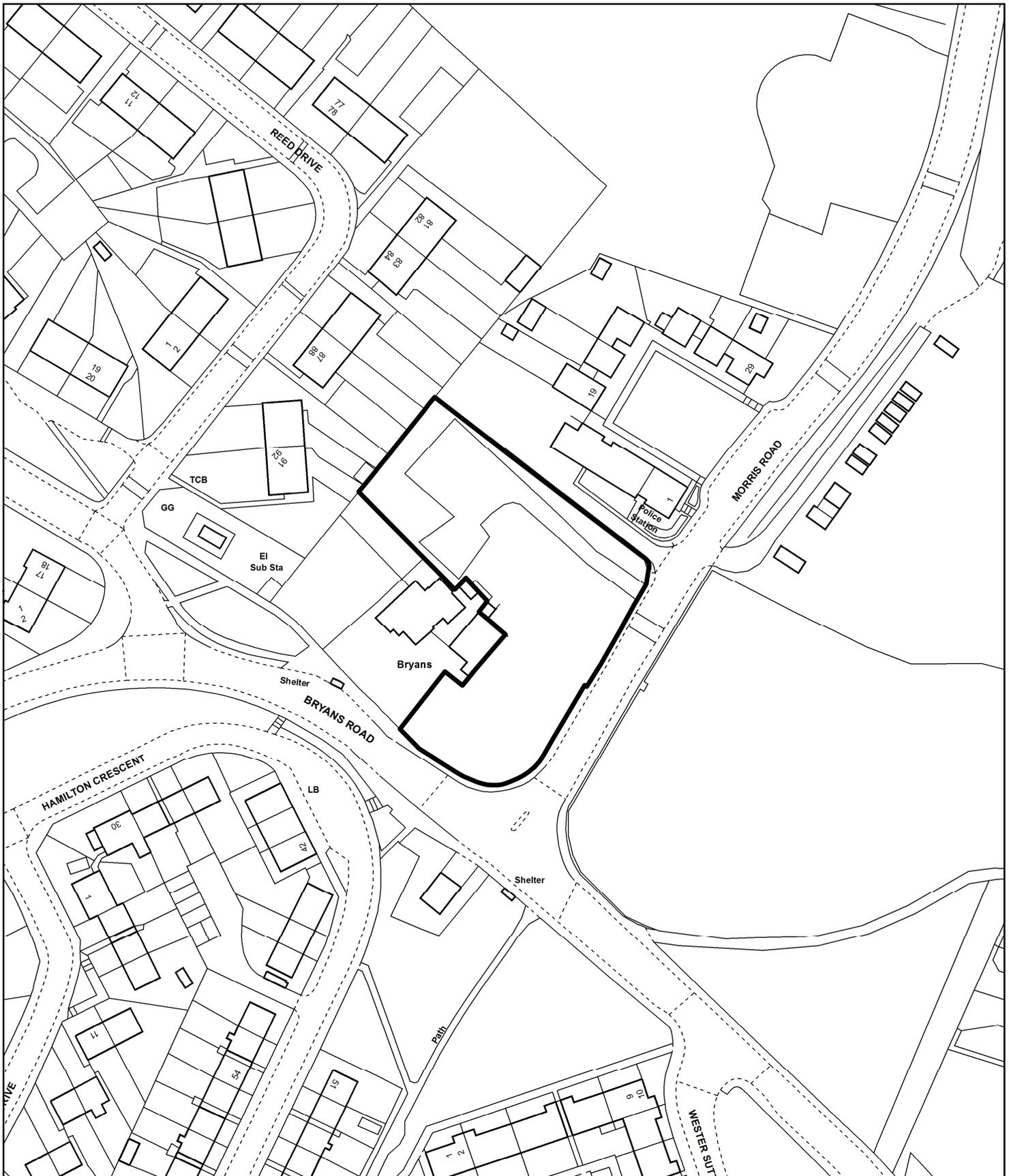
**Agent:** Slorach Wood Architects, the Station Masters  
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**Validation Date:** 21<sup>st</sup> November 2016

**Contact Person:** Whitney Lindsay

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**Background Papers:** 07/00078/FUL & 07/00333/FUL & 15/00029/DPP &  
16/00207/DPP



**Education, Economy  
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Land At Junction of Bryans Road and Morris Road,  
Newtongrange

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File No. 16/00809/DPP

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**APPLICATION FOR PLANNING PERMISSION 16/00727/DPP FOR THE ERECTION OF 9 DWELLINGHOUSES; FORMATION OF NEW ACCESS ROAD AND CAR PARKING AND ASSOCIATED WORKS AT LAND WEST OF THE LAIRD AND DOG HOTEL, HIGH STREET, LASSWADE**

Report by Head of Communities and Economy

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## **1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1** The application is for the erection of 9 dwellinghouses; formation of new access road and car parking and associated works at land west of the Laird and Dog Hotel, High Street, Lasswade. There have been 22 letters of representations and consultation responses from East Lothian Council Archaeology Service, Historic Environment Scotland, The Coal Authority, Bonnyrigg and Lasswade Community Council, the Council's Head of Education and the Council's Policy and Road Safety Manager. The relevant development plan policies are RP5, RP6, RP20, RP22, RP26, HOUS3, DERL1, IMP1, IMP2, IMP3 and DP2 of the Midlothian Local Plan (2008). Policies STRAT2, DEV2, DEV5, DEV6, DEV7, DEV9, DEV10, ENV6, ENV11, ENV16, ENV19, ENV23, IMP1 and IMP2 of the Proposed Midlothian Local Development Plan 2014 (MLDP) are material considerations. The recommendation is to grant planning permission subject to conditions and securing developer contributions.

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1** The application site is a 0.58 hectare site in the centre of Lasswade. The site was for many years occupied by a school building and associated janitor's house; the buildings were demolished in the mid 2000's and the site is now covered with dense self-seeded scrub and building rubble. The eastern side of the site is relatively level; the western side of the site slopes steeply upwards. There are a number of mature trees along the western and southern boundaries of the site. Vehicle access to the site is at the northern end of the site via an access shared with the Laird and Dog Hotel.
- 2.2** The site is bounded to the north and north-west by mature woodland, to the west by the graveyard of Lasswade Old Parish Church, to the south-west by a residential property and by a vacant plot, to the south-east by gardens and ground associated with properties fronting onto

School Green and to the east by the car park of the Laird and Dog Hotel.

- 2.3 The site is situated within Lasswade and Kevock conservation area.
- 2.4 The majority of the site (0.41 hectares) is currently owned by the Council. The site of the former janitor's house (0.17 hectares) is in separate ownership. The applicant does not own the site but has entered into agreements to acquire both plots.

### **3 PROPOSAL**

- 3.1 It is proposed to erect one detached house and eight semi-detached houses. Vehicle access will be from the existing access point at the north of the site; a new access road and parking area will be formed at the eastern side of the site. The house designs are a contemporary interpretation of a 3 storey townhouse. The buildings will be finished in a mix of white render, timber cladding, corten cladding, zinc cladding and sandstone. Due to the steeply sloping nature of the western portion of the site the houses will be built into the slopes, and will appear as 3 storeys when viewed from the front and 2 storeys when viewed from the rear. The back gardens of the properties will be terraced to provide usable outdoor garden space.

### **4 BACKGROUND**

- 4.1 Planning application 04/00854/CAC for the demolition and site clearance of former school buildings was approved in January 2005.
- 4.2 Planning application 04/00880/CAC for the demolition of cottage (the former janitor's house) was approved in January 2005.
- 4.3 Planning application 07/00728/FUL for the erection of two dwellinghouses on part of the site was submitted in October 2007. The application has been held in abeyance subject to the applicant trying to secure an agreement being reached on improvements to the shared access drive; the application is pending consideration. The applicant for the current application is in discussion with the owner of this site and it is anticipated that the application would be withdrawn if consent was granted for the current application.
- 4.4 A Development Brief was adopted by the Council in November 2004. The brief relates to a 0.41 hectare site which included the access road and the site of the former school building. The development brief outlined 2 residential development options: conversion of the existing school building to form 6 residential units; or demolition of all the buildings on the site and the erection of 2 houses on the plot of the former janitor's house and 4 houses on the plot of the former school.

- 4.5 A revised brief was prepared in 2013 to supplement the sales particulars – the scale of development reflected that previously adopted. The revised development brief was prepared after the buildings on site had been demolished and outlined 2 residential development options: the erection of 6 houses on the plot of the former school; or the erection of a single detached house on the plot of the school.
- 4.6 The application has been called to Planning Committee by Councillor Milligan because of concerns over the access to the site, the impact on existing traffic flows and the sensitivity of the location.

## 5 CONSULTATIONS

- 5.1 The East Lothian Council **Archaeology** Service has no objection to the proposal subject to a programme of archaeological works being secured via condition.
- 5.2 **Historic Environment Scotland** has no comment to make on the proposal.
- 5.3 The **Coal Authority** has no objection to the proposal. The response notes that further more detailed considerations of ground conditions and/or foundation design may be required as part of any subsequent building warrant application.
- 5.4 The Council's **Head of Education** estimates that the development of 9 dwellinghouses will give rise to the following number of pupils:
- Primary 3
  - Secondary 2
- 5.5 Primary non-denominational provision at Lasswade Primary School is at capacity and additional primary capacity will be required. A developer contribution will be required towards the cost of this additional capacity.
- 5.6 Primary denominational provision will be at St Mary's RC Primary School, which currently has spare capacity to accommodate this development.
- 5.7 Secondary non-denominational provision will be at Lasswade High School. Additional secondary capacity will be required and as a consequence a developer contribution will be required towards the consequential costs of this additional capacity.
- 5.8 Secondary denominational provision will be at St David's High School, Dalkeith. Additional capacity will be required and as a consequence a developer contribution will be required towards the consequential costs of this additional capacity.

- 5.9 **Bonnyrigg and Lasswade Community Council** has objected to the proposal. The Community Council is concerned that the access arrangements are unsafe; and states that nine large 3 storey dwellings is an overdevelopment of the site.
- 5.10 The Council's **Policy and Road Safety Manager** has no objection to the principle of the proposal. It is recommended that the following details be secured via condition:
- details of alterations to the existing junction onto the High Street;
  - details of the proposed surface water drainage for the access road;
  - details of the proposed street lighting; and
  - details of proposals to maximise the existing visibility splays.
- 5.11 The response notes that the vehicle access is shared with the car park of the Laird and Dog Hotel; and provides access onto Lasswade High Street which at present is subject to a 20mph speed limit. Visibility from this historical junction does not meet current visibility standards however the junction has been in use for many years, does not have a record of road accidents and is not currently an area of road safety concern. This proposal is for a relatively small residential development which, while increasing the current level of traffic using the access, its impact would be minimal.

## 6 REPRESENTATIONS

- 6.1 There have been 22 representations submitted; of these 20 are objections and 2 are neutral representations. The objections come from 16 different households and from the Lasswade and District Civic Society.
- 6.2 The points raised in the representations are:
- The loss of amenity to neighbouring properties from overlooking;
  - The loss of amenity to neighbouring properties from noise;
  - The safety of the vehicle access, from the shared opening with The Laird and Dog, onto Lasswade High Street (A768);
  - The impact of traffic associated with the development on the surrounding road network;
  - The design of the proposed houses. Reference is made to the design, scale and finish materials being out of character with Lasswade;
  - The impact on the character of the conservation area;
  - The impact on pedestrian routes within Lasswade;
  - The principle of development of the site. Reference is made to the site not being identified for development in either the Midlothian Local Plan or the proposed Midlothian Local Development Plan; and to the site being within a river valley;
  - The impact of the development on views of the centre of Lasswade and the setting of the Area of Great Landscape Value;

- The proposed development is an over-development of the site;
- The loss of trees within the application site;
- The flood risk associated with surface water run-off from the site;
- The condition of boundary walls along the boundaries of the site and the impact of development on these walls;
- The lack of adequate school capacity in the area;
- The impact of the development on possible archaeological features within the site; and
- The presence of Japanese Knotweed within the site.

## 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 Plan, adopted in December 2008. The Proposed Midlothian Local Development Plan 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. The following policies are relevant to the proposal:

### Midlothian Local Plan 2008 (MLP)

- 7.2 Policy **RP5: 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.
- 7.3 Policy **RP6: Areas of Great Landscape Value** which states that development will not be permitted where it may adversely affect the special scenic qualities and integrity of the Areas of Great Landscape Value.
- 7.4 Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area.
- 7.5 Policy **RP22: Conservation Areas** seeks to prevent development which would have any adverse effect on the character and appearance of Conservation Areas.
- 7.6 Policy **RP26: Scheduled Ancient Monuments** states that development will not be permitted where it could have an adverse effect on a Scheduled Ancient Monument or the integrity of its setting.
- 7.7 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.

- 7.8 Policy **DERL1: Treatment of Vacant and Derelict Land** seeks the treatment of vacant and derelict sites. The proposed after use should not conflict with other Local Plan policies and proposals.
- 7.9 Policy **IMP1: New Development**, this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case is education provision, transport infrastructure, landscaping, public transport connections, including bus stops and shelters, parking in accordance with approved standards, cycling access and facilities, pedestrian access, acceptable alternative access routes, access for people with mobility issues, traffic and environmental management issues, protection/management/compensation for natural and conservation interests affected, archaeological provision and 'percent for art' provision.
- 7.10 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 requirements, related to the scale and impact of the proposal. This includes education provision, essential roads infrastructure, protecting valuable environmental assets within or adjacent to the site and compensation for any losses including alternative provision where appropriate. In this case the need to upgrade junctions and access arrangements will come through a Traffic Assessment and specific requirements may arise from water and drainage and flood risk assessments.
- 7.11 Policy **DP2: Development Guidelines** sets out Development Guidelines for residential developments. The policy indicates the standards that should be applied when considering applications for dwellings.

Proposed Midlothian Local Development Plan 2014 (MLDP)

- 7.12 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.

- 7.13 Policy **DEV2: Development within the Built-up Area** states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.
- 7.14 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.15 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.
- 7.16 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.
- 7.17 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments.
- 7.18 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.
- 7.19 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.
- 7.20 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.
- 7.21 Policy **ENV19: Conservation Areas** seeks to prevent development which would have any adverse effect on the character and appearance of Conservation Areas.
- 7.22 Policy **ENV23: Scheduled Monuments** states that development will not be permitted where it could have an adverse effect on a Scheduled Ancient Monument or the integrity of its setting.
- 7.23 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.

## **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 site is currently vacant, however it was for many years occupied by a two storey school building which was erected in the 1930's; the site has a long history of development and has formed part of the settlement of Lasswade for many years. The site is identified in both the Midlothian Local Plan (MLP) and the Proposed Midlothian Local Development Plan (MLDP) as being situated within the built-up area of Lasswade where there is a presumption in favour of appropriate development. The site is not identified as a specific allocated housing site in either the existing or proposed plan, however this should not be considered as a presumption against development of the site; policies RP20 of the MLP and DEV2 of the MLDP are both supportive of development within the built-up area.

### Site Access and Transportation Issues

- 8.3 The site was for many years occupied by a school building; in the latter years of the building's existence it was used as offices by the local education authority. Throughout its history the vehicle access to the site has been via the existing access at the northern end of the site. This access point shares the dropped kerb access to Lasswade High Street (A768) with the neighbouring Laird and Dog Hotel. The access for the neighbouring hotel serves the hotel car park, deliveries to the hotel and local recycling facilities for Lasswade.
- 8.4 The access is located on the inside of a curving section of road; the combination of the curve and vegetation on the neighbouring land to the north-west mean that the shared access has a limited visibility splay in relation to traffic approaching from the west. Many of the representations received have referred to the poor visibility for traffic exiting the site and seeking to turn right. While it is undoubtedly the case that the visibility is below the standards that would ordinarily be expected of modern developments the Council's Policy and Road Safety Manager has confirmed that the junction has been in use for many years and does not have a record of road accidents. It should be noted that the local speed limit on this section of Lasswade High Street is 20mph.
- 8.5 The proposed development is a relatively small residential development that will generate limited additional traffic levels. The Council's Policy and Road Safety Manager has no objection to the proposal subject to details of the junction and an improved visibility splay being provided; these details can be secured via condition.

### Setting and Character of Conservation Area

- 8.6 The centre of Lasswade is characterised by its setting within a steep river valley; this creates a distinctive irregular pattern of urbanisation with development climbing the valley sides. The significant level changes on many of the sites within Lasswade means that

underbuilding is a common feature and many of the buildings within Lasswade have a strong vertical emphasis. The densely packed urban centre is set against a heavily wooded backdrop. Lasswade is not characterised by a dominant style or age of building and in general new development has tended to reflect the architectural character of its time.

- 8.7 The design of the development is representative of contemporary architectural tastes and the detailing and finish materials of the buildings will emphasise the verticality of the buildings. The density of the development and the orientation of the buildings along a common plane will ensure that the development will appear as an obviously urban development that will complement the character of the surrounding area; a less dense development would create a suburban development that would be out of character with the surrounding area. The development will be set against the existing wooded backdrop and will appear as a logical extension of the existing urban density.

#### Layout, Form and Density of Development

- 8.8 The access arrangements, site shape and site levels have dictated the layout of the development. The existing access road and level land is located along the eastern portion of the site and the proposed layout reflects this. The houses are arranged in a broadly north south line with the first five houses parallel to the line of the site boundary with the Laird and Dog Hotel; and the remaining four houses stepped forward of this line and arranged parallel to the boundary of the site with properties on School Green. Dividing the site in this way makes the best use of the existing flat land for circulation space while also ensuring that the houses will be set back sufficiently from the houses, flats and gardens to the east of the site; thereby reducing the levels of overlooking of neighbouring properties.
- 8.9 The houses will mark the transition between the flatter circulation space at the east of the site and the sloping land at the west of the site. The sloping land in the western portion of the site will be used to provide garden space for the houses; in order to provide flat land for building and garden space large areas of the slope will be excavated. The gardens will all be split level and will have 2 terraces of garden ground plus a steeply sloping area of banking at the rear of each plot. The layout provides sufficient usable private garden space to comply with MLP standards. Private garden space standards for the proposed MLDP will be outlined in supplementary guidance; while the guidance has not yet been prepared it is likely to reflect the existing standards.

#### Design and Finish Materials

- 8.10 The house designs are a modern interpretation of a traditional townhouse form. The ground floors (basement level when viewed from the rear) will include garages, service space, a bedroom and a study/office; the main living space will be on the first floor (ground floor

when viewed from the rear); and the main accommodation space will be on the second floor (first floor when viewed from the rear). The three storey split level design helps to maximise usable garden space and reflects the widespread use of underbuilding within Lasswade.

- 8.11 As is noted above the detailing and use of finish materials will give the buildings a strong vertical emphasis that reflects the existing character of Lasswade. The use of flat roofs on the buildings complements the contemporary design of the buildings and helps to reduce the scale of the buildings thereby lessening their impact on neighbouring properties. There is sufficient distance between the front elevations of the new houses and the rear elevations of the existing buildings to ensure that there will be no significant loss of privacy. The proposed palette of materials complements the character of the contemporary design and is of a quality that would be expected for a conservation area.

#### Landscaping and Trees

- 8.12 There are a number of trees growing covering mainly the edges of the site consisting of a mixture of self-seeded trees such as Birch, Goat willow and Hawthorn and a number of planted apple trees and a Norway Spruce associated with the garden of the former janitor's house. In addition to the mature and semi-mature trees there are numerous self-seeded juvenile trees. The application is supported by a tree survey which includes survey details for the 37 mature and semi-mature trees within the site. Apart from the Norway spruce the existing trees have very limited long-term future and it is proposed to fell all of the trees on the site.
- 8.13 The application site currently is at present almost entirely covered with vegetation; however this is a recent situation that has arisen due to self seeded vegetation taking root in the disturbed ground created by the demolition. Historically the site had a wooded backdrop but the majority of the developed area was occupied by tarmac areas. The wooded backdrop to the site is significantly enhanced by the established woodland within the land to the west of the application site; however this woodland is outwith the control of the applicant and is reaching over-maturity. In order to secure a long term wooded backdrop for the site the applicant proposes to plant a line of semi-mature trees along the western boundary of the site at the rear of the gardens. A 10m wide strip of boundary planting will be planted at the northern entrance to the site; this will help to soften the appearance of the development when viewed from the High Street.
- 8.14 The eastern boundary of the site, i.e. the area east of the new access road, will be planted with a landscaping strip varying in width from 2.3m wide to 5m wide. While this space may offer some limited opportunities for tree planting it will be important to ensure that any planting along this boundary is not overbearing to the gardens to the east which sit at a lower level.

## Boundaries

- 8.15 A number of representations have made reference to the proposal's possible impact on the structural integrity of the existing boundary walls of the site. Issues relating to the maintenance and repair of shared boundary features are private legal matters between the parties involved and are not material planning considerations. Notwithstanding this the applicant has indicated that he is aware of the concerns of neighbouring residents and is willing to commit to any agreements that the Council has previously entered into with neighbouring residents.
- 8.16 Concern has been raised by the resident of the property to the south west of the application site with regard to the potential for the excavation works to undermine the existing boundary wall and the resident's garden ground. It is standard practise for applicants to commission full structural drawings only once planning permission has been obtained; the detailed structural design for a scheme is assessed as part of the building warrant process rather than the planning process. Notwithstanding this fact the applicant's agent has provided a method statement explaining the proposed works along this boundary and indicating that a retaining wall will be formed. Retaining walls are a common feature of modern developments within Midlothian and the Council's Building Standards team is experienced in assessing such features and a thorough assessment would be carried out as part of the building warrant process.

## Other Matters

- 8.17 Lasswade has a long history of development and there are a number of listed buildings within the surrounding area and the remains of the 13<sup>th</sup> Century Old Lasswade Parish Church are a scheduled monument. Historic Environment Scotland are the lead public body with responsibility to investigate, care for and promote Scotland's historic environment; they have indicated that they have no comments to make on the proposal. The securing of a programme of archaeological work by condition, as recommended by East Lothian Council Archaeology Service, will ensure that any archaeological features within the area are identified and recorded.
- 8.18 The development will not impact on any identified biodiversity sites within the surrounding area.
- 8.19 The site has a long history of development; in order to ensure that any historic contamination issues are considered it would be reasonable to condition that details of a scheme to deal with any contamination of the site is submitted to and approved in writing by the Planning Authority.
- 8.20 In order to remove the existing building debris; create level building plots; and provide space for terracing of the rear gardens it is proposed that excavations to a depth of 4.3m will be carried out. Given the level changes between the application site and the adjoining ground to the

east, there is potential for temporary storage of excavated material in bunds to be overbearing to neighbours and to create issues with surface water run-off. To protect the amenity of neighbouring residents it would be reasonable to condition that there is no storage of excavated materials on site.

#### Developer Contributions

- 8.21 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
- 8.22 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements are set out in the MLP and MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.23 This proposed development of which the principal element is the provision of 9 dwellings has been assessed in relation to the above guidance and it is considered that a Planning Obligation is required in respect of the following matters:

#### Non-Denominational Primary School Capacity

- 8.24 The Head of Education has advised that in order to accommodate all the pupils arising from the various residential developments in Bonnyrigg and Lasswade the following will be required:
- An additional 3.5 streams of non denominational primary school capacity in Bonnyrigg.

The development will therefore be required to make a proportionate contribution to additional non-denominational primary school capacity.

#### Non-Denominational Secondary School Capacity

- 8.25 The Head of Education has advised that this development gives rise to a need for additional secondary school capacity. The development will therefore be required to make a proportionate contribution to additional non-denominational secondary school capacity.

#### Denominational Secondary School Capacity

- 8.26 The Developer Contributions SPG requires that all new residential units in Midlothian contribute towards Midlothian additional denominational secondary school capacity at the Dalkeith Schools Community Campus.

#### Borders Rail

- 8.27 The site is within the A7/A68 Borders Rail Line Corridor. The Midlothian Local Plan 2008 states that contributions will be sought in relation to the re-opening of the Borders Rail Line. A proportionate contribution will be required from this development.

#### A7 Urbanisation

- 8.28 The Midlothian Local Development Plan Proposed Plan 2014 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.

#### Children's Play

- 8.29 A proportionate contribution will be required from this development to enhance local Children's Play facilities.

#### Open Space

- 8.30 The Section 75 agreement will provide for a future maintenance arrangement for open space and SUDS provision through a factoring arrangement.

### **9 RECOMMENDATION**

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

*By virtue of its scale, location, design and choice of materials the proposal complies with policies RP5, RP6, RP20, RP22, RP26, HOUS3, DERL1, IMP1, IMP2, IMP3 and DP2 of the Midlothian Local Plan and policies STRAT2, DEV2, DEV5, DEV6, DEV7, DEV9, ENV6, ENV11, ENV16, ENV19, ENV23, IMP1 and IMP2 of the Proposed Midlothian Local Development Plan 2014.*

Subject to:

the prior signing of a legal agreement to secure the provision of developer contributions towards education provision, the Borders Rail Line, A7 Urbanisation and children's play. The legal agreement shall be concluded prior to the issuing of the planning permission. The applicants will be given a 6 month time period to work with Midlothian Council to conclude the agreement with the sanction of the Committee reconsidering the application and potentially refusing permission if the applicant does not conclude the agreement.

and the following conditions:

1. Development shall not begin until details of the site access, roads, footpaths and street lighting has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i existing and finished ground levels for all roads in relation to a fixed datum;
  - ii proposed vehicular access;
  - iii proposed internal roads (including turning facilities) and footpaths; and
  - iv proposed visibility splays, traffic calming measures, lighting and signage.

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

2. No dwellinghouse shall be occupied until such time as the site access and visibility splays approved in terms of condition 1 are installed to the satisfaction of the Planning Authority.

***Reason for conditions 1 and 2:*** To ensure the future users of the buildings and existing local residents have safe and convenient access to and from the site.

3. Development shall not begin until details of a 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 open space 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 gardens, 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 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 in the open spaces shall be completed prior to the houses/buildings on adjoining plots are occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August); and
- vii drainage details, flood prevention measures 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 RP20 and DP2 of the Midlothian Local Plan; policies DEV5, DEV6 and DEV7 of the Proposed Midlothian Local Development Plan; and national planning guidance and advice.*

4. 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 physical development is of an appropriate standard in terms of its impact on the character and appearance of the area and to ensure appropriate biodiversity measures are carried out. To ensure compliance with policies RP20, RP22 and DP2 of the Midlothian Local Plan; policies DEV5, DEV6, DEV7 and ENV19 of the Proposed Midlothian Local Development Plan; and national planning guidance and advice.*

5. 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 for residential purposes, 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.*

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 Policy RP28 of the Midlothian Local Plan and ENV25 of the Proposed Midlothian Local Development Plan.*

7. During construction no excavated materials, including soil, shall be stored on the site.

**Reason:** *To safeguard the amenity of neighbouring residents.*

8. Development shall not begin until details, including a timetable of implementation, of high speed fibre broadband (or subsequent replacement internet connectivity technology) 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 dwellinghouse. 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 to ensure compliance with policy DEV5 of the Proposed Midlothian Local Development Plan.*

9. 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 Proposed Midlothian Local Development Plan.*

10. 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 Plan and the Proposed Midlothian Local Development Plan and national planning guidance and advice.*

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

**Date:** 14 February 2017

**Application No:** 16/00727/DPP

**Applicant:** John Cook, Cook Investments, 25 Hugh Miller Place, Edinburgh

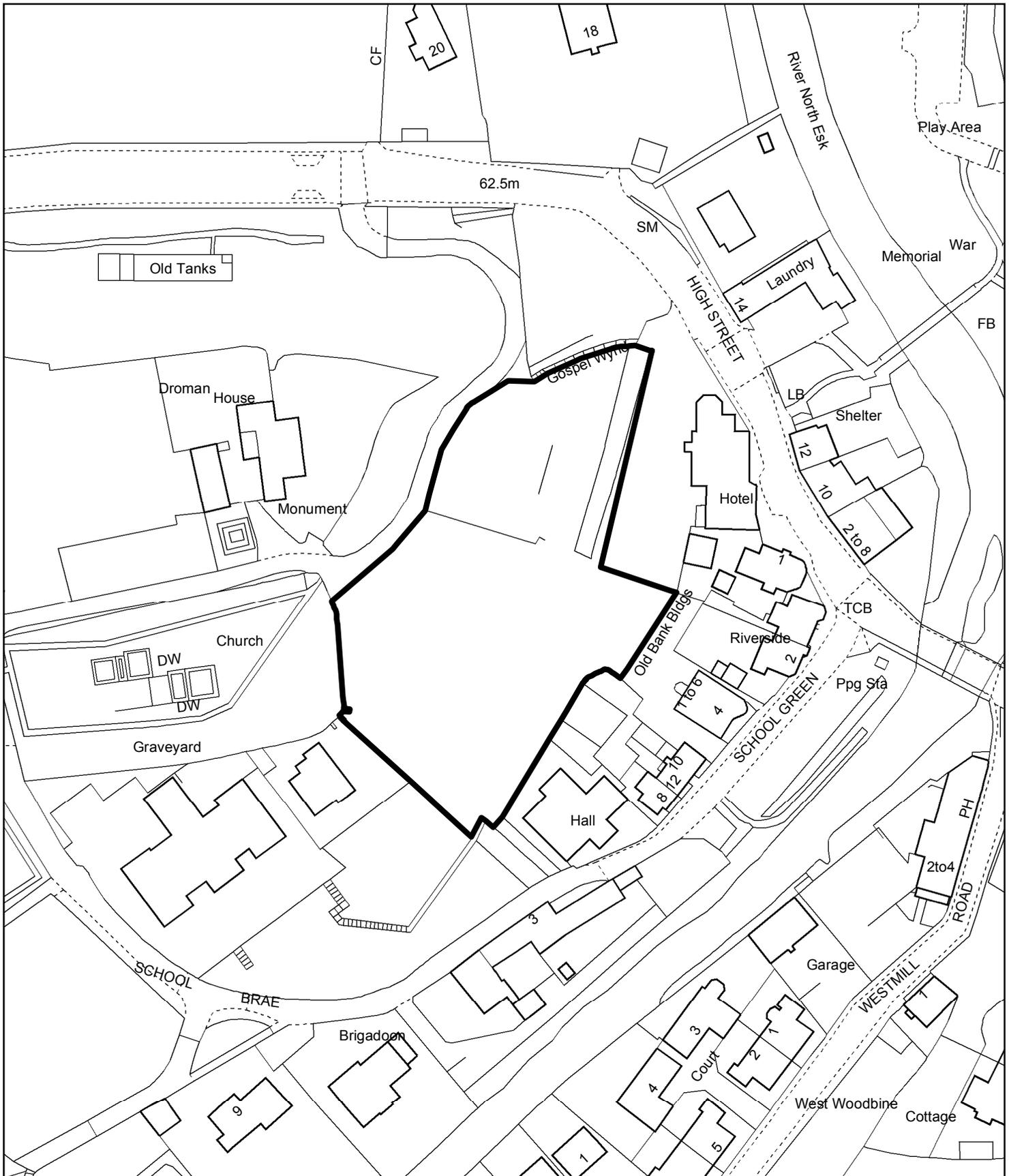
**Agent:** Eoghain Fiddes, Fiddes Architects, 22F Bridge Street, Banchory

**Validation Date:** 24 October 2016

**Contact Person:** Graeme King

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**Background Papers:** 04/00854/CAC, 04/00880/CAC, 07/00728/FUL



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

Erection of 9 dwellinghouses; formation of new access road and car parking and associated works Land West Of The Laird And Dog Hotel High Street Lasswade

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**APPLICATION FOR PLANNING PERMISSION (17/00219/DPP) FOR THE PARTIAL CHANGE OF USE OF LAND AND BUILDINGS FOR WEDDING EVENTS (PART RETROSPECTIVE) AT 32A DAMHEAD, LOTHIANBURN**

Report by Head of Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

**1.1 The application is for the partial change of use of an existing horticultural business at the Secret Herb Garden, 32A Damhead for wedding ceremonies and associated receptions. There have been sixteen letters of representation and consultation responses from the Council's Policy and Road Safety Manager, the Council's Environmental Health Manager, the Scottish Environment Protection Agency (SEPA) and the Damhead and District Community Council. The relevant development plan policies are RP1, RP2, RP4, RP7, RP8, ECON8 and DP3 of the Midlothian Local Plan 2008 (MLP). Policies ENV1, ENV4, ENV7, ENV10 and ENV18 of the Proposed Midlothian Local Development Plan 2014 (MLDP) are material considerations. The recommendation is to refuse planning permission.**

**2 LOCATION AND SITE DESCRIPTION**

- 2.1 The site is within the grounds of the Secret Herb Garden (SHG), an established horticulture business including a plant nursery and ancillary cafe and retail outlet. The site area measures 0.91 hectares and is relatively flat, with the land to the west gradually sloping up towards the site's boundary.
- 2.2 There are a number of buildings within the application site including a glasshouse, shed, barn, residential caravan and office. The site also includes an area of open space which is used to grow plants.
- 2.3 Areas to the north and south of the site are under the control of the SHG and form part of the planning unit of the wider site. The area to the north comprises grassed open space, a yurt (portable round tent structure) and converted railway carriage, used as a bee observatory. The area to the south comprises the site's car park and a dwellinghouse related to the SHG business.

- 2.4 The site is located within the countryside and green belt, with a number of dwellinghouses to the north-east and south-east. The site is accessed via Pentland Road.

### **3 PROPOSAL**

- 3.1 It is proposed to partially change the use of the site to host wedding ceremonies and associated receptions, alongside the existing horticulture use. The events will take place between May and September. Seventeen weddings have been booked for 2017, with 15 events being on Saturdays, one on a Friday and one on a Thursday. This overall figure may change with the potential for additional bookings if planning permission is granted. Wedding events have been taking place on site since 2014. There were 11 weddings in 2016.
- 3.2 The hours of operation are 4pm until midnight. The ceremonies take place within the glasshouse or on the two areas of open space to the west. The venue can accommodate up to 100 guests. The reception area and temporary bar are located within the glasshouse. An alcohol consumption area is restricted (by licence) to an area around the glasshouse.
- 3.3 Live bands/amplified music will be housed in a barn situated within the eastern part of the site, the barn can hold up to 55 people. An acoustic report has been submitted which includes mitigation measures to limit the noise. The live/amplified music will cease by 11pm, with background music playing until 11.45pm.
- 3.4 A new septic tank is proposed as a medium to long term solution to the increased demand. In the short term, a temporary interim arrangement including the provision and use of portable toilets and a restriction on access to the existing toilets is proposed.
- 3.5 On site staff will; supervise vehicles entering and leaving the site, encourage customers to consume alcohol only within the allocated locations and monitor the use and volume of live/amplified music.
- 3.6 The application form states that the wedding event use has not begun. However the associated planning statement states the weddings began in June 2014, which correlates with correspondence between the Planning Authority, the applicant and local residents. The application submission includes financial information relating to the SHG business.

### **4 BACKGROUND**

- 4.1 The site is a smallholding which has an established horticultural use.
- 4.2 Planning application 580/89 for the change of use of existing building to provide a retail shop and the erection of a temporary building to provide

coffee shop and offices was approved in 1989. This was a temporary permission until the end of 1992.

- 4.3 Planning application 02/00110/FUL for the demolition of the existing shop, the change of use and extension and alteration of packing shed to retail unit (part retrospective) was approved in 2003. Conditions were attached restricting the sales area and the goods to be sold and requiring the demolition of the temporary existing shop (approved under application 580/89) and container before the new shop was brought into use.
- 4.4 Planning application 07/00072/FUL for the relocation of retail unit and change of use of the retail unit approved in planning permission 02/00110/FUL to farm office and storage was approved retrospectively in 2007. Conditions were attached restricting the area to be used for retail sales, the goods to be on sale and the use of the building to administrative or storage purposes related to the farm/smallholding.
- 4.5 Planning application 05/00340/FUL for the change of use of the site to a children's play area with miniature railway, was refused in 2005 for the following reasons: potential to intensify the use of a substandard access onto a road with a 60mph speed limit, to the detriment of road safety within the area; the area is not served by public transport and there is a lack of walking and cycling links to the site, therefore it is considered unwise to support a proposal which could encourage the movement of children to and from this site, with its inherently unsatisfactory access onto a narrow, winding rural road.
- 4.6 Planning application 06/00139/OUT for the erection of a dwellinghouse was refused in 2007 as: it was not demonstrated that it was essential for the furtherance of the established horticultural business; the size of the proposed house plot far exceeds what would be considered an appropriate size for ancillary residential accommodation for overseeing the business operation; it would result in the loss of prime agricultural land, be highly visible and result in the coalescence of the farm development with the group of houses to the rear; and the applicant has failed to supply sufficient evidence of the quality of the outflow of water from the private waste treatment plant into the adjacent watercourse.
- 4.7 Planning application 07/00074/FUL for the temporary siting of static caravan for residential accommodation was approved in 2007. Conditions attached stated the caravan was only to be located in the position shown on the approved plans, be permitted for a temporary period of two years, be removed within one month of the expiry of the permission with the site made good. The caravan was to be occupied only by staff essential to the agricultural operation of the organic farm.
- 4.8 Planning application 12/00771/DPP (part retrospective) for the temporary siting of two static caravans to be used as a single

residential unit was approved in 2013 subject to conditions. The caravans were to be on site for a temporary period of three years, be removed within two months of the expiry of the temporary period and be linked and used as a single residential unit by the operator (and their dependents) of the horticultural business on the associated land at 32A Damhead.

- 4.9 Planning application 12/00780/PPP for the erection of a dwellinghouse was withdrawn in 2013.
- 4.10 Planning application 13/00398/DPP for the change of use from shop to cafe and shop, erection of extension to building and formation of new door opening was approved in 2013. This granted approval for the current layout of the site. Conditions were attached, including restricting the goods to be sold from the shop and the installation of a waste water treatment plant. The treatment plant has not been installed.
- 4.11 Planning application 13/00597/DPP for the erection of dwellinghouse and garage was approved in 2013. It was demonstrated the dwellinghouse was required for the furtherance of the established business. An occupancy condition restricts the house to be occupied only by the immediate family of a person employed in the fulltime operation and running of the SHG and at no time to be used as the main place of residence for any other person or persons.
- 4.12 An advert consent application 14/00724/ADV (retrospective) for signage at the site was approved in 2015.
- 4.13 Planning application 16/00045/DPP (retrospective) for additional car parking was approved at the site in 2016.
- 4.14 Two retrospective applications were submitted in 2016 to regularise unauthorised development at the SHG. The first of these applications 16/00636/DPP (retrospective) was for the retention of residential static caravan for a further temporary period (one of the caravans approved under 12/00771/DPP had not been removed within the time period prescribed). This was subject to five objections and an objection from the Damhead and District Community Council. The application was withdrawn before a decision was issued.
- 4.15 The second planning application 16/00637/DPP (retrospective) for the partial change of use of land and buildings as an events venue, incorporating weddings and private functions was submitted after the Planning team received complaints from local residents regarding events taking place at the SHG without planning permission. The application was subject to five objections, two letters of support and an objection from the Damhead and District Community Council. The application was withdrawn before a decision was issued.

- 4.16 Planning application 17/00180/DPP (retrospective) to retain the caravan for a temporary period was approved in May 2017. It is conditioned that the caravan be removed from the SHG and the site made good by the end of September 2017. A condition also restricts occupation of the caravan to an employee of the SHG.
- 4.17 Planning application 17/00205/DPP (retrospective) for the partial change of use of glasshouse building to incorporate evening dining events was submitted in March 2017. This, along with the current application for weddings, appears to separate the events applied for in application 16/00637/DPP. This was subject to seven objections, two letters of support and an objection from the Damhead and District Community Council. The application was withdrawn in April before a decision was issued.
- 4.18 The application has been called to Committee for determination by Councillor Parry as the use of land as a wedding venue will support economic development in the local area.

## 5 CONSULTATIONS

- 5.1 The Council's **Policy and Road Safety Manager** has no objection and is not aware of any road safety or transportation issues arising from the events which have taken place to date. The use of the site as a wedding events venue for a 5 month period does not raise any major transportation issues.
- 5.2 The Council's **Environmental Health Manager** has received complaints over the events taking place at the site. Given the proximity to neighbouring residents, it is considered the site is unsuitable for wedding events with amplified music within marquees. Environmental Health officers carried out an exercise in 2016 to assess the impact of amplified music played within the barn on the neighbouring properties. A reasonable sound level should be achievable within the barn without causing undue disturbance to neighbours, provided suitable noise mitigation measures are undertaken. The noise report submitted with the application assessed the structure of the barn and reported on any potential improvements to sound insulation. The Environmental Health Manager notes that workmanship and attention to detail in the execution of improvements to sound insulation are crucial in achieving the theoretical improvements in practice. If suitable works are undertaken and the management of the SHG can demonstrate that events can take place in the barn with an appropriate internal noise level to make wedding events viable without causing disturbance within neighbouring residential properties, the Environmental Health Manager has no objection to the wedding events provided the following conditions be attached to any consent: no marquees shall be erected on site to be used as part of weddings without prior written approval; the sound insulation measures shall be approved and installed before

live/amplified music is played in the barn; and any amplified music must take place within the barn and be controlled to an agreed level.

- 5.3 The **Scottish Environment Protection Agency** initially objected to the proposal on the grounds of lack of information in respect of foul drainage and the potential impact on the water environment. However the applicant has submitted additional information addressing their concerns. SEPA have subsequently withdrawn their objection.
- 5.4 **Damhead Community Council (DCC)** object to the application. They cannot support the proposal for an unspecified number of wedding events. They object to the open ended nature of the application as the term 'occasional use' can have many interpretations. DCC raise concerns over noise, light pollution, traffic given the potential numbers of guests, loss of amenity and the effect on neighbouring properties.
- 5.5 DCC consider the existing cafe on site for daytime visitors is reasonable, but full scale evening catering has a greater impact at a time when local residents are entitled to a good level of amenity. Wedding events generally involve loud music and physical activity and movement within areas not designed for this purpose with potential for accidents when compared to the dining functions.
- 5.6 DCC also raise concerns over the long term sewage/foul water management, as per SEPA's comments on the existing facilities. The existing septic tank was never designed for this level of use along with the additional waste water from the preparation of meals and washing up.

## **6 REPRESENTATIONS**

- 6.1 Sixteen representations have been received in connection with this application.
- 6.2 Nine letters of support have been submitted on the following grounds:
- The objections on the ground of light and noise pollution are from people who do not live nearby. The closest neighbours have never experienced significant noise or traffic issues;
  - The applicants are actively addressing concerns over noise and light;
  - The approved landfill in the area causes more noise and traffic issues than the wedding events;
  - The SHG is an environmentally sensitive business in the countryside which has improved a neglected piece of land;
  - Concern that the objection from the Damhead and District Community Council's comments are not representative of the course of action agreed at their recent meeting;
  - The SHG is one of the best visitor destinations in Scotland and there would be job losses without the weddings events. The business is successful and warrants support to allow it to thrive

within the boundaries of planning policy and neighbourly cooperation. The applicants have diversified their business in order to succeed in today's climate to provide unique wedding opportunities. It is the most positive development to happen in Damhead for many years;

- If refused it would send a damaging message to the local community about the sort of place the Council would like Damhead to be; and
- Some objections are from an ex-employee which raises the question if this is a personal objection.

6.3 Seven letters of objection have been submitted on the following grounds:

- There is support for the horticultural business at the site but not the wedding events;
- The cafe is ancillary to the horticulture use, however the wedding events operate outwith the legitimate opening hours. It is unjustifiable to state that the wedding events would be ancillary to the horticultural business as this is a significant departure from planning policy;
- The proposal will significantly alter the character of the area and is out of character and scale with the surrounding landscape;
- There is no detail over the number, type or frequency of wedding events, or if the events would be held within the existing buildings or involve the use of outdoor drinking and seating areas;
- The number of quoted attendees does not include staff employed at the wedding events;
- The number of people employed at the site relating to the horticultural business is likely to be lower than those employed in relation to the wedding events and therefore have a reduced impact on local amenity;
- The wedding events would introduce excessive noise, light and traffic pollution into an otherwise quiet setting as this is an isolated business surrounded by rural properties, not conducive to loud, late night light and noise pollution;
- There should be no amplified music at the site. Consideration should be given to the noise and disturbance generated by people attending the wedding events and socialising as well the disturbance from the amplified music;
- The claim that the wedding events has been operating for two years without complaint is untrue as there have been a number of complaints including police incidents;
- Support for the Environmental Health Manager's recommendations;
- The sound test referred to in the acoustic report was purely noise created by a live band, which is not representative of a typical wedding event;
- It is not clear from the noise report if the assessment was with the barn doors open or closed;
- Impact on the privacy of nearby residents;

- Traffic and road safety concerns due to the increased traffic levels and proximity to two blind bends. A survey by the Transportation Department of the Council should be undertaken to assess whether any improvements are required and permission should only be granted if the entrance is deemed sufficient for current/proposed traffic levels. The volume of traffic using Old Pentland Road has increased since previous applications were approved;
- Further parking may be required due to the size of wedding events, which would result in the loss of good quality farm soil and undermine any future occupier carrying out horticultural works;
- The site plan indicates more parking spaces than previously approved;
- It may be necessary for a legal agreement to secure a contributions towards necessary road improvements to make the access safe for patrons;
- The commencement of the wedding events was done covertly without proper processes;
- The existing foul water system has not been upgraded as required by SEPA and there are insufficient toilet facilities provided. The septic tank cannot handle a greater volume of usage and there has already been a noticeable impact on the local burn after events;
- The poor sanitary facilities have been a feature of the site for three years and a permanent solution should be required immediately;
- How can it be ensured that there will be no breaches of foul drainage and who would monitor and enforce this;
- Lack of stewarding despite alcohol being consumed on site. There is an acknowledgement of the stewarding information submitted with the application but it is not clear how this will be carried out, enforced, monitored or the ratio between staff and guests;
- The proposal is contrary to the adopted Midlothian Local Plan and the proposed development plan policies RP1, RP2, RP4, RP7, ECON8 and ENV4, ENV7 ENV18;
- Should permission be granted, it is likely that the business will develop further, more extravagantly with irrevocable impacts;
- It is frustrating that time, effort and resources are spent researching the applications and submitting comments only for these to be withdrawn;
- The multiple applications for individual elements of the business do not clearly demonstrate all events taking place on site or give an accurate reflection of the overall changes to the smallholding. The application should not be considered individually but combined with application 17/00205/DPP;
- The application, along with withdrawn application 17/00205/DPP, appears a mix of application 16/00637/DPP which was withdrawn after being recommended for refusal. Little has changed between the previous and current application;
- The current application and application 17/00205/DPP should be withdrawn and resubmitted as one application in order to accurately assess and demonstrate the events venue;

- The application may be more likely to be supported if it were located on grounds away from residences with good communication and transport links with a fully planned and custom built facility designed to cater for a specific market and clientele;
- It is misleading to state that there would be no loss of agricultural land, with queries over the amount of car parking at the site that has resulted in the loss of prime agricultural land contrary to policy RP4;
- Damage done by guests to a fence on land which does not belong to the applicant;
- The application was submitted as a result of enforcement action which demonstrates a disregard of policy and procedure;
- There is a concern over the difficulty of enforcing planning conditions as there are a number of outstanding breaches of conditions and consents, including the retention of the caravan, conditions relating to 13/00398/DPP, relating to the approved house, retrospective applications applied for the car park and adverts;
- Permission should be refused on the grounds of consistent breaches and disregard for permissions and licences as well as irresponsible behaviour regarding public health and safety and nuisance and impact on neighbours and the area;
- A request for a review of the currently held permissions given the number of breaches and inconsistencies;
- The SHG was put up for sale with the house separate to the business, contrary to conditions attached to the permission for the house;
- A building warrant remains outstanding and consideration must be given to this before the planning application is determined;
- There are a number of other events taking place at the site, including gigs, corporate events, tasting sessions, exhibitions, parties and music nights, as well as full and new moon dinners;
- The application would set a precedent and allow similar schemes, with operating hours in excess of other business in the rural area;
- The value of nearby properties could be affected;
- The site is close to biodiversity assets of Damhead and increased night/evening traffic could lead to an increased level of road kill;
- The proposal does not align with the Damhead and District Neighbourhood Plan 2015-2030 nor enhance the community;
- Should permission be granted, the number of wedding events should be limited to ensure no further incremental growth of this development occurs without the necessary planning procedures being followed;
- Suggestions for conditions, should permission be granted include: to restrict live or amplified music within the acoustically treated barn which should be carried out before any wedding events take place; ensure the barn door be closed when live/amplified music is playing; the number of wedding events be limited to 10 per year as stated by the applicant at a recent Community Council meeting; the numbers of guests limited to 55 to protect the amenity of the area

and prevent further incremental growth of the business; impose noise limits; require compliance monitoring at the nearest noise sensitive properties; prohibit the erection of marquees; restrict operating hours to 11pm to protect residential amenity; restrict guest access to only the areas identified on the site plan during operating hours; require the applicant to make quarterly reports to Midlothian Council detailing all events on site, the nature of the event, number of persons attending, parts of the site used, date and operating hours;

- In times of high wind the glasshouse has been forced to close. It is unlikely that a wedding event would be cancelled if bad weather were to occur. It is imperative there is a building capable of accommodating all guests, therefore the maximum capacity of people attending a wedding should be the capacity of the barn;
- Comments about the licence application which should be considered a material matter if planning permission is granted as well as comments on the building warrant;
- The glasshouse is a safety hazard and queries if a health and safety assessment has been completed;
- If the previous application was refused, then so should the current application;
- It should be queried how successful the events aspect of the business can be if it is operating without a licence, planning permission or building warrants;
- The purpose of planning is not to prop up failing businesses but to determine if the site is appropriate for such a development;
- The claim that the garden centre has been unsuccessful in its traditional form may be because there are two garden centres within a mile of the site;
- The site was never vacant land but was a smallholding;
- The application form is misleading in its description of the size of the smallholding as the majority of the site is now developed which has resulted in the loss of agricultural land;
- Non-compliance with European Convention on Human Rights relating to the human right to the peaceful enjoyment of one's own home and property;
- This is a bad neighbour development;
- No permission has been granted for the yurt, shed or potting shed and these do not appear on the licence plan;
- Query over neighbour notification; and
- The route of the A701 relief road has not yet been decided.

6.4 A number of objections covered both the current application 17/00219/DPP and the withdrawn application 17/00205/DPP. The comments relevant to this application have been referenced in the report.

## 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 Plan, adopted in December 2008. The Proposed Midlothian Local Development Plan 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. The following policies are relevant to the proposal:

### South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 Policy **12: Green Belts** require Local Development Plans to define and maintain Green Belts around Edinburgh whilst ensuring that the strategic growth requirements of the Strategic Development Plan can be accommodated. This will direct planned growth to the most appropriate locations and support regeneration. Local Development Plans should define the types of development appropriate within Green Belts.

### The Midlothian Local Plan 2008 (MLP)

- 7.3 Policy **RP1: Protection of 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, tourism, or waste disposal (where this is shown to be essential as a method of site restoration); it is within a designated non-conforming use in the Green Belt; or it accords with policy DP1;
- 7.4 Policy **RP2: Protection of the Green Belt** advises that Development will not be permitted in the Green Belt except for proposals that;
- A. are necessary to agriculture, horticulture or forestry; or
  - B. are for opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
  - C. are related to other uses appropriate to the rural character of the area; or
  - D. are in accord with policy RP3, ECON1, ECON7 or are permitted through policy DP1.
- Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt;
- 7.5 Policy **RP4: Prime Agricultural Land** states that development will not be permitted which leads to the permanent loss of prime agricultural land unless particular criteria are met;

- 7.6 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;
- 7.7 Policy **RP8: Water Environment** aims to prevent damage to water environment, including groundwater and requires compliance with SEPA's guidance on SUDs;
- 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; and
- 7.9 Policy **DP3: Protection of the Water Environment** sets out development guidelines regarding flooding, treatment of water courses, drainage and Sustainable Urban Drainage Systems (SUDS).

#### Midlothian Local Development Plan (MLDP)

- 7.10 The MLDP is at Examination and it is anticipated that it will be adopted in 2017.
- 7.11 Policy **ENV1: Protection of the Green Belt** advises that Development will not be permitted in the Green Belt except for proposals that;
- A. are necessary to agriculture, horticulture or forestry; or
  - B. provide opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
  - C. are related to other uses appropriate to the rural character of the area; or
  - D. provide for essential infrastructure; or
  - E. form development that meets a national requirement or established need if no other site is viable.
- Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt, which is to maintain the identity and landscape setting of the City and Midlothian towns by clearly identifying their physical boundaries and preventing coalescence;

- 7.12 Policy **ENV4: Prime Agricultural Land** states that development will not be permitted which leads to the permanent loss of prime agricultural land unless particular criteria are met;
- 7.13 Policy **ENV7: Landscape Character** advises that development will not be permitted where it may significantly and adversely affect the local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New developments will normally be required to incorporate proposals to maintain the diversity and distinctiveness of local landscapes and to enhance the landscape characteristics where they have been weakened;
- 7.14 Policy **ENV10: Water Environment** states there is a presumption against development which may cause a deterioration in water quality;
- 7.15 Policy **ENV18: Noise** states that the Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or require to be modified so that no unacceptable impact at sensitive receptors is generated; and
- 7.16 Policy **IMP3: Water and Drainage** states that development involving private sewerage systems will only be permitted where there is no public system in the locality and where the Council is satisfied that the proposal is acceptable in terms of the environment and public health.

#### National Policy

- 7.17 **Scottish Planning Policy** sets out the Scottish Government's policies in respect to a number of planning related matters. This states that the planning system should encourage rural development that support prosperous and sustainable communities and businesses while protecting and enhancing environmental quality.

## **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 Damhead traditionally comprises of small cottages on crofting plots/small holdings. Some of the properties have diversified to incorporate other land uses/business. Acceptable businesses are those which do not adversely affect the character of the area or amenity of nearby residents. The relevant development plan policies seek to ensure that new operations and activities in the countryside do not introduce additional unacceptable noise and disturbance into inherently quiet areas to the detriment of the amenity of the area and nearby residents.
- 8.3 MLP policy RP1 states that development in the countryside will only be permitted if it is for the furtherance of agriculture, horticulture, forestry, countryside recreation, tourism or waste disposal. The consented use of the site as a plant nursery/horticultural business complies with the development plan and application 13/00398/DPP considered the cafe and retail outlet ancillary to the horticulture use, as well as complying with MLP policy ECON8 in support of tourism. The consented uses do not have an adverse impact on the character of the area or the amenity of nearby residents.
- 8.4 The development plan contains restrictive policies relating to proposals for new development within the countryside and green belt. These policies aim to prevent creeping suburbanisation and development in such areas which are under significant pressure due to the convenient commuting distance to Edinburgh, as well as protecting the character of the area. The plan also contains some enabling policies which supports some commercial developments within these areas in some specific circumstances.
- 8.5 MLP policy RP1 sets out the terms for acceptable forms of development in the countryside and aims to restrict development to that required for the furtherance of an established, and acceptable, countryside activity or business. MLP policy RP2 seeks to protect the green belt from development unless it is necessary for an acceptable countryside use or provides for opportunities to access the countryside for sport or recreation. Developments for other uses may be considered acceptable where they are appropriate to the rural character of the area.
- 8.6 The application proposes to retain the plant nursery, cafe and retail unit as well as hold wedding ceremonies and associated receptions. The wedding events began in 2014, and are not ancillary to the horticultural use. There is also a private dining events element to the SHG business which does not form part of this application. The Planning Authority considers both these elements to be new primary uses, not ancillary to the existing horticultural business. These uses both require planning permission. Application 16/00637/DPP covered both these

events, providing clarity over what activities take place at the SHG. This application was withdrawn before it was determined.

- 8.7 The Planning Authority would have preferred that the current application cover both the wedding and private dining events, to provide clarity over what operations currently take place on site and allow an overall accurate assessment of the impact that the events have on the surrounding area, which currently take place without the benefit of planning permission. However, the two elements were submitted as two separate applications and must be assessed as such; although one has subsequently been withdrawn. The Planning Authority is aware of the dining events element and is actively seeking an application related to this use to enable an assessment of its suitability for this location.
- 8.8 The applicant considers the wedding events use ancillary to the horticulture use and requested the description be 'occasional use of land and buildings for wedding events (part retrospective) ancillary to the principle horticultural use'. The Planning Authority has consistently maintained that the wedding events are not ancillary to but are a primary use alongside the horticulture use, therefore requiring a separate planning permission. The wedding events result in a significantly greater impact on the surrounding area than could reasonably be expected from the original use, therefore this cannot be considered ancillary. The wedding events have resulted in a number of complaints from residents in regards noise and disturbance.
- 8.9 The wedding events are to take place yearly between May and September. Details have been provided of the dates of the seventeen weddings booked for 2017 which are mainly on Saturdays but with one on a Friday and one on a Thursday. No details of the maximum numbers of weddings per year have been submitted. The site plan details the buildings and areas of site to be used in connection with the wedding events.
- 8.10 MLP policies RP1 and RP2 allow for some businesses in the countryside provided these meet particular criteria, including the furtherance of a horticulture business. The agent has submitted supporting information stating that the existing horticultural business is not viable and that the proposed wedding events use is required to support the horticultural use of the land. The supporting statement does reference the wedding events use and dining events as supporting the horticultural use. However, it is worth noting that in 2013 planning permission was granted for a dwellinghouse on the site after the owner demonstrated that the horticultural business was viable and not dependant on alternative uses for the site. Furthermore, the applicants submission of turnover for the 12 month period up to September 2016 suggests the wedding event business accounts for approximately 10% of the businesses turnover.

- 8.11 The applicant's statement suggests the horticultural business has been making increasing losses between 2013 to 2015 and that it is only in 2016 that the business overall made a profit, which is attributed to the wedding and dining events. Without the revenue generated from the events element, profitable trading solely from the horticultural business, cafe and shop will be difficult to achieve. The statement notes that the revenue and profit from the wedding events was more than twice that of the dining events. The applicant is willing to consider reducing the number of weddings and increase the numbers of dining events to attempt to limit the impact on residential properties whilst maintaining sufficient revenue to support the horticultural business. However they give no details of the number of weddings required to support the horticultural business.
- 8.12 The Planning Authority is sympathetic to the applicant's view that the horticulture business needs additional diversification but is not convinced the horticultural business will cease trading if the wedding events stop. In addition to the business arguments, the proposal must comply with other criteria of MLP policy RP1, including that the development must be of a scale and character appropriate to the rural area.

#### Impact on Rural Character of the Area

- 8.13 The Planning Authority must assess the impact the proposal would have on the character and amenity of the surrounding area. A balance must be found between the prospect of the continuation of the SHG operating as proposed and the impact that this would have on the character and amenity of the surrounding area and residents. The argument that the existing business requires additional income to continue operating does not mean that any diversification, at any cost, would be automatically supported.
- 8.14 Acceptable businesses in Damhead are those which do not adversely affect the character of the area or amenity of nearby residents. The use of the site for wedding events has the potential to cause significant disturbance to the surrounding area in terms of traffic and noise, and has done so to date when considering the comments made by objectors.
- 8.15 The wedding events can accommodate up to 100 people between 4pm and midnight. This is a significant amount of people within a quiet rural area with residential properties in close proximity. The site plan identifies a large central area for informal recreation, with an area around the glasshouse and nearby buildings designated as an alcohol consumption area. This means that there should be no alcohol outwith this central area. However, the guests using the area for informal recreation during wedding events are likely to generate noise disturbance. The general nature of weddings is for guests to relax and enjoy themselves within the confines of the venue, which in this case

would include the whole site. The buildings on site have not been designed to accommodate the type of use proposed to ensure that noise is contained. Whilst the Environmental Health Manager considers that it is possible to contain noise by adapting the barn where there will be amplified/live music, the general level of disturbance caused by large groups of people using the site as a whole is likely to, and has, caused undue disturbance to the local area.

- 8.16 Guests leaving the site at the end of events are likely to add to the noise nuisance. Given the rural location, it is likely that the number of vehicles would be sizable thereby creating more noise and disturbance. Although there is an existing business operating at the site, this has more 'standard' day time business operating hours which are acceptable in this area and do not result in large numbers of people accessing/leaving the site late at night. Use of the site for events would also result in additional lighting in terms of hours of illumination and the area of illumination which is likely to cause further disturbance to local residents. The lighting will arise from inside the buildings, external safety lighting and lights from associated vehicles.
- 8.17 It is worth noting that while there will be no more than 100 people in attendance at wedding events, this does not include the 38 employees as stated in the applicants submission. It is likely that the staff members will leave the site later than the guests, meaning that it is likely that the noise and disturbance in the area will continue after midnight when the guests have left.
- 8.18 The applicant has suggested they introduce mitigation measures to try to control the noise, such as acoustic fencing and bunds. The applicants would also accept a permission on a trial basis to try to address the concerns raised by objectors. However, the Planning Authority does not consider the mitigation measures to be appropriate in regards the impact these may have on the character or appearance of the surrounding countryside, or would be sufficient to address the general ambient noise which would arise from such wedding events. Since the use has been implemented in 2014 it has generated numerous complaints from local residents; it is not clear how any trial period would be appropriate or suitable. Had the use not been implemented previously, there may be some merit to granting a temporary permission to assess the impact the use may have, however it is clear that its impact to date has been detrimental to local amenity.

#### Transportation Issue

- 8.19 The proposal is not located adjacent to a smaller settlement. There is no locational requirement for it to be in the countryside. The site does not benefit from access to a regular public transport service. The proposed use of the site is not of a character or scale in keeping with the landscape of the area and does not enhance the rural environment.

- 8.20 The Council's Policy and Road Safety Manager has not raised any road safety concerns, despite the intensification of the vehicular access and the objections of local residents. They have stated that they are not aware of any road safety or transportation issues relating to previous events. There would be no requirement for a transportation assessment for the proposal. Should additional parking be required, this would be subject to a further application for assessment. The submitted site plan shows more parking spaces than approved in application 16/00045/DPP; however these do not appear to have been formed on site. The formation of new parking spaces does not form part of this application.

#### Drainage/Water Treatment

- 8.21 As detailed above, the Scottish Environment Protection Agency (SEPA) initially objected to the application on the grounds of lack of information regarding the foul drainage arrangements and potential impact on the water environment. SEPA were consulted as the application site falls within a waste water drainage consultation zone, which they have identified as having a proliferation of private waste water arrangements that is currently causing environmental problems.
- 8.22 SEPA had no objection to application 13/00398/DPP and granted a Water Environment (Controlled Activities)(Scotland) Regulations 2011 (CAR) licence related to the approved uses. Such licences are regulatory controls over activities which may affect Scotland's water environment. The CAR agreed an upgrade from the existing septic tank to a new secondary treatment system which would have a significant improvement to the quality of treated effluent being discharged from the site. A planning condition required the installation of the treatment plant before the cafe opened to the public. On the basis of the CAR being granted, SEPA recommended the two existing registrations for the existing septic tank be withdrawn as all foul flows on site would be treated by the new secondary treatment plant. These have not been withdrawn, but the new treatment plant has not been installed.
- 8.23 SEPA then objected to planning application 16/00637/DPP for the same reason as the initial objection to the current application. The new treatment plant has not been installed and no information was submitted to demonstrate the existing septic tank is appropriately sized to deal with the increased loading from the wedding events in addition to the horticultural, cafe and shop uses. They were also concerned over the proliferation of private discharges into a catchment of small watercourses in the area. SEPA confirmed they had received a complaint relating to foul drainage arrangements at the site.
- 8.24 Since application 16/00637/DPP was withdrawn and the current application submitted, the applicant and SEPA have been in discussions regarding the installation of the new treatment plant, which they estimated would not be installed until May 2017 at the earliest.

The applicants have stated the implementation of the treatment plant depends on planning permission being granted for the wedding events. An interim solution has been proposed which includes the provision of portable toilets to be used by the wedding guests, with the existing toilets for staff members only. The waste from the portable toilets would be disposed of off-site. Should the wedding events application be granted planning permission, the interim arrangements would remain in place until such time as funds/arrangements can be made to install the new treatment plant. This interim solution would also ensure there is no detriment to the receiving watercourse.

- 8.25 SEPA supported the principle of the interim solution before the current application was submitted, provided that consideration was given to the siting of the portable toilets to ensure if they leak there would be limited scope for impact on nearby watercourses. SEPA confirmed to the applicant that they would not regulate the portable toilets.
- 8.26 The applicant has submitted further details of the proposed interim arrangements, including a plan showing the position of the portable toilets and details of the longer term provision of the treatment plant. After considering this information, SEPA subsequently withdrew their objection. Should permission be granted, conditions would be required to secure the timely installation of the new treatment plant.
- 8.27 Although SEPA have withdrawn their objection, it should be noted that the new treatment plant required providing adequate drainage and facilities to the additional customers for the cafe and retail use has not yet been installed. This means that there is insufficient drainage provision for the customers of the cafe and retail unit, before even considering the additional people attending and working at the wedding events.
- 8.28 Also SEPA's acceptance of the interim solution was on the basis that the siting of the portable toilets ensured any leakage would have limited impact on nearby watercourses. Objectors have stated that this is not the case as they have been positioned closer to watercourses than as stated on the submitted plan. Breaches of foul drainage would be enforced by SEPA or the Council's Building Standards team and breaches of a condition relating to the installation of the treatment plant as part of any planning approval would be enforced by the Council as Planning Authority.

#### Other Matters

- 8.29 The neighbour notification procedures as defined by the regulations were correctly carried out by the Council. The application was also advertised in the local press for the purposes of neighbour notification and as a potential bad neighbour development.
- 8.30 The frustration of the objectors relating to the numerous applications submitted and withdrawn by the applicant is noted. However it is in the

applicants control to withdraw their applications if they feel it appropriate to do so. Any outstanding alleged breaches of planning control will be investigated and resolved.

- 8.31 A building warrant application is under consideration to alter and convert the glasshouse, barn and a number of other buildings from agricultural to commercial premises. This will consider the drainage proposals and ensure that the buildings are fit for their proposed uses. There is no requirement to delay determination of the planning application until the building warrant is determined.
- 8.32 A number of comments were made in relation to the licence application, highlighting a number of differences between the two applications. The Planning Authority can only assess the merits of the planning application. However, the Planning Authority has provided comments with regard which works/uses require the benefit of planning permission, to the licensing process.
- 8.33 Non-compliance with the Damhead and District Neighbourhood Plan 2015-2030 is not a material planning consideration.
- 8.34 Planning permission 16/00045/DPP for the formation of a car park, increasing the parking provision within the SHG to 45 spaces was approved. This application was advertised in the local press and was subject to the Council's neighbour notification procedures.
- 8.35 The Planning Authority is aware all buildings on the site, with the exception of the yurt and shed, have been there for some time and therefore are immune from enforcement action. The yurt (portable round tent structure) does not require planning permission.
- 8.36 The issue of damage to fences is not a planning consideration but a private legal matter between the parties involved.
- 8.37 The impact of the wedding events on the value of nearby properties is not a material planning consideration.
- 8.38 The Planning Authority is actively communicating with the applicant and their agent to address all unauthorised works at the SHG. The current application cannot be refused due to alleged breaches of conditions or alleged irresponsible behaviour regarding public health and safety.
- 8.39 The Planning Authority is aware that the SHG site was previously marketed for sale and that the particulars did not include the associated house. The dwellinghouse is no longer listed as being for sale.

## **9 RECOMMENDATION**

- 9.1 That planning permission be refused for the following reasons:

- 1. The proposed development is located within the countryside and green belt and, as such, is contrary to policies RP1 and RP2 of the adopted Midlothian Local Plan 2008.*
- 2. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed change of use would not have a significant adverse impact on the amenity of the neighbouring dwellinghouses due to the use bringing unacceptable levels of noise, traffic and light into an inherently quiet area and is therefore contrary to policy ECON8 of the adopted Midlothian Local Plan 2008 which seeks to support rural development where it does not introduce unacceptable levels of noise nor cause a nuisance to residents in the vicinity of the site.*

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

**Date:** 23 May 2017

**Application No:** 17/00219/DPP (Available online)

**Applicant:** Mr Hamish Martin, Secret Herb Garden, 32A  
Damhead, Lothianburn

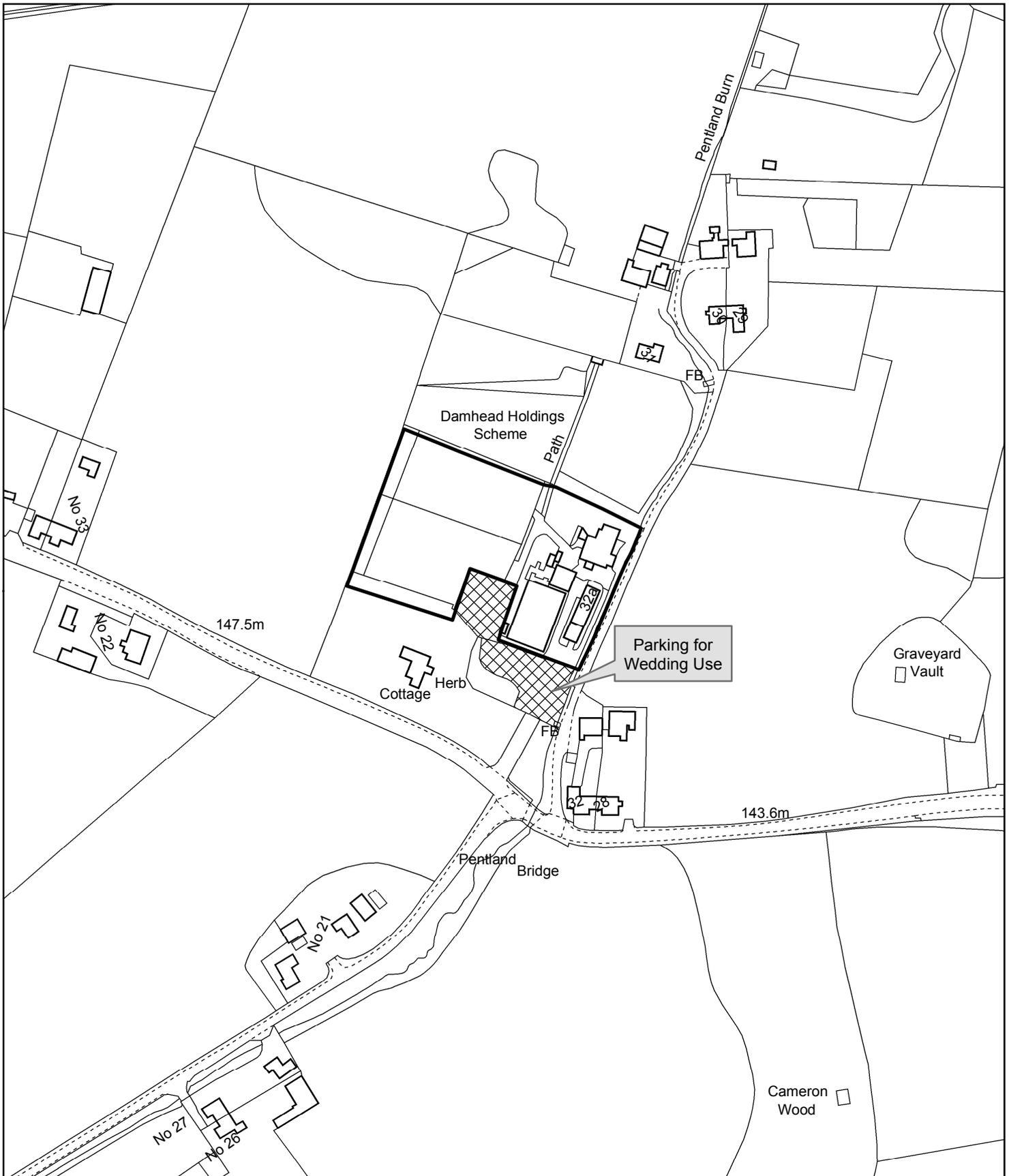
**Agent:** Albert Muckley, Ironside Farrar Ltd, 111 McDonald  
Road, Edinburgh

**Validation Date:** 29 March 2017

**Contact Person:** Mhairi-Anne Cowie, Case Officer

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**Background Papers:**



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