



APPEAL AGAINST NON-DETERMINATION: APPLICATION FOR PLANNING PERMISSION 20/00144/DPP FOR 46 DWELLINGHOUSES, FORMATION OF ACCESS ROADS AND CAR PARKING AND ASSOCIATED WORKS AT LAND AT THE FORMER WELLINGTON SCHOOL, PENICUIK

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 **The application is for the erection of 46 dwellinghouses, formation of access roads and car parking and associated works at land at the former Wellington School, Penicuik and it is subject to an appeal for non-determination as it has not been determined by the local planning authority within the statutory period of time.**
- 1.2 **There have been 35 representations and consultation responses from the Coal Authority, Scottish Water, the Scottish Environment Protection Agency (SEPA), NatureScot, Howgate Community Council, the Council's Archaeology Advisor, the Council's Flooding Officer, the Council's Policy and Road Safety Manager, the Council's Environmental Health Manager, the Council's Housing Planning and Performance Manager, the Council's Education Resource Manager and the Council's Land Resources Manager.**
- 1.3 **The relevant development plan policies are policies 5 and 7 of the South East of Scotland Strategic Development Plan 2013 (SESPlan 1) and policies STRAT4, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, RD1, ENV2, ENV5, ENV7, ENV9, ENV10, ENV11, ENV15, ENV16, ENV17, ENV18, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.4 **The recommendation is to propose to the Scottish Government Reporter determining the appeal to grant planning permission subject to conditions and the conclusion of a planning obligation to secure contributions towards necessary infrastructure and the provision of affordable housing.**

2 APPEAL POSITION

- 2.1 A report of handling setting out the details of the proposed development, the relevant development plan policies and material considerations, a planning assessment and officer recommendation was presented to the Committee for consideration at its meeting of 23 November 2021 – a copy is attached to this report. The Committee determined to defer consideration of the application by one cycle to enable a site visit to be undertaken by the Committee (originally scheduled for 10 January 2022, but cancelled due to the COVID pandemic) and for a visual presentation to be made to the Committee.
- 2.2 The extended statutory time period to determine the planning application expired on the 25 November 2021. Rather than waiting until the Committee meeting of 11 January 2022 to receive a determination the applicants have exercised their right of appeal against non-determination and have requested Scottish Ministers determine the application. A Scottish Government Planning Reporter will be appointed to determine the appeal on behalf of Scottish Ministers.
- 2.3 The Council received notification of the appeal from the Scottish Government's Planning and Environmental Appeals Division on 21 December 2021 and was given until 6 January 2022 to make a submission setting out their position on the application – a request for an extension of time was rejected, but the Council have been advised that the Reporter *may* consider an updated statement from the Council following its Committee meeting of 11 January 2022.
- 2.4 To meet the 6 January 2022 deadline officers have submitted the 23 November 2021 Committee report as an officer position, subject to amendment/withdrawal following the Committee's consideration of the proposal. Despite the appeal the Committee needs to reach a position on the application to enable officers to represent it at the appeal.
- 2.5 As of the 23 December 2021 (the date the Committee agenda is collated) the applicant's agent has advised that the appeal *may* be withdrawn prior to the meeting of the Committee – if this is the case a verbal update will be provided to the Committee.

3 RECOMMENDATION

- 3.1 It is recommended that the Scottish Government Reporter appointed to determine the appeal is invited to grant planning permission for the following reason:

The site is an allocated housing site subject to an appropriate solution to the site's access constraints. The proposals demonstrate a safe and deliverable access arrangement and the proposed development will be of an acceptable scale and character that responds both to the detailed

requirements of the development plan and the surrounding area. It will provide adequate open space, and parking provision; and will not have a significant detrimental impact on the residential amenity or the environment of the area. The proposal therefore complies with policies STRAT4, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, RD1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV16, ENV17, ENV18, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017.

Subject to:

- i) the completion of a planning obligation to secure:
 - A financial contribution towards additional primary education capacity;
 - A financial contribution towards additional secondary education capacity;
 - A financial contribution towards primary education school transport;
 - A financial contribution towards the A701 relief road/A702 link road;
 - Maintenance of open space/play areas; and
 - The provision of onsite affordable housing

The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.

- ii) the following conditions:
 1. Development shall not begin until a scheme 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, roads, parking areas and paths in relation to a fixed datum;
 - ii. existing trees, landscaping features and vegetation to be retained, removed, protected during development (to BS 5837:2012) and in the case of damage or loss, restored;
 - iii. proposed new planting including trees, shrubs, hedging and grassed areas;
 - iv. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the development being 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); unless a suitably qualified ecologist has carried out a walkover survey of the felling/removal area in the 48 hours prior to the commencement of felling/removal, and confirmed in writing that no breeding birds will be affected;

- vii. proposed car park configuration and surfacing;
- viii. details of the location, design, height and specification of proposed street lighting within the development;
- ix. proposed footpaths; and
- x. proposed cycle parking facilities

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (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 policy DEV7 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

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

Reason: *In the interest of protecting the character and appearance of the area so as to comply with policies DEV2 of the Midlothian Local Development Plan 2017.*

3. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include
 - i. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii. proposed vehicular, cycle and pedestrian access;
 - iii. proposed roads (including turning facilities), footpaths and cycle ways. The footpath/cycle link shall be a minimum of 3m in width;
 - iv. proposed visibility splays, traffic calming measures, lighting and signage;
 - v. proposed construction traffic access and haulage routes;

- vi. a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
- vii. proposed car parking arrangements;
- viii. proposed bus stops/lay-bys and other public transport infrastructure;
- ix. a programme for completion for the construction of access, roads, footpaths and cycle paths;

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

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

4. Prior to the commencement of development a layout indicating where an Area of improved Quality (AiQ) will be set out within the site shall be submitted for approval in writing to the planning authority. The AiQ will cover at least 20% of the proposed units and their associated boundary treatments. The layout will identify the high quality materials to be used within the AiQ, samples of which will be required in accordance with condition 5.

Reason: *In the interest of protecting the character and appearance of the area so as to comply with policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017.*

5. 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 the building. The delivery of high speed fibre broadband shall be implemented as per the approved details or such alternative as may be approved in writing by the Planning Authority.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure; and to comply with policy IT1 of the Midlothian Local Development Plan 2017*

6. Development shall not begin until details of a scheme to deal with surface water drainage 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 that the development is provided with adequate surface water drainage; and to ensure that development complies with*

policies ENV9, ENV10 and ENV15 of the Midlothian Local Development Plan 2017.

7. Development shall not begin until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
 - i. Details of construction access routes;
 - ii. signage for construction traffic, pedestrians and other users of the site;
 - iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
 - iv. details of piling methods (if employed);
 - v. details of any earthworks;
 - vi. control of emissions strategy;
 - vii. a dust management plan strategy;
 - viii. waste management and disposal of material strategy;
 - ix. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
 - x. prevention of mud/debris being deposited on the public highway;
 - xi. material and hazardous material storage and removal; and controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

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: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

8. Prior to the commencement of development a Peat Management Plan will be prepared and submitted to the planning authority for approval in writing. The management plan will address any necessity to removal peat and carbon rich soils from the site and where possible show how it can be integrated back into the site.

Reason: *To ensure compliance with policy ENV5 the MLDP 2017.*

9. The development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
- ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
- iv. the condition of the site on completion of the specified decontamination measures.

Reason: To ensure compliance with policy ENV16 of the MLDP 2017.

10. On completion of the decontamination / remediation works referred to in Condition 10 above and prior to any dwelling house being occupied, a validation report or reports shall be submitted to the Planning Authority confirming that the works have been carried out in accordance with the approved scheme. No dwelling house shall not be occupied unless or until the Planning Authority have approved the required validation.

11. Prior to the commencement of development technical details of any bridges and culverts under the access road shall be submitted for approval in writing by the planning authority. Proposed bridges or culverts must be designed to convey the 1 in 200 year design flow. The design of the culvert will take into account the conveyance of added climate change flows. As part of the adopted road this structure with require to meet the design requirements for a highway structure.

Reason: To ensure that development does not increase the risk of flooding on the site and to comply highway standards

12. A feasibility study for the provision of a community heating system for any will be undertaken by a suitably qualified engineer, commissioned by the applicant, and submitted for the approval of the planning authority. Should this study show a community heating system can be introduced, this should be undertaken within timescales to be agreed.

Reason: in order to comply with condition NRG6 of the MLDP 2017.

13. Prior to the commencement of development cross sections of the new access road will be submitted for approval in writing by the planning authority. The cross sections will show proposed footpath, services verge, grass/planting verge, swale verge, tree protection areas and tree planting root ball volumes along the proposed access road.

Reason: To ensure that there is appropriate space to deliver the proposed features.

14. Prior to the commencement of development a Site Biodiversity Action Plan (SBAP) will be prepared and submitted to the planning authority for approval in writing. It shall include:
- Reference to the recommendations set out in chapter 5.0 of the submitted Badger Survey (February 2020) and Ecological Assessment – Update (July 2021);
 - Landscape and habitat design and management;
 - Species protection plans for bats and badgers; and
 - Monitoring protocols.

Thereafter, development shall be carried out in accordance with the approved SBAP.

Reason: *To protect and enhance protected species and other biodiversity on the site in accordance with policy ENV15.*

15. 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. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing by the Planning Authority.

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 Midlothian Local Development Plan 2017 and national planning guidance and advice.*

16. Details of the proposed design of the junctions of the two pedestrian/cycle links to Milkhall Road should be submitted to and approved in writing by the planning authority prior to the commencement of development. Unless otherwise agreed in writing, the detailed design will include 3m of pedestrian footway to be formed on Milkhall Road with pedestrian guard rail.

Reason: *To ensure highway safety is achieved for road users and pedestrians.*

17. The proposed landscaped buildout shown on the layout on the frontage of plots 37/38 should be removed from the layout to allow a 5.5m wide road alignment to be achieved.

Reason: *To ensure appropriate highway design and continuity design.*

18. Development shall not begin until details of the provision and use of electric vehicle charging stations have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.

19. Details of new street lighting on the A701 at the approaches to the proposed site access will be submitted to the planning authority for approval in writing prior to the commencement of development.

Reason: To ensure compliance with policy IMP2 of the MLPD 2017

20. Details of the design and location of the proposed new bus shelter (southbound) on the A701 should be submitted to the planning authority for approval prior to commencement of development.

Reason: To ensure compliance with policy IMP2 of the MLPD 2017

21. Technical details of the proposed upgrading to the existing public footway along the A701 leading to the existing Wellington School Bus Stop shall be submitted to the planning authority for approval prior to the commencement of development.

Reason: To ensure safe pedestrian access to the pedestrian transport connections.

22. Development shall not begin until a programme of archaeological works (field evaluation by trial trenching) in accordance with a written scheme of investigation which has been submitted by and approved by the planning authority. This will be carried out at the site by a professional archaeologist in accordance with details submitted to and approved in writing by the planning authority. The area to be investigated should be no less than 5% of the total greenfield site area with an additional 2% contingency should significant archaeological remains be encountered.

Reason: To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policy ENV25 of the Midlothian Local Development Plan 2017.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date:	23 December 2021
Application No:	20/00144/DPP
Applicant:	Lochay Homes Ltd
Agent:	Strutt and Parker
Validation Date:	9 March 2020
Contact Person:	Hugh Shepherd
Email:	hugh.shepherd@midlothian.gov.uk
Background Papers:	Online planning application file
Attached Plans:	Proposed Site Layout RevM, Woodland Mitigation and Woodland Plan, House-type Plans