

# Notice of Meeting and Agenda



## Planning Committee

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

**Date:** Tuesday, 25 February 2020

**Time:** 13:00

**Executive Director : Place**

**Contact:**

Clerk Name: Mike Broadway

Clerk Telephone: 0131 271 3160

Clerk Email: [mike.broadway@midlothian.gov.uk](mailto:mike.broadway@midlothian.gov.uk)

**Further Information:**

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**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 Declaration 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 Minute of Previous Meeting**

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- 4.1** Minute of Meeting held on 14 January 2020 - For Approval 3 - 6

**5 Public Reports**

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- 5.1** Development Plan Scheme for Midlothian Number 12 - Report by Director of Education, Communities and Economy 7 - 30

- 5.2** Major Applications: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage - Report by Director of Education, Communities and Economy 31 - 36

- 5.3** Appeals and Local Review Body Decisions - Report by Director, Education, Communities and Economy 37 - 40

Application for Planning Permission Considered for the First Time – Report by Director, Education, Communities and Economy

- 5.4** Section 42 Application 17/00385/S42 to Amend Condition 2(ii) (Landscaping) imposed on a grant of planning permission 14/00334/S42 for the erection of a petrol filling station and restaurant/café; formation of associated car parking and vehicular and pedestrian access; and associated works on land north west of Fordel Junction, Dalkeith 41 - 54

**6 Private Reports**

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No Private Reports for discussion at this meeting

**7 Date of Next Meeting**

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The next meeting will be held on Tuesday 7 April 2020 at 1.00 pm.

Plans and papers relating to the applications on this agenda can also be viewed at <https://planning-applications.midlothian.gov.uk/OnlinePlanning>

# Minute of Meeting



## Planning Committee

Date	Time	Venue
14 January 2020	1.00 pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

### Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Cassidy	Councillor Curran
Councillor Hackett	Councillor Hardie
Councillor Lay-Douglas	Councillor McCall
Councillor Milligan	Councillor Munro
Councillor Smail	Councillor Winchester

### In Attendance:

Mary Smith	Director, Education, Communities and Economy
Peter Arnsdorf	Planning Manager
Alan Turpie	Legal Services Manager
Janet Ritchie	Democratic Services Officer

## 1. Apologies

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Apologies for absence were intimated on behalf of Councillors Johnstone, Muirhead and Russell.

## 2. Order of Business

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The order of business was as outlined in the agenda.

## 3. Declarations of interest

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No declarations of interest were intimated at this stage of the proceedings.

## 4. Minutes of Previous Meetings

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The Minute of Meeting of 19 November 2019 was submitted and approved as a correct record.

## 5. Reports

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Agenda No	Report Title	Presented by:
5.1	Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Stage	Peter Arnsdorf
Outline of report and summary of discussion		
There was submitted a report dated 7 January 2020 by the Director, Education, Communities and Economy updating 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.		
The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants were outlined in Appendices A and B attached to the report.		
Decision		
The Committee noted the major planning application proposals which were likely to be considered by the Committee in 2020 and the updates for each of the applications.		
Action		
Planning Manager		

Agenda No	Report Title	Presented by:
5.2	Appeals and Local Review Body Decisions	Peter Arnsdorf

Outline of report and summary of discussion
There was submitted a report dated 7 January 2020 by the Director, Education, Communities and Economy informing the Committee of two notices of review determined by the Local Review Body (LRB) at its meeting in December 2019 and advising that there were no Scottish Government appeal decisions to report to the Committee.
Decision
The Committee noted the decisions made by the Local Review Body at its meeting in December 2019.
Action
Planning Manager

Agenda No	Report Title	Presented by:
5.3	Application For Planning Permission 19/00763/DPP, for the erection of a Primary School and Nursery; Formation of a multi use games area (MUGA), Car Parking and associated works on part of the former Newbattle High School site, Easthouses Road, Easthouses	Peter Arnsdorf
Outline of report and summary of discussion		
<p>There was submitted report, dated 7 January 2020, by the Director, Education Communities and Economy concerning the above application.</p> <p>The Planning Manager provided a brief outline of the proposed development and thereafter responded to questions and comments raised by the Committee with regards to car parking in the area including road safety, issues of flooding and developer's contributions to improve the access to Easthouses Park. The Planning Manager confirmed that several of the issues raised by Members were covered within the conditions of the planning application but he would review any points which were not and take any necessary action.</p>		
Decision		
<p>The Committee agreed to grant planning permission for the following reason:</p> <p><i>The site is located within the settlement boundary of Easthouses and on a site with an established educational and community use and as such there is presumption in favour of an appropriate educational use development. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies. The presumption for development is not outweighed by any other material considerations.</i></p> <p>Subject to the conditions as detailed within the report.</p>		
Action		
Planning Manager		

## **6. Private Reports**

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No private business was discussed.

## **7. Date of Next Meeting**

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The next meeting will be held on Tuesday 25 February 2020.

The meeting terminated at 1. 08 pm



## DEVELOPMENT PLAN SCHEME FOR MIDLOTHIAN NUMBER 12

Report by Director of Education, Communities and Economy

### 1 PURPOSE OF REPORT

- 1.1 This report seeks approval for the Development Plan Scheme for Midlothian number 12 (DPSM12) which is required to be published annually to satisfy legislative requirements.

### 2 BACKGROUND

- 2.1 Preparation of a development plan scheme is a statutory requirement. Each year local planning authorities are required to prepare and submit a Development Plan Scheme (DPS) to Scottish Ministers setting out their intentions with respect to preparing, reviewing and consulting on the development plans for their area over the coming twelve months.

### 3 DEVELOPMENT PLAN SCHEME (DPS)

- 3.1 A DPS is required to contain:
- the proposed development plan programme (including the proposed timetable and details of what is likely to be involved at each stage of preparation or review); and
  - the participation statement (including an account of when and with whom consultation is likely to take place, its format and the steps to be taken to involve the public at each stage).
- 3.2 After approving a DPS, the authority is required to publish it (including electronically), place it on deposit in public libraries and send it to Scottish Ministers (though for information only, not for approval). Consultation on the DPS is not required at present. The Planning (Scotland) Act 2019 will require formal consultation on participation statements in Development Plan Schemes, although regulations to give effect to this change have yet to be made. As in previous years a question seeking views on the Council's proposed engagement activities is included in the DPS.
- 3.3 Since DPSM11 was approved in April 2019, there have been major changes in the context in which the second Midlothian Local Development Plan (MLDP2) will be prepared. Scottish Ministers have rejected the second Strategic Development Plan (SDP2). In addition the Planning (Scotland) Act 2019 significantly changes the system of development plans and will abolish Strategic Development Plans (likely to be in late 2021). There will be a new role for the Scottish Government's National Planning Framework (NPF) as part of the development plan (the Report to Planning Committee on 27 August 2019 gives further background to the 2019 Act).

- 3.4 Each component of the 2019 Act will be brought into force by the introduction of new regulations. The provisions abolishing strategic development plans have yet to come into force and transitional arrangements are expected to be issued in respect of authorities who have already commenced a local development plan under the old system. Midlothian has not commenced the formal stages of reviewing its Midlothian Local Development Plan 2017 (MLDP) and as such is likely to follow the new regulations when published in 2021.
- 3.5 DPS12 proposes that the plan be prepared in accordance with the new regulations, using the National Planning Framework 4 (NPF4) to provide strategic guidance. There are a number of reasons for choosing this option:
- SDP1 was adopted in June 2013, and the evidence base underpinning the plan is increasingly out of date.
  - SDP1 identifies the housing land requirement for the region for the period 2024-2032, but does not indicate how this should be distributed.
  - The declaration of a climate change emergency in Scotland is likely to have land use planning policy implications and it would be advantageous to work with a strategic planning framework that takes this into account.
- 3.6 The timetable for MLDP2 has accordingly been significantly revised. Scottish Government guidance is that local development plans should be replaced every five years (although Local Development Plans under the 2019 Act system are expected to be replaced every 10 years). MLDP2 is not likely to be replaced under the proposed DPS12 timetable until 2025, by which time the adopted plan will be just over 7 years old. On balance however, the approach set out in DPS12 seems to embody the least risk and uncertainty. The Council can use the biennial Action Programme to reassess the adequacy of its effective land supply, using the measures described in paragraph 2.3.9 of the adopted MLDP.

## **4 RECOMMENDATION**

- 4.1 It is recommended that the Committee:
- (a) approves the Development Plan Scheme for Midlothian No.12 (appended to this report); and
  - (b) agrees to publish the DPSM12, place copies in all public libraries and formally submit a copy to Scottish Ministers.

**Mary Smith**  
**Director Education, Communities and Economy**

**Date:** 14 February 2020  
**Contact Person:** Colin Davidson, Planning Officer  
**Email:** colin.davidson2@midlothian.gov.uk  
**Tel No:** 0131 271 3470  
**Background Papers:** Appendix A - Development Plan Scheme for Midlothian No. 12.



# Development Plan Scheme for Midlothian Number 12



March 2020





## 1. Introduction

**1.1** This is the 12th **Development Plan Scheme** for Midlothian. Development Plan Scheme 12 (DPS12) sets a new course for delivering development plans in Midlothian, reflecting the reformed planning system brought about by the 2019 Act, with the the National Planning Framework forming part of the development plan and abolition of Strategic Development Plans. The DPS has been produced in a context that will be subject to further change as new regulations implementing the 2019 Act are brought into force.

**1.2** The DPS sets out the timetable for preparing the **Local Development Plan (LDP)**, and other related planning guidance. It also includes a **Participation Statement** which describes how and when you can get involved in the preparation of the plan. We will prepare a new Development Plan Scheme at least once a year.

**1.3** In May 2019 the Scottish Ministers rejected the proposed Strategic Development Plan for South East Scotland (SDP2). The timetable in the previous DPS11 was based on SDP2 being approved in 2019. The first Strategic Development Plan (SDP1) and its associated supplementary guidance remains in force until publication of National Planning Framework 4 (NPF4). DPS12 proposes a new timetable based on NPF4 and using the reformed planning system introduced by the 2019 Act.

**1.4** The Planning (Scotland) Act 2019 received Royal Assent in July 2019. The Act changes many features of the current system of development plans, including:

- removing the requirement to prepare Strategic Development plans
- removing provisions which allowed Supplementary Guidance to form part of the development plan
- making the National Planning Framework part of the Development Plan
- introducing Regional Spatial Strategies to provide long term spatial development frameworks at regional level
- replacing Main Issues Reports with a new requirement to prepare an Evidence Report
- Changing the regulations to allow the Proposed Plan to be more of a consultative document
- Introducing a longer 10 year timescale for development plans, rather than 5 years at present
- Introducing potential for local communities to prepare new Local Place Plans

**1.5** More information on the main changes introduced by the 2019 Act may be found in the report to Midlothian Council on 27 August 2019 (available through <https://midlothian.cmis.uk.com/live/Meetings/tabid/70/dt/NewMeetingPublic/mid/397/Meeting/982/Committee/8/Default.aspx>). The Scottish Government has stated that they will produce guidance regarding transitional arrangements. More information about the arrangements to give effect to the Act can be

## DPS12

found on the Scottish Government website (available through this link [SG Post Bill Work Programme](#) ) The Scottish Government timetable envisages publishing guidance and regulations on development plans through to the end of 2021. Midlothian Council expect that the transition arrangements will recognise that planning authorities are at different stages of plan preparation, and will help inform our decisions on the timing of plan preparation.

**1.6** The 2019 Act introduces new requirements to seek and have regard to any views expressed by the public as to the content of the participation statement: the regulations that give effect to this change are expected to come into force in 2021. In advance of this becoming a formal requirement, Midlothian Council would like to know what you think of its proposed consultation arrangements, see the question 'HAVE YOUR SAY' at the end of section 5.

## 2. The Development Plan for Midlothian

### WHAT DEVELOPMENT PLANS EXIST AT PRESENT IN MIDLOTHIAN?

The adopted development plan for Midlothian is provided by the Strategic Development Plan (SDP) for Edinburgh and South East Scotland 2013, and the Midlothian Local Development Plan (MLDP) 2017. The development plans may be viewed online by clicking on this link [Development Plans and Policies](#) or in paper copy at any Midlothian library or at the Council's office at Fairfield House, Dalkeith.

### WHAT DOES A DEVELOPMENT PLAN DO?

Development Plans allocate land for development and contain policies which will be used to assess applications for planning permission. They are also accompanied by an Action Programme which sets out how the plan will be delivered.

**2.1** There are a number of ongoing tasks associated with the adopted MLDP. A revision of the current Action Programme (AP) is undergoing consultation and is expected to be adopted by April 2020. The AP is a requirement of the Planning Act, and identifies the actions which will help implement the policies and proposals of the plan.

**2.2** The Midlothian Local Development Plan requires Supplementary Guidance (SG) and planning guidance (pg) to be prepared. The Supplementary Guidance, once adopted has the same status as a policy in the plan (this will change when the 2019 Act takes effect, see below). Planning guidance has a lesser status but will be a useful aid to applicants and to

decision making on development proposals. The table below shows the planned SG and pg, and progress at the start of 2020. Approved guidance and emerging guidance subject to consultation may be viewed online through the [Midlothian planning portal](#)

**2.3** The Planning (Scotland) Act 2019 repeals those provisions of the 1997 Town and Country (Planning) Scotland Act which allowed SG to form part of the development plan, although this change has yet to come into effect and the Council expects that transitional arrangements will be required where SG has already been adopted. The Council will reflect on how the outstanding guidance is to be provided, taking into account any transitional arrangements to give effect to the Act which may be set out by the Scottish Government.

Supplementary Guidance	Status
Midlothian Green Network (SG)	Adopted
Special Landscape Areas (SG)	Adopted
Resource Extraction (SG)	Adopted
Development in the Countryside and the Green Belt (SG)	Adopted
Food and Drink and Other non Retail Uses in Town Centres (SG)	Adopted
Advertisements (SG)	In preparation
Community Heating (SG)	In preparation
Flooding and Water Environment (SG)	In preparation
Low Density Rural Housing (SG)	In preparation
Planning Obligations and Affordable Housing (SG)	In preparation
Quality of Place (SG)	In preparation

Planning Guidance	Status
Dalkeith Shop Front Design Guide (PG)	Adopted

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Planning Guidance	Status
Dalkeith Townscape Heritage Initiative (THI) Homeowners Guide: 'Repair and Maintenance of Historic Buildings in Dalkeith, Home Owners Guide' (PG)	Adopted
Hillend Country Park (PG)	The requirement for PG may be superseded by the planning application process.
Nature Conservation (PG)	Likely to be submitted to Committee for approval early 2020
Open Space Standards (PG)	Settlement wide analysis to support preparation of guidance completed.
Shop Front Design Guide (PG, for other town centres)	Guidance adopted for Penicuik, other towns to follow
Masterplans (for Ec3 and sites allocated in 2017 MLDP where not already commenced)	Initial work started

**2.4** Midlothian Council also carries out post adoption monitoring, looking at the performance of the plan, progress on implementing proposals, how policies are being interpreted and applied in determining planning applications, and the impact of the policies and proposals on a number of environmental factors. Regular liaison with the designated Key Agencies takes place so that the impact of the plan on infrastructure and the environment is shared and understood.

### 3. Production of the Second MLDP

**3.1** Following the decision of Scottish Ministers to reject the second Strategic Development Plan for Edinburgh and South East Scotland, the local authorities that make up the Strategic Development Planning Authority for Edinburgh and South East Scotland (SESplan) have decided not to prepare a revised SDP. In his letter of rejection the Planning and Housing Minister stated that in the short term, ahead of major legislative change, authorities in the SESplan area should prepare Local Development Plans that are consistent with the first SDP for the area.

**3.2** The Planning (Scotland) Act 2019 makes significant changes to the system of development plans. It will abolish Strategic Development Plans and Strategic Development Plan authorities and make the National Planning Framework part of the development plan. A new system of Regional Spatial Strategies is to be introduced to consider land use planning

matters which affect more one planning authority. Before preparing a LDP Councils will be required to prepare an Evidence Report which will be the subject of a government gatecheck. The 2019 Act also introduces new Local Place Plans which are described in the box at the end of this section. Many of these features of the new system require secondary legislation and additional guidance to give greater clarity as to how they will work.

**3.3** The approved SDP covers the period through to 2032. However neither the SDP nor its associated supplementary guidance on housing land indicates how the housing land requirement for 2024-2032 should be distributed. The SDP itself was informed by a Housing Needs and Demand Assessment (HnDA) approved in 2011. The rejection of SDP2 has raised questions over the currency of the 2011 HnDA and introduced uncertainty over future housing land requirements in Midlothian and across South East Scotland. The declaration of a climate change emergency in 2019 will have further implications for land use planning. In addition the approval of the Edinburgh and South East Scotland City Region Deal has a spatial aspect, with implications for infrastructure and economic development across the region.

**3.4** Midlothian Council proposes to carry forward its replacement LDP (MLDP2) under the new regulations to be established by the 2019 Act, and recognising that NPF4 will form part of the development plan rather than reverting to SDP1. The timetable for preparation of MLDP2 has therefore been significantly revised compared to that in DPS11.

**3.5** Midlothian Council is front loading work to inform the preparation of MLDP2 (table starting on page 10 indicates early activities carried out or in progress). This will assist in bringing MLDP2 to adoption as soon as possible after NPF4 is adopted. The MLDP2 will still be less than 5 years old by November 2022. Midlothian Council will use the Action Programme process to review implementation of the plan and in particular to assess the adequacy of the housing land supply (as described in paragraph 2.3.9 of the MLDP).

#### **Activities carried out to support the Second Midlothian Local Development Plan**

Since publication of Development Plan Scheme 11 in April 2019, the following activities have been carried out which contribute to the preparation of LDP2.

- Prepared biennial update of the Action Programme
- Review of existing sites and evidence gathering on potential new allocations
- Carried out regular liaison meetings with Key Agencies including discussion of policy review and infrastructure implications
- Used Midlothian Local Development Plan monitoring group to consider performance of existing policies and emerging issues (including policy gaps, redundant policies and required modifications)

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- Published Housing Land Audit 2019 and prepared new Employment Land Audit
- On-going collection of information to inform preparation of LDP2
- Attendance at community planning events (including community planning workshops and community planning away day) to explain context of new planning Act and changes in the approach to LDP2
- Prepared climate change strategy

The programme of activities will help Midlothian Council to move quickly to preparing an Evidence Report and a proposed LDP following approval of NPF4.

### LOCAL PLACE PLANS

Local Place Plans have been introduced by Section 14 of the 2019 Planning Act. Formal guidance on how to prepare Local Place Plans is to be brought forward by the Scottish Government early in 2021. They are plans relating to the development and change of use of land in a community. A Local Place Plan is not produced in isolation - it must have regard to the Local Development Plan for the area and the National Planning Framework.

Key duties on planning authorities in relation to Local Place Plans are:

- Publish an invitation to local communities to prepare Local Place Plans.
- Publish information on the manner and date by which such Local Place Plans are to be prepared in order to be taken into account in the preparation of the Local Development Plan.
- Provide information on the assistance that the authority may offer to communities wishing to produce a Local Place Plan.
- Maintain a register of Local Place Plans

Until more guidance is issued on the preparation of Local Place Plans the Council will work with its Community Planning Team and the Federation of Community Councils to raise awareness of LPPs and engage in a discussion about how LPPs may be progressed. does not consider that this is the right time to issue an invitation to local communities to prepare them. It must be stressed that these will be the communities' plans, and the Council will not be leading this process.

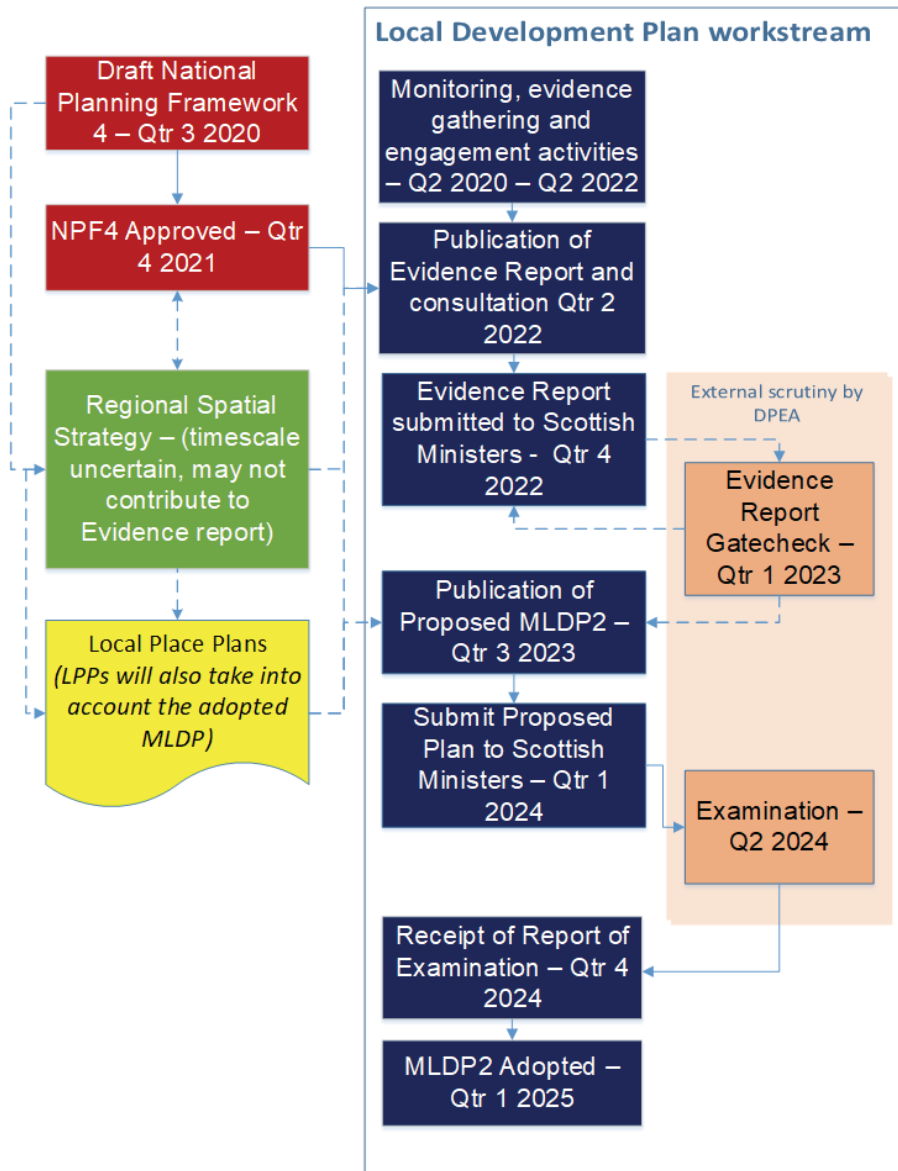
Midlothian Council will set out in a future DPS further information on the manner and timescale in which an LPP should be prepared in order to be taken into account in the preparation of MLDP2. Midlothian Council will maintain a register of valid LPPs and will also list these in future editions of the DPS.



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When the further guidance on LPPs is issued (expected 1st quarter of 2021), Midlothian Council will be in a better position to state what assistance it can offer to communities wishing to prepare a Local Place Plan. This will not preclude early engagement and discussion with communities about land use planning and place making.

## 4. Timetable for LDP2



## 5. Proposed Participation Statement

**5.1** A Participation Statement sets out how, when and with whom the Council will consult and engage on its Development Plan. Independent planning Reporters will review the Council's engagement activities to see that they match what the Council said it would do in the Participation Statement. The timescale for activities may change depending on progress with NPF4 and secondary legislation associated with the Planning (Scotland) Act.

### Aims

- To raise awareness of Local Development Planning in Midlothian
- To design an approach to engagement that is as open and inclusive as possible
- To provide meaningful opportunities to shape the next LDP

### Our Approach

- To seek to use best practice, looking at the approach of other organisations including Planning Aid for Scotland
- Produce information across a variety of formats, including our website, consultation portal and social media, alongside traditional written material
- To work closely with neighbourhood planning and community planning partnerships
- To advise and assist communities in preparing Local Place Plans
- Develop relationships with the Key Agencies and other interested parties - we will explore the potential for co-production of parts of the second LDP
- Seek to continuously improve by carrying out annual review of our engagement activities
- Make information available as early as possible
- Use clear, plain language in all our material
- To ensure that events and materials are accessible as far as is practicable
- To consider all engagement activity in the context of the Councils public sector equality duty

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- Use graphics and maps where appropriate
- Provide events in communities throughout Midlothian

**Overview of proposed engagement activities for the second Midlothian Local Development Plan**

Activity	Description	What we plan to do	Timescale
Development Plan Scheme 12	Sets out Midlothian Council's programme for reviewing its development plans.	Publish online, place in libraries and distribute to Community Councils. Seek views on participation statement.	April 2020
Early activities contributing to the second Local Development Plan.	Will set the context for MLDP2; outline requirements as they emerge from National Planning Framework and issues arising from adopted plan and committed development; seek contacts for future engagement; inform preparation of Evidence Report.	<p>Publish information online</p> <p>Promote online engagement and promote &amp; encourage registration on consultation database</p> <p>Prepare stakeholder briefing</p> <p>Brief and involve elected members, including reporting to Planning Committee at key stages</p> <p>Carry out ongoing monitoring</p>	Throughout 2020 and 2021

### Overview of proposed engagement activities for the second Midlothian Local Development Plan

Activity	Description	What we plan to do	Timescale
		<p>Prepare up to date Housing Land and Employment Land Audits</p> <p>Complete 1st review (2018/2020) of Action Programme for LDP1 and commence information gathering for 2nd review.</p> <p>Regular discussions with Key Agencies, Community Planning Partnership and other Council services.</p> <p>Attend events with Community Planning partners regarding new LDP, and raise awareness of Local Plan Plans.</p> <p>Develop and deliver events using the place standard tool.</p> <p>Monitor and contribute to the Scottish Government's 'transforming planning process'</p>	

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**Overview of proposed engagement activities for the second Midlothian Local Development Plan**

Activity	Description	What we plan to do	Timescale
		and National Planning Framework 4.	
Regional Spatial Strategy	The Regional Spatial Strategy (RSS) is a long term spatial strategy in respect of the development of an area. The Scottish Government may direct combinations of authorities to jointly work to prepare such a strategy. The LDP must have regard to any adopted RSS.	<p>More detail on the scope and content of the RSS and the combination of planning authorities that will prepare the RSS is expected from the the Scottish Government.</p> <p>In the interim, Midlothian Council will work with the other SESplan authorities. There is already collaboration on the Edinburgh and South East Scotland City Region Deal, which includes consideration of economic and infrastructure matters.</p> <p>In preparing the RSS with other authorities Midlothian Council will seek to apply the practices set out in the list above headed 'Our Approach'</p>	Scottish Government post-Bill work programme indicates that preparation of the RSS will run beyond the NPF4 timescale. It is likely that the MLDP2 will be commenced in advance of an RSS for the area.

### Overview of proposed engagement activities for the second Midlothian Local Development Plan

Activity	Description	What we plan to do	Timescale
Evidence Report for consultation	<p>The Evidence Report (EvR) will set out the Council's view on the characteristics of the area including the capacity of infrastructure and the need for additional development land.</p> <p>This is a key consultation stage under the 2019 Act.</p> <p>After consultation, and following any changes, the Council will submit the EvR to Scottish Ministers, who will appoint a person to determine whether it contains sufficient information to enable the authority to prepare the plan.</p>	<p>Publish EvR online for consultation</p> <p>Place paper copies in libraries and at Council HQ</p> <p>Advertise publication to inform stakeholders how, where and when document may be viewed.</p> <p>Encourage engagement and feedback on EvR through scheduled drop in events, discussions with stakeholders and social media activity.</p> <p>Distribute to Community Councils and hold event to discuss EvR</p> <p>Brief and involve elected members, including reporting to Planning Committee.</p> <p>Meet and discuss issues with stakeholder groups</p>	Quarter 2 2022

## DPS12

**Overview of proposed engagement activities for the second Midlothian Local Development Plan**

Activity	Description	What we plan to do	Timescale
		<p>expressing interest/concern on request.</p> <p>Prepare tailored consultation activities to seek views of those groups named in the Planning (Scotland) Act 2019 in relation to preparation of EvR (viz. disabled persons, gypsies and travellers, children and young people).</p> <p>Hold structured workshop or 'charrette' events to look at places and topics in greater detail. These may also use the 'Place Standard' tool</p> <p>Send email 'mailshot' to customer database inviting comments/feedback, (including use of online surveys/opinion polls)</p> <p>Prepare local media releases</p>	



### Overview of proposed engagement activities for the second Midlothian Local Development Plan

Activity	Description	What we plan to do	Timescale
		Raise awareness among Council staff: publish articles in e-staff newsletter.	
Proposed Plan	<p>The Proposed Plan under the new system is still the plan that the Council proposes to adopt.</p> <p>However, there is provision under the 2019 Act to make modifications after the representation period, before submitting to Scottish Ministers. Any unresolved representations will be considered by an independent planning reporter as part of an examination of the plan at a later date.</p>	<p>Seek approval of elected members through Planning Committee prior to publication</p> <p>Publish proposed plan online for consultation.</p> <p>Place paper copies in libraries and at Council HQ</p> <p>Advertise publication to inform stakeholders how, where and when document may be viewed.</p> <p>Encourage engagement and feedback on proposed plan through scheduled drop in events, discussions with stakeholders and social media activity.</p>	Quarter 3 2023

## DPS12

**Overview of proposed engagement activities for the second Midlothian Local Development Plan**

Activity	Description	What we plan to do	Timescale
		<p>Distribute to Community Councils and hold event to discuss proposed plan</p> <p>Adopt Scottish Government guidance arising out of the 2019 Act re effective community engagement (if available and depending on timescale)</p> <p>Prepare tailored consultation activities to seek views of children and young people.</p> <p>Send email 'mailshot' to customer database inviting comments/feedback</p> <p>Prepare local media releases</p>	

## **MAKING SURE EVERYONE IS INVOLVED**

The 2019 Planning (Scotland) Act introduces a particular requirement to consult with disabled persons, gypsies and travellers, and children & young people on the Evidence Report. A planning authority must also make arrangements that they consider appropriate to promote and facilitate participation by children and young people in the preparation of the LDP.

There is also a public sector equality duty established in the Equality Act 2010. This includes a requirement for public authorities in the exercise of their functions to advance equality of opportunity between people who share a relevant protected characteristic and those who do not. In preparing the first MLDP the Council prepared an Equality Impact Assessment (EqIA), which assessed the impact of the plan on the identified protected characteristics groups (which include age, disability, and race - including gypsies and travellers).

The EqIA approach was useful as it involved systematic assessment of the plan in respect of the protected groups to ensure there was no disadvantage and that opportunities were not missed. The EqIA also considered the approach to consultation and engagement. Midlothian Council will repeat the EqIA process for MLDP2. The participation statement requires tailored consultation for targeted groups: as we draw nearer to the Evidence Report in 2022 we will provide further detail on how this will be carried out.

### **Question 1**

#### **HAVE YOUR SAY**

What is your view of our planned consultation activities? Please let us know if you have any suggestions to improve engagement

**5.2** If you are viewing the DPS as a paper copy and you wish to respond to the question above, please see contact details in section 7, page 16.

## 6. Register an interest

**Are you interested in being involved in the second Midlothian Local Development Plan?**

**6.1** Follow this link to register as an interested party in the Second Midlothian Local Development Plan.

**6.2** [Link to register as a consultee or agent with Midlothian Council](#)

**6.3** Once we have your contact details we can send you information about events, documents for comment and keep you informed about progress with the MLDP.

## 7. Contact us

**If you have any questions about the Local Development Plan or this Development Plan Scheme, please get in touch.**

**7.1** by email: [ldplan@midlothian.gov.uk](mailto:ldplan@midlothian.gov.uk)

**7.2** by writing: Midlothian Council Planning, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3AA

**7.3** If you want to talk about the next Local Development Plan for Midlothian please call 0131 271 3470



## COMMUNICATING CLEARLY

We are happy to translate on request and provide information and publications in other formats, including Braille, tape or large print.

如有需要我們樂意提供翻譯本，和其他版本的資訊與刊物，包括盲人點字、錄音帶或大字體。

Zapewnimy tłumaczenie na żądanie oraz dostarczymy informacje i publikacje w innych formatach, w tym Braillem, na kasecie magnetofonowej lub dużym drukiem.

ਅਸੀਂ ਮੇਰਾ ਕਰਨ ਤੇ ਖੁਸ਼ੀ ਨਾਲ ਅਨੁਵਾਦ ਅਤੇ ਜਾਣਕਾਰੀ ਤੇ ਹੋਰ ਰੂਪਾਂ ਵਿੱਚ ਪ੍ਰਕਾਸ਼ਨ ਪ੍ਰਦਾਨ ਕਰਾਂਗੇ, ਜਿਨ੍ਹਾਂ ਵਿੱਚ ਬਰੇਲ, ਟੇਪ ਜਾਂ ਵੱਡੀ ਛਪਾਈ ਸ਼ਾਮਲ ਹਨ।

Körler için kabartma yazılar, kaset ve büyük nüshalar da dahil olmak üzere, istenilen bilgileri sağlamak ve tercüme etmekten memnuniyet duyuruz.

اگر آپ چاہیں تو ہم خوشی سے آپ کو ترجمہ فراہم کر سکتے ہیں اور معلومات اور دستاویزات دیگر شکلوں میں مثلاً بریل (ناپیدا افراد کے لیے) انجریس ہوئے حروف کی لکھائی میں، نیپ پر یا بڑے حروف کی لکھائی میں فراہم کر سکتے ہیں۔



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

Report by Director of Education, 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 DEVELOPMENT PLAN UPDATE**

- 3.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan June 2013 (SDP1) and the Midlothian Local Development Plan 2017 (MLDP). The MLDP was adopted by the Council at its meeting of 7 November 2017.

## **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 2020 and the updates for each of the applications.

**Dr Mary Smith**  
**Director of Education, Communities and Economy**

**Date:** 14 February 2020  
**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
17/00435/DPP	Land at Newbyres, River Gore Road, Gorebridge	Erection of 125 residential units; formation of access roads, SUDS features and associated works	April 2020	Pre-Application Consultation (13/00609/PAC) carried out by the applicants in August - November 2013. The application has been held in abeyance for a significant period of time whilst the applicant considers amending their layout. The applicant has submitted amended plans for consideration – the Council have instigated a re-neighbour notification and consultation process.
18/00099/DPP	Land at Gore Avenue and Newbyres Crescent, Gorebridge	Erection of 46 flatted dwellings; 17 dwellinghouses and 12 extra care units associated works	Being held in abeyance pending additional information from the applicant	Pre-Application Consultation (17/00913/PAC) carried out by the applicants in November 2017 – February 2018. This application is being held in abeyance subject to the applicant submitting additional information regarding mine gas mitigation measures - this information then needs to be cleared by the Council's Environmental Health Service.
18/00495/DPP	Land west of Burnbrae Terrace Bonnyrigg	Erection of resource facility including offices; training suites, stores, workshops, ambulance depot and enterprise units; formation of car parking, access roads and external storage areas; and associated works	Being held in abeyance pending a review of the project	Pre-Application Consultation (17/00721/PAC) carried out by the applicants in September 2017 – December 2017.  There is an outstanding objection from SEPA which needs addressing by the applicant. There is also an outstanding concern regarding potential noise impacts on nearby residents which needs consideration by the applicant and the Council in its assessment of the application.
18/00528/S42	Land at Calderstone, Biggar Road, Lothianburn	Section 42 Application to amend conditions 3, 4, 5, 6 and 10 of planning permission 15/00113/PPP, for the erection of hotel (to amend the phasing of the development).	April 2020	Section 42 applications do not require to go through the Pre-Application Consultation process. The conditions relate to the phasing of development, landscaping, building design and layout and transportation matters.  After a period of review, when the application was being held in abeyance, the applicant wants the application to progress to determination.

19/00748/PPP	Whitehills, Whitehill Road, Millerhill	Planning permission in principle for Class 4 (Business), 5 (General Industry), 6 (Storage and Distribution) and sui generis uses (home improvement showrooms/warehousing.	April 2020	Pre-Application Consultation (19/00489/PAC) carried out by the applicants in May 2019 – August 2019.  This application is reported to this meeting of the Committee.
19/00981/PPP	Land north of Oak Place, Mayfield, Dalkeith	Application for planning permission in principle for residential development and associated works.	April 2020	Pre-Application Consultation (19/00106/PAC) carried out by the applicants in February 2019 – April 2019.
19/01001/S42	Former Millerhill Marshalling Yards, Whitehill Road, Millerhill	S42 application to amend condition 2 of planning permission 15/00884/DPP (amendment to approved landscaping scheme)	April 2020	Section 42 applications do not require to go through the Pre-Application Consultation process.
19/01018/PPP	Midlothian Snow Sports Centre	Application for planning permission in principle for the redevelopment of existing snowsports centre to include leisure facilities; tourist accommodation; hotel; function suite and ancillary retail and restaurant; formation of access and car parking.	May 2020	Pre-Application Consultation (18/00970/PAC) carried out by the applicants in December 2018 – March 2019.
19/01039/PPP	Land north of Seafield Road, Bilston	Application for planning permission in principle for residential development and associated works.	May 2020	Pre-Application Consultation (19/00641/PAC) carried out by the applicants in July 2019 – September 2019.

## APPENDIX B

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

Ref	Location	Proposal	Date of PAC submission	Earliest date for receipt of planning application and current position
17/00367/PAC	Site Hs12 Hopefield Farm 2 Bonnyrigg	Residential development  The site is identified for an indicative 375 residential units in the MLDP.	9 May 2017	02/08/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00606/PAC	Land south east of Auchendinny, The Brae, Auchendinny (Site Hs20)	Residential development  The site is identified for an indicative 350 residential units in the MLDP.	27 July 2017	20/10/17 - no application yet received. A pre-application report was reported to the November 2017 meeting of the Committee.
17/00663/PAC	Land bounded by A7, Stobhill Road and Pentland Avenue, Gorebridge	Mixed use development comprising residential and commercial land uses	16 August 2017	09/11/17 - no application yet received. A pre-application report was reported to the October 2017 meeting of the Committee.
18/00894/PAC	Land at Wull Muir, Gorebridge	Erection of up to 9 wind turbines (wind farm)	9 November 2018	02/02/19 - no application yet received. A pre-application report was reported to the January 2019 meeting of the Committee.
18/00962/PAC	Land east and west of Easthouses Road, Easthouses	Residential development and erection of school, with associated engineering works, open space and landscaping	14 December 2018	09/03/19 - no application yet received. A pre-application report was reported to the February 2019 meeting of the Committee.
19/00012/PAC	Land east of Salters Road, Dalkeith	Mixed use development comprising film and TV studios including workshops/offices; reception/commissary; gatehouse; backlot; trailer park; film academy and associated student accommodation; and associated access, parking and infrastructure.	9 January 2019	04/04/19 - no application yet received. A pre-application report was reported to the January 2019 meeting of the Committee.

19/00126/PAC	Former Lothianburn, Golf Club, 106 Biggar Road, Edinburgh	Mixed use development comprising mountain bike trail centre, indoor and outdoor leisure uses, food and drink, professional services, retail, visitor accommodation and associated works	14 February 2019	10/05/19 - no application yet received. A pre-application report was reported to the May 2019 meeting of the Committee.
19/00252/PAC	Land at Wellington School, Penicuik	Residential development  The site is identified as an 'Additional Housing Development Opportunity' for an indicative 50 - 60 residential units in the MLDP.	20 March 2019	13/06/19 - no application yet received. A pre-application report was reported to the June 2019 meeting of the Committee.
19/00626/PAC	Land at Drummond Moor, Rosewell	Proposed holiday resort development	15 July 2019	08/09/19 - no application yet received.  A pre-application report was reported to the October 2019 meeting of the Committee.



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## APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Director of Education, Communities and Economy

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### 1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of an appeal decision received from Scottish Ministers. There were no notices of reviews determined by the Local Review Body (LRB) in January 2020.

### 2 APPEAL DECISIONS

- 2.1 An appeal against a refusal of planning permission (determined by the Committee at its meeting of June 2019) for planning permission in principle for Class 4 (Business) uses with ancillary Class 1 (Shops), Class 2 (Financial, professional and other services) and Class 3 (Food and drink) uses; residential development; and associated access, parking, landscaping and drainage infrastructure at land to the north of Hardengreen House, Dalkeith has been dismissed (refused planning permission). The Reporter appointed by the Scottish Ministers concluded that the proposed development is contrary to the development plan and there were no material considerations which outweighed this position. A copy of the appeal decision accompanies this report.

### 3 RECOMMENDATION

- 3.1 The Committee is recommended to note the appeal decision by Scottish Ministers.

**Dr Mary Smith**  
**Director of Education, Communities and Economy**

**Date:** 14 February 2020  
**Contact Person:** Peter Arnsdorf, Planning Manager  
peter.arnsdorf@midlothian.gov.uk  
**Tel No:** 0131 271 3310

**Background Papers:** LRB procedures agreed on the 13 June 2017.



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Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2056
- Site address: Land to the north of Hardengreen House, Dalkeith
- Appeal by Hardengreen Estates Ltd against the decision by Midlothian Council
- Application for planning permission in principle 19/00099/PPP dated 6 February 2019 refused by notice dated 8 August 2019
- The development proposed: Class 4 (Business) use with ancillary Class 1 (Shops), Class 2 (Financial, professional and other services) and Class 3 (Food and drink) uses; residential development; and associated access, parking, landscaping and drainage infrastructure
- Date of site visit by Reporter: 8 January 2020

Date of appeal decision: 31 January 2020

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## Decision

I dismiss the appeal and refuse planning permission in principle.

## Preliminary matter

Under the terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 the council carried out an EIA screening. This concluded that the proposal did not require an environmental impact assessment. I have considered the screening decision carefully and find nothing to make me reach a different conclusion.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. As the proposed development may also affect the setting of the listed Hardengreen House I must also have special regard to preserving the setting of that building under the terms of section 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
2. The development plan in this case comprises the Edinburgh and South East Scotland Strategic Development Plan approved 2013, (SESplan) and the Midlothian Local Development Plan adopted 2017. SESplan policies 2 and 12 and local development plan policies STRAT1, ECON1 and ENV1 are quoted in the reasons for refusal. In brief these concern the supply and location of employment land, the safeguarding of land for economic land uses and the extent of and appropriate development in the green belt.



3. Having regard to the provisions of the development plan, the submissions before me and my site inspection, the main issues in this appeal are the impact of the proposal on an allocated economic use site and whether a development in the green belt would be justified.
4. The proposed site covers 2.4 hectares and is roughly triangular in shape with a narrow strip extending to the north-east that would provide the main access from the road leading to the Eskbank Park and Ride facility. The site is adjacent on its north-east side to that park and ride facility for the Borders railway, which runs along the west side of the site, including Eskbank station. To the east is a solar farm, part of the nearby Edinburgh College. To the south-east are the policies of Hardengreen House, a category C listed building now used as a children's nursery. A strip of land within the site that abuts the south-east boundary, covering some 0.77 hectares, about 32% of the overall site, lies within the green belt as designated in the local development plan.
5. The remaining 68% of the site is effectively within the Dalkeith and Eskbank built up area. It is designated in the local development plan as site e11 which forms part of the established economic land supply.
6. An indicative plan submitted with the application shows business uses, including car parking, as occupying the northern part of the site. This would occupy some 80% of the allocated site. The remaining 20% would be given over to residential use together with almost all the green belt area. Small parts of the green belt area would be used for the SUDS pond and associated use.
7. The council points out that an application for Class 4 business use on the allocated site would be acceptable in principle. As it would be in accordance with the development plan I accept this view. The proposed development would however include residential use of the site and this would conflict with SESplan policy 2 and local development plan policies STRAT1 and ECON1 as quoted in the reasons for refusal. Overall the proposal as it affects the allocated site would not therefore accord with the development plan.
8. Local development plan policy ENV2 sets out criteria for the support of development within the green belt. These include necessity for agricultural, horticultural or forestry uses; provision of facilities for outdoor recreation and sport and access to the countryside; relates to uses appropriate to the rural character of the area; provides essential infrastructure or forms part of a nationally required development for which no other site is available. None of these apply in this case.
9. The council acknowledges that the green belt part of the site is in poor condition. This is partly because it was occupied by a now demolished steading building and works associated with the construction of the Borders railway. Arguably part of the site could be classed as brownfield.
10. From my site inspection it is clear the greenbelt boundary is indistinct, with only a post and wire fence in poor condition demarcating it from the allocated site. It does not in my view contribute to the green belt in any significant manner. As the appellant points out it does not serve any useful purpose and is subject to antisocial behaviour. Evidence of graffiti on the adjacent railway overbridge seen during my site inspection supports this view.

11. The council states that a case could be made to amend the greenbelt boundary at this location but considers a planning application is not the appropriate method for this. I accept this view and consider a review of the local development plan would be the correct way to take this forward. As matters stand however the green belt part of the proposal does not accord with the development plan.

12. Turning to material considerations Hardengreen House is a category C listed building that dates from 1796. Originally built as a farm house it was extended on a number of occasions since then. The old farm steading, as referred to above, has now been demolished. The house is currently used as a children's nursery. Former stable buildings which lie on the edge of the application site do not form part of the listing.

13. The house itself is situated within a generous plot and separated from the proposed site by woodland. The policies have already been affected by the construction of outbuildings for nursery use and planning permission has been granted for a two storey detached nursery building of contemporary design. This would be located adjacent to the main house. The part of the proposed development nearest to the house would be residential and taking all the above into account, especially the level of screening, I consider any impact there may be on the house's setting would not be significant.

14. Ten representations were received by the council objecting to the proposed development. The grounds include the greenbelt and open space uses, traffic and access matters, lack of demand for commercial units, schools and health facilities. None of these provide any support for the proposed development. Matters relating to the council's processing of the application are not relevant to my determination and should be pursued if necessary through other channels.

15. Drawing all these matters together I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and there are no material considerations which would still justify granting planning permission.

16. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Trevor A Croft*

Reporter





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**SECTION 42 APPLICATION 17/00385/S42 TO AMEND CONDITION 2(ii) (LANDSCAPING) IMPOSED ON A GRANT OF PLANNING PERMISSION 14/00334/S42 FOR THE ERECTION OF A PETROL FILLING STATION AND RESTAURANT/CAFE; FORMATION OF ASSOCIATED CAR PARKING AND VEHICULAR AND PEDESTRIAN ACCESS; AND ASSOCIATED WORKS ON LAND NORTH WEST OF FORDEL JUNCTION, DALKEITH**

Report by Director of Education, Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1** In May 2011 planning permission in principle was granted for the erection of a petrol filling station and restaurant/café; formation of associated car parking and vehicular and pedestrian access; and associated works on land north west of Fordel Junction, Dalkeith. A subsequent Section 42 application (14/00334/S42) was granted in June 2014 maintaining an extant planning permission for the proposed development on the site.
- 1.2** There have been consultation responses from Historic Environment Scotland, Scottish Environment Protection Agency, Scottish Government, Scottish Natural Heritage, Scottish Water, Transport Scotland, the Council's Archaeology Advisor and the Council's Policy and Road Safety Manager. There have been no representations.
- 1.3** The relevant development plan policies are policy 13 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies RD1, ENV4, ENV6, ENV7 and ENV11 of the Midlothian Local Development Plan 2017.
- 1.4** The recommendation is to grant planning permission subject to conditions.

**2 LOCATION AND SITE DESCRIPTION**

- 2.1** The application site comprises 3.64 hectares of agricultural land on the north side of the A68 Dalkeith Bypass. The site is located in the countryside approximately 2 miles south east of Dalkeith, immediately adjacent to the A68(T) Dalkeith Bypass. The majority of the site comprises the northernmost of the two loops formed by the A68, the

A6124 and the slip roads off the A68. In addition, the site includes parts of two fields to the south east of the slip road. The fields are bounded by timber post and rail fences, and hedgerows.

- 2.2 The site area is located on the elevated northern slope of a hill that forms part of the ridgeline known as the Mayfield/Tranent Ridge. That ridge forms the watershed between the valleys of the River South Esk and the Tyne Water. The elevated slopes of the Ridge afford extensive and dramatic views across the surrounding valleys and lowland towards the coast. The site is approximately 104 metres higher above sea level than Dalkeith High Street.

### **3 PROPOSAL**

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 and Planning Act 2019 (hereafter referred to as the Act), is to amend the wording of condition 2(ii) of planning permission in principle 14/00334/S42. The condition currently reads as follows:

*A landscape design statement detailing proposed new planting within the site; including trees, shrubs, hedging and grassed areas. The planting shall include planted up mounds along the edges of the site and tree planting incorporated in the layout of the site as illustrated on page 22 of the Design Statement submitted with the planning application.*

- 3.2 It is proposed that the phrase “as illustrated on page 22 of the Design Statement submitted with the planning application” be deleted. The justification for the proposal is the fact that planning permission has been granted in principle and the design shown in the Design Statement was indicative. The condition is intended to secure a detailed landscaping design which takes account of the layout and design that will be secured via other conditions; reference to an indicative design is unnecessary.
- 3.3 A Section 42 application is, in itself, a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore if planning permission is granted for this application it will supersede planning consent 14/00334/S42 if implemented.
- 3.4 Although a Section 42 application is a new planning application in law the Act states “on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”. The principle, layout and form of

development are not subject to assessment. Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply.

## **4 BACKGROUND**

- 4.1 Planning permission in principle 10/00340/PPP was granted in May 2011 for the erection of a petrol filling station and restaurant/café; formation of associated car parking and vehicular and pedestrian access; and associated works. The indicative plans and statements submitted with the application showed:
1. the erection of a petrol filling station incorporating 10 bays (8 car bays and 2 HGV bays) and a kiosk containing a small retail area for convenience and travel-related goods including snacks;
  2. the erection of a restaurant/cafe, including a drive-through facility and internal eating area;
  3. the erection of a “marker” building, which is a tall freestanding pillar that serves to easily identify the facility to travellers along the A68 and A6106;
  4. the formation of a vehicular access to the site;
  5. the formation of associated car parking, including an area for parking of long vehicles and service areas for the filling station and restaurant/cafe; and,
  6. the formation of a pedestrian route linking the filling station and restaurant/cafe over-bridge providing access to a site which was the subject of a separate application (ref.10/00339/PPP) for planning permission in principle for the erection of hotel, tourist retail outlet and tourist orientation centre and formation of associated car parking and vehicular and pedestrian access and associated works. (This application was subsequently withdrawn by the applicant.)
- 4.2 Planning permission in principle 14/00334/S42 was granted in June 2014 for a Section 42 application that deleted a condition that sought to secure a reduction in CO2 emissions when compared to the 2007 Building Regulations. The application was approved as by the time of submission new Building Regulations (with greater reductions in CO2 emissions) had been introduced. The granting of the Section 42 application had the effect of maintaining an extant planning permission for the site.
- 4.3 When application 10/00340/PPP was submitted in June 2010 the same applicant also submitted an application for planning permission in principle (ref.10/00339/PPP) for the erection of hotel, tourist retail outlet

and tourist orientation centre and formation of associated car parking and vehicular and pedestrian access and associated works on an adjacent site which is land bounded by the A68, the A6124 and north bound slip roads. This adjacent site is on the southern side of the A68(T) and is situated within the southernmost access loop of the A68(T). The application was called in by the Scottish Ministers on 3 November 2011 because of the possible implications for policies within the Edinburgh and the Lothians Structure Plan, the adopted Midlothian Local Plan 2008 and Scottish Planning Policy (SPP). On 22 November 2012 the Ministers confirmed that they were minded to grant planning permission in principle subject to conditions and to the prior signing of a legal agreement to secure developer contributions. Agreement could not be reached on the developer contributions and the application was withdrawn on 29 June 2018.

- 4.4 Applications 10/00339/PPP (southern site) and 10/00340/PPP (northern site that is the subject of the current application) were accompanied by an Environmental Statement (ES) prepared under the Environmental Impact Assessment (Scotland) Regulations 1999. This ES jointly covered both sites. The ES included: (i) a description of the proposed development; (ii) an assessment of alternative locations; (iii) a landscape and visual impact assessment (LVIA); (iv) a habitat assessment; an assessment of the impact on water resources; (v) an environmental desk study of ground conditions; (vi) a waste assessment; (vii) a cultural heritage assessment; (viii) an assessment of social and economic impacts; and, (ix) a summary and conclusions.
- 4.5 As part of the application process for the current planning application an Environmental Impact Assessment (EIA) screening was carried out to comply with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The screening conclusion was that due to the period of time that had elapsed between the original application and the current application an EIA was required and therefore an updated EIA Report should be submitted.
- 4.6 The Planning Authority provided a Scoping Opinion in June 2018 confirming that the EIA Report should address transport, ecology and landscape impact. Updated reports were submitted in November 2018.

## 5 CONSULTATIONS

- 5.1 **Historic Environment Scotland** does not object to the application.
- 5.2 **The Scottish Environment Protection Agency (SEPA)** does not object to the application.
- 5.3 The **Scottish Government** has confirmed that the submission of an EIA application has been noted in their records.
- 5.4 **Scottish Natural Heritage (SNH)** does not object to the application.

- 5.5 **Scottish Water** has advised that it has infrastructure (large Trunk mains) passing through the application site.
- 5.6 **Transport Scotland** does not object to the application.
- 5.7 The Council's **Archaeology Advisor** does not object to the application.
- 5.8 The Council's **Policy and Road Safety Manager** does not object to the application.

## 6 REPRESENTATIONS

- 6.1 No representations have been received.

## 7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

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

- 7.2 **Policy 13 (OTHER COUNTRYSIDE DESIGNATIONS)** requires Local Development Plans to review and justify additions or deletions to other countryside designations fulfilling a similar function to those of the Green Belt as appropriate. Opportunities for contributing to the Green Network proposals should also be identified.

Midlothian Local Development Plan 2017

- 7.3 Policy **RD1: Development in the Countryside** states that development opportunities that will enhance rural economic development opportunities will be permitted if:
- They are of a scale and character appropriate to the rural area and well integrated into the rural landscape; and
  - They are capable of being serviced with an adequate and appropriate access; and
  - They are capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, unacceptable discharge to watercourses; and
  - They are accessible by public transport and services (where appropriate); and
  - They are not primarily of a retail nature; and
  - They do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.

- 7.4 Policy **ENV4: Prime Agricultural Land** does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification to do so.
- 7.5 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.
- 7.6 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.7 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.

## **8 PLANNING ISSUES**

- 8.1 The main issue to be determined is whether the proposal accords with the development plan, unless material planning considerations indicate otherwise. The consultation responses received are material considerations.

### Principle of Development

- 8.2 The principle of the development at this location was established by the granting of planning permissions 10/00340/PPP and 14/00334/S42. There has been no material change in planning circumstances since the granting of the original permission which would warrant refusal of the Section 42 application on the grounds of the principle of development.

### Wording of Condition 2(ii)

- 8.3 The deletion of the phrase *“as illustrated on page 22 of the Design Statement submitted with the planning application”* from condition 2(ii) will improve the precision of the condition and therefore better reflect the guidance contained in the Scottish Government’s Circular 4/1998: The Use of Conditions in Planning Permissions. The amended



condition will have no impact on the planning authority's ability to secure an effective landscape scheme for the proposed development.

#### EIA Report

- 8.4 An Extended Phase 1 Habitat Survey was conducted on 29 October 2018 and a report of the findings was submitted as part of the updated EIA Report. The survey did not identify any protected species within the application site and assessed the arable land within the application site as being of very little ecological value. The proposal will have limited impact on local biodiversity and, via its landscaping, offers potential for improving local biodiversity.
- 8.5 The 2010 Environmental Statement (ES) included a Transport Assessment (TA) that assessed the impact of both proposed developments. The updated Transport Statement submitted with the current application identifies that the forecast travel flows are approximately 30% of the figure forecast in the 2010 TA. Both the Council and the Scottish Government were satisfied that the junction could accommodate the flows predicted in the 2010 TA; as the current proposal will only generate 30% of the previously forecast traffic flows it does not generate any concerns in relation to its impact on the effective working of the junction. Both Transport Scotland and the Council's Policy and Road Safety Manager were consulted on the application and neither consultee objected to the proposal.
- 8.6 The Landscape and Visual Impact Statement (LVIA) submitted with the 2010 ES was prepared in accordance with the then current Guidance for Landscape and Visual Impact Assessment (GLVIA2) which was published by the Landscape Institute in 2002. Updated guidance (GLVIA3) was published in 2013. In support of the current application a statement of review has been submitted comparing the methodology used in the 2010 LVIA with that set out in GLVIA3 and considering whether the changes to the guidance are likely to affect the findings of the original LVIA.
- 8.7 The LVIA is largely consistent with a report prepared under GLVIA3 and whilst some additional work would be required to comply with current standards, the current proposal is significantly reduced in scale when compared to the development assessed in the 2010 LVIA. The section of the A68(T) where the development is proposed was built as an entirely new road in the late 2000's and opened for use in 2009. The 2010 LVIA was carried out when landscape planting associated with the new road was relatively immature. The intervening years have allowed the planting to mature and development in the surrounding area has also increased. The reduction in scale of the development, when compared to the 2010 LVIA and the changes in the landscape character of the area are likely to result in the landscape and visual effects of the proposed development being similar to lower than the effects reported in the 2010 LVIA.

## Conclusion

- 8.8 The updated statements provided for the EIA Report indicate that the impact of the proposed development is likely to be less than that assessed in the 2010 ES. There are no material changes in planning circumstances that would warrant refusal of the current application. As is noted above a Section 42 consent is a new permission in law and planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply. It would be appropriate to attach the same conditions as attached to planning permission in principle 10/00340/PPP with the exception of the changes approved via application 14/00334/S42 and the current application.

## **9 RECOMMENDATION**

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

*There is a locational need and justification for the proposed development's countryside location; and, subject to conditions securing landscape mitigation, the proposed development can be satisfactorily integrated into the surrounding landscape. The proposal therefore complies with the policies of the Midlothian Local Development Plan 2017.*

Subject to the following conditions:

1. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each phase of the development, the provision of landscaping, trees and shrubs planting, the SUDS provision, transportation infrastructure and implementation of all of the recommendations made in the Extended Phase 1 Habitat Assessment for the site, dated June 2010. Development shall thereafter be carried out in accordance with the approved phasing unless otherwise approved in writing by the planning authority.

***Reason:*** *To ensure the development is implemented in a manner which mitigates the impact of the development process.*

2. Development shall not begin until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works 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 the buildings, external structures, roads and landscape mounds in relation to a fixed datum;



- ii a landscape design statement detailing proposed new planting within the site; including trees, shrubs, hedging and grassed areas. The planting shall include planted up mounds along the edges of the site and tree planting incorporated in the layout of the site;
- iii the location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- iv a schedule of plants to comprise species, plant sizes and proposed numbers/density;
- v a programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the new buildings on the site being occupied;
- vi proposed car park surfacing;
- vii proposed footpaths; and,
- viii 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. 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 adequate landscape mitigation including measures to have immediate impact in the interests of safeguarding the landscape character and amenity of the area.*

3. Development shall not begin until confirmation has been submitted to and approved by the Planning Authority that there is no contamination of the site and/or previous mineral workings required to be remedied; or alternatively, if there is contamination of the site and/or previous mineral workings required to be remedied 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.

Before any of the buildings or parking areas are brought into use 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.*

- 4. Development shall not begin until an application for approval of matters specified in conditions for the siting, design and external appearance of the service station building, restaurant/cafe, and marker building/structure and other associated structures has been submitted to and approved in writing by the planning authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. Development shall thereafter be carried out using the approved materials or such alternatives as may be approved in writing with the planning authority.

***Reason:*** *In the interests of safeguarding the character and visual amenity of the countryside.*

- 5. Development shall not begin until an application for approval of matters specified in conditions for the site access, roads, footpaths and cycle ways 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;
  - iv proposed visibility splays, traffic calming measures;
  - v proposed car parking arrangements;
  - vi a programme for completion for the construction of access, roads, footpaths and cycle paths; and
  - vii proposed lighting.

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 for 5(i)-(vi):*** *In the interest of road and pedestrian safety.*

**Reason for 5(vii):** *In the interests of safeguarding the landscape character and appearance of the area and to ensure that there will be no distraction or dazzle to drivers on the trunk road and that the safety of the traffic on the trunk road will not be diminished.*

6. 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 national and local planning guidance and advice.*

7. The restaurant/cafe and car parking and service areas hereby approved shall not come into use unless and until the petrol filling station also approved in terms of this planning permission comes into operation.

**Reason:** *In the interests of safeguarding the character and amenity of the countryside as the restaurant/cafe and car parking and service areas are only acceptable in the countryside in association with the operation of the petrol filling station for which there is a justifiable operation requirement for within the countryside, and not as independent standalone uses.*

8. The non-fuel retail sales from the petrol filling station shall be ancillary to the sale of fuel to motorists. Prior to the petrol filling station opening for business the proposed shop floor layout, detailing the items to be stocked, shall be submitted to and approved in writing by the Planning Authority.

**Reason:** *To ensure the use of the retail unit remains compatible with its countryside location and ancillary to the primary use of the petrol filling station.*

9. The proposed development shall conform to the following constraints:
  - i the detailed proposal shall provide for single-storey buildings only;
  - ii. the proposed surface water treatment for the development specified in the surface water drainage strategy report dated April 2011 docketed to this planning permission shall be implemented in full and made operational prior to any of the new buildings hereby approved being occupied. There shall be no variation therefrom unless with the prior approval of the Planning Authority; and,
  - iii. there shall be no drainage connections to the trunk road drainage system.

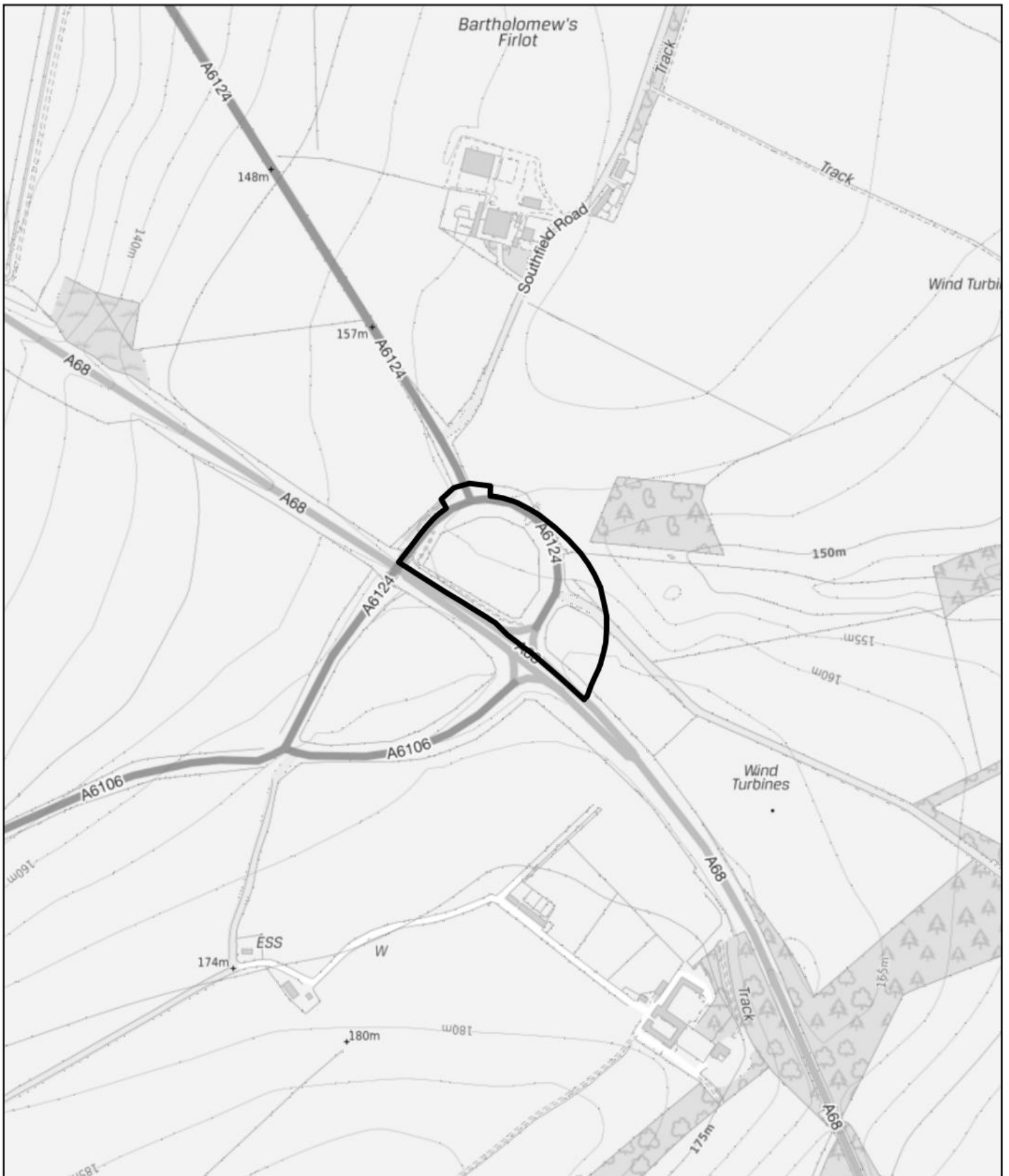
**Reason for 9(i):** *To ensure that the proposed development does not appear intrusive in the landscape and it can be sufficiently mitigated with landscaping.*

**Reason for 9(ii):** *To ensure that surface water is adequately drained from the site and to ensure that sufficient land is available within the site for tree and shrub planting to mitigate the landscape impact of the development.*

**Reason for 9(iii):** *To ensure that the efficiency of the existing drainage network is not adversely affected.*

**Dr Mary Smith**  
**Director of Education, Communities and Economy**

<b>Date:</b>	14 February 2020
<b>Application No:</b>	17/00385/S42
<b>Applicant:</b>	Cranstoun Estate, Fordel House, Fordel, Dalkeith
<b>Agent:</b>	Richard Heggie, Urban Animation, 22 Westhall Gardens, Edinburgh
<b>Validation Date:</b>	16 May 2017
<b>Contact Person:</b>	Graeme King
<b>Tel No:</b>	0131 271 3332
<b>Background Papers:</b>	10/00339/PPP, 10/00340/PPP & 14/00334/S42



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

Section 42 application to amend condition 2(ii) of planning permission 10/00340/PPP as amended by application 14/00334/S42 Land North West of Fordel Junction, Dalkeith

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