

# Notice of Meeting and Agenda



## Planning Committee

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

**Date:** Tuesday, 11 October 2022

**Time:** 13:00

**Executive Director : Place**

**Contact:**

Clerk Name: Democratic Services  
Clerk Telephone:  
Clerk Email: [democratic.services@midlothian.gov.uk](mailto:democratic.services@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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- |            |  |        |
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| <b>4.1</b> | Minute of Meeting of 30 August 2022 submitted for Approval | 5 - 14 |
|------------|--|--------|

## **5 Public Reports**

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- |            |   |         |
|------------|---|---------|
| <b>5.1</b> | Planning Enforcement Charter and Update Report and Charter for Approval - Report by Chief Officer Place   | 15 - 32 |
| <b>5.2</b> | Update regarding the use of Planning Conditions to cover the Duration of Planning Permissions - Report by Chief Officer Place                                 | 33 - 36 |
| <b>5.3</b> | Appeal Decision - Application for Planning Permission in Principle - Land at Stobs Farm, Lady Brae, Gorebridge (21/00252/PPP) - Report by Chief Officer Place | 37 - 48 |
| <b>5.4</b> | Application for Planning Permission - Land at Newbyres, Site B, River Gore Road Gorebridge (22/00066/DPP) - Report by Chief Officer Place                     | 49 - 80 |

(A) TO CONSIDER RESOLVING TO DEAL WITH THE UNDERNOTED BUSINESS IN PRIVATE IN TERMS OF PARAGRAPH 13 OF PART 1 OF SCHEDULE 7A TO THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973 - THE RELEVANT REPORTS ARE THEREFORE NOT FOR PUBLICATION; AND (B) TO NOTE THAT NOTWITHSTANDING ANY SUCH RESOLUTION, INFORMATION MAY STILL REQUIRE TO BE RELEASED UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 OR THE ENVIRONMENTAL INFORMATION REGULATIONS 2004.

## **6 Private Reports**

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- |            |  |
|------------|--|
| <b>6.1</b> | Outstanding High Hedge Notice requirements within garden of Ancrum House, 9A Ancrum Bank, Dalkeith |
|------------|--|
- 13. Information which, if disclosed to the public, would reveal that the authority proposes—(a) to give under any enactment a notice under or by

virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.

## **7 Date of Next Meeting**

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The next meeting will be held on Tuesday 22 November 2022 at 1 pm



# Minute of Meeting

Planning Committee  
Tuesday 11 October 2022  
Item No: 4.1



## Planning Committee

Date	Time	Venue
Tuesday 30 August 2022	1.00 pm	Via MS Teams

### Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Bowen	Councillor Cassidy
Councillor Curran	Councillor Drummond
Councillor McCall	Councillor McEwan
Councillor McKenzie	Councillor McManus
Councillor Milligan	Councillor Parry
Councillor Pottinger	Councillor Russell
Councillor Scott	Councillor Smaill
Councillor Virgo	Councillor Winchester

### In Attendance:

Derek Oliver	Chief Officer Place
Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
William Venters	Principal Solicitor
James Gilfillan	Consultant Policy and Planning
Janet Ritchie	Democratic Services Officer

## 1. Apologies

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No apologies were received

## 2. Order of Business

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The order of business was as set out in the Agenda.

## 3. Declarations of interest

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Councillor Winchester declared an interest with regards to 5.7 advising that she had met the Applicant's representative whilst in the Council buildings but at no time had she expressed a view on the Application.

## 4. Minutes of Previous Meetings

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The minute of the meeting of 14 June 2022 was submitted and approved as a correct record.

## 5. Reports

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Agenda No	Report Title	Submitted by:
5.1	Planning Obligations Annual Report 2021/2022	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this Report was to provide details of:</p> <ul style="list-style-type: none"><li>a) The framework in which planning obligations secure developer contributions and governance behind their spent;</li><li>b) The planning obligations entered into by the Council in financial year 2021/2022; and</li><li>c) The value of contributions paid to the Council in financial year 2021/2022.</li></ul> <p>The Planning, Sustainable Growth and Investment Manager presented this report highlighting the background to the report and the use of planning obligations to secure developer contributions, transfer land, restrict uses of land or require physical work and how this is governed. It was noted that planning obligations are also referred to as a legal agreement or a Section 75 agreement.</p> <p>The Planning, Sustainable Growth and Investment Manager also highlighted the appendices attached to the report which outline the details of the planning obligations that were entered into in the last financial year 2021/22 (Appendix 1) and planning obligations received in the same financial year (Appendix 2).</p> <p>In response to a question raised the Planning, Sustainable Growth and Investment Manager confirmed that there was no formal legal table on Developer's contribution although Midlothian is near the top in this respect.</p>		

Decision
<p>The Planning Committee:</p> <ul style="list-style-type: none"> <li>a) Noted the information set out in the report and attached appendices; and</li> <li>b) Agreed to receive an annual report setting out the level of developer contributions secured by planning obligations and the sum of developer contributions recovered within the reporting financial year.</li> </ul>
Action
The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.2	Tree Protection in Midlothian and the role of the Trees in mitigating Climate Change and Protecting and Enhancing Biodiversity.	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this Report was to inform the Committee of the protection given to trees in Midlothian, their important role in mitigating the effects of climate change and their contribution to biodiversity.</p> <p>At its meeting of 13 June 2022 the Committee requested a report with regard:</p> <ul style="list-style-type: none"> <li>the current legislation and policies that seek to protect trees and encourage their planting as part of the development process;</li> <li>the value trees have in mitigating against climate change; and</li> <li>Trees contribution towards biodiversity.</li> </ul> <p>The Planning, Sustainable Growth and Investment Manager in presenting this report highlighted the main sections of the report advising that the report sets out the legislative and regulatory framework with regards to trees.</p> <p>Thereafter the Planning, Sustainable Growth and Investment Manager responded to questions and comments raised and it was noted that the canopy cover in Midlothian could be given further consideration in the next local plan. The Planning, Sustainable Growth and Investment Manager also provided clarification on the removal of trees and the penalty if these have a TPO and advised that hedgerows do not have the same protection but further confirmed with the new Scottish Government National Framework to be adopted next year this will give additional weight to trees as well as green space.</p>		
Decision		
The Planning Committee noted the contents of the report.		
Action		
The Planning, Sustainable Growth and Investment Manager		

Agenda No	Report Title	Submitted by:
5.3	Supplementary Guidance: Low Density Rural Housing	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this Report was to update the Committee on the adoption of the Low Density Rural Housing Supplementary Guidance.</p> <p>In presenting this report the Planning, Sustainable Growth and Investment Manager advised that following its meeting in June 2022 the Committee agreed to adopt the Low Density Rural Housing Supplementary Guidance following the formal consultation process and that the Scottish Ministers were informed of the Council's intention to adopt the supplementary guidance. The Scottish Ministers did not propose to issue a direction in relation to the guidance and that the Council was free to adopt the guidance and this guidance is now available on the Council's website.</p>		
Decision		
The Planning Committee noted the contents of the Report.		

Agenda No	Report Title	Submitted by:
5.4	Guidance on the Role of Councillors in the Consideration of Pre-Application Consultations for Major Developments	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this Report was to advise the Committee of the recommended procedures for Councillors in the pre-application process.</p> <p>The Planning, Sustainable Growth and Investment Manager outlined the background to the report and the main procedures as detailed in Section 3 of the report.</p> <p>The Chair highlighted that following the Seminars and Training provided to Members it was important to put this on the agenda for the newly appointed Members to clarify the position with regards the proposals at pre-application stage.</p>		
Decision		
<p>The Committee:</p> <ul style="list-style-type: none"> <li>a) Noted the established guidance and Committee procedures set out in this report;</li> <li>b) Agreed to receive a regular report regarding any formal pre- application consultations by prospective applicants.</li> </ul>		
Action		
The Planning, Sustainable Growth and Investment Manager		



Agenda No	Report Title	Submitted by:
5.5	Pre - Application Report regarding Residential Development, the Erection of a Primary School and Associated Roads, Landscaping, Open Space, Footpath/Cycle Ways, Suds and Infrastructure on Land South East of Auchendinny, The Brae, Auchendinny, Penicuik (22/00577/PAC)	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this report was to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre application consultation for residential development, the erection of a primary school and associated roads, landscaping, open space, footpath/cycle ways, sustainable urban drainage system (SUDS) and infrastructure on land south east of Auchendinny, The Brae, Auchendinny, Penicuik.</p> <p>The pre application consultation was reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.</p> <p>The Planning, Sustainable Growth and Investment Manager outlined the main sections contained within the report and thereafter responded to questions and comments from the Committee. In responding to an issue raised with regards to infrastructure he explained the different processes regarding the different types of infrastructure and a further comment was made by Councillor McEwan highlighting that the systems monitoring this should be robust. It was also noted that with regards to all future applications that dust suppression is in place and covered under conditions. The Planning, Sustainable Growth and Investment Manager in responding to a further question regarding flooding advised that all housing schemes install SUDS to ensure there is no detrimental effect on or off site with regards to flooding, however, if there is a particular problem at present on site it should not make it worse and generally would improve the situation.</p> <p>The Planning, Sustainable Growth and Investment Manager also confirmed that with regards to the map on P63 he would provide an amended map identifying the different types of land within the orange boundary and this would be attached to the minute.</p>		
Decision		
<p>The Committee:</p> <ul style="list-style-type: none"> <li>a) Noted the provisional planning position set out in this report;</li> <li>b) Noted that any comments made by Members will form part of the minute of the Committee meeting;</li> </ul> <p>Noted that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.</p>		

d) Agreed that the Planning, Sustainable Growth and Investment Manager would provide a further detailed map outlining the different types of land within the orange boundary of map on P63 of the report and this would be appended to the minute.
<b>Action</b>
The Planning, Sustainable Growth and Investment Manager/Democratic Services

Agenda No	Report Title	Submitted by:
5.6	Pre - Application Report regarding the Erection of High School, Community Facilities, Veterinary Clinic, Formation of Sports Pitches, Car Parking and Associated Works at Land East and West of Seafield Moor Road, Bilston (22/00581/PAC)	Chief Officer Place
<b>Outline of report and summary of discussion</b>		
<p>The purpose of this report was to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre application consultation for the erection of a High School, Community Facilities, and Veterinary Clinic, formation of Sports Pitches, car parking and associated works at land to the East and West of Seafield Moor Road, Bilston.</p> <p>The pre application consultation was reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.</p> <p>The Planning, Sustainable Growth and Investment Manager outlined the main sections contained within the report and thereafter in responding to a question raised by the Chair whether the Council would have to find alternative housing land if this application was to go ahead and he confirmed that it would not be necessary to find alternative housing land as it was already covered in another development which exceeded the planned housing build.</p> <p>With regards the Science Park he confirmed there was still a quantum of land within the Science Park to develop and grow so this will not displace any bioscience projects coming forward. Also noted was comments regarding dust suppression and traffic management.</p>		
<b>Decision</b>		
<p>The Committee noted:</p> <ul style="list-style-type: none"> <li>a) The provisional planning position set out in this report;</li> <li>b) That any comments made by Members will form part of the minute of the Committee meeting;</li> <li>c) That the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.</li> </ul>		

Action
The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.7	Application for Planning Permission in Principle for a Mixed Use Development Comprising Class 2 (Professional Services), Class 8 (Residential Institutions), Class 9 (Residential), Class 10 (Non- Residential Institutions) and Sui Generis (Mixed Use of Retirement Flats and Assisted Living/Extra Care Flats) Uses; Affordable Housing; and Associated Enabling Works on an Area of Open Space at the Junction of the A701 and Pentland Road, Straiton. (21/00958/PP)	Chief Officer Place

#### Outline of report and summary of discussion

The application was for planning permission in principle for a mixed use development comprising Class 2 (professional services), Class 8 (residential institutions), Class 9 (residential), Class 10 (non-residential institutions) and sui generis (mixed use of retirement flats and assisted living/extra care flats) uses; affordable housing; and associated enabling works. The application site was an area of open space at the junction of the A701 and Pentland Road, Loanhead.

The Planning, Sustainable Growth and Investment Manager outlined the main sections contained within the report highlighting the proposal set out in section 3, the background and the consultations detailed within section 4 and 5 of the report and advised that the recommendation is to refuse planning permission for the reasons detailed in Section 9 of the report.

The Planning Sustainable Growth and Investment Manager in responding to a question regarding infrastructure confirmed that there was no additional infrastructure planned other than what was already identified in the application.

In response to several questions regarding the structure and stability of the ground he provided some background details of the ground condition in that area advising that any new development would require to carry out extensive survey work and this would be assessed on a case by case basis. He further advised that in principle any new development would require to stabilise the ground in which it needs to develop for the development to take place safely without causing any instability out with the site.

Councillor Parry, seconded by Councillor Imrie moved to refuse the application for the reasons as set out in the report.

Councillor Smaill sought clarification on the process if the application was refused and the Planning Sustainable Growth and Investment Manager advised that the Applicant has 4 options:

- To appeal to the Scottish Minister

<ul style="list-style-type: none"> <li>• To re-submit an amended scheme improving the application</li> <li>• To put forward a business case for the land to be allocated in next Local Plan</li> <li>• To accept the decision</li> </ul>
<b>Decision</b>
The Planning Committee refused the application for the reasons as set out in the report.
<b>Action</b>
The Planning, Sustainable Growth and Investment Manager

## **6. Private Reports**

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No items for discussion

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

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The next meeting will be held on Tuesday 11 October at 1.00pm

The meeting terminated at 14.12 pm



## Legend

**ENV1** – Protection of the Green Belt

**ENV4** – Prime Agricultural Land

**ENV6** – Special Landscape Areas

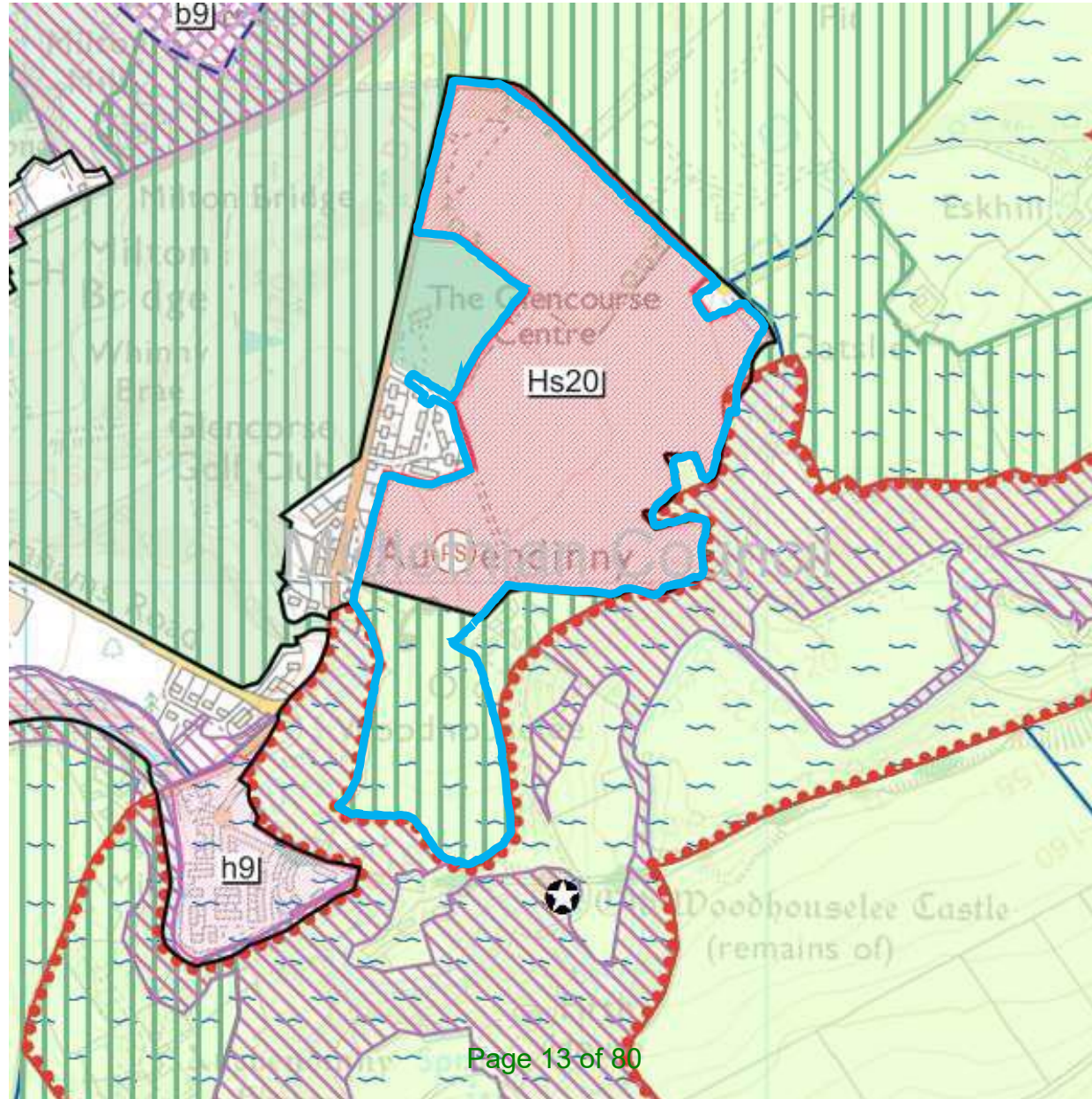
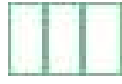
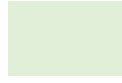
**ENV8** – Protection of River Valleys

**ENV14** – Regionally and Locally Important Nature Conservation Sites

**ENV23** – Scheduled Monuments

**RD1** – Development in the Countryside

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MLDP Map produced by Lovell Johns Ltd



## Legend



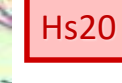
**Application Boundary** – 22/00577/PAC



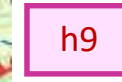
**DEV2** – Protecting Amenity in Built-Up Area



**DEV8** – Open Spaces (In Settlement Area)



**STRAT3** – Strategic Housing Land Allocations



**STRAT1** – Established Housing Land Supply



**STRAT1** – Established Economic Land Supply

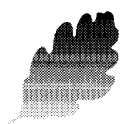


**ECON2** – Midlothian Science Zone



**IMP2** – Education Facilities: Primary School





## UPDATE REPORT ON PLANNING ENFORCEMENT ACTIVITY AND NEW MIDLOTHIAN PLANNING ENFORCEMENT CHARTER FOR APPROVAL

Report by Chief Officer Place

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### 1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of the Scottish Planning Enforcement regime, provide statistical details of complaints received, closed and notices served in the period 2019-2022 and to seek approval of an updated Planning Enforcement Charter which identifies priorities and targets for planning enforcement activity.

### 2 BACKGROUND

- 2.1 The Town and Country Planning (Scotland) Act 1997 as amended by the 2006 and 2019 Acts and associated regulations provide the legislative basis for the various forms of planning enforcement activity. Scottish Government guidance on the approach to be taken to enforcement work is contained in Circular 10/2009 – Planning Enforcement. Paragraphs 7-10 of the Circular provides a good overall summary of the framework that local planning authorities are operating within in relation to planning enforcement matters.
- 2.2 Paragraphs 7-10 of Circular 10/2009 – Planning Enforcement are as follows:

*7. Nothing in this guidance should be taken as condoning any breach of planning law. Planning authorities have a general discretion to take enforcement action against any breach of planning control if they consider such action to be expedient, having regard to the provisions of the development plan and any other material considerations. When they are considering whether any particular formal enforcement action is an expedient remedy for unauthorised development, planning authorities should be guided by the following considerations: planning authorities, under the provisions of the 1997 Act, have primary responsibility for taking whatever enforcement action may be necessary in the public interest, in their administrative area.*

*Decisions in such cases, and any resulting action, should be taken without undue delay. Failure to do so could constitute grounds for a finding of maladministration by the Scottish Public Services Ombudsman. In considering any enforcement action, the planning*

*authority, with regard to the development plan, should consider whether the breach of control would affect unacceptably either public amenity or the use of land and buildings meriting protection in the public interest. Enforcement action should always be commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of planning control which has no material adverse planning implications (but see paragraph 8 below). However, planning authorities should be aware that failure to take enforcement action against a breach of planning control could be subject to a referral to the Scottish Public Services Ombudsman*

*8. While it is the case that it may be possible to resolve a breach of planning control through informal negotiations, particularly where the breach is relatively minor and/or unintentional, where such an approach is initially unsuccessful, further negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop. Planning authorities should bear in mind the statutory time limits for taking enforcement action and, in particular, the possibility that a referral to the Procurator Fiscal to determine whether to initiate a criminal prosecution may need to be made promptly in those cases where breaches have to be prosecuted within 6 months of the date on which the offence was committed. This is not the date of the alleged breach of planning control but the last date of failure to comply with the Notice requiring the breach to be remedied.*

*9. The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.*

*10. Planning authorities have a wide choice of available options for taking enforcement action, whenever they consider it appropriate. Authorities need to assess, in each case, which power (or mix of powers) is best suited to dealing with any particular suspected or actual breach of control to achieve a satisfactory, lasting and cost-effective remedy. Rapid initiation of enforcement action is usually vital to prevent a breach of planning control becoming well established and more difficult to remedy.*

**2.3 The time limits on taking enforcement action are identified at paragraphs 10-12 of the Circular:**

*10. Where a breach of planning control consists of the carrying out of any form of 'operational development' without planning permission, section 124(1) provides that enforcement action may only be taken*



*within 4 years of the date on which the operations were 'substantially completed'. This provision extends to building, engineering, mining and other operations in, on, over or under the land.*

*11. Where a breach of planning control consists of a change of use of any building (which, for the purposes of the 1997 Act, includes part of a building) to 'use as a single dwellinghouse', section 124(2) provides that enforcement action may only be taken within 4 years of the date of the breach. This time limit applies both where the change to use as a single dwellinghouse involves development without planning permission, and where it involves a failure to comply with a condition or limitation to which a planning permission is subject.*

*12. Where there is any other breach of planning control - i.e. a breach involving any material change in the use of land (other than a change to use as a single dwellinghouse) either without planning permission, or in breach of a condition or limitation to which a planning permission is subject - section 124(3) provides for the 10 year time limit on enforcement action to apply.*

- 2.4 It should be noted that there are no time limits for taking enforcement action in relation to unauthorised works to listed buildings.
- 2.5 In Midlothian all valid planning enforcement complaints received are investigated. Investigations will take different time period depending on the nature of the issue involved and the complexity of the case. Typically an enforcement complaint will be closed for one of the following five reasons:
- Investigations identify that there is no breach of planning control;
  - There is a breach of planning control but it is considered to be a minor/technical breach and not harmful and therefore not expedient to take further action;
  - The breach has been resolved informally;
  - Retrospective planning permission has been granted for the previously unauthorised development; or
  - Formal enforcement action has been taken and the notice served has been complied with.
- 2.6 The details of the different enforcement powers open to the Council are set out in the attached Planning Enforcement Charter.

### **3 MIDLOTHIAN PLANNING ENFORCEMENT CHARTER**

- 3.1 Section 158A of the Town and Country Planning (Scotland) Act 1997 as amended requires a planning authority to prepare an enforcement charter. This is a publicly available document setting out how the enforcement system works, in particular, the role of the planning authority and the service standards it sets itself.
- 3.2 The proposed updated charter sets out:

- the background to planning enforcement;
- the different types of notice available to local planning authorities;
- the considerations the local planning authority must have in contemplating enforcement action including expediency;
- service standard and priorities; and
- the new requirement from the Planning (Scotland) Act 2019 for Scottish local authorities to proactively monitor major development sites.

- 3.3 Once the Enforcement Charter is approved it will be published on the Council's website. Furthermore, the intention is to transfer the attached word document into a more attractive version with visual representations in line with the suite of other planning documents on the Council's website.

## 4 ENFORCEMENT ACTIVITY

- 4.1 The below tables sets out the number of enforcement complaints received and closed and enforcement notices served for the period 2019-2022.

Table 1- Enforcement Complaints Received and Closed 2019-2022

	2018/19	2019/20	2020/21	2021/22	2022/23*
<b>Complaints received</b>	157	135	127	71	23
<b>Cases closed</b>	133	80	80	172	46

\*Q1 2022/2023 – 1 April -30 June 2022

Table 2- Notices Served by Midlothian Council 2019-2022

	2019	2020	2021	2022**
<b>Planning Contravention Notice</b>	6	0	9	9
<b>Enforcement Notice</b>	2	3	1	8
<b>Breach of Condition Notice</b>	3	0	1	0
<b>Section 179 (Amenity Notice)</b>	0	0	0	1
<b>Section 33A – Submission of a Planning Application</b>	0	0	1	9

\*\*to date

## **5 RECOMMENDATION**

- 5.1 It is recommended that the Committee:
- a) Note the report on Planning Enforcement Matters;
  - b) Approve the attached Midlothian Planning Enforcement Charter 2022 and agree to its publication; and
  - c) Delegate to the Planning, Sustainable Growth and Investment Manager any formatting matters to enable the Planning Enforcement Charter to be uploaded onto the Council's website in a more attractive format with visual representations in line with the suite of other planning documents on the Council's website.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 30 September 2022  
**Contact Person:** Matthew Atkins Lead Officer Planning Obligations and Enforcement  
matthew.atkins@midlothian.gov.uk

# Midlothian Council

## Planning Enforcement Charter 2022

**To ensure an effective, consistent and clear approach to carrying out enforcement with regards to breaches in planning control**

The Scottish Government's Circular 10/2009 Planning Enforcement recognises that: "The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach."

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## 1 Introduction to Planning Enforcement

The vision defined within the Local Outcomes Improvement Plan (LOIP) for Midlothian is:

**“By 2030 Midlothian will be a carbon neutral area with a sustainable green economy, built and natural environment; where working in partnership with residents, community organisations, public service agencies and businesses we will have reduced inequalities in learning, health and economic circumstances over life; both between Midlothian residents locally, and between Midlothian residents and Scottish averages.”**

Planning Enforcement plays an important role in achieving these goals and improving the quality of life and civic pride amongst our communities. The Midlothian Planning Enforcement Charter is focused on ensuring that Midlothian continues to be a place of choice to live and work because of the good quality of life it provides. It will ensure that Midlothian maintains a high quality built environment and fosters civic pride amongst residents who are proud to call Midlothian their home.

The Council is responsible for dealing with issues of Planning Enforcement across Midlothian. This is important to ensure that all development accords with both national and local planning policies while at the same time achieving the Council's spatial vision for Midlothian.

Development without planning consent can cause upset and distress for residents, businesses and visitors to Midlothian. Most breaches of planning control are not a criminal offence although there are some notable exceptions, such as unauthorised works to listed buildings, unauthorised works to protected trees and demolition in conservation areas without consent.

All complaints regarding a potential breach of planning regulations are subject to an initial investigation and the Council has discretion over what action will be taken and when. This will be based on the particular merits of each individual case and enforcement action will be taken where and when it is considered fair, reasonable, proportionate and expedient to do so.

The Planning Enforcement Charter sets out how the Council will deal with breaches of the planning regulations. It provides information and guidance to residents, developers and those with other interests, regarding how the Council will deal with developments which do not accord with national and local policies. It seeks to balance the concerns of local people with the rights of land and property owners, and sets out the nature and timescales associated with taking timely enforcement action where appropriate.

The enforcement process followed by the Council is in accordance with the national approach set out in the Scottish Government's Circular 10/2009 Planning Enforcement <https://www.gov.scot/publications/planning-circular-10-2009-planning-enforcement/>

## 2 Planning Enforcement – The Basic Principles

The Definitions - The Planning Enforcement system can only take action against **development** that does not have planning permission and is a **breach of planning control**:

### So what is Development?

The meaning of “development” is defined with the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) Section 26(1) as:

...“development” means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land”

### What is a breach in planning control?

A breach of planning control is defined under Section 123(1) of the 1997 Act:

- a) Carrying out development without the required planning permission, or
- b) Failing to comply with any condition or limitation subject to which planning permission has been granted,
- c) Initiating development without giving notice in accordance with Section 27A(1) of this Act, or
- d) Carrying out development without displaying a notice in accordance with Section 27C(1) of this Act.

Considering these definitions what can the Council investigate and not investigate under its Planning Enforcement function:

### The Council's Planning Enforcement Service can investigate the following:

- ~ Development consisting of the change of use of land/buildings without planning consent;
- ~ Works to listed buildings without consent;
- ~ Any activity giving rise to direct or indirect damage to protected trees or qualifying trees in conservation areas;
- ~ Non-compliance with conditions attached to a grant of planning permissions;
- ~ Unauthorised building works and/or engineering works; and
- ~ The display of unlawful advertisements.

### The Council's Planning Enforcement Service cannot investigate:

- ~ Boundary disputes and other land ownership issues (including servitudes, wayleaves and title conditions) which are civil matters outwith the remit of planning legislation;
- ~ Devaluation of property, including that caused by damage from the development process;
- ~ Obstructions, parking and traffic enforcement;

- ~ Graffiti and anti-social behaviour;
- ~ Dangerous structures; and
- ~ Noise nuisance

**Before taking enforcement action consideration will be given to the Human Rights Act 1998 and to the Equalities Act 2010.**

### **3 Time Limits for Taking Enforcement Action**

The Council may take enforcement action against unacceptable unauthorised operational development (building and engineering works) for up to four years from the date the breach commences. Operational development includes, for example:

- ~ Alterations and/or extensions to residential properties;
- ~ Alterations and/or extensions to commercial properties;
- ~ Alterations to shop fronts;
- ~ The erection of boundary fencing;
- ~ Engineering operations comprising the changing the level of land or the formation of a hardstanding;
- ~ The erection of a new building.

For any other development involving a change of use of land and/or building/s or a breach of a planning condition the Council may take action up to **ten** years from the commencement of the breach.

There is an exception to this '*10 year rule*' - for any development involving a change of use to a residential use (Class 9 or Sui Generis flat) the Council has four years to take enforcement action.

For listed buildings there is no time limit to taking action as long as the breach of planning control happened after the building was listed.

### **4 Making an Enforcement Complaint**

In order to investigate a potential breach of planning control the Council will require: the address of the specific property/s or premise/s at which the alleged breach is taking place;

- ~ Details of the alleged breach of planning control; including details of the location, scale and timings of the alleged breach;
- ~ The complainant's name, address and email/telephone contact details;
- ~ The Council will **not** accept any enquiries submitted anonymously or complaints that the Council consider to be vexatious.

**Confidentiality** - Any details submitted to the Council in relation to an enforcement complaint will be treated in the strictest confidence. The Council will not reveal the identity of the complainant to those parties responsible for the alleged breach of planning control.

Enforcement complaints can be made in the following ways:

**Online** via [Planning and building | Midlothian Council](#)

**By email** via [planning.enforcement@midlothian.gov.uk](mailto:planning.enforcement@midlothian.gov.uk)

**By Post**

Planning Enforcement  
Fairfield House  
8 Lothian Road  
Dalkeith  
Midlothian  
EH22 3AA

## 5 Priorities for Planning Enforcement

All enforcement complaints are important to us, however to manage the limited resource effectively we must prioritise complaints so that the breaches which have the potential to cause the most harm are dealt with quickly and efficiently. A breach of planning regulations will be assessed according to the following categories:

**1. Significant Harm** includes:

- ~ Development with serious and immediate implications upon the continued health and wellbeing of the public;
- ~ Loss of a protected tree/s;
- ~ Loss or damage to a listed building;
- ~ Breaches of Planning Obligations - non-payment of financial contribution.

**2. Medium Harm** includes:

- ~ Unauthorised development which would adversely affect the character and appearance of a conservation area or the setting of a listed building;
- ~ Unauthorised building and/or engineering works;
- ~ Unauthorised changes of use;
- ~ Breaches of planning conditions which result in harm to general amenity; and
- ~ Breaches of planning conditions in relation to major developments.

**3. Low Harm** includes:

- ~ Unauthorised signage and advertisements (unless the sign/advert seriously affects public safety);
- ~ Any breach of planning control which is of a temporary nature (unless public safety is compromised);
- ~ Unauthorised fences, walls and gates outside of a Conservation Area (unless as identified as being harmful to highway/pedestrian safety in which case it will be considered as Medium Harm);
- ~ Development that, based on the information provided and/or an initial consideration, is unlikely to be a breach of planning control;



- ~ Unauthorised telecommunications equipment or satellite dishes on residential dwellings; and
- ~ Untidy land

## 6 Midlothian Planning Enforcement – Objectives and Process

The Council aims to treat all service users in a fair manner and will deal with all cases where a breach is discovered in a transparent way.

Where a breach has occurred we will:

- ~ Communicate clearly to the responsible person/s by explaining what steps are required to resolve the breach and the possible consequences in the event that those steps are not taken;
- ~ Update the complainant about what actions are being taken - this means we will inform them at each key stage of the process, for example, during the progress of the investigation, whether an enforcement notice has been served or if an appeal against a notice has been received;
- ~ Show identification when we visit a site;
- ~ Take formal enforcement action where required in the event that attempts to negotiate a remedy appear to fail;
- ~ Explain the right of appeal against any notices issued;
- ~ Let the complainant know the final outcome of their complaint.

Although personal circumstances may be considered in some instances and each enforcement complaint received will be considered on a case by case basis, the Council will generally deal with enforcement complaints in line with process set out in Section 7 of this Charter.

## 7 What you can expect when making an enforcement complaint

When your complaint is received by the Council it will be subject to initial screening and categorised as Significant Harm, Medium Harm or Low Harm. You will receive an acknowledgment detailing how your case has been prioritised and details of the case officer who will be dealing with your complaint.

The site will be visited within:

- ~ 5 working days\* for cases of **Significant Harm**
- ~ 10 working days for cases of **Medium Harm**
- ~ 20 working days for cases of **Low Harm**

\*A breach causing immediate irreversible unacceptable harm will be visited within 48 hours.

Following this site visit an initial assessment will be carried out and if no breach is discovered the case will be closed. It is acknowledged that in some instances it may be that the level of harm won't be apparent until a site visit has been carried out and in some cases the priority level of the case adjusted.

If a breach of planning control has occurred the owner and/or relevant parties will be advised by the Council of the action that they need to take to remedy the breach.

This could include:

- ~ The cessation of the use of land and/or buildings or the removal of any unauthorised building/engineering works; or
- ~ Submit a retrospective planning application in an attempt to regularise the breach of planning control. The submission of a planning application does not automatically mean planning permission will be forthcoming.

The owner and/or relevant party will be given up to 28 days to comply with these requirements.

After the expiry of the 28 day period a second assessment will take place by the Planning, Sustainable Growth and Investment Service to determine if it is expedient to take further action. This will take into account the nature of the breach of planning control, the harm caused by the development and the intentions and actions of the owner and/or relevant parties to this point.

### **“Expedient”**

Where it is considered expedient to pursue the case one of the following options is likely to be required:

- ~ Further negotiation/investigation is required to making a determination if formal action is required;
- ~ Further evidence needs to be secured - this can be achieved through the service of a formal Planning Contravention Notice (PCN) on land owners/occupiers; or
- ~ The service of a formal notice requiring action to be taken by a set deadline. A full list of notices and explanations is included in Section 8 of this Charter.

### **“Not expedient”**

It is at the Council’s discretion whether to take formal enforcement action. Planning breaches may be unintentional or be considered technical or trivial. The Council will take action when it is considered fair and reasonable to do so and is proportionate to any harm caused. In some cases where there is a breach of planning control the harm caused is minor, meaning action is not justified, for example it is not expedient to pursue the case.

**Each case will be determined on its own individual merits.**

### **Expediency**

There are no statutory definition of expediency although it has been considered in the Courts and relevant case law identifies that local authorities when determining whether it is expedient to take action should consider the following:

- ~ Is the proposed action in the public interest (not private interest);
- ~ The breach is sufficiently harmful to justify taking action;
- ~ The proposed action is reasonable and commensurate with the breach in planning control to which it relates;
- ~ The action undertaken would be cost effective; and
- ~ Or not take action if the development is in accordance with planning policies.

## Timescales

It is important to remember that Planning Enforcement action can be a lengthy process and potentially frustrating process for all involved. The Enforcement Team aims to resolve breaches as quickly as possible.

~ We aim to close 60% of our cases within 16 weeks of receipt of a complaint; However, due to the nature of enforcement and the effects of external factors such as the timescales involved in appeals to the Scottish Ministers and prosecutions, some cases will take longer. We appreciate your patience.

## 8 Enforcement Controls – Notices and Other Powers

### Breach of Condition Notice (Section 145 of the 1997 Act as amended)

Used for enforcing the conditions applied to any planning permission. It is effective from the date it is served. It may be used as an alternative to an enforcement notice (see below), and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal against this notice. Contravening a breach of condition notice can result in the Council deciding to prosecute, with a fine of up to £5,000 per offence.

### Enforcement Notice (Section 127 of the 1997 Act as amended)

This notice is generally used to deal with unauthorised development but can also be used for a breach of planning conditions. There are similar notices and powers to deal with listed buildings and advertisements, (see below). An Enforcement Notice will specify a time period to take effect (usually a minimum of 28 days) and will specify what steps that must be taken to remedy the breach and the time for this to be completed after the take effect period. There is a right of appeal against an Enforcement Notice, and the terms of the notice are suspended until a decision is reached. Failure to comply with the terms of an Enforcement Notice within the time specified is an offence and may lead to the imposition of a fine of up to £50,000 per offence.

### Fixed Penalty Notice (Section 136A and 145A of the 1997 Act as amended)

Where there is non-compliance with an Enforcement Notice or Breach of Condition Notice, the Council can serve a fixed penalty notice. The fine has been set at £2,000 for non-compliance with an Enforcement Notice, and £300 for non-compliance with a Breach of Condition Notice. There is no right of appeal against these notices, although timeous payment prevents the Council from reporting the non-compliance with the original notice to the Procurator Fiscal. It should be noted however that this type of notice cannot be served where a person has already been prosecuted for non-compliance with the same Enforcement or Breach of Condition Notice.

### Listed Building Enforcement Notice (Section 34 Planning (Listed Buildings and Conservation Areas) Act (Scotland) 1997)

This must be served on the current owner, occupier and anyone else with an interest in the property, and the procedures involved are similar to those outlined above in relation to Enforcement Notices. The notice must specify the steps to be taken to remedy the breach and specify a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence. There is the right of appeal against the notice. Breaches of listed building control are a serious matter. It is a criminal

offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building, and this could, in certain circumstances, lead to a fine up to £50,000 or imprisonment.

#### Stop Notice (Section 140 of the 1997 Act as amended)

This is only used in particularly urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety or a significant impact on public amenity. A Stop Notice is served with an Enforcement Notice. A Stop Notice cannot prohibit the use of a building as a dwellinghouse or prohibit the carrying out of any activity if the activity has been carried out for a period of more than four years. If a Stop Notice is served without due cause, or a subsequent appeal against a parallel Enforcement Notice is upheld, the Council may be open to claims for compensation. The use of Stop Notices therefore needs to be carefully assessed by the Council. There is no right of appeal against a Stop Notice, and failure to comply with its terms is an offence and may lead to the imposition of a fine of up to £50,000 per offence.

#### Temporary Stop Notice (Section 144A of the 1997 Act)

In certain cases where a breach of planning control is considered to have a severe impact on amenity, a Temporary Stop Notice can be served. These do not require to be accompanied by an Enforcement Notice and last for a maximum of 28 days. There is no right of appeal against a Temporary Stop Notice, and failure to comply with its terms is an offence and may lead to the imposition of a fine of up to £50,000 per offence.

#### Notice requiring application for planning permission for development already carried out (Section 33A of the 1997 Act as amended) – A Section 33A Notice.

Where the Council considers that a development which does not have planning permission may be acceptable (i.e. they consider that it might be granted planning permission) they may issue a notice requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing such a notice does **not** guarantee that permission will be granted; the Council may, on consideration of the application, decide instead to refuse permission, or to grant permission subject to conditions or alterations to make the development acceptable. In the event of non-submission - the Council has to assess whether it is expedient to take further enforcement action.

#### Planning Contravention Notice (Section 125 of the 1997 Act as amended)

Used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations which apply to any planning permission already granted. Supplementary information or representations on the matters raised in the notice may also be requested. There is no right of appeal against a Planning Contravention Notice, and failure to comply with its terms is an offence and may lead to the imposition of a fine of up to £5,000 per offence or £10,000 for knowingly providing false or misleading information.

### Requisition of Information Notice (Section 272 of the 1997 Act as amended)

Provides limited powers to obtain information on interests in land and the use of land. There is no right of appeal against a Requisition of Information Notice, and failure to comply with its terms is an offence and may lead to the imposition of a fine of up to £1,000 per offence.

### Amenity Notice (Section 179 of the 1997 Act)

Allows the Council to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. The notice, which is also known as an 'Amenity Notice', and sets out the action that needs to be taken to resolve the problem within a specified period. There is a right of appeal and the terms of the notice are suspended until a decision is reached. If the notice is not complied with the Council can decide to undertake the required works (direct action) and then recover the costs.

### Advertisement powers

The Council's powers are set out in the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. The Council have powers to serve Advertisement Enforcement Notices in relation to advertisements that are unauthorised in terms of the above regulations. A notice of this type can specify a time period (normally 28 days) for compliance with its terms. However, this period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety. Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined up to £5,000 per offence and £50 per day for continued display after conviction. The Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately. Council officials can enter unoccupied land, if necessary, to remove an advertisement. However, they have no powers to remove advertisements displayed within a building to which there is no public access. The content of an advertisement is not covered by planning control. Any complaints about advertisement content should be made to the Advertisement Standards Authority.

### Interdict, Interim Interdict and Injunction

This is a court order used to stop or prevent a breach of planning control. Such applications are considered by the courts on their own merits. Before initiating proceedings, the Council will consider the likely outcome and the risk of incurring wasted expenditure.

### Direct action

Failure to comply with the terms of an Enforcement Notice within the time specified can result in the Council carrying out the specified work. The Council may then recover its costs from the landowner.

### Power to Enter Land

The Council has powers to enter land to investigate alleged breaches of planning control, to check whether there has been compliance with a formal notice, or to check whether a breach has been satisfactorily resolved. This power applies to any land and may involve officials entering land owned by neighbours adjacent to the site of the breach or alleged breach.

### Unauthorised Works to Protected Trees (Section 171 of the 1997 Act as amended)

S171 of the 1997 Act defines that it is an offence to carry out works to trees subject to statutory protection, which results in their uprooting, felling, lopping or wilful destruction, without the Council's prior consent. In addition to planning controls a Felling Permission from Scottish Forestry may be required to fell trees. Guidance can be found: <https://forestry.gov.scot/support-regulations/felling-permissions>

Formal action can be taken against persons who have carried out unauthorised works to trees that are subject to statutory protection by virtue of either a Tree Preservation Order (TPO) or a tree(s) being within a Conservation Area. Where protected trees have been removed or destroyed formal action can be taken through the service of a Tree Replacement Notice to secure replacement planting. In some cases, reports of offences may be submitted to the Procurator Fiscal and, if successful, can result in fines up to £20,000.

### High Hedges

The High Hedges (Scotland) Act 2013 came into effect on 1 April 2014. It grants local authorities the power to act as independent adjudicators in disputes between neighbours with regard high hedges. Before that date there was no Scottish local government mechanism to resolve disputes between neighbours regarding overgrown hedges. The legislation was designed to provide a solution to the problem of high hedges if they interfere with people's right to 'reasonable enjoyment' of their property. In order for an application for a High Hedge Notice (HHN) to be considered, the applicant is required to produce formal evidence that attempts have been made to settle the issue with their neighbour beforehand. Following a full assessment of a HHN application, the Council can either decide to issue a HHN or dismiss the application. If a HHN is issued, it ordinarily requires the owner of the HH to take steps to reduce its height and to maintain the hedge thereafter at a reduced height. Non-compliance is enforced by direct action and recover of costs where possible.

## 9 Direct Action Policy

In order to ensure the Council is able to resolve breaches of planning consent in a timely manner it has the power to instigate direct action where works have not been undertaken in compliance with an enforcement notice – the Council can then seek to recover the cost the remediation works.

### Background

If the requirements of an enforcement notice are not met within the period of compliance specified in the notice, Section 135 of The 1997 Act as amended grants the Council additional powers to:



- ~ Enter the land and take the steps to satisfy the requirements of a notice; and
- ~ Recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

In light of the social, physical and financial issues surrounding the use of Direct Action, this Policy serves to provide details of the procedure/considerations for undertaking such action and the process by which the Council will seek to recover the costs of this action.

### **When will direct action be taken?**

Direct action may be taken either in isolation of, or in conjunction with court remedies, including an interdict. The Council may choose to take action as follows:

- ~ Where the requirements of an enforcement notice have not been complied with by the compliance date; and
- ~ Where the Council considers that direct action is necessary to remedy the harm caused by a planning breach.

### **Direct action procedure**

Once the date to comply with the requirements of an enforcement notice expires, Council officers will visit the site to check compliance. If following this site visit it is confirmed that the notice has not been complied with in full, the Council will assess whether it is expedient to take additional action, including prosecution, an injunction and/or direct action.

The Council will write to the owner/responsible parties to advise of the intention to take direct action, at least 28 days before works are due to take place.

In order to access the property, the Council may need to liaise with other services including the Police and/or Bailiffs.

In taking direct action the Council may appoint an officer to project manage the works on-site to ensure that the steps of the notice are complied with.

It should be noted that any materials, debris or other items that are removed from a premises throughout the course of undertaking direct action will be stored securely for a minimum of three days.

The Council will take steps to advise the owner(s) of these items and how to recover such possessions. After this time the Council may choose to dispose of this material or sell them to recover the expenses of taking direct action.

### **Process for recovery of costs**

In accordance with the provisions of Section 135 of The 1997 Act as amended, the Council will undertake all reasonable endeavours to recover expenses incurred in undertaking direct action. A charge will be applied to the land and an invoice sent to owners/responsible parties; this charge is binding on successive owners of the land to which the original Enforcement Notices relates. This charge will take effect on the date that the Council undertakes direct action to comply with the Enforcement Notice.

The expenses recoverable will include such sums as the Council considers being reasonable in respect of its establishment charges. An establishment charge is the reasonable charge that a Local Authority incurs for administering the direct action procedure.

The Council will take all reasonable steps to recover the expenses as a debt and will raise an invoice in accordance with its existing practice and procedures and if the debt remains unpaid, the Council will take steps to register the charge for payment at the Land Register to be noted against the title of the property.

## 10 Planning Obligations

The Council proactively monitors compliance with planning agreements entered into pursuant to Section 75 of the 1997 Act as amended to ensure that financial contributions are paid in a timely manner and in accordance with the provisions of the agreement. If the Council identifies ongoing development taking place without the necessary contributions being paid or required infrastructure being provided, the Council reserves the right to seek arrestment of the developer's bank account(s) and/or interdict the development pursuant to Section 146 of The 1997 Act to ensure adherence to the terms of the planning agreement. As a standard requirement the Council requires that provision is made in planning agreements for late interest on unpaid sums to attract an interest rate of 8% above the Bank of England base rate.

## 11 Compliance

The Planning Acts require that Councils set out in their Enforcement Charters how they will monitor compliance with the planning permissions for major developments. The Council already proactively monitors commencement of major developments (and other developments that are subject to a Planning Obligation). From 1 April 2023 the Council will aim to visit each major development that is in the course of being implemented/constructed and undertake a check in relation to the approved plans and relevant conditions every two months. Relevant details will be recorded in a spreadsheet that will be updated and made available for public viewing online. Any specific issues brought to the Council's attention may lead to additional monitoring activity.





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## UPDATE REGARDING THE USE OF PLANNING CONDITIONS TO COVER THE DURATION OF PLANNING PERMISSIONS.

Report by Chief Officer Place

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### **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise the Committee of new regulations which implement sections of the Town and Country Planning (Scotland) Act 2019 in relation to the requirement to use planning conditions to limit the duration of planning permissions (based on commencement of development, not completion of development).
- 1.2 This report will also provide advice to the Committee in relation to the determination of planning applications in respect to timescales limiting the duration of planning permissions and will recommend a procedure in relation to applications for planning permission which have already been considered by the Committee but have not yet been issued (as they are subject to the legal processes associated with securing developer contributions).

### **2 BACKGROUND**

- 2.1 The Town and Country Planning (Scotland) Act 1997 set out a requirement for development secured through the grant of planning permission (both in detail and principle) to be commenced within a prescribed timescale. This time scale was to be secured through the use of planning conditions.
- 2.2 The Town and Country Planning (Scotland) Act 2006 subsequently removed the requirement to use planning conditions to specify the duration of the planning permission. The legislation set out a direction in respect to the time periods within which development was to commence before the permission would lapse and, as such, planning conditions were not necessary.
- 2.3 The 2006 Act made the situation less clear for applicants/developers and members of the public, who were not always aware of the date by which a development was meant to commence given that it was not specified within the conditions attached to the decision notice.

- 2.4 The Town and Country Planning (Scotland) Act 2019 sets out a requirement for conditions to again be used in order to cover the duration of a planning permission. The legislation states that applications for (detailed) planning permission have three years within which development must be commenced and five years for applications for planning permission in principle. Should a condition not be attached to a planning decision the legislation requires the development to comply with those timescales.
- 2.5 Aside from the change to the requirement to now use planning conditions to limit the duration of planning permissions one other change is to the actual time within which development approved through an application for planning permission in principle is to be commenced. The 2019 Act simplifies the position in that, irrespective of the submission of any applications in relation to discharging matters specified in conditions, development must start on the scheme approved through the planning application in principle within five years of the original decision notice.
- 2.6 The Council can agree to alternative durations for the planning permission through the use of the planning conditions. In order for alternative timescales for the commencement of development to be considered justification needs to be submitted by the applicant for assessment. There may be specific circumstances that justify shorter or longer periods before a planning permission lapses.
- 2.7 In addition, the 2019 Act allows planning authorities to attach conditions with regard to the timing of making applications for approval of detailed matters, and as to the phasing of development.
- 2.8 The clarity provided in relation to the duration of a planning permission in relation to a planning permission in principle may be welcomed by local communities. However, it is the case that applicants can apply to modify or remove a planning condition through section 42 of the Act. Despite this, there may be material considerations which could result in a section 42 application not being approved.
- 2.9 The abovementioned changes came in to effect on 1 October 2022.

### **3 PROCEDURE**

- 3.1 Standard planning conditions covering the duration of planning permission have been revised and reintroduced. Unless an alternative time period has been assessed as being appropriate all planning applications which are approved are subject to the conditions below:

#### Application for planning permission

**Condition:** The development to which this permission relates shall commence not later than the expiration of three years beginning with the date of this permission.

**Reason:** *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

Application for planning permission in principle

**Condition:** The development to which this permission relates shall commence not later than the expiration of five years beginning with the date of this permission.

**Reason:** *To accord with the provisions of Section 59(2) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

- 3.2 When considering future development proposals at the Committee, members may wish to consider whether it is the Council's view that development should commence within a particular timescale. However it would be necessary to carefully justify any change from the position set out in the legislation.
- 3.3 There are a small number of planning applications which have been considered by the Committee which are still to have a decision issued. This could be due to various reasons, but it is usually as a result of ongoing discussions regarding developer contributions. When these applications were originally considered by the Committee it was not a requirement to attach planning conditions in relation to limiting the duration of the planning permission. For any planning decisions issued after the 1 October 2022 it will be necessary to attach the conditions which appear in paragraph 3.1 above.

## **4 RECOMMENDATION**

- 4.1 It is recommended that the Committee:
- a) notes that planning conditions relating to the duration of planning permission will be attached to planning decisions from the 1 October 2022; and,
  - b) agrees that planning applications which have been considered by the Committee at previous meetings and are to be approved, but the decision notice not yet issued, are to be subject to the planning conditions stated in paragraph 3.1 of this report.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 30 September 2022  
**Contact Person:** Duncan Robertson, Lead Officer Local Developments  
duncan.robertson@midlothian.gov.uk





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**APPEAL DECISION WITH REGARD APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE 21/00252/PPP, FOR RESIDENTIAL DEVELOPMENT, FORMATION OF ACCESS ROADS AND CAR PARKING, A SUSTAINABLE URBAN DRAINAGE SYSTEM AND ASSOCIATED WORKS AT LAND AT STOBS FARM, LADY BRAE, GOREBRIDGE.**

Report by Chief Officer Place

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## **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise the Committee of an appeal decision with regard an application (21/00252/PPP) for planning permission in principle for residential development, formation of access roads and car parking, a sustainable urban drainage system (SUDS) and associated works on land at Stobs Farm, Lady Brae, Gorebridge.

## **2 BACKGROUND**

- 2.1 The stated planning application was subject to an appeal for non-determination as it had not been determined by the local planning authority within the statutory period of time as set out in the application report presented to the Committee at its meeting of 15 March 2022.
- 2.2 At its meeting of 15 March 2022 the Committee determined to invite the Scottish Government Reporter appointed to determine the appeal to refuse planning permission – the Reporter dismissed the appeal and refused planning permission. A copy of the appeal decision is attached to this report.
- 2.3 The planning application was subject to 56 objections and an objection from the Gorebridge and District Community Council.

## **3 THE DECISION**

- 3.1 In reaching a decision to refuse planning permission because of the developments potential impact on the landscape and visual amenity the Reporter concluded “I find the proposal would represent an undesirable and excessive incursion of development in a highly prominent part of the landscape, giving rise to significant adverse landscape and visual effects to the detriment both of the character of Gorebridge and its setting, and by virtue of the development’s influence upon wider areas of countryside. On this basis, the development would

fail to accord with criterion (a) of SESplan policy 7, and it would also be contrary to LDP policy ENV 7 ('Landscape character').

- 3.2 However, in reaching the decision, which aligned with the Committee's aspirations, the Reporter did reach two other significant conclusions, one with regard effective housing land supply and the second with regard meeting demands on education capacity.
- 3.3 The first significant conclusion relates to the Council's housing land supply position. The Reporter concluded that because the Council does not have any housing targets beyond 2024 (because Scottish Government Ministers rejected SESplan2 on transportation grounds, not housing targets, SESplan1 is considered out of date and Scottish Ministers have delayed adopting National Planning Framework 4 (NPF4), which will set Midlothian's new housing targets) it is automatically assumed Midlothian has an effective housing land supply shortfall. This is despite the Reporter acknowledging there is no Scottish Government methodology to work out an effective housing land supply, the lead Reporter in assessing Midlothian's Local Development Plan at examination in 2017 concluding the Council had an effective housing land supply and subsequent Housing Land Audits (agreed by Homes for Scotland – the umbrella group for the house building industry) confirmed Midlothian had an effective housing land supply and that the proposed development will not automatically contribute to the pre 2024 targets.
- 3.4 Although the Reporter's conclusion on the Council's effective housing land supply position can be considered to be unreasonable and in the immediate future it leaves the Council vulnerable to other housing appeals (at present no other appeals are pending), it is only a temporary situation until NPF4 is adopted, and although the deadline has slipped on a number of occasions the Scottish Government's latest commitment is to adopt NPF4 in autumn 2022. NPF4 will set new housing targets for Midlothian, the draft NPF4 was setting an annual supply target of 805 units a year.
- 3.5 With regard the second significant conclusion which related to education capacity, the Reporter stated "I do not consider it to be satisfactory for the Council to indicate that there is an education capacity problem but fail to present solutions to it (whether temporary or permanent)". In effect, if a developer is proposing to fund an education solution to a restriction on education capacity, the Council should identify a solution rather than refuse a planning application on education capacity grounds.

## **4 RECOMMENDATION**

- 4.1 It is recommended that the Committee notes the planning appeal decision with regard residential development and associated works at land at Stobs Farm, Lady Brae, Gorebridge.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 30 September 2022  
**Contact Person:** Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager  
peter.arnsdorf@midlothian.gov.uk



## Appeal Decision Notice

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Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2061
- Site address: Land at Stobs Farm, Lady Brae, Gorebridge, EH23 4HN
- Appeal by Hallam Land Management and CEG against the failure to give a decision by Midlothian Council
- Application for planning permission in principle 21/00252/PPP dated 01 April 2020
- The development proposed: residential development (indicative total of around 308 homes) and associated works
- Date of site visit by Reporter: 31 March 2022

Date of appeal decision: 1 September 2022

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### Decision

I dismiss the appeal and refuse planning permission in principle.

### Preliminary matter

The council provided a screening opinion which concluded that an Environmental Impact Assessment (EIA) would not be required to accompany this planning application. Having regard to the criteria outlined in Schedule 3 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, which relate to the characteristics of the development, its location and likely impacts, I agree with the council's conclusion that this proposal would not constitute EIA development.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The adopted development plan is principally comprised of the Edinburgh and South East Scotland Strategic Development Plan (the SDP, known as SESplan) adopted in June 2013; and the Midlothian Local Development Plan, adopted in November 2017 (the LDP). There is also associated supplementary guidance which accompanies the SDP and LDP.

2. Having regard to the provisions of the development plan the main issues in this appeal are (i) the principle of development, having regard to whether there is a sufficient effective housing land supply; (ii) landscape and visual effects; and (iii) how infrastructure requirements would be met.

#### Principle of development

3. The sufficiency or otherwise of the effective housing land supply is a potentially determinative matter in this appeal, because the location of the development would in normal circumstances be contrary to the development plan. It is outwith the settlement



boundary for Gorebridge, and in an area designated as countryside. LDP policy RD 1 ('Development in the countryside') outlines the limited circumstances in which development may be permitted in the countryside. The proposed development is incapable of aligning with any of the exceptions the policy provides to the otherwise general presumption against development in this location. The development would be directly contrary to policy RD 1 on this basis.

4. The appellant's case for why the development ought to be granted consent is both predicated and reliant on the assertion that in Midlothian, there is an insufficient effective housing land supply. This is in the context of the provisions of SESplan policy 6 ('Housing land flexibility'), which requires each constituent planning authority to maintain at least five years' effective housing land supply at all times. In turn, policy 7 ('Maintaining a five year housing land supply') permits the release of unallocated greenfield sites where necessary to maintain a five years' effective housing land supply, subject to more detailed criteria also being satisfied. LDP policy STRAT 2 similarly also relaxes the presumption against housing development outwith built-up areas where a housing land shortfall emerges.

5. Whilst SESplan pre-dates Scottish Planning Policy (SPP) 2014, in this regard it is consistent with SPP paragraph 123 which also requires planning authorities to maintain enough effective land for at least five years. Where a shortfall emerges, paragraph 125 of SPP makes clear that development plan policies for the supply of housing land will not be considered up-to-date. In accordance with SPP paragraph 33, this would engage the presumption in favour of development which contributes to sustainable development as a significant material consideration. The scale of any shortfall would also affect the weight, or in other words the 'the tilted balance' in favour of development, which would need to be outweighed by significant and demonstrable adverse impacts in order for the refusal of planning permission to be justified in the overall planning balance.

6. In city regions, the starting point for assessing the adequacy of the current effective housing land supply is the housing supply target and housing land requirement set by the strategic development plan. In this regard, the age of SESplan and the fact that it is overdue for replacement means that it does not provide a sufficiently forward-looking figure against which the adequacy of land supply can be assessed. The figures stated for Midlothian (which appear in the SESplan supplementary guidance 'Housing land' published in November 2014) only extend to 2024. It is therefore impossible to calculate how much effective housing land would be enough for at least five years.

7. This situation with the development plan prevents me from being able to assess the sufficiency of the housing land supply. Whilst the SPP presumption is engaged as a significant material consideration in this case by virtue of this aspect of the development plan being out-of-date, a finding of a shortfall in the effective housing land supply would require the tilted balance to be applied, as outlined above, in addition to SESplan policy 7. However, there is no way in which a definitive finding on the adequacy of the housing land supply can be reached when the figures stipulated by SESplan (and repeated in the LDP) do not apply beyond 31 March 2024. It would be inappropriate for me to attempt to reach a finding by applying my own assumptions or some other approach which deviated from the five-year requirement, because this would not be adequately grounded in policy or evidence.

8. Notwithstanding this finding, I consider there is still some merit in exploring what the available evidence indicates in regard to the housing land supply situation. The appellant and council have presented their respective positions on how this matter should be approached, and I also sought further written submissions to further explore the issue. In

the absence of any satisfactory alternative to an up-to-date housing land requirement, I am reliant on other evidence to establish whether, on balance, it would be reasonable for the appeal to be determined in accordance with the normal provisions of the development plan relating to housing, or whether a shortfall in housing land could more fairly be assumed at this time.

9. I do not consider that calculations based on housing figures in the rejected replacement SDP (SESplan2) or in draft National Planning Framework 4 (NPF4) provide any basis for reaching conclusions on the adequacy of the current effective housing land supply, given the respective statuses of these documents. The expected adoption of NPF4 later this year is an important material consideration in my view, the reasons for which I return to below, but I do not consider that weight can be given to housing figures for Midlothian set out in the draft version, particularly given these could be subject to (potentially significant) change.

10. The LDP states that the current housing land requirement for the overall plan period to 2024 is for 12,490 homes. The appellant has highlighted that the means by which this figure was set in the LDP (i.e. by not applying a generosity margin to the SESplan figure, which is also 12,490) was inconsistent with the approach taken in the Edinburgh LDP and West Lothian LDP examinations. However, the question of whether a generosity allowance should be added was a matter which was expressly considered during the examination of the Midlothian LDP. There would be no justification to now interpret the housing land requirement stated in the LDP as a housing supply target to which a generosity margin should be added. To do so would disregard what the LDP deliberately states.

11. Based on information contained in the housing land audits for 2018, 2019, and 2020 (and whilst being mindful of the limitations of accurate forward programming), this provides some indication of whether or not, at those points in time during the current plan period, there was likely to have been at least five years' effective housing land supply.

12. The council has applied the average methodology (which is simply based on the annualised requirement multiplied by five) whilst the appellant has made the case for why the residual methodology (which takes account of completions to date) ought to be favoured. Ultimately I can see advantages and disadvantages of both options. Government policy does not stipulate which methodology ought to be favoured, and neither option can be deemed to be definitively right or wrong.

13. The respective methodologies unsurprisingly give starkly contrasting results. In 2018, 2019 and 2020, the average methodology indicates that an effective land supply sufficient for in excess of six years could have been demonstrated at the time of each audit. Meanwhile using the residual methodology would indicate less than a five-year effective supply, with the shortfall growing year-on-year from 1,049 units in 2018 to 2,002 units in 2020.

14. Regardless of which methodology is used, as already explained it is impossible to make an up-to-date calculation of how much land would represent a five-year effective housing land supply when there is not a housing land requirement applicable to the next five years. Furthermore, even if it was accepted that a shortfall may have existed at other points in time during the current plan period, it does not necessarily follow that a shortfall would still exist today.

15. What is not in dispute between the appellant and council is the number of homes which have been built so far in the current plan period. In the 12 years between 2009

and 2021, a total of 6,809 homes have been completed in Midlothian. That leaves three years before the end of the plan period for a further 5,681 homes to be completed, if the housing land requirement of 12,490 homes to be built between 2009 and 2024 is to be achieved. The council has indicated that the draft 2022 housing land audit records that at least 802 units have been completed between April 2021 and March 2022. On that basis, this would leave two years for in the region of 4,879 homes to be built if the number of homes required to be built during the current plan period is to be met. I have seen nothing to suggest that this would be achievable, and given this would require the rate of annual completions to be at least three times higher than has been achieved so far in any other year during this plan period, in my view it is inconceivable that completions will be sufficient to align with the housing land requirement for the plan period.

16. Whilst housing completions are almost certainly going to fall some way short of the number required during the overall plan period, this does not in itself demonstrate that an insufficient effective housing land supply must have been the cause, or that a land supply shortfall must exist now. The council has referred to various external factors outwith its control which has suppressed completion rates. These include the 2008/9 recession and, very recently, the pandemic. I am in no doubt that such significant influences would be capable of adversely affecting housing completion rates. That said, as the appellant has highlighted, there would have been various options available to the council to respond to a reduced rate of completions and site-specific delays through its action programming, which may have limited the scale of the emerging shortfall across the overall plan period.

17. It is relevant to note that, across the plan period of 2009 – 2024, the 2017 LDP predicted a total housing land supply of 12,997 (i.e. 507 units more than the overall housing land requirement). There do not appear to have been any obvious deficiencies in the overall supply situation at the point at which the LDP was adopted, which could have signalled that a shortfall in the effective land supply could be anticipated to emerge during the plan period. That said, all supply assumptions have their limitations, and they can rapidly alter.

18. As I have already outlined, in the absence of a sufficiently forward-looking housing land requirement, it is impossible to make a finding on whether the council is currently maintaining at least a five-year effective housing land supply. Based on other relevant evidence and indicators, and in particular the fact that the number of homes likely to be completed by 2024 will fall some way short of the number that had been planned for in this period, there is some cause to assume that a more generous supply of effective housing land may have lessened this shortfall. Planned sites have either failed to become effective when envisaged, and/or the build-out rates have not kept pace with programming. In either scenario, the identification and release of additional sites may have to some extent enabled this increasing shortfall in actual completions to have been avoided.

19. In practice I am rather sceptical that supply is to blame for the under-delivery of new homes in Midlothian. Given the rate of delivery has been less than expected (and noting the various other influences which have affected build-out rates and/or the uptake of sites in this period) I have difficulty with the notion that a release of additional sites would have led to any notable increase in completion rates.

20. There is also still a distinction to make between the effective land supply and actual completion rates, and I recognise that the need to rely on other evidence and assumptions, rather than an up-to-date housing land requirement, is in itself a rather unsatisfactory situation for both the appellant and the council. The absence of a sufficiently up-to-date housing land requirement in my opinion represents a failure of the plan-led system. The

only meaningful proxy measure of the adequacy of 'supply' is now completion rates, and despite the limitations of this approach, I find this to be the best available evidence. On this basis, I shall for the purposes of this assessment assume that a shortfall in the effective housing land supply exists. Noting the scale of shortfall in completions relative to the housing land requirement, I take this to indicate that a moderate angle of tilt in favour of the development should be applied in this regard, to be taken forward into the overall planning balance.

21. Having reached this conclusion, a relevant material consideration is whether the delivery of housing on the site would help to address the assumed shortfall in an appropriate timeframe. Where new homes would not be completed until after 2024 (being the date against which a shortfall in actual completions can be anticipated), it follows that these would do nothing to address the shortfall by the end of the current plan period. In such circumstances it is fair to consider whether any housing completions on the site beyond 2024 should be afforded the same weight as those which would help to lessen the shortfall during the plan period.

22. Furthermore, it is a well-established principle that development plans, and plan periods, operate independently from one-another, the practical effect of which is that (under)-performance against a previous plan does not fall to be taken into account in development management decisions made under a current, up-to-date development plan. In other words, when a new development plan is published which sets a new housing land requirement (or equivalent) for Midlothian, this will effectively 'reset' the housing situation entirely, and there would be no need or expectation to have ongoing regard to shortfalls against targets in a superseded development plan. In reaching this conclusion, I note and draw support from the appellant's own view expressed in paragraph 1.42 of its further written submissions (which I appreciate was made in support of a different argument), where it asserts that "Any shortfall arising against those [2009-2024] housing figures will exist in perpetuity until such time as a new development plan is approved and adopted".

23. In paragraph 9 I have already alluded to the relevance of NPF4 in this case. It cannot be ignored that NPF4 is expected to be published during 2022. Even if this current timescale was to experience some delay, there is no reason to envisage its publication being pushed back to beyond 2023. Once published, NPF4 will be part of the development plan and will, with immediate effect, provide a minimum all-tenure housing land requirement for Midlothian. This means that by the earliest date that the proposed development could conceivably provide any housing completions (i.e. during 2023), the housing land requirement would have already been reset. In policy terms at least, any homes built on this site would be counted as contributing to meeting the new NPF4 requirement, rather than reducing the scale of a shortfall in completions relative to a requirement set in SESplan (that is out-of-date and which will have been formally superseded by NPF4).

24. Ultimately however, until NPF4 is published in its final form I consider the most pragmatic approach is to consider the proposal in the context of how the additional housing could help to address the housing supply situation as it presents itself today. Having found that a shortfall should in this case be assumed, there is nothing before me to indicate that the appeal site is not effective, and therefore it is capable of helping to remedy the assumed shortfall, albeit that the majority of completions would be beyond the current plan period. Whilst a future policy resolution to the shortfall can be anticipated as imminent, I do not consider this to currently outweigh the case for releasing additional land for housing.

25. In principle, the proposal aligns with and benefits from the support of SESplan policy 7, on the basis of my assumption that an effective housing land shortfall exists.

Compliance or otherwise with policy 7 overall is however subject to three criteria (a-c) as outlined in the policy. I consider these in turn below.

(a) Would the development be in keeping with the character of the settlement and local area?

26. A landscape and visual appraisal has been prepared in support of the proposal. I have had careful regard to the reasoning and findings of this document, related submissions and matters discussed in correspondence between the appellant and council, before reaching my own conclusions. I also referred to the appraisal during my site inspection.

27. The proposed development would represent a substantial urban extension to the southeast of Gorebridge. The site is relatively elevated, in parts steeply sloping, and the eastern boundary of the site broadly follows the ridgeline which is well defined in views from the west.

28. In plan form, the development would appear to extend southwards to a broadly comparable extent to other recent residential development on the south side of Gorebridge, located further to the west. However, given the elevation and topography of the appeal site, this development would in my opinion have notably more pronounced landscape and visual effects than those other recent schemes. The substantial tract of intervening agricultural land between the appeal site and recent development to the west means that, in practice, there would be very little, if any, sense of the developments visually relating to one-another. Instead it would result in the proposed development appearing as a relatively isolated, linear, even sprawling, incursion into a highly prominent area of countryside.

29. Considered as a whole, the site would poorly visually relate to Gorebridge, and other residential developments on the south side of the settlement do little to alter this perception. Those developments are at a significantly lower level. The residential development immediately to the north of the appeal site, on the opposite side of Lady Brae, is more comparable in that it occupies a relatively elevated position. However, the levels are still noticeably lower than the majority of the appeal site. It is also apparent that care has previously been taken to establish Lady Brae as a strong and defensible urban edge in this location, and in landscape and visual terms this has been successful in my opinion.

30. This is not to say that the entirety of the appeal site is necessarily devoid of development potential due to the nature of resultant landscape and visual effects. Furthermore, adverse effects need to be balanced against the importance of addressing the housing supply shortfall. However, I have particular concern over the landscape and visual effects which would occur from the development of the site to the south side of Stobs Farm (considered as 'compartments' B and C in the landscape and visual appraisal). Whilst I note the potential for landscaping and planting plans to some extent soften the development's appearance over time, in my view it would be unlikely to adequately mitigate the adverse effects of developing the site. The development would remain highly prominent due to its elevation and gradient across the site.

31. I find that the southernmost parts of the site in particular would have a disproportionately greater impact than the part of the site closer to Lady Brae ('compartment A'). Development of compartments B and C would starkly encroach into an area with an otherwise obviously more rural character, which contributes both to the setting of Gorebridge as well as forming a rural backdrop in other views, in areas more firmly within a countryside context, to the east and south. The photomontages for viewpoints 1, 2, 5



and 6 provided in the landscape and visual appraisal together illustrate examples of the effects of the development at both shorter and longer range, and show how the visual influence of the development extends considerably further than other parts of Gorebridge. They also illustrate a rather disjointed relationship with the current, well defined urban edge and pattern of more recent development.

32. All told, I find the proposal would represent an undesirable and excessive incursion of development in a highly prominent part of the landscape, giving rise to significant adverse landscape and visual effects to the detriment both of the character of Gorebridge and its setting, and by virtue of the development's influence upon wider areas of countryside. On this basis, the development would fail to accord with criterion (a) of SESplan policy 7, and it would also be contrary to LDP policy ENV 7 ('Landscape character').

(b) Would the development undermine green belt objectives?

33. The appeal site is not within the green belt and therefore it would have no bearing upon the objectives of green belt designations. Accordingly, the proposal would comply with criterion (b) of SESplan policy 7.

(c) Is any additional infrastructure required as a result of the development either committed or to be funded by the developer?

34. It is reasonable to expect that any development of this scale and type would require additional infrastructure in order to be satisfactorily accommodated. In this case and based on the responses of relevant consultees, I am satisfied that the vast majority of infrastructure matters (such as road improvements, public transport links and utilities) are capable of being satisfactorily addressed through the use of appropriate conditions and/or a legal agreement.

35. The only matter relating to infrastructure over which there is ongoing dispute between the appellant and council is in regard to the capacity of local schools to accommodate additional pupils from the development. I sought further written submissions on this matter, and it is clear from the respective positions of the council and appellant that disagreement over the scale and duration of any potential capacity issues stem from the assumptions used in the respective assessments.

36. Regardless of the precise scale of any predicted capacity issues, there is a need to identify the potential solutions in order to overcome the constraint in education capacity. In this regard, the appellant has outlined various measures which it considers could be employed in order to ensure that sufficient school capacity would be maintained, and it has confirmed that it would be agreeable to making a proportionate financial contribution towards these. The council has not agreed that these measures would be deliverable or appropriate, but critically it has not put any alternative solutions forward. In effect therefore, education capacity constraints are in this instance being presented by the council as an insurmountable constraint to any further housing development in Gorebridge

37. In my view, the council's position is at odds with the thrust of SESplan policy 7 and its intention to enable the release of additional housing land if needed. Criterion (c) of the policy recognises that infrastructure requirements may exist, and it places the onus on the developer to meet the costs of a solution where one is not already committed. The policy does not envisage a situation that infrastructure capacity would act as an absolute

constraint to development even in the face of a developer's agreement to meeting proportionate costs to resolve the matter.

38. In this context, I do not consider it to be satisfactory for the council to indicate that there is an education capacity problem but fail to present solutions to it (whether temporary or permanent). In the absence of any agreement over what ultimately may be the most appropriate means of resolving the capacity constraints identified, I simply note that the appellant has confirmed its agreement to meeting proportionate costs for necessary measures. In doing so, and subject to this being secured as necessary, the requirement of policy 7(c) would be satisfied.

#### Overall planning balance

39. The principle of development - and therefore the outcome of this appeal - ultimately rests on whether the additional housing being proposed, or the resultant landscape and visual effects, ought to be afforded the greater weight in the overall planning balance. There are a range of other relevant matters (including economic impact; accessibility; ecology; and use of prime agricultural land for development) but there are none which I consider to be individually capable of being pivotal to the question of the acceptability of the principle of residential development at this location.

40. The proposed development would be contrary to SESplan policy 7, on the basis that the development would be in conflict with criterion (a). However, that in itself does not mean that planning permission should be refused, particularly given the development plan is out of date and as an effective housing land shortfall is assumed. It is entirely possible that the importance of increasing the housing land supply, and ultimately delivery of new homes, could still outweigh the adverse impacts of development, when a tilted balance is applied in recognition of the assumed housing situation.

41. In considering whether this development would contribute to sustainable development, I have also had regard to the terms of SPP and the six qualities of successful place outlined therein. I find the proposal would fail to align with the attributes of a 'distinctive' development by virtue of part of the site's particularly poor relationship to the existing settlement form, landscape setting and topography. The landscape and visual effects would be disproportionately harmful for a development of this scale, for the reasons outlined in my foregoing assessment.

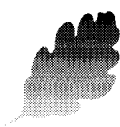
42. I have previously noted that the timing of the development is a material consideration, in the context that NPF4 is expected to be published this year. However, even if this matter is set aside entirely and I assume that there is both an ongoing effective housing land shortfall and no prospect of an imminent policy resolution to it, I still reach the same conclusion that the development proposed would not represent a sustainable form of development overall on the basis of its landscape and visual impact.

43. Once NPF4 is published, it would be for the council to establish whether additional sites would need to be allocated in this area and, if so, whether any parts of the appeal site would be an appropriate option to take forward into a future iteration of the LDP. That process would inevitably take account of the locations of any other further allocations in and around Gorebridge and their physical relationship to one-another. This appeal decision relating to the full site area as proposed, and in the context of the current pattern of development, would not fetter the council's ability to reconsider the site, or parts of it, for housing at a future point in time and in the wider context of plan-making.

44. As it stands however, for the reasons set out above, the proposed development does not accord overall with the relevant provisions of the development plan. Having applied the presumption in favour of development which contributes to sustainable development as a significant material consideration in this case, and having also applied a moderate tilted balance in recognition of the assumed housing shortfall, I still conclude that there are no material considerations which would be sufficient to justify granting planning permission in the face of the significant adverse effects I have identified. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Christopher Warren*  
Reporter





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**APPLICATION FOR PLANNING PERMISSION 22/00066/DPP FOR  
ERECTION OF 96 DWELLINGS; FORMATION OF ACCESS ROAD, CAR  
PARKING, SUDS, LANDSCAPING AND ASSOCIATED WORKS AT LAND  
AT NEWBYRES SITE B, RIVER GORE ROAD, GOREBRIDGE**

Report by Chief Officer Place

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

- 1.1 The application is for the erection of 96 dwellings, the formation of access road, car parking, sustainable urban drainage system (SUDS), landscaping and associated works on land at Newbyres Site B, River Gore Road, Gorebridge.
- 1.2 There have been 71 representations (69 objections and two in support) and consultation responses from the Coal Authority, the Scottish Environment Protection Agency (SEPA), Scottish Water, Network Rail, the Council's Archaeological Advisor, the Council's Ecological Advisor (TWIC), the Council's Policy and Road Safety Manager, the Council's Flooding Officer, the Council's Education Resource Manager, the Council's Land Resources Manager and the Council's Senior Manager Protective Services.
- 1.3 The relevant development plan policies are Policy 5 and 7 of the South East of Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT 1, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV17, ENV18, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).
- 1.4 The recommendation is to grant planning permission subject to conditions and the applicant entering into a planning obligation to secure contributions towards necessary infrastructure and the provision of affordable housing.

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The application site occupies some 4.57 hectares of land on the western edge of Gorebridge. It includes the majority of the land (apart from an area of approximately 1 hectare of land adjacent to its south western corner) comprising the allocated, committed, housing site h24 in the Midlothian Local Development Plan 2017. Mature woodland

bound the site to the northwest and west and playing fields in Gore Glen lie beyond the woodland further to the northwest. Existing private houses and their associated gardens bound the site to the north, northeast and east. These private houses are part of the development known as the Birchwood Estate. The Borders Railway line bounds the site to the south.

- 2.2 The site is on the southwest facing slope of the Gore Water Valley. There is an average gradient of around 1 in 15 over the major part of the site, which increases to up to 1 in 8 in more localised areas towards the southern site boundary. The majority of the site is rough grassland.

### 3 PROPOSAL

- 3.1 Detailed planning permission is sought for 96 residential dwellinghouses with associated roads, landscaping, open space, footpath/cycle ways, a sustainable urban drainage system (SUDS) and other associated works. The details comprise:

- 96 dwellinghouses, including affordable housing (24 dwellinghouses);
- Formation of one new primary vehicular access road taken from River Gore View and an internal loop road within the site;
- Two private drives to serve houses;
- Provision of a 3m wide multi-user cycle path centrally from the north of the site to the south west of the site;
- Open space located centrally within the site. A further area of open space is delivered around the proposed SUDS pond at the south west corner of the site;
- Provision of a SUDS pond at the south west of the site with associated infrastructure;
- Provision of visitor parking including electric vehicle parking;
- Provision of a series of 2m wide pedestrian footpaths throughout the site;
- The provision of landscaping and new planting; and
- Provision of new equipped play area at the north east of the site.

- 3.2 With respect to the proposed housing, the average housing density comprises approximately 21 dwellings per hectare (considered to be low density) and would consist of the following housing mix:

House Type:	Number:
<b><u>Affordable Housing:</u></b>	
2-bed	12
3-bed	12
<b><u>Market Housing:</u></b>	
2-bed	8

3-bed	11
4-bed	46
5-bed	7
<b>Total Dwellings</b>	<b>96</b>

- 3.3 The proposed dwellinghouses are formed of 16 housetypes, all of which show two storey buildings with pitched roofs. All have primary ridge lines perpendicular to their front elevation. The roofs will be painted to reflect existing development in the area. The primary building material will be brick, and the site will exhibit three primary varieties of brick to promote variation.
- 3.4 Boundary treatments are proposed to be timber fencing on the majority of rear boundaries with some walling proposed for prominent, highly visible boundaries.
- 3.5 The application is accompanied by the following documentation:
- Previously confirmed Pre-Application Consultation Report (PAC);
  - Design and Access Statement (DAS)
  - Acoustic Report (June 2022);
  - Noise Survey (April 2016);
  - Odour Assessment (September 2017);
  - Odour Survey And Risk Assessment (August 2022);
  - Previously submitted Transport Assessment and Appendices (TA);
  - Previously submitted Flood Risk Assessment (2012);
  - Previously submitted Site Investigation Report (March 2007);
  - Preliminary Ecology Assessment (October 2021);
  - Tree Survey (March 2021);

## **4 BACKGROUND**

- 4.1 The site, together with the further area of land referenced in paragraph 2.1 of this report, was first allocated for residential development in the 2003 Midlothian Local Plan.
- 4.2 In August 2011 the Council granted detailed planning permission (07/00351/FUL) for the erection of 76 houses, the formation of an access road, SUDS pond and associated works on the site. This permission was not implemented and has expired.
- 4.3 The applicant carried out a pre-application consultation (13/00609/PAC) for residential development on the site in 2013.
- 4.4 Application 17/00435/DPP for the erection of 117 dwellinghouses and associated works on the site was withdrawn.
- 4.5 The proposal is classed as a Major Development, as defined by the Town and Country Planning (Scotland) (Hierarchy of Developments) Regulations 2009. Therefore, the applicant has certain obligations in

relation to pre-application consultation with the community. The applicant submitted a proposal of application notice to the Council (13/00609/PAC) and the application is accompanied by a pre-application consultation report which details the consultation methodology and the feedback gained from this process.

## **5 CONSULTATIONS**

- 5.1 **The Coal Authority** does not object to the application and advise that “the content and conclusions of the information prepared by Mason Evans Partnership Limited is sufficient for the purposes of the planning system in demonstrating that the application site is safe and stable for the proposed development.
- 5.2 The **Scottish Environment Protection Agency (SEPA)** has lodged a holding objection to the application on flood risk grounds. Their objection is based on a lack of information provided by the applicant to date. They have further stated that this objection would further relate to SUDS and Drainage and the interaction with a burn adjacent to the site’s northwest boundary. It is noted that the applicant has subsequently submitted a Flood Risk Assessment (FRA) for consideration that may address the above concerns. However, until SEPA have been able to review this information, there is no guarantee that the FRA will adequately address Flood Risk and Drainage concerns they have raised.
- 5.3 **Scottish Water** does not object to the application. They advise that there is currently sufficient capacity within the Rosebery Water Treatment Works for future water supply. However, it was noted that capacity of the Gorebridge Waste Water Treatment Works could not be confirmed and that a detailed Pre-Development Enquiry is required to be provided to consider future connection. They also note that future capacity cannot be reserved and that capacity will be reviewed upon any formal connection application being submitted to Scottish Water. The capacity at the said facilities is a matter between the developer and Scottish Water and subject to a separate regulatory process outwith the remit of the Council.
- 5.4 **Network Rail** does not object to the application, but do raise a number of concerns for the development that would have to be addressed and suggest conditions to ensure:
- A suitable trespass proof fence of at least 1.8 metres in height adjacent to Network Rail’s boundary and provision for the fence’s future maintenance and renewal should be made.
  - That no construction work will commence until a construction method statement, which includes plant details, locations and lifting plans, is submitted to the planning authority for approval in conjunction with Network Rail’s Asset Protection Engineers.

- No development shall take place on site until such time as a noise impact assessment has been submitted to and approved in writing by the planning authority.
- 5.5 The **Council's Archaeological Advisor** does not object to the application stating that the proposed application area was already subject to archaeological evaluation by trial trenching back in 2008, and no further archaeological works are recommended as a result of the proposal.
- 5.6 The **Council's Ecological Advisor – The Wildlife Information Centre (TWIC)** does not object to the application subject to a condition ensuring that the recommendations within the applicant's Ecological report/s are implemented. The recommendations are set out in section 8 of this report.
- 5.7 The **Council's Policy and Road Safety Manager** does not object to the application, but did raise concerns regarding the number of visitor parking spaces and the location of the electric vehicle charging parking spaces and the need for further details to be secured by conditions. Amendments to the proposed development have subsequently been undertaken to address the concerns.
- 5.8 The Council's **Flooding Manager** does not object to the application but requests that further details regarding SUDS should be provided. These should include cross-sections showing the proposed invert level, 1:200 year flood level (0.5% probability of flooding) + CC (Climate Change) and any retention required due to the change in ground levels. The sections should include the maintenance access track required by Scottish Water and the road, cycleway/footway and verge arrangement to the north.
- 5.9 The **Education Resources Manager** does not object to the application, but advise, contributions towards education facilities would be required. The catchment schools are:
- Non-denominational primary Gorebridge Primary School
  - Denominational primary St Andrew's RC Primary School
  - Non-denominational secondary Newbattle High School
  - Denominational secondary St David's RC High School
- 5.10 The Council's **Land Resources Manager** does not object to the application.
- 5.11 The Council's **Senior Manager Protective Services** does not object to the application, subject to conditions securing:
- a. An updated site investigation report shall be submitted to and approved by the Council. This will need to include

recommendations for further remediation as required by the findings where necessary.

- b. Validation reports to be completed prior to occupation of dwellings.
- c. Limits to construction hours.
- d. The preparation of a Construction and Environmental Management Plan (CEMP) covering the following matters:
  - Noise control measures
  - Dust control measures
  - Plant and Machinery
  - Vehicle movement routes
  - Site Management
- e. The installation of trickle ventilation on properties closest to the Borders Railway to allow for ventilation with closed windows and thus mitigate noise.

## **6 REPRESENTATIONS**

6.1 There have been 71 representations received, which can be viewed in full on the online planning application case file. 69 of representations object to the application and two support the application. A summary of the main points raised are as follows:

- The infrastructure, services and facilities within Gorebridge are insufficient to cater for new housing development;
- The traffic on local roads has increased and concern that the relevant information submitted is out of date;
- The proposed access route is down a narrow road and residents amenity would be harmed by increased traffic;
- The Ecology report has not addressed the developments impact on hedgehogs sufficiently;
- The development would result in the loss of valued open space used for walking by local residents;
- The development takes access from development served by one main vehicular access point - this is a safety concern;
- The proposed access would cut through existing green space;
- Development would generally harm the wildlife in the area;
- Safe routes to school need to be secured;
- Construction vehicles would damage roads and cause nuisance;
- Public consultation was only carried out by the developer in 2013;
- The proposed development does not take into account existing trees;
- The Transport Assessment is out of date;
- The SUDS need to be completed prior to the completion of the housing because of concerns over flood risk;
- The developer needs to consult with Scottish Water regarding the adoption of the SUDS;
- The area of open space appears to be reduced;
- The relevant consultees were not consulted;
- The development would deliver houses to help meet a national shortfall;

- Footpaths should be lit;
- Larger houses are needed for working from home purposes;
- Some of the proposed dwellings are too high for the site;
- The 2005 development brief has not been taken into account;
- The development would hinder efficient water supply;
- The proposal states that emergency vehicles could access the site via a footpath along the side of Arniston Rangers Football Pitch – this is incorrect;
- Development should extend the existing path at the south west of the site to join up with the bottom of Birchwood to allow cyclists and walkers a path around the development to access Gore Glen;
- The privacy of existing residents would be reduced;
- The proposed development exceeds the capacity of the site;
- The proposed development does not respond positively to existing development;
- The pumping station is located at a higher level than some dwellings;
- Solar Panels should be provided on all homes;
- The proposal does not provide any affordable housing;
- The development would spoil a rural outlook; and
- The equipped play area would attract anti-social behaviour.

## 7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017.
- 7.2 SESplan June 2013 is older than five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within a National Planning Framework 4 (NPF4) to be prepared by Scottish Ministers. Once approved, NPF4 (which was subject to consultation until 31 March 2022 and is expected to be adopted in autumn 2022) will form part of the development plan alongside local development plans. Until NPF4 is approved, SESplan remains part of the development plan albeit increasing out of date.
- 7.3 The following policies are relevant to the proposal:
- Edinburgh South East Scotland Strategic Development Plan 2013 (SESPlan)
- 7.4 **Policy 5 (HOUSING LAND)** requires local development plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing requirements for each period.



- 7.5 **Policy 7 (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY)** states that sites for greenfield housing development proposals either within or outwith the identified strategic development areas may be allocated in local development plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) the development will be in keeping with the character of the settlement and local area; (b) the development will not undermine green belt objectives; and (c) any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

Midlothian Local Development Plan 2017 (MLDP)

- 7.6 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP.
- 7.7 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.8 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.9 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.10 Policy **DEV6: Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.11 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.



- 7.12 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility). Supplementary Guidance on open space standards is to be brought forward during the lifetime of the plan.
- 7.13 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.14 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area.
- 7.15 Policy **TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.16 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.17 Policy **ENV2: Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the Midlothian Green Network.
- 7.18 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.
- 7.19 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

- 7.20 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.21 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.22 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.23 Policy **ENV17: Air Quality** states that the Council may require further assessments to identify air quality impacts where considered requisite. It will refuse planning permission, or seek effective mitigation, where development proposals cause unacceptable air quality or dust impacts.
- 7.24 Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.
- 7.25 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.26 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.27 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.
- 7.28 Policy **IMP1: New Development** ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental

management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.

- 7.29 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.30 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

#### National Policy

- 7.31 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. The individual and cumulative effects of infill must be sustainable in relation to the social and economic infrastructure of a place, and must not lead to over-development.
- 7.32 SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of the SPP are developed within the local plan and local development plan policies.
- 7.33 The SPP states that *design is a material consideration in determining planning applications* and that *planning permission may be refused and the refusal defended at appeal or local review solely on design grounds*.
- 7.34 The SPP supports the Scottish Government's aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.
- 7.35 SPP introduces a presumption in favour of development that contributes to sustainable development, but states:

*The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to*

*achieve the right development in the right place; it is not to allow development at any cost.*

- 7.36 SPP promotes a plan-led system and the starting point for any assessment of an application for planning permission, unless material considerations justify a departure. SPP requires planning authorities to maintain a five year supply of effective housing land at all times. Where a shortfall emerges, specific provisions within SPP allow for the assessment of additional sites not allocated for housing to be considered to make up the shortfall. Sustainable development can be defined by the 13 principles of sustainable development set out in paragraph 29 of SPP.
- 7.37 The Scottish Government policy statement *Creating Places* emphasises the importance of quality design in delivering quality places. These are communities which are safe, socially stable and resilient.
- 7.38 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.39 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

## **8 PLANNING ISSUES**

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

### The Principle of Development

- 8.2 The site is allocated for housing (site h24) in the MLDP and is located within the built up area of Gorebridge where there is a presumption in favour of appropriate residential development. This presumption in favour of appropriate residential development is further reinforced by the previous grant of planning permission (07/00351/FUL) for 76 units – the site's continued allocation for 76 units reflects this grant of planning permission (now expired). The site has been allocated for housing since the 2003 Midlothian Local Plan and contributes towards the Council's housing land supply. No material considerations have been presented to outweigh the presumption in favour of development.

### The Supply of Effective Housing Land

- 8.3 The Council is required to maintain a *five year supply of effective housing land* (enough land allocated and coming forward for housing to meet its housing targets over the next 5 years) at all times (SPP paragraph 125). The number of homes required in a local authority area is identified through the Strategic Development Plan (SESplan) and is met by the development strategy and policies of the MLDP. Where a shortfall in the supply of effective housing land emerges, sites that are not allocated for residential development should be considered as possible additional sites to make up the shortfall.
- 8.4 A recent planning appeal decision in relation to residential development at Stobs Farm, Lady Brae, Gorebridge (Reporter's ref: PPA-290-2061, Midlothian Council's ref: 21/00252/PPP) is reported elsewhere on the Committee agenda. Whilst the proposed housing development was dismissed the Reporter did assess submitted evidence in regards to housing land supply. The Scottish Government Reporter concluded that it would be impossible to calculate how much effective housing land would be enough for at least five years as the SESplan published figures only extend to 2024 and SESplan2 was rejected (as previously reported to Committee) and the Scottish Government has not yet adopted National Planning Framework 4 (NPF4) which will set the new housing targets for local planning authorities – the Reporter therefore made an assumption that Midlothian does not have an effective housing land supply. Although, this is an assumption which the Council may consider to be unreasonable and unfair, the appeal decision is of significant weight as to provide further impetus to support the granting of planning permission for residential development on allocated housing sites such as the one proposed.

### Layout, Form and Density

- 8.5 The policy framework for the assessment of the design and layout of proposed new developments is provided by Scottish Planning Policy 2014 (SPP) and the MLDP. Scottish Planning Policy requires that planning should support development that is designed to a high quality which demonstrates the six qualities of a successful place. The six qualities are:
- Distinctive.
  - Safe and Pleasant
  - Welcoming
  - Resource Efficient.
  - Adaptable
  - Easy to Move Around and Beyond
- 8.6 MLDP Policy DEV6: Layout and Design of New Development requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. It logically follows that a proposed development that fails to demonstrate the six qualities of a

successful place and/or the requirements of Policy DEV6 should not be supported and therefore should be refused planning permission.

- 8.7 It is considered that the majority of dwellings achieve good sized gardens having regard to Midlothian's established approach on garden size for dwellings with 3 apartments (rooms excluding kitchens and bathrooms – i.e. bedrooms and living rooms) to deliver 110sqm and of 4 or more apartments to deliver 130sqm. It is further assessed that the spacing between proposed new dwellings within the site and existing dwellings (outside the site) is adequate. Whilst there are some instances where separation distances falls marginally below the prescribed requirement for Midlothian, they are minor shortcomings for front to front distances, Midlothian seeks to achieve a 22m separation. The narrowest such separation within the proposals is between plots 87 and 22 with a separation of 20m. This falls 2m below the set guidance. Most dwellings fronting each other are at an angled orientation to other dwellings. On balance sufficient privacy is considered to be provided for dwellings.
- 8.8 Similarly, Midlothian seek a 25m distance between 'back to back' elevations. This is not achieved at every dwelling. The shortest back to back distance is at plots 32 and 29 which achieve just over a 23m separation. Whilst this is slightly below the requirement there is a level change and the disparity is minor and the relationship between these properties is at a slight angle. As such, it is considered that on balance sufficient 'back to back' distances are achieved across the site.
- 8.9 The details of the proposed houses in terms of materials and the scale of the buildings is set out at paragraph 3.3 of this report. It is assessed that these are acceptable and compatible to the sites location and the adjacent settlement.
- 8.10 The primary vehicular entry into the site is a key visual receptor for the site. River Gore View is characterised by open amenity space between it and Kirkhill Court to the southeast. This open space provides vistas to the southwest. It is considered vital that the proposed development respond positively to this open space. The development seeks to introduce additional open space to the southwest of the existing open space. This open space funnels down through the site towards the southwest, extending the continuity of the existing built form at River Gore View and Kirkhill Court. Within this area development has avoided turning its back to existing development. In combination with the levels at the site, the proposed area of open space would allow/retain some longer vistas from the existing built up area.
- 8.11 In addition to the above the siting of the proposed Area of Improved Quality (AIQ), an area of enhanced design quality, around the proposed area of open space is considered to be to its benefit and of reflects good design principles. The higher quality materials combined with the open space will provide an attractive setting at the heart of the



site. Open space at the centre of the site and around the proposed SUDS pond is given a large degree of overlooking to promote positive surveillance for these areas.

- 8.12 A 3m wide multiuser route from the main vehicular entrance through the central open space and then to the west corner provides a clear and legible access route for users. Whilst this is only shown to be provided up to the boundary of the site, land to the west of the site is within the Council's ownership and it will be a requirement of any development that the proposed multiuser route be connected to the core path network.
- 8.13 It is regrettable that the proposed substation at the entrance to the site is located so prominently. Landscaping is proposed to soften this feature.
- 8.14 The levels on the site pose a significant challenge. The proposed development has sought to address this through a number of means. The provision of extended garden areas for those located centrally in the site avoids the need for retaining features at these locations. Whilst this does result in some garden areas having a 1:6 grading, sufficient flat garden is provided within these plots.
- 8.15 The need for retention features within the site still exists. Midlothian generally seeks that no retaining features be in excess of 1m in height. There are still some requirements for 1.2m retaining structures between some dwellings. The majority of proposed retention between houses is less than 1m. It is proposed to apply a condition requiring all retaining features over 1m in height to be cribblock to allow for opportunities to plant them to soften their impact.
- 8.16 The SUDS Pond is logically located at the lowest point of the site. The proposed permanent water level is circa 3m below the encircling maintenance track. Considering the depth requirement of the feature a pond is considered appropriate and would appear more natural than a basin. The proposed pond would further provide biodiversity benefits to the development and wider environment. Dwellings proposed to the east and north of the pond provide some passive surveillance of the pond, in addition to the multi user route adjacent to the pond.
- 8.17 The proposed development does result in a large degree of on plot parking in front of dwellings. This is mitigated in some instances by parking down the sides of dwellings, lessening their presence on the street. Despite this, bay and parallel parking is still required on streets. These are generally located away from the central open space. Landscaping is further proposed to be introduced into the scheme to lessen the visual impact of parking.
- 8.18 The proposed development further seeks to deliver dwellings at important locations with dual aspect features. Where otherwise a

dwelling might present a blank/bland gable to a vantage point the development has proposed enhanced gable detailing to minimise a stark outlook from gable features.

- 8.19 Secondary streets, such as private drives and parking courts are appropriately differentiated with block paving.

#### Landscaping and Open Space

- 8.20 The site's location does mean that it boasts views to the south and west towards the Pentland Hills, in turn the application site is to a degree visible. However, the proposals would sit in the context of existing development and the site has been allocated for development of 76 dwellings. Whilst the proposed numbers are in excess of this, the additional impact is not considered to be significant in landscape terms. The proposed development is therefore considered to comply with MLDP policy DEV7.
- 8.21 As has already been considered above, the positioning of open space is appropriate. The quantum of open space has further been assessed against MLDP policy DEV9 and associated Appendix 4 of the MLDP.
- 8.22 The proposed development would generate circa 220 persons/population. Appendix 4 seeks that per 1000 population the following areas of open space are required:
- Amenity Open Space – 1.6ha
  - Equipped Play Space – 0.25ha
  - Informal Play Space - 0.55ha
- 8.23 The proposed development delivers 0.3ha of amenity space and designates an area of 0.05ha for an equipped play area. In addition, it should be noted that the proposed amenity open space measurement does not include areas around the proposed SUDS pond. Whilst this area will be graded and less useable than the central open space, it will provide some amenity area. No space is marked for informal play. Whilst the Amenity open space falls short of the proposed standard, the provision of onsite play is considered to be a benefit for the site and the wider local area facilitating integration with the neighbouring community.
- 8.24 It is assessed the development does have access to the core path network and other open spaces within proximity to the site. Furthermore, there are easy walking connections to local facilities. The provisions are therefore considered to be on balance compatible with the objectives of MLDP policy DEV9 and Appendix 4



## Access and Transportation Issues

- 8.25 The Council's car parking standards give rise to a requirement for 48 visitor parking spaces within this development. 44 spaces are proposed throughout the development via parallel and bay parking features offset from the highway. This represents a minor shortfall on what would be required by guidance.
- 8.26 Paragraph 42 of Scottish Planning Policy requires that new development is to be safe and pleasant and Paragraph 271 requires that development proposals take account of the implications on road safety. Despite the minor shortfall in spaces, the provision is considered to be acceptable when the development is considered as a whole and its proximity to local bus services (circa 400m walk from the edge of the site). Local bus services on Main Street and the B704 provide services 29, 48, 339, N3, R1, R2 and X29 with up to 5 buses arriving in an hour. Facilities within the town centre within a similar walking distance and Gorebridge Train Station is within a 10 minute walk and under 1km away (circa 800m).
- 8.27 The provision of suitable pedestrian and cycle routes and the linking of such routes to existing routes beyond the site are a key component of a new development. They provide much needed permeability, improved accessibility and assist in integrating a new development into an existing neighbourhood. In this instance there is a proposed pedestrian and cycle links through the central open space connecting to the existing core path network past plots 37 – 41. This is considered to be acceptable.
- 8.28 A further footpath connection is proposed to the east of plot 49 that connects to River Gore Road. At the southeast of the site a possible path connection to existing footpaths is proposed. It is acknowledged that a connection is not able to be achieved at this time due to it being the site boundary. Whilst a cycle pedestrian link at this location may be promoted by the Green Network Supplementary Planning Guidance, the proposed development would provide a multi user route that would provide access to Main Street (B704) within a similar travel time.
- 8.29 The central loop road within the site is further defined with paved surfacing at junctions and turns in the road. This is beneficial in encouraging road users to slow down.
- 8.30 Access to public transport is achieved through bus stops found at Hunterfield Road, within a 5 minute walk of the edge of the site. Electric vehicle charging parking spaces are proposed within the site. A total of six are proposed.
- 8.31 The proposed development is considered to comply with MLDP policies TRAN1 and TRAN5.

- 8.32 The Council's Policy and Road Safety Manager is satisfied that transportation, access and parking matters have either been addressed or can be addressed through the imposition of conditions on a grant of planning permission.

#### Archaeology

- 8.33 MLDP policy ENV25 requires that where a site could affect an identified site of archaeological importance the applicant will be required to provide an assessment of the archaeological value of the site and the likely impact of the proposal on the archaeological resource. In relation to this site a desktop assessment was carried out followed by a scheme of investigation of trial trenching in accordance with a written scheme of investigation agreed by the Council's archaeological adviser at the time of the original planning permission for this site. No features of artefacts of archaeological interest were identified as a result of that investigation and the proposed development is acceptable in terms of archaeology in terms of MLDP policy ENV25.

#### Ecology and Biodiversity

- 8.34 The applicants submitted a Preliminary Ecological Appraisal dated June 2022 in support of the application. This has been reviewed by the Council's Ecology Consultee, TWIC. Whilst they have minor comments on the data compiled within the report they assess it as being of a professional standard and do not raise any objections to the proposed development and information submitted.

- 8.35 Whilst no objection is raised against the application the report does make recommendations for mitigation of impact of what habitat does exist on the site. These recommendations include:

- Broadleaf woodland should be retained;
- Tree root protection barriers should be utilised;
- Pre work checks should be undertaken;
- Excavations made during construction should be covered and means of escape provided if mammals were to enter;
- vegetation clearance should not be completed during the breeding bird season (March to August inclusive)
- Light should be temporary during construction and development should avoid permanent light spill on existing hedges and woodland; and
- Any permanent lighting should be designed to be 'bat friendly' and should not illuminate bat commuting, foraging and roosting habitats within or adjacent to the site.

- 8.36 In addition the report suggests the following opportunities for biodiversity gain, these include, but are not limited to:

- Any vegetation planting should include a wide range of native species of local provenance, including berry or nectar producing plants;
- The creation of species-rich grasslands or flower meadows in the public open spaces;
- Any areas of proposed soft landscaping should be enhanced for invertebrates by including nest boxes and/ or log piles; and
- The planting of the borders of any SUDS ponds with native aquatic species would enhance habitat for invertebrates and increase the waterbodies value as a foraging and breeding resource for amphibians.

8.37 The above mitigation and enhancements can be secured by appropriate conditions on any grant of planning permission.

#### Flood Risk and Drainage

8.38 The proposed development seeks to drain the development via a SUDS Pond (permanently wet) at the lowest part of the site to the southwest. No objection has been raised in regards to the proposed drainage system, but it has been set out by the Council's Flooding Officer that additional details of the proposed SUDS pond will be required. This can be secured by condition on any grant of planning permission. As such the proposed development would seek to deliver SUDS that would comply with MLDP policy IMP3.

8.39 The site is not located within an area identified by SEPA's flood maps as being susceptible to either river flooding or surface water flooding. However, SEPA have raised an objection to proposals based on a lack of information in respect of flood risk and surface water drainage and that it may place buildings and persons at flood risk contrary to SPP and with a potential impact on the water environment.

#### Potential Impact of Railway Noise

8.40 MLDP policy ENV18 seeks to protect residential development from noise sources without placing undue pressure on existing noise generating uses. The site is within close proximity to the Borders Rail that bounds much of the site's southern boundary. A noise report has been submitted with the application to determine whether the existing railway would generate noise sufficient to have a negative impact on the proposed dwellings. It has been reviewed by the Council's Senior Manager Protective Services and found that noise levels internally and externally within the completed development will meet the requirements of the Scottish Government's Planning Advice Note relating to noise (PAN1:2011) and the accompanying Technical Advice Note (TAN) with the exception of the internal LAmax levels at night within the nearest residential receptors which are predicted to exceed the recommended LAmax of 42 dB by 8 dB when windows are open for ventilation. Mitigation of this noise is proposed within the submitted Noise Report

and suggests either a 4.3m acoustic barrier at the end of gardens binding the railway, or that affected bedrooms were fitted with acoustically attenuated trickle ventilators which would allow the windows to remain closed and provide adequate ventilation. Considering the amenity issues that might persist with a 4.3m fence at the end of gardens, it is agreed with the applicant that the latter mitigation feature (ventilation) should be delivered for plots 9 – 27. The proposals are therefore considered to comply with MLDP policy ENV18

#### Potential Impact of Odour

- 8.41 The site is located close to the Gorebridge sewage works and there is the potential that odours from this facility could be harmful to the amenity of future residents of this site. The applicants have provided an assessment of the odour impact which has been considered by the Council's Senior Manager Protective Services, who is in agreement with the methodology of the survey and assessment and noted that two further rounds of monitoring had been undertaken as requested. The assessment has deemed that the site has the potential to have slight adverse effects from odour from the nearby sewage works as a worst case scenario and the overall assessment deems that odour impacts at proposed sensitive receptors are considered to be not significant. On this basis they raise no objection to the application. The proposals are therefore considered to comply with MLDP policy DEV2 in this regard.

#### Ground Conditions

- 8.42 In this instance the site falls within the Coal Authority defined Development High Risk Area due to previous mineral workings. In the context of the site investigation report provided, neither the Coal Authority or the Council's Senior Manager Protective Services have objected to the application and are satisfied that in relation to this particular issue it would be acceptable for planning permission to be granted, subject to the imposition of suitable conditions in relation to addressing matters of contamination and ground conditions. The proposals are therefore considered to comply with MLDP policy ENV16.

#### Developer Contributions and Affordable Housing

- 8.43 As noted earlier in this report planning permission was granted in 2011 for 76 dwellings. The planning permission together with the one relating to site h36 (North Gorebridge) were bound by a planning obligation to secure developer contributions towards:
- primary education capacity;
  - secondary education capacity;
  - Improvements to Gorebridge Town Centre;
  - Community Facilities;
  - Off site play facilities;

- The provision of 30 affordable dwellings within Site h36 (North Gorebridge) to meet the requirement arising from both sites; and
  - The transfer of land for a primary school within allocated site h36.
- 8.44 Since the lapse of the 2011 planning permission the MLDP has been adopted and it states at paragraph 3.2.6 that “The MLDP affordable housing requirement supersedes previous Local Plan provisions for affordable housing; for the avoidance of doubt, the 25% affordable housing requirement will apply to all housing sites allocated in previous Local Plans that do not have an extant planning consent”. As such additional affordable housing will be required – at the time of granting the previous permission the requirement was a 5% -10% affordable housing provision. 24 affordable housing units are being proposed.
- 8.45 Despite the earlier agreement, if the Council is minded to grant planning permission for the development it will be necessary for the applicant to enter into a new planning obligation to secure:
- A financial contribution towards additional primary education capacity;
  - A financial contribution towards additional secondary education capacity;
  - A financial contribution towards Borders Rail,
  - A financial contribution towards Gorebridge Town Centre;
  - A financial contribution towards open space maintenance; and
  - The provision of affordable housing (25%).
- 8.46 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The circular advises that planning obligations should only be sought where they meet all of the following tests:
- necessary to make the proposed development acceptable in planning terms (paragraph 15);
  - serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
  - relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
  - fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23); and
  - be reasonable in all other respects.
- 8.47 The requirements as set out above for any proposed planning obligation would meet the above tests.

## Other Matters

- 8.48 Regarding matters raised by representors and consultees and not already addressed in this report:
- The technical documentations submitted to the application have been reviewed by the relevant consultees, and whilst some of these are dated, they have been considered fit for purpose and no objections have been raised from consultees on this basis; and
  - Comments raise concern that the applicant advised that an emergency access route is available adjacent to the Arniston Rangers football ground - this has not been raised as a concern by the Council's Policy and Road Safety Manager.
- 8.49 The following matters raised in the representations are not material considerations in the determination of the application:
- The development would spoil a rural outlook; and
  - The equipped play area would attract anti-social behaviour.

## **9 RECOMMENDATION**

- 9.1 It is recommended that planning permission be granted on the following reason:

*The proposed development site is allocated for housing in the Midlothian Local Development Plan 2017. 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, subject to securing developer contributions. The presumption for development is not outweighed by any other material considerations.*

Subject to:

- a. the prior signing 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 Borders Rail,
  - A financial contribution towards Gorebridge Town Centre;
  - A financial contribution towards open space maintenance; and
  - The provision of affordable housing (25%).

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

- b. SEPA withdrawing their holding objection.

- c. the following conditions:

1. The development to which this permission relates shall commence not later than the expiration of three years beginning with the date of this permission.

**Reason:** *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

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 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 residential phase of the development, the provision of affordable housing, the provision of open space, children's play provision, structural landscaping, the SUDS provision and transportation/roads infrastructure. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

**Reason:** *To ensure the development is implemented in a manner which mitigates the impact of the development process on existing land users and the future occupants of the development.*

4. Notwithstanding that delineated on application drawing the development shall not begin until details of a revised scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i. other than existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
  - ii. existing trees, landscaping features and vegetation; including hedges, to be retained; removed, protected during development and in the case of damage, restored;
  - iii. proposed new planting in communal areas, road verges and open space, including trees, shrubs, hedging, wildflowers and grassed areas;



- iv. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi. programme for completion and subsequent maintenance of all soft and hard landscaping;
- vii. drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff;
- viii. proposed car park configuration and surfacing;
- ix. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use); and,
- x. details of existing and proposed services; water, gas, electric and telephone

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).

Any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

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

- 5. 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;
  - iv. proposed visibility splays, traffic calming measures, lighting and signage;
  - v. 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:
  - vi. proposed car parking arrangements; and
  - vii. 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.*

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

7. Prior to the commencement of development details of a suitable trespass proof fence of at least 1.8 metres in height adjacent to Network Rail's boundary and provision for the fence's future maintenance and renewal shall be prepared and submitted to the planning authority for approval in writing. Thereafter development shall accord with approved details.
8. Prior to the commencement of development a construction method statement, which includes plant details, locations and lifting plans, shall be prepared and submitted to the Planning Authority for approval and agreed in conjunction with Network Rail's Asset Protection Engineers.

**Reasons for conditions 6 and 7:** *To ensure safeguarding of Borders Rail infrastructure.*

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

**Reason:** *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

10. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development, as well as mammal passage points in walls and fences, has been submitted to and approved in writing by the

planning authority. The scheme shall include the recommendations set out within section 8 of the submitted Preliminary Ecological Appraisal (PEA) dated 16.06.2022 and prepared by Envirocentre. 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 ENV 15 of the Proposed Midlothian Local Development Plan 2017.

11. Notwithstanding the docketed report Mason Evans Report on Plot 3 Gorebridge – Report on Site Investigations, Persimmon Homes (East) Scotland Ltd dated March 2007 ref 2006/42. No development shall take place until an updated Report on Site Investigations is prepared and submitted to the planning authority for approval in writing. The updated report shall include a fully informed desk study review and shall address/include:

- i. All relevant appendices referred to within the Report on Site Investigations, Persimmon Homes (East) Scotland Ltd dated March 2007 ref 2006/42;
- ii. Commentary on potential mine workings and ground gas risks
- iii. Assessment of Radon Gas levels;
- iv. Additional justification for limited number (9 in total) of soil samples with associated commentary on likely impact on human health;
- v. Updated commentary on human health, water environment and ground gas risk assessments;
- vi. water supply pipe risk assessment which shall be consulted on with Scottish Water; and
- vii. Recommendation for any further required remediation works necessary based on the findings of this updated report.

***Reason:*** To ensure that all potential sources of contamination have been thoroughly assessed against up-to-date guidance and to secure appropriate remediation.

12. On completion of the decontamination/remediation works referred to in Condition 11 above and prior to any dwellinghouse 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 dwellinghouse shall be occupied unless or until the planning authority have approved the required validation.

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

13. 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. This shall include an updated cross section through the proposed SUDS pond which shows water levels and 1:200 year + climate change flooding level. 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 and ENV10 of the Midlothian Local Development Plan 2017.

14. Construction on site shall be limited to the following hours:

- Monday to Friday - 8am – 7pm
- Saturday - 8am – 1pm
- Sunday - No working

***Reason:*** To preserve the amenity of the residential environment in accordance with policy DEV 2 of the Proposed Midlothian Local Development Plan 2017.

15. Development shall not begin until 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
- xii. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0800 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.*

16. Development shall not commence until details of the double glazed window units and the accompanying acoustic trickle ventilation on properties at plots 9 to 27 to allow for ventilation with closed windows to achieving satisfactory internal noise levels, is prepared and submitted to the planning authority for approval in writing. Thereafter development shall be carried out in accordance with these approved details.

17. Correct installation of the double glazed window units and accompanying acoustic trickle vents agreed by condition 15 shall be verified after the completion of the dwellings, by an appropriately qualified Acoustic Consultant and accredited /chartered member of the Institute of Acoustics or the Association of Noise Consultants. Verification will compose of a written report.

***Reason:*** *To mitigate noise from the Borders Railway and thus allow development to comply with policy ENV 18 of the Proposed Midlothian Local Development Plan 2017.*

18. Development shall not commence until details are prepared and provided demonstrating the proposed cycle way / footpath proceeding to the south west of the site shall connect to the core path network and route code MID/8-23/1.
19. Prior to the occupation of the first dwellinghouse, the cycleway / footpath and connection referred to in condition 17 shall be completed and safe to use, unless otherwise agreed in writing with the planning authority.

***Reasons for conditions 17 and 18:*** To ensure that appropriate pedestrian and cycling access is achieved by the development.

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

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

21. Prior to the first occupation of any of the dwellings on plots 1 and 2, 57 – 64 and 94 – 96 an equipped neighbourhood children's play area and shall be formed/constructed on the central open space (fronted by plots 1 and 2) and made available for use in accordance with detailed drawings and a written specification to be submitted to and approved in advance by the planning authority. There shall be no variation therefrom unless with the prior written approval of the planning authority.

**Reason:** To ensure the timely provision of an acceptable quantity and quality of equipped children's play in the development in the interests of the residential amenity of the future occupants of the houses and flats.

22. Notwithstanding the docketed Site Layout (ref: 02-01-NEW rev AB) a schedule of improved quality materials for the identified area of improved quality shall be prepared and submitted to for approval by the planning authority. Samples shall be provided. Thereafter development shall accord with these approved samples.

**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.

23. Any retaining walls in excess of 1.2m in height shall be crib lock wall or other similar product that allows planting within the walling. Details, including sections, of such retaining walls shall be prepared and submitted to the planning authority for approval in writing. This shall take place prior to the implementation of any such retention features. Development shall thereafter be in accordance with approved details.

**Reason:** To reduce the impact on amenity resulting from retaining walls, and to ensure compliance with policy DEV 2 and 6 of the Proposed Midlothian Local Development Plan 2017.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 30 September 2022

**Application No:** 22/00066/DPP

**Applicant:** Persimmon Homes

**Agent:** N/A

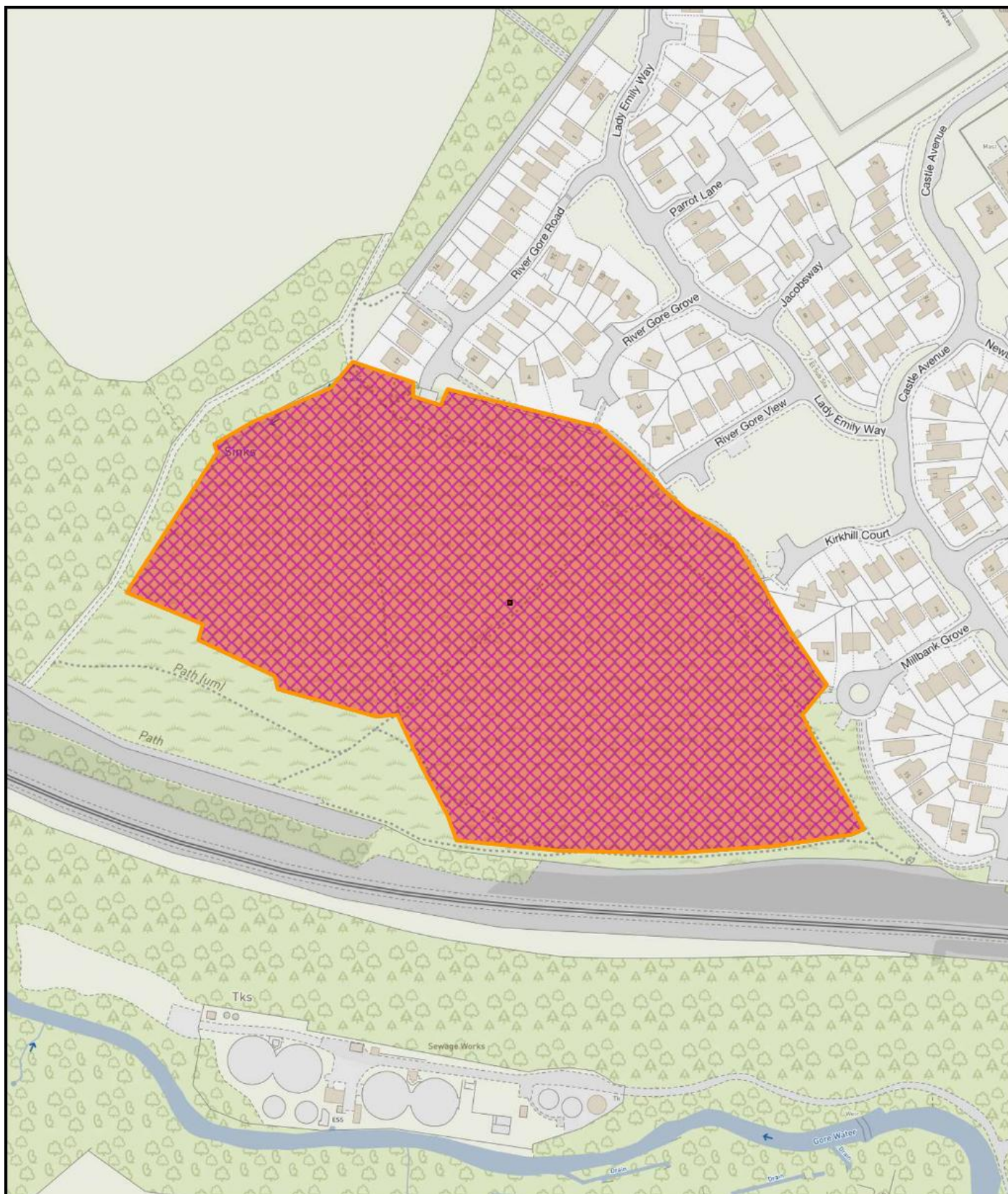
**Validation Date:** 9 February 2022

**Contact Person:** Hugh Shepherd

**Email:** [hugh.shepherd@midlothian.gov.uk](mailto:hugh.shepherd@midlothian.gov.uk)

**Background Papers:** 07/00351/FUL, 13/00609/PAC, and 17/00435/DPP





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

## **Erection of 96 dwellings and associated works Newbyres Site B, River Gore Road, Gorebridge**

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File No.22/00066/DPP

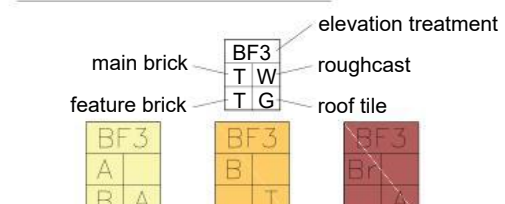
Scale: 1:2,500







MATERIAL FINISHES



MATERIALS CODING:

Elevation Treatment  
BF3 - Full Brick  
Roof tiles  
A - Seawave Anthracite (Pantile)  
T - Seawave Terracotta (Pantile)

Bricks  
B - Cussworth River  
A - Thoresby River  
Br - Sherborne River  
Doors/Windows  
Front doors to be steel painted black.  
Rear/side doors to be steel painted black.  
Garage doors to be steel painted black.  
Windows to be white uPVC.  
Fascias to be white uPVC.  
RWP's to be black uPVC.

All landscaping shown reflects the proposed scheme at the time of print. All prospective buyers are to refer to the current Landscape Layout for full details.

All front gardens to be turfed.

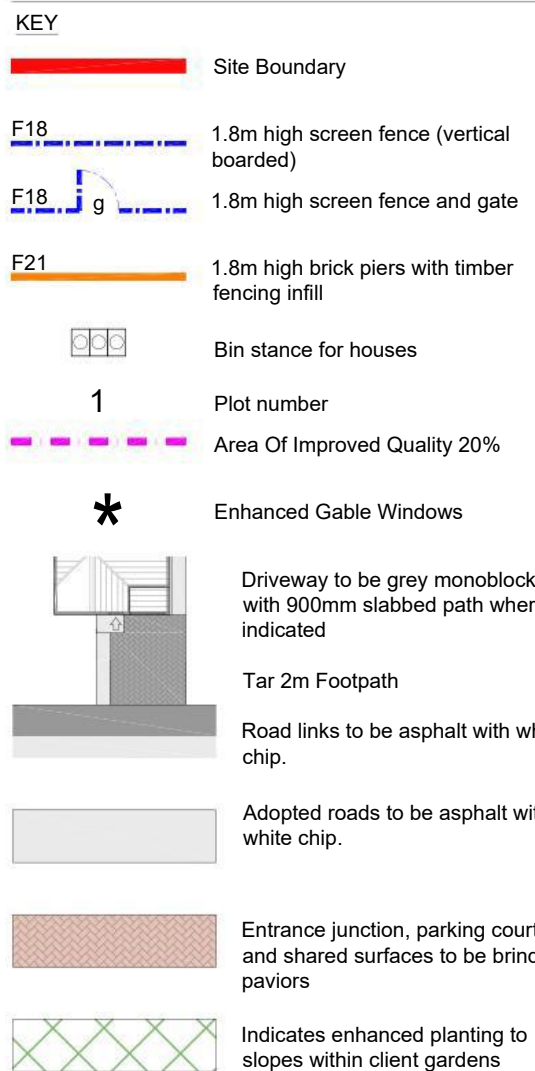
Paths to single dwelling to be 1.0m clear.

Pathways to communal areas to be 1.2m clear.

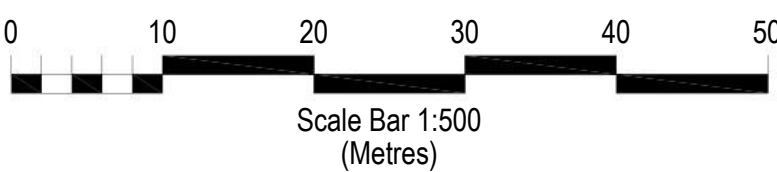
Pavements to be 2m wide unless otherwise stated (ie cycleways)

CONSTRUCTION

All houses on this site will be built in timber frame and to V5 specification. Refer to site specific drawing issue register for relevant drawings.



NORTH



Buyers are warned that this is a working drawing & is not intended to be treated as descriptive material describing, in relation to any particular property or development, any of the Specified Matters prescribed by any Order made under the above Act. The contents of this drawing may be subject to change at any time & alterations & variations can occur during the progress of the works without revision of the drawing. Consequently the layout, form, content & dimensions of the finished construction may differ materially from those shown. Nor do the contents of this drawing constitute a contract, part of any contract or a warranty.

I CERTIFY THAT THIS IS THE ORIGINAL TRUE COPY OF THE DRAWING AS REFERRED TO IN OUR APPLICATION FOR BUILDING WARRANT. SIGNED ON BEHALF OF PERSIMMON HOMES (SCOTLAND) LTD

SIGN & DATE:

ACCOMMODATION SCHEDULE

House Type	Notes	Code	No
Portree	2 bed. terr.	613t	8
Newmore	3 bed. terr.	799t	8
Kearn	3 bed. det.	931d	3
Leith	4 bed. det.	1033d	8
Crammond	4 bed. det.	1146d	4
Eltrick	4 bed. det.	1212d	3
Balerno	4 bed. det.	1217d	8
Thurso	4 bed. det.	1233d	7
Thornton	4 bed. det.	1247d	6
Whithorn	4 bed. det.	1407d	10
Warriston	5 bed. det.	1481d	4
Stockbridge	5 bed. det.	1653d	3
Total PD Units			72
Braemar	2 bed. terr.	834	12
Threave	3 bed. terr.	953	12
Total HA Units			24
TOTAL UNITS			96

Denotes housing association plots.

CONSTRAINTS & PLANNING NOTES

- Garden Sizes to comply with MLC Local Plan  
Detached / Semi Detached Dwelling  
- 110m<sup>2</sup> - 3 Bed  
- 130m<sup>2</sup> - 4 - 5 Bed  
Rear Elevation (Back to Back) = 25m  
Front Elevations (Front to Front) = 22m  
Gable to Rear or Front Elevation = 16m
- Extended Community Greenspace to interlink with existing residential open space strategy.
- 44 Visitor Parking Bays (45% Parking Provision)  
Public EV charging location. Charger to serve 2 no. bays (total of 6 EV charging bays on site).

AB	Footpath stopped up at Plot 9 as requested by Planner. Cycle Path diverted in South West corner due to levels to allow tie in with existing footpath link. Plots 44-48 re-arranged to allow garden sizes to comply with new rear fence line due to SEPA Standoff from Drain 1 as noted in FRA.	16.09.22	AF
AA	Substation and switching station moved to allow for wayleave distance to plot 60.	18.08.22	GT
Z	Plots 1 and 2 moved due to levels issue on boundary	05.08.22	JH
Y	Key added to indicate affordable plots	04.08.22	JH
X	Plots 17, 26, 29, 37, 52 and 53 moved to meeting separation distance requirements	02.08.22	JH
W	Parking bays amended following planning feedback	27.07.22	JH
V	Further revise following planning feedback Minor increase to open space areas.	27.07.22	JH
U	Revised to include housing association plots. Minor amendments to improve open space	25.07.22	JH
T	1 unit removed due to feedback from planning.	04.07.22	JH
S	Layout amended following planning comments. Reroute of plots, including repositioning terraces to front open space. Updated SUDS feature. Basin swapped for pond, to promote biodiversity within the site.	17.06.22	JH
R	Remix at plots 2, 5, 19, 23 and 44 - 48. Visitor parking locations increased from 15 to 39, including 6 public EV charging.	08.05.22	JH
Q	Plots 33 and 43 amended following issues with drainage run repositioned to provide frontage to central open space. Units adjacent SUDS basin moved to provide habitat link to open space. Visitor parking bays amended to sit outwith road.	12.04.22	JH
P	Minor amendments following planning meeting. Units repositioned to provide frontage to central open space.	10.01.22	JH
N	Amended to increase average sq ft of house types. Back to back gardens in middle of site amended so that low level gardens have a planted buffer zone over slope.	17.12.21	JH
M	Updated to reflect planning feedback. Total unit numbers reduced from 104 to 96 units.	15.11.21	JH
L	Threave's adjusted for plot specific arrangements. Area of Improved Quality indicated on layout.	22.09.21	JH
K	Layout finalised ahead of planning submission. Total unit numbers reduced from 117 to 104 units.	13.09.21	JH
J	Design amended following feedback from planning.	30.08.21	JH

River Gore View Newbyres

Site Layout

02-01-NEW AB

PERSIMMON HOMES  
EAST SCOTLAND LTD  
UNIT 1  
WESTER INCH BUSINESS PARK  
OLD WELL COURT  
BATHGATE • EH48 2TQ  
TEL 01506 638300  
FAX 01506 638301

