

# Notice of meeting and agenda



## Planning Committee

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

**Date:** Tuesday, 12 January 2016

**Time:** 14:00

**John Blair**  
Director, Resources

**Contact:**

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**Further Information:**

This is a meeting which is open to members of the public.

**Audio Recording Notice:** Please note that this meeting will be recorded. The recording will be publicly available following the meeting, including publication via the internet. The Council will comply with its statutory obligations under the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

## **1 Welcome, Introductions and Apologies**

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## **2 Order of Business**

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

## **3 Declarations of Interest**

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Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

## **4 Minutes of Previous Meeting**

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<b>4.1</b>	Minutes of Meeting held on 17 November 2015 - For Approval	<b>5 - 26</b>
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## **5 Public Reports**

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<b>5.1</b>	Broadband and the Planning System	<b>27 - 30</b>
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<b>5.2</b>	Major Applications - Applications currently being Assessed and other Developments at Pre-Application Consultation stage	<b>31 - 36</b>
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<b>5.3</b>	Appeals and Local Review Body Decisions	<b>37 - 84</b>
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<b>5.4</b>	Pre-Application Consultation - Proposed Residential Development at Land West of Corby Craig Terrace, Bilston 15 00936 PAC	<b>85 - 88</b>
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Applications for Planning Permission Considered at a Previous Meeting – Reports by Head of Communities and Economy:-

<b>5.5</b>	Infilling of Quarry at Middleton Limeworks, Gorebridge 15.00503.DPP	<b>89 - 116</b>
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<b>5.6</b>	Formation of raised decking and installation of roof lights at 4 Manse Road, Roslin 15.00715.DPP	<b>117 - 124</b>
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Applications for Planning Permission Considered for the First Time – Reports by Head of Communities and Economy:-

<b>5.7</b>	Erection of new community facilities including primary school, library, health centre and alterations to existing leisure centre and associated works at land at George Avenue, Loanhead 15.00684.DPP	<b>125 - 144</b>
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<b>5.8</b>	Planning permission in principle for residential development at land at Paradykes Primary School, Mayburn Walk, Loanhead 15 00712 PPP	<b>145 - 158</b>
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<b>5.9</b>	Residential development at land adjacent to Charles Letts and Co Ltd, Salter's Road, Dalkeith 15 00616 DPP	<b>159 - 178</b>
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<b>5.10</b>	Erection of retail unit and associated works at land at Mayshade Garden Centre, Eskbank Road, Bonnyrigg 15 00692 DPP	<b>179 - 200</b>
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## **6 Private Reports**

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No private business to be discussed at this meeting.



**MINUTES of MEETING of the MIDLOTHIAN COUNCIL PLANNING COMMITTEE** held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 17 November 2015 at 2.00 pm.

**Present:-** Councillors Bryant (Chair), Baxter, Beattie, Constable, de Vink, Johnstone, Milligan, Montgomery, Muirhead, Parry, Pottinger, Rosie, Russell, Wallace and Young.

**Apologies for Absence:** - Councillors Bennett, Coventry and Imrie.

**1. Declarations of Interest**

Councillor Young declared a non-pecuniary interest in agenda item 10(d) - Application for Planning Permission in Principle (**15/00546/PPP**) for Residential Development on Land West of The Cottage, Hardengreen (paragraph 4 of the **Appendix** refers), on the grounds that he knew the land owner. He indicated that it was his intention to leave the meeting for the duration of this particular item and not to contribute to any discussion thereof.

**2. Minutes**

The Minutes of (i) Meeting of 25 August 2015 and (ii) Special Meeting of 15 September 2015 were submitted and approved as correct records.

**3. Midlothian Local Development Plan: Proposed Plan**

With reference to the Addendum of the Minutes of the Council of 16 December 2014, there was submitted report dated 10 November 2015, by the Head of Communities and Economy providing an update on progress of the preparation of the Midlothian Local Development Plan (MLDP).

The report advised that the consultation period on the MLDP: Proposed Plan had ended on 26 June 2015. In response to the publishing of the proposed plan, 834 representations had been received comprising 2,628 separate comments for consideration. As of the 10 November 2015 the Planning team had considered and drafted a provisional response to 70% of the comments.

The Planning Manager confirmed that it was proposed to hold a series of workshops to provide elected Members with more detail with regard the scale and nature of representations received. Following which it was proposed to report to Council to seek approval for the submission of the proposed MLDP to the Scottish Government. It was anticipated that an examination by a Scottish Government Reporter would commence in Spring 2016. Adoption of the Plan was expected in the Autumn of 2016.

**Decision**

- (a) To note the Midlothian Local Development Plan update; and
- (b) To agree to hold elected Member workshops in January 2016.

(Action: Head of Communities and Economy)

#### **4. Planning Performance Framework**

With reference to paragraph 3 of the Minutes of 20 November 2012, there was submitted report, dated 10 November 2015, by the Head of Communities and Economy, providing an update on the progress of work undertaken on the Planning Performance Framework (PPF) for Midlothian and advising of the feedback received from Scottish Government on Midlothian Council's Planning Performance Framework report for 2014-15.

The report advised that the feedback report (a copy of which was appended to the report) provided a helpful independent 'audit' of performance and progress, as well as some clear indications of areas for improvement, and as such, was to be welcomed as a positive statement.

The Committee, then heard from the Head of Communities and Economy who responded to Members' questions.

##### **Decision**

To note the feedback received from Scottish Government on the Council's submitted Planning Performance Framework (PPF) for 2014/15.

(Action: Head of Communities and Economy).

#### **5. Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage**

There was submitted report, dated 10 November 2015 by the Head of Communities and Economy, updating the Committee on 'major' planning applications, formal pre-application consultations by prospective applicants and the expected programme of applications due for reporting.

The Committee, heard from the Planning Manager, who in responding to point raised regarding the quality of the Pre-Application Consultation carried out by some applicants, advised that it was always helpful to get feedback regarding such matters.

##### **Decision**

- (a) To note the current position in relation to major planning application proposals which were likely to be considered by the Committee in 2015/16; and
- (b) To note the updates for each of the applications.

(Action: Head of Communities and Economy)

#### **6. Appeal and Local Review Body Decisions**

There was submitted report, dated 10 November 2015, by the Head of Communities and Economy, detailing the notices of reviews determined by the Local Review Body (LRB) at its meetings in September and October 2015 and advising of the outcome of an appeal determined by Scottish Ministers.

The report advised that the appeal by Mr M Robertson was against the issuing of an enforcement notice to secure the removal of two dormer windows which had been erected without the benefit of planning permission at 15 Dundas Street, Bonnyrigg. The Scottish Ministers had dismissed the appeal and as the works were retrospective the Reporter had given the applicant 9 months (until 10 May 2016) to remove them.

### **Decision**

- (a) To note the decisions made by the Local Review Body at its meetings on 1 September 2015 and 20 October 2015; and
- (b) To note the outcome of the appeal determined by Scottish Ministers.

## **7. Pre-Application Consultation - Proposed Residential Development at Site HS14, Rosewell North, Rosewell (15/00774/PAC)**

There was submitted report, dated 10 November 2015, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed residential development at site HS14 Rosewell North, Rosewell (15/00774/PAC).

The report advised that in accordance with the pre application consultation procedures approved by the Committee at its meeting on 7 October 2014 (paragraph 3, Page 4-199 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.

Having heard from the Planning Manager, the Committee discussed the ability of the area to sustain more development without investment in better public transport, improved community facilities, protection of the existing cycle route and the provision of new links into it, and the provision of fibre optic broadband. Consideration was also given to possible issue of coalescence.

### **Decision**

- (a) Noted the provisional planning position set out in the report; and
- (b) Noted that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

(Action: Head of Communities and Economy).

## **8. Applications for Planning Permission**

Applications for planning permission were dealt with as shown in the **Appendix** hereto.

The meeting terminated at 3.41pm.





## APPENDIX

(relative to paragraph 8)

1. **Application for Planning Permission in Principle (15/00045/PPP) by Old Road Securities plc, c/o EMA Architecture and Design Ltd for Residential Development; Community Facilities; Primary School; Playing Field; Office Units (Class 4); Farm Shop (Class 1); Café (Class 3) and Rail Halt with Associated Car Parking; Public Open Space; Roads and Drainage Infrastructure at Redheugh East, Gorebridge.**

There was submitted report, dated 10 November 2015, by the Head of Communities and Economy concerning the above application.

The Committee, having heard from the Planning Manager, discussed the proposed development, giving particular consideration to issues arising from the timing of the provision of certain elements of the proposed development, most notably the primary school; concerns were expressed regarding the prospect of young children and their families having to cross the busy A7 in order for the children to attend primary school. Other issues which were also discussed included the provision of a rail halt as opposed to a station; consistency in the timings for site works/plant noise; and landscaping within the site. In response to a question regarding the provision of fibre optic broadband connections, Members noted that the issue had been raised with the applicants. With regards the issue of Supplementary Guidance on the provision of Broadband it was intended to bring forward a report in the new year.

After further discussion, the Committee agreed that planning permission be granted for the following reason:

*The proposed development is in accordance in principle with the adopted Midlothian Local Plan which allocates this site for a new settlement. An appropriate Masterplan for the new settlement can be secured by condition.*

subject to:

- (i) the prior signing of a legal agreement to secure the provision of affordable housing, education provision, children's play provision, new community facilities, Borders Rail Line contributions and road improvements, as well as works to secure safe routes to schools; and,
- (ii) the following conditions:
  1. The development hereby permitted shall be begun within ten years from the date of this permission, or within two years from the date of approval by the planning authority of the last application for matters specified in conditions to be approved. Application for approval of matters specified in conditions shall be made to the planning authority within eight years from the date of this permission. Prior to the development commencing the planning authority shall be notified in writing of the expected

commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing.

**Reason:** *To accord with Section 59 and 27A of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning etc (Scotland) Act 2006). The statutory three years has been extended because of the long-term nature of the development.*

2. The masterplan submitted with the application is not approved. The details of the development delineated on the Indicative Development Framework Plan (Ref no 13023(PL)001B REV B), dated 18 September 2014 and the Masterplan – Redheugh East Design and Access Statement and dated August 2014 and submitted with the application, are not approved.

**Reason:** *The application is for planning permission in principle only and the details delineated within the masterplan are for illustrative purposes only.*

3. Development shall not begin until an application for approval of matters specified in conditions for a masterplan for the site has been submitted to and approved in writing by the planning authority. The masterplan shall identify how the development addresses the following:
  - i. links between Redheugh East (the application site), Redheugh West and the the long-term safeguarded land to the west of Redheugh West;
  - ii. the form, densities and scale of the built environment;
  - iii. percent for art;
  - iv. areas of improved quality;
  - v. a schedule of anticipated materials
  - vi. site levels;
  - vii. landscaping;
  - viii. areas of open space, the linear park/green corridor and play areas (equipped, informal kick about areas, pitches and informal open space) and their location; and
  - ix. the installation of high speed broadband to the new housing, business and other uses on the site.

**Reason:** *To ensure the development is designed and planned to deliver a coherent community for the benefit of the future occupants.*

4. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each residential phase of the development, the provision of affordable housing, community facilities, the central hub (retail unit/s and business units) the provision of open space, structural landscaping, SUDS provision and transportation

infrastructure, in particular the provision of the road and bridge across the Borders Rail line. The phasing shall show the land between the A7 and the Borders Rail line as phase 1 of the development. 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.*

5. Development shall not begin until an application for approval of matters specified in conditions for a scheme of effective drainage and flood management for the site has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i. a scheme for the Sustainable Urban Drainage for the whole of the site. The scheme shall be developed in accordance with the technical guidance contained in The SUDS Manual (C697) and shall incorporate source control; and
  - ii. levels both existing and proposed for the whole site showing 1m contours and cross sections through the site. This topographic information shall clearly demonstrate that there is a sufficient height difference between the small watercourses (identified in the Kaya Consulting Flood Risk Assessment, dated 2015) and the proposed development. This shall include existing and proposed ground levels, watercourse bank and bed levels, and finished floor levels.

**Reason:** *The planning application is in principle and the details required are to ensure the surface water from the whole site can be appropriately treated and to ensure that levels on the site are appropriate in relation to flood risk.*

6. Development shall not begin on any individual phase of development (identified in compliance with conditions 3 and 4) until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works for the corresponding phase of development has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i. existing and finished ground levels and floor levels for all buildings, open space, SUDs features and roads in relation to a fixed datum;
  - ii. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored. This shall include the retention, protection during construction and inter-planting of the hedging on both sides of Povert Road;

- iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas, including the details of the means of planting to ensure sufficient soil volumes are allowed to enable new planting particularly in areas of hardstanding to become established;
- iv. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures, and any acoustic fencing required to comply with noise requirements;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density, having cognisance to the requirements of Network Rail in relation to planting in proximity to the rail line and the species to be planted ;
- vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the buildings on adjoining plots being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
- 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);
- x. proposed cycle parking facilities;
- xi. proposed woodland management plan for any existing, to be retained, and proposed woodland; and,
- xii. 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 (part vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

**Reason:** *The application is in principle and the hard and soft landscaping scheme will ensure the development is acceptable for future residents.*

- 7. Development shall not begin on an individual phase of development (identified in compliance with conditions 3 and 4) until an application for approval of matters specified in conditions for the siting, design and external appearance of all buildings and other structures, including electricity substations, for the corresponding phase of development has been submitted to and approved in writing by the planning authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure

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

**Reason:** *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

8. Development shall not begin on an individual phase of development (identified in compliance with conditions 3 and 4) until an application for approval of matters specified in conditions for site access, roads, footpaths, cycle ways and transportation movements for the corresponding phase of development 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 roads (including turning facilities), footpaths and cycle ways;
  - iii. proposed visibility splays, traffic calming measures, lighting and signage;
  - iv. proposed construction traffic access and haulage routes;
  - v. a green transport plan designed to minimise the use of private transport and to promote walking, cycling and the use of public transport;
  - vi. proposed car parking arrangements;
  - vii. an internal road layout which facilitates buses entering and leaving the site in a forward facing direction;
  - viii. details of 3 metre wide pedestrian/cycling link to be provided to all boundaries of the phase of development and to tie in to the pedestrian cycle links approved in the Masterplan for the whole settlement; and,
  - ix. a programme for completion for the construction of access, roads, footpaths and cycle paths.

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

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

9. Development shall not begin until an application for approval of matters specified in conditions for works to the A7 and the B704 Cockpen Road have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i. Provision of a new standalone toucan crossing on the A7 to link with the school on the east side of the A7;
- ii. Reduction in the speed limit to 30mph along the A7, from Engine Road to Newtonloan Toll and the B704 Cockpen Road, from Newtonloan Toll to Povert Road;
- iii. Installation of pedestrian crossing facilities on the Newtonloan Toll signalised junction;
- iv. A new signalised pedestrian crossing located to the immediate east of the B704 Cockpen Road/Butlerfield Industrial Estate priority junction;
- v. A new signal controlled pedestrian crossing in the vicinity of the A7/Povert Road junction;
- vi. Two new vehicular access points on the A7 and onto Cockpen Road, including signage and lighting;
- vii. Details of the closure of the access road to Redheugh Farm and the bridge carrying Povert Road to all but pedestrian and cycle traffic and for local access for vehicles only; and ,
- viii. A programme for completion for the construction of access, roads, footpaths, cycle paths and crossings and for road closures and for the works to the signalised junction at Newtonloan Toll.

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.

10. Development shall not begin until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved in writing by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
  - i. the nature, extent and types of contamination and/or previous mineral workings on the site;
  - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
  - iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and,
  - iv. the condition of the site on completion of the specified decontamination measures.



Before any part of the site is occupied, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

**Reason:** *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

11. Development shall not begin until an application for approval of matters specified in conditions for 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 IMP1 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

12. Development shall not begin until an application for approval of matters specified in conditions for a programme of archaeological works (Metal Detector Survey and Evaluation) and scheme of investigation has been submitted to and approved in writing in by the planning authority. The approved programme of works shall be carried out by a professional archaeologist prior to any construction works, demolition or pre commencement ground works take place unless otherwise agreed in writing by the planning authority.

**Reason:** *To ensure this development does not result in the unnecessary loss of buried archaeological material in accordance with Policy RP28 of the Adopted Midlothian Local Plan.*

13. Development shall not begin until an application for approval of matters specified in conditions for Ecology including bat and badger mitigation measures has been submitted to and approved in writing in by the planning authority. The application shall include separate bat and badger surveys undertaken by a suitably qualified ecologist. The bat and badger surveys shall cover the site and land bounding the site application and shall include recommended mitigation measures.

**Reason** *In the interests of safeguarding bats and badgers*

14. Development shall not begin until an application for approval of matters specified in conditions for details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse or commercial unit.

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.*

15. No development shall commence on any phase of development beyond phase 1, prior to the construction of the new road and road bridge over the Borders Rail line connecting the A7 with the residential development to the west of the Borders Rail line. Phase 1 comprises the housing development hereby approved in principle and located between the A7 and the Borders Rail line. The maximum number of dwellinghouses on the first phase of development is 135, unless another maximum number of dwellinghouses on this first phase is agreed by a grant of planning permission or matters specified in conditions application.

**Reason:** *To ensure the new community is developed in a logical and cohesive manner that allows for vehicular access between housing to the east and north of the new settlement and between residential development and the school and community facilities. Povert road is unsuitable to serve any more than the initial phase of development and in the longer term is to be used for pedestrian and local access only.*

16. No overhead wires, cables or telecommunication masts shall be introduced onto the site without the prior written approval of the planning authority.

**Reason:** *To ensure that the appearance of the development is not spoiled by over-head power lines, wires and telecommunication masts in accordance with Policy UTIL2 of the Midlothian Local Plan.*

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

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

18. All fixed plant / machinery noise shall comply with the following:-

Night time (22:00 – 08:00 hrs) - NR25 (internal, open window)  
Day time (08:00 - 22:00 hrs) - NR30 (internal, open window)  
All day Sunday - NR25 (internal, open window)

19. For commercial, industrial, leisure noise affecting residential use (existing or proposed), noise levels shall comply with BS 4142 - rating level less than +5dB above an agreed representative L<sub>A90</sub>. External measurement set up shall be as per BS 4142.



Representative  $L_{A90}$  value and measurement locations shall be agreed in writing by the Planning Authority.

20. In relation to all environmental, commercial, leisure sources the internal noise level shall comply with the World Health Organisation Night Noise Guidelines for Europe 2009 - 42 dB  $L_{Amax}$  (fast) (internal) for the avoidance of sleep disturbance.
21. Midlothian Council design standards for residential use, in relation to anonymous noise sources are as follows and they shall be complied with on this site:

50 dB  $L_{Aeq(1hr)}$  for daytime external garden amenity  
35 dB  $L_{Aeq(1hr)}$  for daytime internal living apartment  
30 dB  $L_{Aeq(5 mins)}$  for night time internal living apartment (excluding fixed plant controlled by NR25 or NR20 if tonal).

22. In terms of vibration from train movements, the vibration dose value in terms of BS 6472-1:2008 Guide to Evaluation of Human Exposure to Vibration in Buildings shall not exceed the low probability of adverse comment day and night-time values of 0.2 to 0.4  $m.s^{-1.75}$  and 0.1 to 0.2  $m.s^{-1.75}$  respectively. Measurement locations shall be submitted to and approved in writing by the planning authority.
23. Noise levels in relation to the new proposed primary school shall comply with Building Bulletin 93: Acoustic Design of Schools.
24. With regard to construction site operations the following noise levels shall be met 70 dB  $L_{Aeq(12hr)}$  (façade), with BPM at all times in accordance with BS5228 guidance. During construction Best Practicable Means shall be utilised at all times in accordance with BS5228 guidance.
25. In relation to piling operations during construction, the following noise levels shall be met:

75 dB  $L_{Aeq(1hr)}$  (façade)  
80 dB  $LA_{01}(1hr)$  (façade)

During Construction Best Practicable Means shall be utilised at all times in accordance with BS5228 guidance.

***Reason for conditions 19 to 25:*** To prevent noise or vibration levels from adversely affecting the occupants of noise sensitive properties at the site.

(Action: Head of Communities and Economy).

**2. Application for Planning Permission (15/00503/DPP) by The NWH Group, c/o William Booth, Dalgleish Associates Ltd, Dunblane for the Infilling of quarry at Middleton Limeworks, Gorebridge.**

There was submitted report, dated 10 November 2015, by the Head of Communities and Economy concerning the above application.

The Committee, having heard from the Planning Manager, discussed the proposed development in particular consideration was given to the type of infill materials that would be permitted and how this would be monitored, the ability of the local road network to accommodate the additional traffic movements, and restoration of the site. Support was also expressed for the proposed establishment of a local Community Liaison group.

Thereafter, the Committee agreed to continue consideration of the application to allow a site inspection visit to take place.

(Action: Head of Communities and Economy/Democratic Services).

**3. Application for Planning Permission (15/00685/DPP) by Midlothian Council, c/o AHR Architects Ltd for the Erection of Primary School including the Formation of a MUGA and Sports Pitch; Formation of Car Parking and Associated Works at Land at Roslin Primary School, Pentland View Place, Roslin.**

There was submitted report, dated 10 November 2015, by the Head of Communities and Economy concerning the above application.

Having heard from the Planning Manager, the Committee agreed that planning permission be granted for the following reason:

*The site is situated within the settlement boundary of Roslin and has an established education and associated sports and play use. The redevelopment of the site for the provision of a new school and associated facilities is compatible to its location and is supported in terms of development plan policies. Subject to conditions, the design and layout of the proposed development is acceptable and there are no material planning considerations which outweigh the presumption in favour of the development.*

subject to the following conditions:

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

hedge planted along the south-eastern boundary of the site and the southern end of the north eastern boundary of the site over the length of the mutual boundary with the garden of the house at 38A Penicuik Road;

- iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the new building being completed or brought into use whichever is the earlier. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
- vii drainage details, watercourse diversions, flood prevention measures and SUDS (Sustainable Drainage Systems) to manage water runoff;
- viii proposed car park configuration and surfacing, including kerb details;
- ix proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- x details of existing and proposed services; water, gas, electric and telephone;
- xi details of the floodlighting system and any security lights to be installed within the site. The floodlights and security lights shall be designed and installed such that there is no direct illumination of any neighbouring residential property and the lamp design shall be such that the actual lamps and inner surface of the reflectors are not visible from neighbouring houses which have a garden boundary with the application site. In addition, the lighting shall be designed to minimise the spillage of light up into the sky. The floodlighting system shall be fitted with an automatic cut out to ensure that the system cannot operate after 9pm unless otherwise approved in writing by the Planning Authority. The design and construction of the lighting shall take account of the Guidance contained within the Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008;
- xii the locations and design of security/CCTV cameras and mounting poles;
- xiii details, including the location of all street furniture.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi).

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

**Reason:** To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.

**Reason for 1(iii):** To safeguard the privacy and residential amenity of the neighbouring residential from users of the southern-most proposed playground of the new school.

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

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

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

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

4. The soft landscaping of the site delineated on docketed drawings, including mounding is not approved.

**Reason:** The detailed landscape proposals for the site cannot be assessed until ground levels for all buildings, open space and roads in relation to a fixed datum and as require by condition 1, have been submitted for the prior approval of the planning authority.

5. The discharge of surface water to the water environment shall be in accordance with the principle of SUDS (Sustainable Drainage Systems) Manual (C697) published by CIRIA and surface water drainage from the construction phases shall be dealt with by SUDS. Such drainage shall be in accordance with C648 and C649, both published by CIRIA.

**Reason:** To ensure the provision of an appropriate SUDS strategy to serve the proposed development in the interests of safeguarding the water environment.

6. 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 proposed construction traffic access and haulage routes;
- vi a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
- vii proposed car parking arrangements;
- x a programme for completion for the construction of access, roads, footpaths and cycle paths; and
- xi the permeable paving and car park drainage system.

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.*

7. Detailed drawing and a written specification and/or a manufacturers brochure of proposed air handling equipment and extract flues to be installed on the building/on the site shall be submitted for the prior approval of the Planning Authority.

***Reason:*** *To ensure that air handling equipment and extract flues are not unduly intrusive or conspicuous on the building, in the interest of safeguarding the character and visual amenity of the area.*

8. The design and installation of all plant and machinery shall be such that the combined noise level shall not exceed NR 30 daytime (07:00 to 23:00 hrs) and NR 25 night time (23:00 to 07:00 hrs) as measured from within any living apartment in any neighbouring noise-sensitive premises. For the purposes of this condition the assessment position shall be as identified by BS 7445 in relation to internal noise measurements.

***Reason:*** *To ensure noise from plant at the site does not cause an unacceptable level of nuisance to nearby noise sensitive dwellings.*

9. The grass pitches and synthetic pitch will be designed and constructed by a recognised (e.g. SAPCA\* registered) specialist pitch contractor; details of contractor and pitches specification shall be submitted for the written approval of the planning authority prior to the commencement of development.

\*SAPCA is The Sports and Play Construction Association  
([www.sapca.org.uk](http://www.sapca.org.uk))

**Reason:** *To ensure the pitches are designed and constructed to an acceptable standard.*

10. The outdoor sports facilities shall be completed and operational within 1 year of completion or occupation of the new school building, whichever is the earlier.

**Reason:** *To ensure the outdoor sports facilities are provided timeously.*

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

**Reason:** *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policy RP20 of the Midlothian Local Plan and national planning guidance and advice.*

12. Unless otherwise approved in writing by the planning authority, any floodlights or security lighting on the site shall not be used between the hours of 9.00pm and 7am. The floodlights and security lighting shall be designed to minimise the spillage of light outwith the site boundaries or up into the sky.

**Reason:** *To minimise any impact on amenity of floodlighting and security lighting on the surrounding area.*

13. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority; or alternatively it has been confirmed in writing to the planning authority that there is no contamination/previous mineral working requiring mitigation. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
  - i. the nature, extent and types of contamination and/or previous mineral workings on the site;
  - ii measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
  - iii measures to deal with contamination and/or previous mineral workings encountered during construction work; and
  - iv the condition of the site on completion of the specified decontamination measures.

Before the new school building, new MUGA and new grass 7 aside kick about pitch are occupied/first come into use, the measures to



decontaminate/remediate the site shall be fully implemented as approved by the planning authority.

**Reason:** *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

14. The new school building hereby approved shall not come into use unless and until the car parking, cycle and scooter parking all delineated on docketed drawing No.LL(90)001 rev F, and the shelters over all of the cycle parking and scooter parking have been formed/erected and are made available for use. Thereafter, the car parking, cycle and scooter parking and shelters shall be retained unless otherwise approved by the Planning Authority.

**Reason:** *In the interests of road and pedestrian safety and to safeguard the amenity of the area.*

15. The grass 7 aside kick about pitch hereby approved shall not be available for use when the school is not open unless with then prior written approval of the Planning Authority.

**Reason:** *To safeguard the amenity of neighbouring residential properties as use of the grass pitch out with school hours has the potential to give rise to noise nuisance.*

(Action: Head of Communities and Economy)

#### **Sederunt**

With reference to paragraph 1 above Councillor Young, having declared a non-pecuniary interest in the following item of business, left the meeting at 3.15pm, taking no part in the discussion thereof.

**4. Application for Planning Permission in Principle (15/00546/PPP) by Avant Homes, c/o John Handley Associates Ltd, Edinburgh for Residential Development on Land West of The Cottage, Hardengreen.**

There was submitted report, dated 10 November 2015, by the Head of Communities and Economy concerning the above application.

Having heard from the Planning Manager, the Committee in discussing the proposed development considered the current policy position and if there were any material planning considerations which would justify a departure. The potential impact on the development of the site of the gas pipeline that crossed through the middle of it was also discussed.

Thereafter, the Committee agreed that planning permission in principle be refused for the following reasons:

1. The site is not allocated for housing and there does not exist a requirement for the proposed residential development in the Green Belt and countryside. Therefore the proposed development is unacceptable in principle, contrary to SESplan Policy 12 (Green Belts) and adopted Midlothian Local Plan Policies RP1 (Protection of the Countryside) and RP2 (Protection of the Green Belt).
2. The proposed development would result in the permanent loss of prime agricultural land. There is at this time no overriding justification for the development which outweighs the environmental or economic interests served by retaining the agricultural land in productive use. Thereby the proposed development is contrary to adopted Midlothian Local Plan Policy RP4 (Prime Agricultural Land).
3. The proposed residential development is not required to meet Midlothian's effective housing land supply and as such there is no overriding need to support residential development on an unallocated site outwith the development plan process.

(Action: Head of Communities and Economy).

### **Sederunt**

Councillor Young rejoined the meeting at the conclusion of the foregoing item of business at 3.20pm.

### **5. Application for Planning Permission (15/00737/DPP) by Mr G Dean, East Kilbride for the Formation of hot food takeaway and installation of flue at 5 Staiside Court, Bonnyrigg.**

There was submitted report, dated 10 November 2015, by the Head of Communities and Economy concerning the above application.

The Committee, having heard from the Planning Manager, discussed the potential impact of the proposed development and whether the proposals complied with development plan policies or if there were material planning considerations that indicated otherwise. It was noted that the representations and consultation responses received were material considerations. The loss of a unit for the approved Class uses and the impact on neighbouring properties, in particular the Lasswade High School where the Council operated a policy promoting healthy life styles and healthy eating, were also discussed.

After discussion, the Committee agreed that planning permission be refused for the following reasons:

1. The proposed development would result in the loss of a unit which has been approved and developed to be either a Class 1, 2 or 3 use (retail, financial, professional and other services and food and drink uses) in support of the existing neighbourhood centre and as such a reduction in the range and quality of these uses within the neighbourhood centre will undermine its vitality and viability contrary to Midlothian Local Plan policy DP7. The proposed use will also



undermine the implementation of Midlothian Local Plan policies SHOP6 and SHOP7 which supported the original grant of planning permission for Class 1, 2 and 3 uses, not a hot food takeaway sui generis use.

2. The proposed development's proximity to nearby residential properties will result in an unacceptable loss of amenity and detract from the existing character of the area and is therefore contrary to Midlothian Local Plan policies RP20 and DP7.
3. The proposed development's location in close proximity to the Lasswade High School is contrary to the Council's Corporate objectives of promoting healthy life styles and healthy eating at its schools. This is a significant material consideration which outweighs any planning argument to support the proposed development.

(Action: Head of Communities and Economy).

### **Sederunt**

Councillor Milligan left the meeting at the conclusion of the foregoing item of business at 3.40pm.

**6. Application for Planning Permission (15/00715/DPP) by Mr P Clark, 4 Manse Road, Roslin for the Formation of raised decking and installation of roof lights at that address.**

There was submitted report, dated 10 November 2015, by the Head of Communities and Economy concerning the above application.

Having heard from the Planning Manager, the Committee agreed to continue consideration of the application to allow a site inspection visit to take place.

(Action: Head of Communities and Economy).





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## **BROADBAND AND THE PLANNING SYSTEM**

Report by Head of Communities and Economy

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### **1.0 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to update the Committee on the delivery of high speed fibre broadband with regard new developments.

### **2.0 BACKGROUND**

- 2.1 At its meeting of 17 November 2015 the Committee requested clarification with regard securing the delivery of appropriate high speed fibre broadband infrastructure.
- 2.2 At its meeting of 21 April 2015 the Committee expressed its desire to see the delivery of high speed fibre broadband as an integral part of the development process, in particular with regard the delivery of new housing. The Committee's view is a material consideration in the assessment of subsequent planning applications and as such the Planning team have been positively negotiating with house builders to ensure proposed house types are high speed fibre broadband compatible and that developers liaise with digital providers at an early stage to secure the provision of digital infrastructure.

### **3.0 PLANNING POSITION**

- 3.1 Telecommunications and, in particular, digital communication and connectivity is an increasingly important component of e-commerce and social networking. The availability of digital infrastructure to business and domestic customers is central to the expansion and development of online, wireless and mobile services and technologies. The Council supports the roll-out of high speed broadband across Midlothian and acknowledges the importance of this technology to promote e-commerce and e-communication and the contribution it can make to Midlothian's sustainable development objectives.
- 3.2 78% of Midlothian is covered by high speed broadband connections and 98% will be covered by 2017 (BT Openreach programme 2014). The equipment and structures required to support digital technologies should be designed as an integral part of new development wherever possible and any adverse impacts mitigated by siting and design solutions

3.3 The Proposed Midlothian Local Development Plan (MLDP) advises that as digital infrastructure improves, further development opportunities may arise and result in demand for land and property to accommodate the development of data hubs, dark stores and digital innovation centres. The Plan supports the development of such facilities on sites allocated for economic development where they are an employment generator and/ or where the development may serve to attract further business investment. The design of new development and redevelopment proposals should incorporate digital technology provision and connections and use digital technology to enhance the energy efficiency of buildings.

3.4 The MLDP includes a policy (IT1) which seeks to secure appropriate digital infrastructure. Policy IT1 is as follows:

*Proposals for telecommunications developments will be supported where they are sited and designed to minimise environmental impact, taking into account:*

- A. technical and operational considerations;*
- B. the possibility of sharing existing telecommunication facilities, provided that this does not increase any adverse visual impact;*
- C. the possibility of erecting ground-based masts or installing on an existing building or other structure;*
- D. using slimline or the smallest suitable equipment, commensurate with technological requirements;*
- E. the availability of alternative sites;*
- F. concealing or disguising masts, antennas, equipment housings, etc., where appropriate; and*
- F. any other relevant policies.*

*New homes and business properties and redevelopment proposals should be designed in such a way as to incorporate high speed broadband connections and other digital technologies that could optimise the energy efficiency and contribute to reducing the carbon footprint of the building.*

3.5 At its meeting of 16 December 2014 the Council approved the content of the proposed MLDP. The MLDP: Proposed Plan was published in May 2015 with the period to make representations expiring 26 June 2015. In response to the publishing of the proposed plan, 834 representations have been received comprising 2,628 separate comments for consideration. However, no objections to Policy IT1 were received. General comment was made in two representations with regard the need to improve digital infrastructure.

#### **4.0 CONDITIONS ON A GRANT OF PLANNING PERMISSION**

4.1 Negotiations and/or conditions are used to ensure the effective delivery of digital infrastructure through the planning application process.

- 4.2 The following condition is used on a grant of planning permission in principle (PPP) were appropriate:

Development shall not begin until an application for approval of matters specified in conditions for details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse or commercial unit. 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.*

- 4.3 The following condition is used on a grant of detailed planning permission (DPP) were appropriate:

Development shall not begin until details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse or commercial unit. 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.*

## **5.0 RECOMMENDATION**

- 5.1 The Committee is recommended to:
- a) note the update; and
  - b) note the template planning conditions.

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

**Date:** 5 January 2016  
**Contact Person:** Peter Arnsdorf, Planning Manager.  
**Tel No:** 0131 271 3310

**Background Papers:** Council Report entitled 'Midlothian Local Development Plan: Proposed Plan' 16 December 2014.





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

Report by Head of Communities and Economy

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### **1 PURPOSE OF REPORT**

- 1.1 This report updates the Committee with regard to 'major' planning applications, formal pre-application consultations by prospective applicants, and the expected programme of applications due for reporting to the Committee.

### **2 BACKGROUND**

- 2.1 At its meeting of 8 June 2010 the Planning Committee instructed that it be provided with updated information on the procedural progress of major applications on a regular basis.
- 2.2 The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants is outlined in Appendices A and B attached to this report.

### **3 PREMATURE APPLICATIONS**

- 3.1 A consequence of the Proposed Plan being at an advanced stage is premature planning applications being submitted by a number of applicants on a number of sites. These are identified in Appendix A by the statement "Subject to progress on Midlothian Local Development Plan" and relate to sites which are not currently allocated for development in the adopted 2008 Midlothian Local Plan but are proposed in the MLDP. These sites are subject to representations from local communities and interested parties and will be tested at examination by a Scottish Government Reporter (anticipated to be Spring 2016).
- 3.2 In the interests of fairness and transparency it is proposed not normally to report these applications to Committee until the proposed MLDP has progressed through the examination process and the Council has adopted the plan, unless the Committee wish to consider an application in advance of the adoption of the MLDP or there are extenuating circumstances. However, there is a risk that applicants may appeal against non determination, an option open to applicants if

an application is not determined within the set timeframe (four months from the date of validation for a major application) or an agreed extended time period.

- 3.3 If an appeal against non determination is submitted it would be determined by Scottish Ministers after consideration of relevant planning policies and other material considerations. Paramount in the consideration would be the potential for an application to undermine the development plan process if considered in advance of the adoption of the MLDP and whether Midlothian has a sufficient housing land supply as defined in Scottish Government Planning Policy.

#### **4 RECOMMENDATION**

- 4.1 The Committee is recommended to note the major planning application proposals which are likely to be considered by the Committee in 2016 and the updates for each of the applications.

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

**Date:** 5 January 2016  
**Contact Person:** Peter Arnsdorf, Planning Manager.  
**Tel No:** 0131 271 3310

**Background Papers:** Planning Committee Report entitled 'Major Developments: Applications currently being assessed and other developments at Pre-Application Consultation stage' 8 June 2010.



## APPENDIX A

### MAJOR APPLICATIONS CURRENTLY BEING ASSESSED

Ref	Location	Proposal	Expected date of reporting to Committee	Comment
06/00474/OUT	Land adjacent to Rullion Road, Penicuik	Application for Planning Permission in Principle for residential development	Dependant upon receipt of amended plans from the applicant	The applicant is currently engaged in a pre application consultation process (15/00987/PAC) and has advised that an amended planning application will be submitted in Spring 2016.
06/00475/FUL	Land between Deanburn and Mauricewood Road, Penicuik	Erection of 300 dwellinghouses	Dependant upon receipt of amended plans from the applicant	The applicant is currently engaged in a pre application consultation process (15/00987/PAC) and has advised that an amended planning application will be submitted in Spring 2016.
14/00405/DPP	Land 160M south west of Mayshade Garden Centre Eskbank Road, Bonnyrigg	Erection of 56 dwellinghouses and associated infrastructure	January 2016	Pre-Application Consultation (13/00340/PAC) carried out by the applicants in May/June 2013.  This application is reported to this meeting of the Committee
14/00910/PPP	Land at Cauldcoats, Dalkeith	Application for Planning Permission in Principle for residential development, erection of a primary school and mixed use developments.	Subject to progress on Midlothian Local Development Plan	Pre-Application Consultation (14/00553/PAC) carried out by the applicants in October/November 2014.
15/00364/PPP	Land adjacent Old Pentland Road, Loanhead	Mixed-use development comprising; film and TV studio and backlot complex; mixed commercial uses; hotel; and gas heat and power plant.	Subject to determination by the Scottish Ministers	Pre-Application Consultation (14/00729/PAC) carried out by the applicants in October/November 2014.  The applicants have appealed non determination.
15/00503/DPP	Middleton Limeworks, Gorebridge	Infilling of quarry	January 2016	Pre-Application Consultation (15/00157/PAC) carried out by the applicants in March/April 2015.  This application was reported to the Committee at its meeting of 17 November 2015 and was deferred for a site visit.

15/00616/DPP	Land 200M east of Charles Letts And Co Ltd, Dalkeith	Erection of 82 dwellinghouses	January 2016	Pre-Application Consultation (13/00716/PAC) carried out by the applicants in October/November 2013.  This application is reported to this meeting of the Committee
15/00684/DPP	Land at Loanhead Leisure Centre, George Avenue Loanhead	Erection of community facility comprising primary school; nursery; early years/wrap around care; library; health centre; and alterations to the existing leisure centre site and associated external works	January 2016	A pre-application report was reported to the May 2015 meeting of the Committee.  This application is reported to this meeting of the Committee
15/00712/PPP	Land at Paradykes Primary School, Mayburn Walk Loanhead	Residential development and associated developments (demolition of existing Paradykes Primary School, nursery, community learning centre, library and health centre)	January 2016	A pre-application report was reported to the May 2015 meeting of the Committee.  This application is reported to this meeting of the Committee
15/00884/DPP	Millerhill Marshalling Yard Whitehill Road, Millerhill, Dalkeith	Train stabling and cleaning facilities; new railway lines; office; staff welfare facilities; car parking; access and landscaping	March 2016	A pre-Application report was reported to the August 2015 meeting of the Committee.

## APPENDIX B

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

Ref	Location	Proposal	Date of receipt of PAC	Earliest date for receipt of planning application and current position
13/00522/PAC	Land north of Oak Place, Mayfield	Residential Development	18 July 2013	11/10/13 - no application yet received
13/00609/PAC	Housing Site B, land at Newbyres, River Gore Road, Gorebridge	Residential Development	19 August 2013	12/11/13 - no application yet received
14/00451/PAC	Land at Newton Farm and Wellington Farm, Old Craighall Road, Millerhill, Dalkeith	Residential development and associated developments	10 June 2014	03/09/14 - no application yet received
14/00833/PAC	Land at Salter's Park, Dalkeith	Mixed-use development comprising residential and employment uses	12 November 2014	05/02/15 - no application yet received A pre-application report was reported to the January 2015 meeting of the Committee.
15/00774/PAC	Site Hs14, Rosewell North, Rosewell	Residential Development	22 September 2015	15/12/15 - no application yet received A pre-application report was reported to the November meeting of the Committee
15/00936/PAC	Land 470M West Of Corby Craig Terrace, Bilston	Residential Development	25 November 2015	17/02/16 This pre-application is reported to this meeting of the Committee.
15/00987/PAC	Land Between Deanburn And Mauricewood Road Penicuik	Residential Development	17 December 2015	10/03/16





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## APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

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### 1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in November 2015; and four appeal decisions received from Scottish Ministers.

### 2 BACKGROUND

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes decisions on appeals which have been considered by Scottish Ministers.

### 3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 24 November 2015 the LRB made the following decision:

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
1	15/00592/DPP	Whitehill, Nine Mile Burn, Penicuik	Erection of dwellinghouse	Review upheld. Permission granted.

### 4 APPEAL DECISIONS

- 4.1 An appeal against a refusal to grant planning permission (15/00029/DPP) for the erection of 13 flatted dwellings and 5 dwellinghouses, formation of car parking and access road and

associated works on land at the junction of Bryans Road and Morris Road, Newtongrange has been dismissed. The application was refused on the adequacy of car parking and the impact on road safety, design appearance and layout including adequacy of garden space and the effect upon residential amenity. The Scottish Government Reporter dismissed the appeal on the adequacy of car parking provision. A copy of the appeal decision accompanies this report.

- 4.2 An appeal against a refusal to grant planning permission (14/00044/DPP) for the erection of 9 wind turbines and associated infrastructure on land at Mount Lothian Moss, Penicuik has been dismissed. The application was refused on landscape and visual amenity grounds. The Scottish Government Reporter dismissed the appeal on both these grounds. A copy of the appeal decision accompanies this report.
- 4.3 An appeal against a refusal to grant planning permission (15/00365/DPP) for the erection of wind turbines and associated infrastructure on land at Springfield Farm, Penicuik has been upheld. The application was refused on landscape and visual amenity grounds. The Scottish Government Reporter upheld the appeal after considering the proposed development will not be significantly detrimental to the landscape. A copy of the appeal decision accompanies this report.
- 4.4 An appeal against non determination of a planning permission in principle application (14/00420/PPP) for residential development and associated infrastructure on land north and south of Lasswade Road, Eskbank has been upheld. The application was not determined by the Council because of the status of the proposed Midlothian Local Development Plan (MLDP), the application being considered to be premature. The Scottish Government Reporter upheld the appeal after considering the proposed development accords with the provisions of the development plan on the basis that Midlothian Council does not have an effective five year land supply. This was based on the Council's 2014 Housing Land Audit. A copy of the appeal decision accompanies this report.
- 4.5 Since the appeal a draft 2015 Housing Land Audit has been prepared which demonstrates that the Council has an effective housing land supply. The land supply is dependant on the house building industry building houses on the sites granted planning permission or allocated in the adopted 2008 Midlothian Plan. The sites in the proposed MLDP will also be included once the plan is adopted.

## **5 RECOMMENDATION**

- 5.1 The Committee is recommended to note the decision made by the Local Review Body at its meeting on 24 November 2015 and the four reported Scottish Ministers' appeal decisions.

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

**Date:** 5 January 2016

**Contact Person:** Peter Arnsdorf, Planning Manager.  
**Tel No:** 0131 271 3310

## Appeal Decision Notice

T: 01324 696 400  
F: 01324 696 444  
E: [dpea@scotland.gsi.gov.uk](mailto:dpea@scotland.gsi.gov.uk)



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

- Planning appeal reference: PPA-290-2029
- Site address: land at junction of Bryans Road and Morris Road, Newtongrange
- Appeal by T & V Builders Ltd. against the decision by Midlothian Council
- Application for planning permission 15/00029/DPP dated 13 January 2015 refused by notice dated 04 June 2015
- The development proposed: erection of 13 flatted dwellings and 5 dwellinghouses, formation of car parking and access road, and associated works
- Date of site visit by Reporter: 07 October 2015

Date of appeal decision: 17 November 2015

### Decision

I dismiss the appeal and refuse planning permission.

My decision on the appellant's claim for expenses is set out in a separate notice.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are (1) the adequacy of car parking and impact on road safety; (2) the design, appearance and layout of the development including adequacy of garden space; and (3) the development's effect upon residential amenity.

#### *The adequacy of car parking and impact on road safety:*

2. The land to which this appeal relates is a brownfield windfall site. Policy HOUS 3 of the adopted Midlothian Local Plan 2008 supports housing developments in such locations, subject to proposals meeting a range of criteria, one of which is that traffic and parking requirements are met. The policy does not specify these parking requirements, and nor do they appear elsewhere in the local plan. The council has adopted local parking standards which are outwith the statutory development plan, but which assist in applying the policy and so are capable of being a material consideration.

3. A total of eighteen dwellings are proposed. In response to previous unsuccessful attempts to obtain planning permission for residential development on this site, the council produced an informal site brief to guide applicants on the likely planning requirements. I





accept that this brief was essentially pre-application advice. The site brief was not adopted or statutory guidance and therefore did not prejudice the determination of any subsequent planning application. The weight this advice can be afforded as a material consideration is therefore negligible, although I recognise that there would have been a reasonable expectation from the applicant that this advice would reflect development plan requirements. I requested further information from the council in relation to how the adequacy of the car parking provision was assessed for this proposal. In response, the council has explained that the application was determined having regard to parking standards adopted in 2003 ('Standards for Development Roads'), and that only subsequent to this did the council begin applying revised, newly adopted parking standards (entitled 'Midlothian Council Parking Standards' (2014)) in the assessment of planning applications. Whilst there is not an explicit conflict between the site brief and local plan policy HOUS 3, the brief's requirement for 150% car parking provision does not appear to correlate with the council's adopted or superseded parking standards.

4. Notwithstanding that the fourth reason for refusal related to inadequate parking provision (reflecting concerns raised by numerous third parties), the council has stated that the proposal did accord with the 2003 parking standards. The council has not explained how this conclusion was reached and neither the council nor the appellant has set out calculations to demonstrate this. In the absence of this and applying the standards to the proposal myself, I found that some ambiguity is presented by calculations being founded on the number of rooms in a dwelling, rather than the number of bedrooms (which tend to more accurately reflect likely demand for car parking). The standards exclude bathrooms, WCs and separate kitchens from the calculation, but my interpretation is that 'open plan' dining-kitchens (as proposed for the five houses) should be counted as a room. Using this approach, my calculations state that 30.75 spaces would be needed for this development. As 27 spaces are proposed this would be a modest shortfall against the requirements of those standards.

5. It is unclear to me why the revised 2014 standards were not used by the council when determining the planning application. As previously noted, the council has stated that the 2014 standards have only been used in relation to assessing planning applications since May 2015. As the decision notice is dated June 2015 however, it appears that the revised standards should have formed part of the council's assessment. In any case, there is no dispute that the revised standards are now adopted (at the point of my determination) and have superseded the 2003 standards. I therefore attach greater weight to the council's 2014 parking standards in my assessment. These updated parking standards recommend significantly increased parking requirements for proposals of this nature. I consider that they provide a more rational means of calculating parking requirements (based on bedroom numbers and therefore the likely numbers of occupants). Applying these updated standards, 43 spaces should be provided for this development. The proposed parking would be deficient by 16 spaces, representing a shortfall of approximately 37%.

6. I find that the impact of such a considerable deficiency in car parking provision would be highly likely to lead to on-street car parking in the immediate vicinity. During my accompanied site inspection I noted that whilst car parking is not expressly forbidden or restricted on Morris Road (from where the proposed properties would be accessed), it would certainly be undesirable for cars to overspill from the site and be parked on the carriageway, due to the nuisance this would cause to other road users. I observed Morris

Road to be a well-used route which also acts as the main approach to Newbattle Community High School. Whilst I note that the council's policy and road safety team did not object to the development, I nevertheless consider that on-street car parking in this location has the potential to compromise road safety, due to there being access and egress points on both sides of the road and any parked cars would potentially restrict visibility both from and of these. Any cars parking near to the junction of Morris Road and Bryans Road / Suttieslea Road would also reduce visibility for pedestrians attempting to cross the road, in the context again that this road acts as the main access to a school. I have noted that a traffic signal-controlled junction with an improved crossing is planned (entirely separate from this appeal proposal). This would make crossing the road safer, but it would be likely to further reduce the opportunity for acceptable on-street parking.

7. Many of the third party representations have raised wider road safety concerns regarding the adequacy of the site's proposed access and egress including its unsuitability for refuse collection vehicles. I do not share these particular concerns. The site access would be adequate for the relatively modest number of vehicular movements it would need to accommodate, and it is common for refuse collection vehicles to need to temporarily obstruct the road outside residential properties. This would typically only occur once every one or two weeks, and the obstruction would be for a matter of moments whilst bins were emptied into the vehicle. These matters would not warrant the refusal of planning permission. Numerous third parties have also stated that visibility for vehicles turning onto Bryans Road / Suttieslea Road from Morris Road would be restricted by the proposed building. During my site inspection it was evident to me that this would not be the case.

8. I nevertheless conclude that the development's car parking provision would be unacceptably deficient for the number and size of dwellings proposed. Whilst the shortfall appears to have been exacerbated somewhat by the council's adoption of revised parking standards, car parking remains inadequate when assessed against the previous more lenient (and arguably less realistic) standards. The appellant has not submitted any evidence to suggest that a relaxation of the parking standards should be acceptable in this location. In any case, whilst I note that the site is adjacent to a bus route and, for many, within a reasonable walking distance from the centre of Newtongrange, I do not consider these benefits to be sufficient to justify such a significant shortfall in parking provision. As such, the development would be contrary to the relevant provisions of local plan policy HOUS 3.

#### *Design, appearance and layout including adequacy of garden space*

9. Local plan policy RP 20 resists development in built-up areas, and in particular in residential areas, where it would detract from the existing character or amenity of the area. Policy HOUS 3 supports development where it has regard to the character of the area in terms of scale, form, design and materials. Policy DP2 meanwhile contains quite extensive, specific guidelines applicable to all developments. These include requirements for good design both in terms of layout and architectural quality, sets minimum standards for private open space provision and specifies minimum separation distances between dwellings.

10. The overall design, appearance and size of the flatted residential block (but not the houses) has given rise to numerous third party objections and has also formed the basis of two of the council's reasons for refusal. The use of a flat roof has been specifically referred

to as inappropriate. During my site inspection I found that there was no particular or dominant architectural style in the locality. The appellant has drawn attention to the presence of other flat-roofed buildings in the vicinity, and I also noted that both the adjacent police station and residential properties on Morris Road utilise flat roofs on parts of these buildings. As such, I do not see that a flat-roofed building on the appeal site should in itself be seen as detrimental to the character and appearance of the area.

11. Perception of design is always subjective to a degree, but good design generally demonstrates a positive or sympathetic response to the site's features and context. The absence of any particular architectural vernacular in this locality gives a considerable degree of design freedom and whilst there may be scope for the design to be improved further, I do not consider the overall architectural merits of the proposal to be unacceptable. The use of three storeys would inevitably increase the dominance of the building but the combination of the site's levels relative to the adjacent roads, the flat roof (which minimises the overall height and massing), and its position set back from the corner of Morris Road and Bryans Road / Suttieslea Road would avoid the development becoming unduly dominant or overbearing in the wider streetscape. The choice of materials are appropriate, reflecting those commonly used in the area.

12. The proposed gardens for the five houses and the communal private open space for the flats all fall below the sizes required by policy DP2 but they are not deficient to such an extent to lead me to a clear finding that the development would be contrary to policy DP2. That said, this matter does tend to strengthen my earlier conclusion, in regard to parking provision, that the scale of proposed development exceeds the capacity of the site to satisfactorily accommodate it.

*Effect upon residential amenity:*

13. Local plan policy DP2 sets out required separation distances between houses. There are no other policies which explicitly relate to residential amenity matters, but it is nevertheless a well-established planning principle to safeguard residential amenity, and I attach significant weight to this material consideration in this appeal. During my site inspection I viewed the appeal site from the garden of Bryans Farmhouse. Its owner-occupiers, together with a number of third parties, have raised concerns that the development would have an unacceptable impact upon residential amenity at this property. I observed that the areas of domestic curtilage and also the ground floor windows (including a conservatory which was not shown on the submitted plans) on the south-east side of the house are almost entirely screened from views from outside of the site by the walls, fencing and outbuilding surrounding it. The 'back to back' separation distances required by policy DP2 (to safeguard privacy) would not be achieved between the southeast elevation of Bryans Farmhouse and the northwest elevation of the flats. I find however that the absence of any windows on the westernmost part of the proposed building on this elevation, together with the proposed use of obscure-glazing on other specified windows, would effectively prevent any overlooking.

14. I am satisfied that the proposed layout of the development and separation distances avoid any overbearing impact or overshadowing of Bryans Farmhouse. This conclusion is supported by the vertical sky component test and 'sun on ground indicators' used by the council. I recognise that the solar panels fitted to the south-east facing roof slope of an

outbuilding would have reduced periods of direct sunlight which would reduce their efficiency, but I do not attach sufficient weight to this material consideration for it to be pivotal to my decision.

15. I understand that the owners of Bryans Farmhouse run a child-minding business from the property, and it has been intimated in representations that this increases the need for privacy. The council has confirmed that planning permission has not been granted for a child-minding business and so it is assumed to be of a scale and nature that is ancillary to the house. In any event, I do not see why a child-minding business would reasonably require a greater level of privacy than a house, and no evidence has been provided by any parties to suggest otherwise.

16. To conclude, I am satisfied that this development would not result in a significant or unacceptable loss of residential amenity at Bryans Farmhouse. Whilst the separation distances specified by policy DP2 would not be fully achieved, overlooking would not result so I accept that a minor departure from the policy on this matter would be acceptable in this instance. No other adjacent residential properties (on Reed Drive) would be significantly affected by the development.

*Other matters:*

17. The appellant has stated that the mature deciduous trees along the northwest site boundary (beyond which are the rear gardens of properties on Reed Drive) would be retained where possible. The submitted plans however do not show these trees. During my site inspection I found that the trunks of some of these trees would obstruct the proposed access to the houses' rear gardens. I consider that these trees have considerable amenity value and their protection would be desirable. Had I been minded to allow the appeal I would have required more information from both the appellant and council on this issue, with the aim of adequately safeguarding against their loss or damage where appropriate.

18. The need for surveys in relation to former coal mining activity and archaeology could be satisfactorily dealt with by condition. The appellant has stated that they are agreeable to the use of a Section 75 agreement to secure education and affordable housing contributions from the development, as required by the local plan. Third party concerns in relation to whether plans would be complied with, the effect on the structural integrity of the outbuilding at Bryans Farmhouse and the longevity of flat roofs are not material planning considerations and so have not influenced my decision.

19. The appellant has intimated that a reduction in the density of development would be unviable. No evidence has been provided to support this argument but, in any event, this would not justify allowing a development that would be unacceptable in other respects.

*Conclusions:*

20. The proposed car parking to serve the development is deficient to an unacceptable degree. This would result in both residents and visitors to the properties being forced to find alternative locations to park, and this would most likely result in on-street parking on Morris Road which would have an adverse impact upon road safety and impede traffic flow.

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

*Christopher Warren*  
Reporter

## Appeal Decision Notice

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Decision by Dan Jackman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2025
- Site address: Mount Lothian Moss, Penicuik, Midlothian
- Appeal by Wind Prospect Developments Limited against the failure of Midlothian Council to issue a decision within the prescribed period
- Application for planning permission 14/00044/DPP dated 21 January 2014
- The development proposed: 9 wind turbines (102 metres to tip) and associated infrastructure
- Date of Hearings: 12 and 13 May 2015
- Date of site visits by Reporter: Accompanied 14 May 2015, unaccompanied 23 October 2014, 1 May 2015 and 11 May 2015.

Date of appeal decision: 26 November 2015

### Decision

I dismiss the appeal and refuse planning permission.

### Preliminary matter

1. On behalf of a local resident, a legal submission was made on the 12<sup>th</sup> September 2014 which argued that Scottish Ministers should decline to determine this appeal and issue a direction made under Section 48(7) of the Town and Country Planning (Scotland) Act 1997.
2. On 10<sup>th</sup> December 2014, after considering submissions from the other main parties, Scottish Ministers declined to exercise their discretion under Section 48(7) of the Act and indicated that they wished me to determine the appeal.
3. It was put to me that the reasons given by Scottish Ministers were inadequate and I should address this matter in my decision. However, I have no authority to act on Scottish Ministers behalf in relation to a direction under Section 48(7).
4. I found no difficulty in reaching a decision in the absence of site specific wind speed data. I note that Midlothian Council also felt able to establish a position on the planning merits of the case without such data. I am aware of no policy requirement for a minimum average on site wind speed or any particular electricity output figure. It is established that the commercial viability of any proposal is not a relevant matter to be assessed in deciding whether to grant planning permission.



5. The appellants now have access to over a year's site specific wind speed data and dispute that any conclusions can be safely drawn from average wind speeds from a variety of other sites in the general locality. I can conceive of no reasonable scenario where a project involving £24.8 million of capital expenditure would be built if such a project was not commercially viable. It is safe to assume that the benefits from the wind farm would be at least those normally considered to apply to any commercially viable wind farm with a capacity of 20.7 megawatts.

6. It is commonplace in any planning decision to have to balance predicted positive and negative impacts. There is always a degree of uncertainty in any planning decision and this uncertainty has to be resolved by exercising reasonable planning judgement.

### Reasoning

7. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.

### Development Plan

8. The development plan consists of the South East Scotland Strategic Development Plan approved on 27<sup>th</sup> June 2013 and the Midlothian Local Plan adopted in December 2008. The strategic development plan sets the strategic planning context for South East Scotland in order to inform the detailed policies in the local development plans. It includes policies relating to the protection of the environment and the provision of renewable energy. However, it was agreed at the hearing that these general policies did not assist in the detailed assessment of any individual wind farm proposal.

9. As is often the case, the Midlothian Local Plan includes policies that apply to a particular development type, such as a wind farm and general policies that would apply to any proposal, including a wind farm. Policy NRG 1 relates to renewable energy projects and states that proposals will be permitted provided that 9 criteria can be met. These criteria relate to a range of matters including impact on designated sites, residential amenity, landscape and visual impact and the impact on a variety of nature conservation interests. There was agreement that this approach was consistent with the overall objective of the development plan which was to ensure that development took place in an environmentally acceptable manner.

10. Criterion G of Policy NRG 1 states that a proposal should also comply with any other relevant policies of the local plan. There are a wide range of potentially relevant policies. However, the most directly relevant policies referred by the main parties were Policies RP 6 and RP 7 (landscape matters), RP 10 – 13 (nature conservation matters) and RP 24 (listed buildings).

11. The submissions to the council and those made during the appeal process have raised a broad range of concerns. However, it seems to me from the submissions and discussion at the hearing sessions that the determining issues in dispute relate to landscape and visual impact, impact on residential amenity, impact on nature conservation interests and impact on listed buildings. I shall consider each of these issues in turn.

### Landscape and visual impact

#### *Methodology*

12. The submitted environmental statement contains a landscape and visual impact assessment prepared using a widely recognised methodology. Penicuik Environment Protection Association (PEPA) had a number of criticisms of the landscape and visual impact assessment, including that viewpoints were not representative, views are not experienced in isolation and that turbine blades move and therefore draw the eye.

13. My understanding is that the viewpoints were agreed with the council. I note that the addendum has an extended number of viewpoints. It is important to recognise that viewpoints are intended to be representative and obviously cannot include every position where the wind farm might be seen. The landscape and visual impact assessment included a variety of written and illustrative material. All the submitted material has to be properly interpreted and assessed in the field. This includes making allowance for the fact that turbine blades will rotate. I am satisfied that the submitted landscape and visual impact assessment contains sufficient information upon which to make a decision.

#### *Landscape impact*

14. Landscape effects relate to the changes to the physical characteristics and the perceptions of the landscape. In brief summary, the landscape and visual impact assessment concluded that the proposal would be read as consistent with the scale, pattern and character of the host environment. The turbines would not overwhelm or dominate. Significant impacts would be localised, which would be expected from any reasonable scale commercial wind farm development.

15. These conclusions were disputed by Midlothian Council, PEPA and those local residents who attended the hearing sessions. There were also a variety of concerns expressed by Scottish Natural Heritage, Scottish Borders Council (the neighbouring planning authority) and other local objectors in their written responses.

16. The main reason for the difference in opinion appears to me to relate to the considered scale of the landscape and the proposal. The scale of a landscape does not relate to any particular dimension. It is a descriptive term regarding the perception of relative size. Scale is important because viewers will use other landscape features as scale indicators to gauge the perceived size of a wind farm development. A proposal that is judged to be out of scale may appear visually dominant and excessively prominent.

17. Based on my own accompanied and unaccompanied site visits, I consider that defining the scale of the landscape in this instance is not a simple matter. I accept that within the general locality of the proposal there are landscape elements which are



frequently considered as attributes of a large scale landscape. However, there are also blocks of forestry and woodland that act as scale indicators. In addition, there is the important role played by both the Pentland Hills and Moorfoot Hills. These hill ranges can act as scale indicators in some views. I also agree with those who argued that where the wind farm is seen against the hills, the hill range's vertical scale is diminished. I consider that the 2007 and 2014 landscape capacity studies are correct to identify the two hill ranges as being important to the overall perception of the moorland fringes landscape character type and to highlight their importance as a factor to be satisfactorily addressed by a successful design. That does not mean that I consider that either landscape capacity study is definitive in defining an acceptable height or number of turbines.

18. In my judgement, the scale of a proposed wind farm is not just determined by the height to the tip of the turbines. It is also determined by the number of turbines and the turbine layout. Depending on the angle of the view, frequently the two lines of turbines are actually seen in the landscape as one single spread of turbines.

19. I consider that the combination of height, number and layout means that the proposal would be perceived as out of scale with the moorland fringes landscape character type. I consider that the landscape effect extends at least as far as is generally indicated by the applicant in CD 6.14. I believe it would be possible to perceive a new landscape character sub type, dominated by the wind farm, not only within this broad area but from the higher level viewpoints when looking down into the landscape, for example, viewpoints 12 and 15. This change does not respect the local landscape character and in my opinion would adversely and unacceptably affect the quality of the local landscape.

20. In the current local plan there is an Area of Great Landscape Value identified. This is shown in figure 6.1.25 of the environmental statement. It was explained to me that the council had reviewed its landscape designations and intended to replace the Area of Great Landscape Value with Special Landscape Areas, although in the vicinity of the site the actual changes to the extent of the designations are limited.

21. There is no direct landscape effect on the Area of Great Landscape Value (and the corresponding Special Landscape Area). There would be indirect effects. In particular, as stated above, the extent of the new landscape character sub type would be readily appreciated. However, I do not believe that the extent of the landscape impact upon either the Area of Great Landscape Value or the Gladhouse and Moorfoot Scarp Special Landscape Area is sufficient to amount to a significant adverse effect on these areas overall.

22. Also I cannot agree with those who argued that there would be a significant landscape impact on the Pentland Hills themselves, (as opposed to impacting on views of the Pentland Hills from the host landscape). Although the wind farm can be seen and I believe the landscape change detected from parts of the Pentland Hill ridge, I do not believe that it can be reasonably argued that this would have any significant effect on the defining characteristics of the Pentland Hills overall.

23. I accept that the site is not in a location where any wind farm would be unacceptable in principle. I accept that any wind farm would introduce tall vertical structures and therefore be noticeable in the landscape. I agree that the council's draft spatial framework

does identify the area as a possible location for a wind farm. However, this is caveated by the comments made in the Draft Supplementary Guidance – Wind Energy Development in Midlothian 2014. The draft supplementary guidance actually states, “*Very limited potential for turbines 50 m – 80 m but towards the lower end up to 6 turbines.*” This does not indicate to me that the council considers 6 x 80 metre turbines to be acceptable or that it accepts that the landscape can automatically absorb 80 metre turbines.

24. Overall, the design choices of the proposal in terms of height, number of turbines and layout have not minimised the landscape impact and I consider that it is out of scale with the receiving landscape. In my opinion, many of the criticisms of the design of the proposal regarding its dominance expressed by Midlothian Council, PEPA, local residents, Scottish Borders Council and Scottish Natural Heritage are well founded. In my judgement, the overall landscape impacts of the proposed wind farm are unacceptable.

### *Visual Impact*

25. The visual impacts of the proposal are closely related to the proposal’s effects on landscape character. My assessment of the representative viewpoints illustrates my concerns over the landscape impacts.

26. I believe that the view from viewpoints 1, 2, 4, 5 and 10 show a wind farm that by virtue of its height and spread, relative to the scale indicators of trees and the surrounding hill ranges would be perceived as out of scale and excessively prominent. Even the viewpoints at a greater distance such as viewpoints 12, 15, 16 and 17 (12 and 17 being representative of views from the Pentland ridge), in my opinion illustrate a wind farm that is excessively dominant. From these viewpoints I could not reconcile what I perceived from the submitted material with the descriptive words used on behalf of the appellant, such as “inferior” and “subservient”.

27. I note from Scottish Natural Heritage’s guidelines that careful attention should be paid to the impact on nearby residents, as they will experience a wind farm from different locations, at different times of the day, for longer periods and in different seasons. There are some 34 properties within 2 kilometres of the site. A wind farm that over dominated the landscape would be experienced in many cases from these properties and in all cases as they travelled about the locality. I consider this to be visually unfortunate.

28. Although figure 6.1.14 shows that visibility exists for the majority of the area within 10 kilometres of the site, I agree with the appellant that the actual extent of visibility on the ground is less. Actual visibility from settlements and the main road network is less than implied by figure 6.1.14 and would be intermittent in nature. However, I think it is important to understand how a tall structure is appreciated in the landscape. I also agree with PEPA, that a tall vertical structure is not just perceived from any one viewpoint in isolation. A wind farm does not have to be constantly in view for people to be aware of its presence.

29. Anyone travelling around the local road network surrounding the site (including local residents), those walking along the Pentland Hill ridge, and those seeing the wind farm from those locations represented by viewpoints 13, 15, 16 and 22, would see what I have identified as an out of scale wind farm. Even from viewpoint 19, which I accept in isolation

is not of itself significant, would nonetheless mean that many road users would be aware of the presence of the proposal.

30. I therefore consider that many people would be aware of the presence of a wind farm that I find to be out of scale. This would be visually unfortunate to the point where I consider the impacts are unacceptable.

### *Cumulative impact*

31. Based on my accompanied and unaccompanied site visits, I cannot agree with those who argued that there would be unacceptable cumulative landscape and visual impacts. The existing Bowbeat wind farm is approximately 8 kilometres from the proposal. At this distance I believe that the two wind farms would be clearly read as separate. Any difference in height between the two proposals would also be imperceptible at such a distance.

32. Cloich Forest and Hag Law wind farms are current proposals. I accept that if these were consented then from certain locations viewers would be aware of the presence of more wind farms. However, I agree with the appellants that the dominate impact is that of the Mount Lothian proposal itself. Whilst I have found that the landscape and visual impact of the proposal itself to be unacceptable, I consider that it is an exaggerated concern that the proposal, with or without Cloich Forest and Hags Law would create a wind farm landscape over an extended area of Midlothian/Scottish Borders.

33. The proposals for Cauldhall opencast coal mine seem uncertain. Planning permission has not been issued and at the hearing the council informed me that the developer was reviewing whether to proceed or not. In any event, the landscape and visual impacts from an opencast coal mine are of a completely different nature than from a wind farm. I accept that if both proposals were constructed or operated at the same time, careful consideration would be necessary in relation to certain cumulative impacts, for example lorry movements. However, the council would be in a position to manage these impacts through appropriate planning conditions. I find no reason why the development of a consented open cast coal mine, subject to appropriate conditions, should automatically preclude any environmentally acceptable wind farm proposal.

### *Conclusion*

34. For the reasons set out above, I find that the combination of height, number and layout results in a wind farm design that is out of scale with the receiving landscape. I consider that this results in a visually unfortunate proposal which would be perceived by many people. I conclude that the proposal would have an unacceptable effect on the wider environment by reason of its landscape and visual impacts, which would be contrary to criterion C of Policy NRG 1. For the same reasons, I believe the proposal would adversely affect the quality of the local landscape and would be contrary to Policy RP 7.

### Residential amenity

35. My understanding of criterion B of Policy NGR 1, following the discussion at the hearing session, is that a distinction should be made between the general landscape and

visual impacts that nearby residents might experience and the particular impacts on the amenity of an individual property, which may include residential visual amenity.

36. In terms of noise and shadow flicker, these matters were assessed in the submitted environmental statement. Subject to appropriate conditions I find that there is no reasonable basis for assuming that these impacts would be unacceptable.

37. I am aware that PEPA had concerns as to the accuracy of the noise predictions in the environmental statement and the possible adverse health consequences for nearby residents. The Assessment and Rating of Noise from Wind Farms (ETSU-R-97) is the framework that the Scottish Government expects wind farm designers and councils to follow. I am aware that not everyone agrees with ETSU-R-97. My understanding is that the noise limits set in ETSU-R-97 are not intended to make a wind farm inaudible. The limits are considered to be acceptable. Concerns over health effects in relation to noise from wind farms are in my experience frequently raised. Due to this frequency over many years I must assume that Scottish Ministers are also aware of such concerns. Nonetheless, Scottish Ministers have chosen to continue to recommend that ETSU-R-97 is the appropriate framework to follow.

38. I can understand the concerns expressed to me at the hearing and in the written representations from local residents regarding the changes to the outlook from their residential properties. However, it is an inevitable consequence of the Scottish Government's energy policy that in a relatively densely populated country, some residential properties are likely to be close to a wind farm.

39. A local resident does not have a right to a view. The concern over changes to property values is not of itself a relevant planning consideration. I agree with the appellant that for the impact of a wind farm development on the residential visual amenities of any one property (as opposed to the general landscape and visual impacts) to be sufficiently harmful to justify refusal, the impact must be unpleasantly overwhelming.

40. On my accompanied site visit I visited some of the closest properties to the wind farm. In my assessment, whilst visual impacts were clearly significant, I found none that could be described as unpleasantly overwhelming. I therefore find that the conclusions of the appellant's own study, that there would be significant effects for 23 out of the 34 properties within 2 kilometres but that none would be excessively dominating to be fair. Therefore, whilst I find that the general landscape and visual impacts are unacceptable and obviously these will be experienced by the local residents, I do not find any overwhelming impacts on the residential amenity of any individual property. I therefore conclude that the proposal would comply with criterion B of Policy NRG 1.

#### Nature conservation matters

41. PEPA, the council and some other representations considered that because of inadequacies in the various surveys the conclusions drawn in the environmental statement regarding potential impacts upon geese, osprey, bats and some other protected species could not be relied upon.

42. Some of these concerns over the methodologies used for some of the surveys were shared by Scottish Natural Heritage, Royal Society for the Protection of Birds and Scottish Wildlife Trust. However, the final response from Scottish Natural Heritage dated 28<sup>th</sup> March 2014 stated that the information was sufficient upon which to base a decision. Overall, and subject to appropriate conditions, which would include mitigation measures, the various potential impacts on nature conservation matters were not considered to be unacceptable. None of the above organisations with a special interest in nature conservation maintained an on-going objection in principle or elected to take part in the hearings. I note that the council chose not to exercise its power to request further information between the receipt of Scottish Natural Heritage's consultation reply in March and the appellant's decision to appeal against non determination in August 2014.

43. Therefore, on the basis of all the evidence before me, I cannot agree with those parties who argued that there would be a breach of criterion A (in relation to international, national or regional designations) or criterion I (flight paths of migratory birds) of Policy NGR 1. It therefore also follows that I find no breach of Policies RP 10 -13.

#### Listed buildings

44. On behalf of the occupier of Toxside, a grade B listed building, it was argued that the proposal would be detrimental to the setting of the listed building. I visited Toxside. I consider that the setting of the building mainly relates to the immediate surroundings of the existing curtilage. I do not consider that the setting extends to the wind farm site which is some 1.6 kilometres away.

45. I note that neither the council nor Historic Scotland found any unacceptable adverse impact on any heritage assets including listed buildings. I conclude that there is no breach of criterion A of Policy NRG 1 or Policy RP 24.

#### Other matters

46. Policy NRG 1 refers to a range of other matters including archaeology, tourism, grid connection, driver distraction and aviation. However, these matters have all been assessed in the submitted environmental statement and taken into account in the design of the proposal. I find that in relation to these other matters, there would either be no impacts, or subject to appropriate conditions, no unacceptable impacts.

#### Development plan conclusions

47. Overall, I conclude that the combination of height, number and layout of the turbines of the proposed wind farm results in a proposal that is out of scale and would produce unacceptable landscape impacts which would be experienced by many people. I find that this would be contrary to the objectives and policies of the development plan which seek to ensure environmentally acceptable renewable energy developments.



## Material Considerations

### Scottish Planning Policy

48. It is important that Scottish Planning Policy is read as a whole. It does introduce a policy presumption in favour of development that contributes to sustainable development. I have no doubt that a wind farm that had acceptable environmental impacts would be considered by the Scottish Government to be an example of development that contributes to sustainable development.

49. However, I do not consider that a wind farm that would have unacceptable landscape and visual impacts would be considered as development that contributes to sustainable development. Paragraph 202 states that *“the siting and design of development should take account of local landscape character. It adds that “...developers should seek to minimise adverse impacts through careful planning and design ...”* Paragraph 203 states that *“Planning permission should be refused where the nature or scale of proposed development would have an unacceptable impact on the natural environment.”*

50. I do not see how a development that was considered to have unacceptable landscape and visual impacts could be considered as well designed in outcome 1 or protect and enhance our natural assets in outcome 3. Likewise, a wind farm with unacceptable landscape and visual impacts would conflict with the principles in paragraph 29 regarding good design, protecting and enhancing natural heritage or protecting the amenity of existing development.

51. I do not doubt that the Midlothian Local Plan would be considered as out of date in terms of the guidance in paragraph 33. It was formally adopted some 7 years ago when there was different regional and national planning and energy policies. I therefore find that Scottish Planning Policy and its approach to wind farm development is a significant material consideration.

52. Paragraph 161 states that planning authorities should set out a spatial framework to guide developers following the approach set out in table 1. The site itself is not subject to any designations and the nearest village defined in the local plan is more than 2 kilometres away. It seems clear to me that the site is in group 3 – areas with potential for wind farm development. I note that the council’s more recent draft spatial framework also identifies the site for some wind farm development.

53. Many of the matters listed in paragraph 169 that should be considered are similar to the considerations listed in Policy NRG 1. An important difference is that Scottish Planning Policy also states that the benefits of a wind farm should be considered.

54. The proposal would represent a capital expenditure of some £25 million which would have an economic benefit irrespective of where individual components would be sourced. Jobs would be created during construction and in the longer term for maintenance. The proposal has a generating capacity of just under 21 megawatts which would make an important contribution to Scottish Government targets, including reducing the generation of greenhouse gas emissions. It also has to be recognised that the extent of the proposal’s

contribution to renewable energy generation is a function of both the size and number of the turbines.

55. Although this matter was debated in the submissions before me, it seems clear that the targets are not a cap. I am aware of no advice from Scottish Ministers suggesting that the threshold for acceptable wind farm proposals has changed due to the progress or otherwise in achieving the published targets.

56. The applicant and its development partner have made a commitment to source the wind turbine towers from a Scottish company. Although an absolute guarantee cannot be given, it is obviously preferable that components are sourced in Scotland than from elsewhere and I consider this commitment to be a benefit. Business rate contributions and land owner payments would also have overall economic benefits. Whilst some parties argued that the alternative route for the horse trail was poorly chosen, I consider that the provision of a new path is a benefit and I am sure that in practice a suitable route could be agreed.

57. The appellant has also proposed a community benefit fund which could include contributions to nearby colleges and the Penicuik Civic Society. Paragraph 173 of Scottish Planning Policy refers to the Scottish Government Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments. I note that this document states that community benefit funds are a voluntary undertaking and are not material considerations.

58. I have carefully considered the benefits of the proposal. However, paragraph 169 also refers to taking into account the landscape and visual impacts. As stated above, I have found them to be unacceptable. It seems to me that Scottish Planning Policy requires the decision maker to balance the benefits and adverse impacts of a proposal before reaching a decision. In my judgement, the adverse landscape and visual impacts that I and other parties have identified outweigh the benefits in this instance.

### Landscape capacity studies

59. Landscape capacity studies can be useful tools in understanding the nature of impacts caused by wind turbines. They can be helpful in informing the preparation of spatial frameworks and identifying issues for designers to consider. However, they should not be given the attributes of detailed zonings of land for a particular number of turbines of a particular size.

60. Landscape character type boundaries are broad and cannot be treated as precise divisions of land. The wind farm typologies used in both the 2007 landscape capacity study and the 2014 landscape capacity study are also broad. For example, the 2007 study had 5 typologies. There would be a big difference in landscape and visual impact between type 1 – 21 x 90 metre turbines and the lower end of type 2 – 6 X 30 metre turbines. The 2014 study included a different mix of typologies, which mainly focused on height rather than numbers.

61. In my opinion, it would be impossible for any landscape capacity study to properly anticipate all the multiple impacts of the many factors that are involved in the design of a

wind farm. I do not consider that the conclusions of either study are determinative. The 2007 study has been reviewed and replaced by the 2014 study, which in any case might be subject to further change.

62. Nonetheless, a proposal for a 9 X 102 metre turbine wind farm exceeds the predicted capacity in both studies. This is consistent with my judgement that the proposal is out of scale with the surrounding landscape.

### Midlothian Local Development Plan

63. At the time of the hearing sessions the proposed Midlothian Local Development Plan was about to be consulted upon. I understand that the council is still considering the comments received before submitting the plan for examination. It is therefore quite possible that the detailed policy wording of any relevant policies could change. The proposed plan also includes a spatial framework in figure 6.1 that identifies the site as a wind farm opportunity area. However, as indicated above this is caveated and I consider this matter below.

64. Notwithstanding any detailed changes that might occur, it seems to me that in general terms the Midlothian Local Plan, Proposed Midlothian Local Development Plan and Scottish Planning Policy are adopting similar approaches. The impacts of a proposal have to be balanced against the benefits. It is difficult to see how any likely local development plan policy would automatically support a wind farm that was considered to have unacceptable landscape and visual impacts.

### Draft Supplementary Guidance 2014 – Wind Energy Development in Midlothian

65. I do not attach much weight to the draft supplementary guidance. Whilst it indicates the council's current thinking, it is subject to potential future changes. As indicated above, the spatial framework does indicate that the site may be suitable for a wind farm. However, as also indicated above, this is caveated. I do not believe it is a fair understanding of the council's position to suggest that it supports 6 X 80 metre turbines or that a height of 80 metres has been established as acceptable. It is clear to me, that at face value, the draft spatial framework and draft supplementary guidance do not provide support for a 9 X 102 metre turbine wind farm.

### Other matters

66. In some of the submissions, various criticisms were made regarding the efficiency of wind farms and the wisdom of Scottish Government energy policy generally. I appreciate that not everyone agrees with Scottish Government planning and energy policy. Nonetheless, this is properly a matter for Scottish Ministers to determine and it is not appropriate for me to review Scottish Government policy in an individual appeal decision.

67. I am aware of decisions to refuse planning permission for two nearby proposed wind farms at Auchencorth and Spurlens Rig. However, each case must be considered on its merits and I see little in these cases that informs a decision for a different wind farm in a different location, aside from demonstrating that environmentally unacceptable wind farms should not be granted planning permission.



### Material consideration conclusions

68. I find that most of the relevant material considerations would support the refusal of planning permission for a wind farm with unacceptable landscape and visual impacts. However, it is also necessary to weigh the benefits of the proposal against these impacts. In my judgement, on this occasion, I find that the unacceptable landscape and visual impacts are not outweighed by the benefits of the proposal.

### Environmental impact assessment

69. As is required, the submissions included an environmental impact assessment describing the impact of the development on a range of matters. This had been prepared after consultation with the appropriate organisations. Following the formal submission of the application, further information and an addendum were prepared in response to various consultation responses.

70. There were a range of concerns expressed by some parties to some of the conclusions drawn by the appellant from all the submitted environmental information. Above I have set out my conclusions on the main areas of dispute. Overall, I am satisfied that aside from the landscape and visual impacts, there would be no other adverse significant effects on the environment that could not be mitigated by appropriate conditions and agreements. I have also identified the environmental benefits of the proposal in relation to the generation of renewable energy and the reduction of carbon emissions.

### **Overall Conclusions**

71. For the reasons set out above, I conclude that the combination of height, number and layout of the turbines would have unacceptable landscape and visual impacts. The proposal would therefore be contrary to the objectives and policies of the development plan to permit environmentally acceptable wind farms. The proposal does have a number of benefits which need to be considered. However, overall, in my judgement, the benefits do not outweigh the adverse landscape and visual impacts. I therefore conclude that there are insufficient material considerations which would justify granting planning permission in this instance. I have considered all other matters raised but there are none which would lead me to alter my conclusions.

*Dan Jackman*

Reporter

## Appeal Decision Notice

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Decision by David Liddell, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2031
- Site address: Land At Springfield Farm, Springfield Road, Penicuik, Midlothian, EH26 8PR
- Appeal by Springfield Energy Ltd against the decision by Midlothian Council
- Application for planning permission dated 1 May 2015 refused by notice dated 26 August 2015
- Development of two wind turbines of up to 35.5m height to tip and ancillary infrastructure, comprising foundations, crane hardstanding area, access track and underground cabling, and control box
- Application drawings: Figure 1.2 Planning Application Boundary; Figure 2.1 Site Layout; Figure 2.3 Wind Turbine Elevations; Figure 2.4 Control Box
- Dates of site visits by Reporter: 26 & 30 November 2015

Date of appeal decision: 8 December 2015

### Decision

I allow the appeal and grant planning permission subject to the 9 conditions listed at the end of the decision notice. I draw attention to the 3 advisory notes at the end of the notice.

### Preliminary Matter

1. I was asked, on behalf of one of the objectors to the proposal, to hold a hearing session to assist consideration of this appeal. I am satisfied, however, that the scope and extent of the written evidence (supplemented by my unaccompanied inspections of the site, the viewpoint locations and the surrounding area) is such that I can determine the appeal without the need for further procedures.

### Reasoning

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.

3. Having regard to the provisions of the development plan the main issues in this appeal are the landscape and visual impacts, including any cumulative impacts, of the proposal, its impacts on residential amenity and its benefits. I also take account of potential impacts on the nearby Auchencorth Moss Monitoring Station.

### *The development plan*

4. The development plan for this appeal comprises the South East Scotland Strategic Development Plan (SESplan) and the Midlothian Local Plan.

5. I have been referred to Policy 10 Sustainable Energy Technologies of SESplan. This requires the local development plans in the SESplan area to set a framework for the encouragement of renewable energy. This policy has very little direct relevance to individual development proposals like the one before me. It is therefore in assessing the proposal against the terms of the local plan that a judgement can be reached on whether it is in accordance with the development plan.

6. In refusing the planning application, the council refers to policies NRG 1 and NRG 2 of the local plan. Policy NRG 1 Renewable Energy Projects supports renewable energy development subject to a number of criteria. Policy NRG 2 provides support for individual wind turbines and micro-generation. Despite the appeal proposal (being neither a single turbine nor what would commonly be understood to be micro-generation) seeming to be out with the scope of policy NRG 2, both the council and the appellant consider that it is relevant. I am satisfied that policy NRG 2 was framed with small-scale proposals such as this one in mind, and its requirements are similar to those in policy NRG 1. I can therefore accept that policy NRG 2 is of relevance to the appeal.

7. A number of other local plan policies are of relevance. Policy RP 6 Areas of Great Landscape Value aims to protect the scenic qualities and integrity of Areas of Great Landscape Value (AGLVs). Policy RP 7 Landscape Character says that development which may adversely affect the quality of the local landscape will not be permitted. Policy RP 13 Species Protection sets out the requirements for proposals affecting protected species.

### *Material considerations*

8. My attention has been drawn to a number of other documents which are material considerations in this case. These include Scottish Planning Policy (SPP), the proposed Midlothian Local Development Plan (the LDP, which will in time replace the local plan), the 2014 Midlothian Landscape Wind Energy Capacity Study ('the 2014 study'), the predecessor 2007 Landscape Capacity Study for Wind Turbine Development in Midlothian ('the 2007 study'), the draft version of the council's supplementary guidance on wind energy development and the Landscape Technical Note prepared for the Main Issues Report of the LDP. The permission, recently renewed, for 30m high turbines at Rosemay Farm, a short distance to the south of the appeal site, is also a material consideration in this case.

### *The site*

9. The appeal site lies to the south of the complex of farm buildings at Springfield Farm. It is a fairly flat, rectangular field of improved grassland, currently used for the grazing of livestock. The field is bounded by stone walls, post and wire fencing and rows of mature trees. The field sits a little over 1 kilometre west of the A701, and a similar distance northwest of the small village of Leadburn.

### *The proposal*

10. The turbines would be a maximum of 35.5m high to blade tip. Served by a new track from the farm complex, they would be around 200 metres apart, one near the southeast boundary of the field and one near the northwest. Grid connection would be by underground cabling to the existing overhead power line which runs through the farm.

### *The 2007 and 2014 Studies*

11. There is some dispute about the landscape character of the vicinity of the appeal site. The council considers that is unclear, from the mapping in the 2007 and 2014 studies, whether the appeal site lies in the Lowland Moorland landscape character type (LCT) or in the Moorland Fringes. The council's view is that there are no features within the field which indicates which LCT it lies within. On balance, the council considers that the flat and expansive nature of the site and its environs is the dominant characteristic. This being indicative of the Lowland Moorlands, it is on the basis of that LCT which the proposal should be considered.

12. The appellant considers that the site is located within the Moorland Fringes. He contends that the aerial photography submitted with the proposal clearly shows the transition between the two LCTs, and he also points to the more settled nature of the area around the site in contrast to the moorland beyond.

13. On the basis of my site inspection, I find that the site is clearly more closely related to Moorland Fringes than to Lowland Moorland. The field is rectangular, of improved grassland, and bounded by stone walls and planted rows of trees. The fields to the northeast, southeast and southwest generally exhibit similar characteristics. It seems to me that the northwest boundary of the site, which is continued in an almost straight line for some distance in either direction, marks a very clear and obvious boundary between the open moorland lying generally to the west and the more settled landscape to the east. There is a further, smaller area of moorland to the east (Springfield Moss, which is under peat extraction) but this only serves to underline the fringe-like character of this area.

14. It is appropriate at this point to consider the advice in both the 2007 and 2014 studies. The council based its assessment largely on the 2014 study. This provides the most up to date guidance to inform decisions on wind turbine development in Midlothian. On the other hand, policies NRG 1 and NRG 2 refer to the 2007 study.

15. The 2014 study says that it represents strategic guidance, and that the impacts of individual development proposals should be considered on a case-by-case basis. Some flexibility on turbine heights may need to be applied close to the upper height thresholds used in the study. In areas close to the boundaries between LCTs, the advice relating to each relevant LCT ought to be considered.

16. I think it is prudent to approach the 2007 study in a similar spirit. However, the proposal (2 turbines of 35.5m height) does not easily sit within any of the 5 typologies used in the 2007 study. This reduces the extent to which it can provide clear advice relating to the proposal before me. Although I have regard to the 2007 study and note the appellant's

reservations about the 2014 study not having yet been the subject of consultation, I find the advice in the latter document to be more directly applicable to the appeal proposal.

17. In relation to views towards the Pentland Hills, the sensitivity assessment for the Moorland Fringes in the 2007 study says that tall turbines would affect the perception of the vertical scale and prominence of the hills, and could detract from the dramatic form of the northern Pentlands.

18. The study identifies the A701 as one of the roads which affords extensive and often dramatic views towards the hills, in particular where the full height of the northern Pentlands can be seen. It is stated that all typologies, but in particular taller turbines, could interrupt dramatic views to the hills from settlements and from the A701. In addition, turbines and other associated infrastructure could impact on elevated views from the hills.

19. Overall, the study assigns to the Moorland Fringes a landscape and visual sensitivity of medium-high, and there is limited capacity for turbine development. Turbines should be sited to avoid intrusion on key views of the northern Pentlands.

20. The sensitivity assessment for the Lowland Moorlands in the 2007 study says that single and small typologies could fit better at the transition with the Moorland Fringes. The descriptions of the constraints arising from potential impacts on views of the Pentlands are generally similar to those for the Moorland Fringes.

21. Overall, the study assigns to the Lowland Moorlands a medium-high landscape and visual sensitivity. The proximity to the Pentlands is a key constraint severely restricting scope for development. There is limited capacity, and turbines up to 30m high only could be accommodated at the transition with the adjacent Moorland Fringes. Impacts on key views of the Pentlands from roads and settlements should be avoided. There are very few locations which would avoid intrusion on such views.

22. The 2014 study identifies a 'smaller typology' of turbines between 30m and 50m high, including single turbines and small groups. In relation to the Moorland Fringes, there would be medium sensitivity to 30m-50m high turbines as these could fit better with landscape scale and minimise impacts on the Pentlands and views from surrounding settlements. However the accompanying mapping indicates that the appeal site is not within an area with potential for turbines of this height, nor even with potential for turbines below 30m height. This map is replicated in the proposed LDP.

23. In relation to the Lowland Moorland, it is said that these low-lying and open moorlands are important in the contrast they provide to the Pentlands which immediately backdrop them and which rise dramatically to create a highly scenic landscape composition. This relationship, and the potential impacts on views towards the hills and on an appreciation of their vertical scale, are a constraint to wind turbine development. There is said to be no scope to accommodate turbines higher than 30m. Smaller turbines should be located at the transition with the Moorland Fringes. The accompanying mapping does not show where this might apply and appears, in contrast, to indicate that there is 'no potential for wind turbines' in this area. I note that the only mapped area of Moorland Fringes with potential for turbines up to 30m high and which shares a boundary with Lowland Moorland is an area north of the Moorfoot Hills.

24. The 2014 study recommends a spatial landscape strategy for Midlothian. To avoid significant intrusion on key views to the Pentlands is one of the key strategic aims listed. Views from the A701 are said to be amongst the most spectacular.

25. In light of the above, the proposal would clearly run counter to the advice in the 2014 study, and to the draft supplementary guidance which it informs. Although I find a comparison with the 2007 study to be less helpful, on the face of it there is little support for the proposal there either. As I note above, however, the 2014 study advises of the need for individual proposals to be considered on their merits.

### *Landscape impacts*

26. Whilst I acknowledge that impacts on the landscape character of the Lowland Moorland must be considered, I have found that the distinction between the two LCTs is clear. The turbines would, when viewed, be very clearly understood to be part of the farmed and settled Moorland Fringes. The impact on the landscape character of the adjacent Lowland Moorland would be very low.

27. The turbines would be significantly higher than the adjacent trees, and higher still than the farm buildings at somewhat greater distance. They would not, however, overwhelm these features. The locations of the turbines, near the edges of the field, would accord with the ordered nature of this part of the Moorland Fringes. So too, in following the field boundary and then turning at a right angle to it, would the route of the access track. Although they would be locally prominent features, I therefore conclude that the turbines would not have a significant effect on the landscape character of the Moorland Fringes.

28. In relation to cumulative landscape impacts, I am satisfied that, other than the Rosemay turbines, the distances to other consented and operational turbines mean that no significant cumulative impacts, either landscape or visual, would occur. The information submitted by the appellant includes a plan showing the locations of the proposed Rosemay turbines and a photomontage of both proposals from viewpoint A at Leadburn. Both proposals would be fairly similar in size and would appear, from this location at least, to form a coherent and evenly-spaced array. They would have similar relationships with the surrounding landscape of fields, shelterbelts and farm buildings. Photomontages supplied by the Penicuik Environmental Protection Association (PEPA), albeit that the accuracy of these is criticised by the appellant, show similar effects from other locations, although the four turbines would not always appear so evenly spaced. In this context, and noting the relatively modest size of the turbines, there would be no significant cumulative landscape impacts.

29. The Pentland Hills AGLV currently extends as far as the minor road which runs along the northwest edge of Auchencorth Moss, being at closest approach around 1.8 kilometres from the appeal site. The AGLV includes the hills themselves, the policies of Penicuik House and the upper North Esk Valley. Noting the distance to the AGLV, its large extent, the presence of the intervening LCT of Auchencorth Moss and that the core of the AGLV is the upland landscape of the Pentland Hills, I am satisfied that any impacts on the AGLV would be negligible.



30. I therefore conclude that, in relation to its landscape impacts, the proposal would not cause a significant impact on the Pentland Hills AGLV or the Pentland Hills Regional Park. The scenic qualities and the integrity of the AGLV would not be affected. Impacts on the quality of the wider landscape would be very minor, the local character of which would be respected. In these respects, the proposal would therefore comply with policies RP 6, RP 7 NRG 1 and NRG 2 of the local plan. It would also comply with policies NRG 1 Renewable Energy and Low Carbon Energy Projects and ENV 7 Landscape Character of the proposed LDP, which have similar requirements to local plan policies NRG 1 and RP 7 respectively.

31. It is proposed in the LDP that the AGLV is renamed as a Special Landscape Area (SLA) and extended to include Auchencorth Moss and the area of Moorland Fringe in which the appeal site lies. The Landscape Technical Note issued in association with the Main Issues Report for the LDP describes and evaluates the proposed SLA. The council's third reason for refusing the application refers to policy ENV 6 Special Landscape Areas of the proposed LDP. This states that developments affecting Special Landscape Areas must not have a significant adverse effect on the special landscape qualities of any SLA.

32. In relation to my findings above, the core of the SLA would remain the Pentland Hills, and it would be slightly larger in extent. It would, however, include the appeal site. I find above that there would be no significant impacts on the landscape character of either the Lowland Moorland of Auchencorth Moss or the Moorland Fringes in which lies the appeal site. I therefore conclude that there would be no significant impact on the special landscape qualities of the SLA. In this respect, the proposal would satisfy the requirements of policy ENV 6 of the proposed LDP.

33. I address the scenic qualities of the SLA, in particular views towards it and from it, along with visual impacts below.

### *Visual Impacts*

34. The appellant is critical of the council's focus on the impacts of the proposal on views towards the Pentlands. However, on the basis of my site inspections and the written material before me, I agree that impacts on the generally westward and north-westward views towards the hills (from in and around Leadburn) are the critical visual impact which must be considered. From such locations, the flat expanse of Auchencorth Moss serves to underline the height and sculptural form of the hills which rise beyond. Further to the north or south (and of course from further west), the Pentlands would not appear directly behind the turbines. At greater distances from the turbines their visual impacts would generally be lesser.

35. In relation to this critical visual impact, the key consideration is the height of the turbines. This is what determines the degree to which they could appear to diminish the height and drama of the hills. The height of the turbines would also determine whether, and from what locations, they would appear to break the skyline rather than sit below it.

36. I acknowledge that the turbines would have an impact on such views towards the Pentlands. The photomontage for viewpoint A illustrates the likely effects, and there would be similar effects for around 1 kilometre as one approaches Leadburn when travelling north on the A701. Although the turbines would be prominent in the foreground they would

remain, except perhaps from a small number of locations, below the skyline. Although taller than the other landscape features nearby, they would not be dramatically out of scale. They would be clearly understood to be foreground features, distinct from and of an entirely different scale from the hills beyond.

37. I refer again to the consent, recently renewed, for the two 30m high turbines at Rosemay Farm. Although this consent has not been implemented (and may never be), some weight should be attached to it. Having regard to the cumulative photomontage supplied for viewpoint A, the impacts of the proposed turbines on views of the Pentlands beyond would likely be similar to the impacts of the consented Rosemay turbines. Although the Springfield Farm turbines would extend the lateral spread of turbine development, they would not appear, from in and around Leadburn, to be significantly higher than the Rosemay turbines. They would, as I find above, together comprise a cohesive group which accords well with the landscape character of their immediate surroundings. There would be similar cumulative impacts from the stretch of the A701 immediately to the south of Leadburn, although the positions of the Rosemay turbines would mean that these two would appear closer together.

38. Further south on the A701 (as illustrated in viewpoint B) intervening shelterbelts and woodland means visibility of the turbines when travelling north on this road would be very intermittent. I appreciate, of course, that trees which are present now may come to be felled in the future, but I have seen no evidence which would lead me to expect any significant change in the pattern of woodlands and shelterbelts in the area.

39. The visual impacts from the footpath on the former railway line to the east of Leadburn (represented by viewpoint G) would be similar to those at viewpoint A, although the greater distances from here to the turbines mean that they would appear significantly lower in relation to height of the hills beyond. The effects of the slight cutting in which the former railway (now the footpath) sits and the ruderal vegetation on the low embankment are such that, around the location of viewpoint G and on the stretch of the path north of here, views of the hills are often fully or partially obscured. There are, however, much more open and impressive views of the hills from further south along the path, for example from the interpretation board describing the peatland restoration here. It is clear that the turbines would impact upon such views, although to a lesser extent than from Viewpoint A and the stretch of the A701 to the south of it. The turbines would appear well below the skyline of the hills.

40. From further north on the A701 the topography and intervening vegetation means that the turbines would generally be less prominent than from in and around Leadburn. This is illustrated in viewpoints D and E. There would be clearer views from a more elevated stretch of the A6094 near Mosshouses. However, as viewpoint C shows, this southwest view has less drama than the views from around Leadburn, and the distance to the site is such that the turbines would appear smaller.

41. Viewpoint F, from the junction of the A766 and A702, illustrates the kind of visual impacts which could be experienced when looking east towards the turbines. From this particular location, the turbines would be minor features and there would be no significant impacts on this view towards the Moorfoot Hills beyond. Closer views would be available from the minor road which runs through Auchencorth Moss. Even at the nearest point at



around 1.8 kilometres distance, they would appear fairly modest in size and be associated with the settled landscape around Leadburn rather than the moorland in the foreground.

42. Notwithstanding the advice in the 2014 study, in my view the proposed turbines would have only a minor impact on views of the Pentlands, with other visual impacts being lesser still. Given their modest size, their distance, and that they would be visually associated with a fairly settled landscape, impacts upon views from the hills would be negligible. In respect of its visual impacts, the proposal would therefore comply with policies NRG 1, NRG 2 and RP 6 of the local plan. It would also accord with policies NRG 1 and ENV 6 of the proposed LDP, these having similar requirements.

### *Residential amenity*

43. Albeit that there may be impacts on the very attractive (and clearly valued) views of the Pentlands currently enjoyed from some properties, such impacts are commonly held not to be material planning considerations. The nearest houses (aside from the appellant's) are Rosemay farmhouse and Leadburn Manor. From the former, the turbines would be seen beyond the much closer consented Rosemay turbines. Leadburn Manor would be over 800m from the nearest turbine and, at such a distance, the relatively modest size of the turbines would mean that no significant adverse effects on overall residential amenity would be experienced. I draw the same conclusion for other houses which are further afield, including those in Leadburn village itself. No houses are within a distance of ten times the proposed rotor diameter, the distance beyond which the Scottish Government advises that shadow flicker effects are generally unlikely.

44. In relation to noise, the appellant's modelling of the likely noise emissions from the turbines predicts that, even allowing for cumulative effects with the Rosemay turbines, noise levels would not exceed the recommended limits in the 'simplified' method from 'Assessment and Rating of the Noise from Wind Turbines' (ETSU-R-97). The council has raised no concerns in respect of noise, and had not proposed any relevant planning conditions. However, in my view it would be prudent to set noise limits by means of a planning condition. Such a condition is anticipated in the appellant's noise assessment.

45. Overall, I am satisfied that there would be no significant impacts on residential amenity, thereby satisfying the requirements of local plan policies NRG 1 and NRG 2, and of policy NRG 1 in the proposed LDP.

### *Auchencorth Moss Monitoring Station*

46. Representations submitted to DPEA by the Natural Environment Research Council Centre for Ecology and Hydrology (NERC CEH) and Bureau Veritas raise concerns about the impacts of the proposal on the operation of the Auchencorth Moss Monitoring Station, located immediately to the west of the appeal site. A letter from the Scottish Government's Directorate for Environment & Forestry supports these comments.

47. The monitoring station is part of a UK network monitoring air quality. The site helps the UK meet its obligations to report to the European Commission on air quality, and is a site for research on exchange of pollutants and greenhouse gases with peat bogs. It also helps inform research and analysis into the effectiveness of public policy measures on air

quality. NERC CEH operate the monitoring station for the UK government and the devolved administrations. Bureau Veritas undertake monitoring at the station, and is the central management and coordination unit for the UK air quality network.

48. The measurements taken at the monitoring station are potentially sensitive to wake effects from wind turbines, to dust emissions and to the effects of construction activities. The representations request that turbine 2 (the westernmost of the 2) is relocated away from its location to the south (and generally downwind) of the monitoring station, that the access track is surfaced in a material which would minimise dust, and that NERC CEH is informed as to the dates of any construction activities.

49. Following these comments, the appellant's agent discussed these matters with NERC CEH and proposed that turbine 2 be located at the eastern extent of the planning application boundary, which provides a 15m allowance for micro-siting. The subsequent email exchanges between these parties indicate that NERC CEH agree that this would 'minimise' any impacts on the monitoring station and that it is content with this solution.

50. Although the appellant expects that use of the access track for the turbine would be very low, he has agreed with NERC CEH to grass seed the track post construction, and maintain it in such a condition thereafter.

#### *Other potential impacts*

51. In relation to impacts on bats, the appellant states that the turbines would, in accordance with best practice, be no closer than 50 metres from any trees. I note that the Wildlife Information Centre, which provides a screening service for the council on planning applications, is satisfied that sufficient information in relation to bats was submitted with the application. The Wildlife Information Centre did not raise any other concerns about the proposal, including impacts on geese – an issue raised by objectors. In this context, I conclude that there would be no significant impacts on biodiversity or on protected species, and that the requirements of local plan policy RP 13 would be satisfied.

52. I am aware that a proposed wind farm on Auchencorth Moss was dismissed at appeal several years ago, however that was a proposal for many more, much larger, turbines. I also note concerns about setting a precedent for future turbine development, but I must determine the appeal on its own merits. The point is also made that there are sufficient wind farms already consented to meet Scottish Government targets. However, SPP does not indicate that these targets are to be taken as a cap on further development. Given my findings in respect of landscape and visual impacts, I see no reason to conclude that there would be significant impacts on tourism.

#### *The benefits of the proposal*

53. The proposed turbines would have a rated capacity of 100 kilowatts each. Based on site-specific wind data, the appellant anticipates an average annual output of 587.4 MegaWatt hours. It is stated that this would offset the emission of 205 tonnes of carbon-dioxide annually, and would be the equivalent of supplying electricity for 116 homes. This would amount to a fairly modest, yet still notable, benefit in relation to the generation of renewable energy and the associated reduction in greenhouse gas emissions. Objectors

have questioned the assumptions behind these figures. Even if the benefits are less than as stated above, the proposal would still contribute to targets for renewable energy production and the reduction of greenhouse gas emissions.

54. I also acknowledge the benefits to the farm business of the regular and long-term income stream which the turbines would provide. This may help the appellant develop the proposed 'farm park' visitor and education centre, although I give this particular benefit little weight given the early stage this project has reached.

55. The appellant points to support in SPP for renewable energy, whilst objectors take the view that the impacts of the proposal mean that it would be contrary to SPP. In light of my conclusions above, I find that the proposal draws support from SPP including, given that it would produce renewable energy and have very modest visual and other impacts, from the presumption in favour of development which contributes to sustainable development.

## Conclusion

56. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission.

57. I have considered all other matters raised, none which alter my conclusions.

58. The council has proposed that only 1 condition be attached, securing restoration of the site at the end of the life of the turbine. The appellant is content with such a condition, and I agree that it is necessary to ensure restoration of the site. I have also, in accordance with standard practice for wind turbine development, imposed a condition limiting the duration of the permission to 25 years. Consequently, I have added a time limit condition, as the standard duration of a planning permission that is imposed by section 58(1) of the Town and Country Planning (Scotland) Act 1997 does not apply to temporary permissions.

59. Given that the final turbine specifications have not been confirmed, there should be a condition requiring that these be agreed with the council beforehand. As noted above, it is also appropriate to have a condition controlling noise levels. Conditions are also required to cover the matters agreed between the appellant and NERC CEH. Finally, a condition can ensure that the Ministry of Defence is, as they request, notified of the construction of the development and the final turbine positions.

*David Liddell*

Reporter

## Conditions

1. The development shall be begun no later than three years from the date of this permission.

*(Reason: in accordance with section 58(4)(c) of the Town and Country Planning (Scotland) Act 1997.)*

2. The permission hereby granted shall endure for a period of 25 years from the date of first commissioning of the turbines. Written confirmation of the date of first commissioning shall be provided to the planning authority within one month of that date.

*(Reason: to define the duration of the consent.)*

3. In the event that either turbine is no longer required, or where it has been non-operational for a continual period of at least 12 months, then the turbine shall be decommissioned and all parts of the turbine removed from the site, including all foundations cabling and transformers, and the site returned to its condition immediately prior to commencement of the development.

*(Reason: to ensure that the site is returned to an acceptable condition in the event that the turbines are no longer required.)*

4. No development shall commence until full details of the proposed wind turbines have been submitted to and approved in writing by the planning authority. These details shall include:

- i. The make, model, design, power rating and sound power levels of the turbines; and
- ii. The external colour and/or finish of the turbines.

Thereafter, development shall progress in accordance with these approved details unless otherwise agreed in writing by the planning authority.

*(Reason: in the interests of visual and residential amenity.)*

5. Turbine 2 shall be located 15 metres to the east of the location shown in the approved drawings.

*(Reason: to minimise impacts on the Auchencorth Moss Monitoring Station.)*

6. The new access track shall be grass seeded within one month of the final commissioning of the wind turbines (or within an alternative period of time previously agreed in writing by the planning authority). Full details of the means of construction of the track, and of its maintenance following completion of the development, shall be submitted to and agreed in writing by the planning authority prior to the development commencing. Thereafter the track shall be constructed and maintained in accordance with the approved details.

*(Reason: to minimise impacts on the Auchencorth Moss Monitoring Station.)*

7. No development shall commence until the developer has provided, in writing, the Natural Environment Research Council Centre for Ecology and Hydrology with the dates that construction will commence on site and is expected to be complete.

*(Reason: to minimise impacts on the Auchencorth Moss Monitoring Station.)*

8. No development shall commence until the developer has provided the Ministry of Defence with the following information in writing:

- i. The dates that construction will commence on site and is expected to be complete;
- ii. The maximum height of each wind turbine and construction-related equipment (such as cranes); and
- iii. The latitude and longitude of each wind turbine.

*(Reason: in the interests of aviation safety.)*

9. Noise from the wind turbines shall not exceed 35dB <sub>LA90 (10 min)</sub> at the boundary of the curtilage of any noise sensitive property at all times at wind speeds of up to 10 metres per second as measured within the site. In the case of properties where the occupier has financial involvement in the wind turbines, noise limits may be increased to 45 dB <sub>LA90 (10min)</sub>.

*(Reason: to protect noise sensitive receptors from unacceptable noise levels.)*

### Advisory notes

1. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).

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Notice of Intention by Michael J P Cunliffe, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2030
- Site address: Land North and South of Lasswade Road, Eskbank, Dalkeith
- Appeal by Gladman Developments Limited against the failure of Midlothian Council to issue notice of their decision on an application
- Application 14/00420/PPP for planning permission in principle dated 14 June 2014
- The development proposed: Planning permission in principle for residential development with open space, access roads, car parking and associated facilities
- Application drawing: Site location plan (130529 Larkfield Site Boundary)
- Date of site visit by Reporter: 8 October 2015

Date of notice: 15 December 2015

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## Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the conditions listed below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, covering the matters listed in paragraph 43.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are housing land supply, the effects of the proposed development on the character of the surrounding area and on green belt objectives, the availability of infrastructure, and the provisions of the Proposed Midlothian Local Development Plan.

### *The site and the proposed development*

2. The site comprises 7.8 hectares of agricultural land split between two parcels to the north and south of Lasswade Road (A768) on the western edge of Eskbank. The more northerly parcel (Larkfield West, 5 hectares) is bounded by existing housing to the east, mature woodland to the north, and the A7 to the west. The more southerly parcel (Larkfield South, 2.8 hectares) is bounded to the west by the A7, with woodland to the east providing a buffer from existing housing and from parkland to the south. Lasswade Road joins the A7 at a roundabout to the west of the combined site.



3. Both sites are generally level, although to the northern edge of Larkfield West the land begins to slope gently towards the River North Esk. The parcels of land are lined by large hedgerows on the edges bordering roads. In Larkfield South a strip of woodland separates it from the existing residential area to the east, while Larkfield West is bounded by woodland to the north. A line of electricity pylons runs from north to south near the eastern boundary of the combined site. Larkfield West is located within the boundary of the Melville Castle designed landscape, which is included in the Inventory of Gardens and Designed Landscapes in recognition of its national importance. The site lies to the south of the River North Esk and is separated from the core designed landscape around Melville Castle by the A7 bypass to the west.

4. The proposed development would provide up to 120 dwellings, of which 25 per cent would be affordable; associated infrastructure and engineering works, including new vehicular accesses from Lasswade Road; formal and informal public open space; and landscaping and boundary treatments. While the application is for planning permission in principle, the appellant has submitted a masterplan showing a possible layout of the development. This shows the main part of the development on the Larkfield West site, with both sites separated from the A7 and Lasswade Road by dense planting of trees.

#### *The development plan*

5. The development plan comprises the SESplan strategic development plan (SDP) approved by Scottish Ministers in June 2013 and the Midlothian Local Plan adopted in 2008. SESplan Policy 5 (Housing Land) identifies a requirement for sufficient housing land to be allocated so as to enable 107,545 houses to be built across the SESplan area in the period 2009 to 2029, of which 74,835 houses are required for the period 2009 to 2019. Supplementary guidance was adopted in October 2014 to provide detailed further information for local development plans (LDPs) as to how much of that requirement should be met in each of the six council areas. This states the housing land requirement for Midlothian for 2009-2019 as 8,080 units, with a further 4,410 units between 2019 and 2024. The site is within the A7 / A68 / Borders Rail Corridor Strategic Development Area (SDA) identified by SESplan.

6. SESplan Policy 6 (Housing Land Flexibility) requires each planning authority in the SESplan area to maintain a five years' effective housing land supply at all times. The scale of this supply is to derive from the housing requirements for each area identified through the supplementary guidance provided for by Policy 5. For this purpose planning authorities may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the LDP.

7. SESplan Policy 7 (Maintaining a Five Year Housing Land Supply) states that sites for greenfield housing development proposals either within or outwith the identified SDAs may be allocated in LDPs 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.

8. SESplan Policy 12 (Green Belts) requires local development plans to define and maintain green belts around Edinburgh and to the south-west of Dunfermline to:

- a. Maintain the identity and character of Edinburgh and Dunfermline and their neighbouring towns, and prevent coalescence, unless otherwise justified by the local development plan settlement strategy;
- b. Direct planned growth to the most appropriate locations and support regeneration;
- c. Maintain the landscape setting of these settlements; and
- d. Provide opportunities for access to open space and the countryside.

Local development plans will define green belt boundaries to conform to these purposes, ensuring that the strategic growth requirements of the SDP can be accommodated. LDPs should define the types of development appropriate within green belts.

9. In the local plan, the most relevant policy is Policy RP2 (Protection of the Green Belt). This states that development will not be permitted in this area unless it is essential for the furtherance of agriculture, horticulture, forestry, outdoor sport or outdoor recreation, or is related to other uses appropriate to the rural character of the area. Policy RP4 (Prime Agricultural Land) states that development will not be permitted which leads to the permanent loss of prime agricultural land (Macaulay Classes 1, 2 and 3.1) unless the site is allocated to meet Structure Plan requirements, or there is a locational justification for the development which outweighs the environmental or economic interests served by retaining the farmland in productive use.

### *National policy*

10. Scottish Planning Policy (SPP) introduces a presumption in favour of development that contributes to sustainable development (paragraph 27). The presumption in favour of sustainable development does not change the statutory status of the development plan (paragraph 32). Where the relevant policies in the development plan are out of date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.

11. SPP (paragraph 125) makes it clear that where a shortfall in the 5 year effective housing land supply emerges, then development plan policies for the supply of housing land will not be considered up-to-date. Planning authorities are encouraged to actively manage the housing land supply to ensure that a generous supply of land for house building is maintained and there is always enough effective land for at least 5 years.

12. SPP (paragraph 34) addresses the issue of prematurity. Granting planning permission would prejudice an emerging development plan only where a development is so substantial, or its cumulative effect would be so significant, as to undermine the plan



making process. This would occur by pre-determining decisions about the scale, location or phasing of new developments that are central to the emerging plan. The issue of prematurity will be more relevant the closer the emerging plan is to adoption or approval.

13. The National Planning Framework (NPF3) also promotes the need to ensure a generous supply of housing land in sustainable locations where people want to live. In paragraph 2.5 it notes that the recent financial climate has reduced the amount of new house building and so envisages a significant increase in house building to ensure that housing requirements are met across the country. Specific mention is made of the SESplan area where greater and more concerted effort is required to deliver a generous supply of housing land.

### *Housing land supply*

14. The Midlothian Housing Land Audit 2014 is the most recent available. It shows that the 5-year effective housing land supply position at 31 March 2014 was 4,351 units. On the appellant's calculations, the 5-year requirement derived from SESplan and taking account of completions was 5,030 units leaving a shortfall of 679, without any generosity allowance. However, SPP (paragraph 116) requires housing supply targets to be increased by 10 per cent to 20 per cent to ensure a generous supply. On that basis, the supply would meet 87 per cent of the requirement with no generosity allowance, 75 per cent with a 10 per cent allowance, and 65 per cent with a 20 per cent allowance.

15. The council's response is to increase the supply figure by adding in programmed completions on sites allocated in the Proposed Midlothian LDP. Over the period 2014-19 these additional completions would amount to 1,085 units bringing the total to 5,436 and thus providing a 5 year supply including a generosity allowance (which I calculate as 8 per cent). However, the council's additional figures include completions of 160 houses in 2015-16 and 273 houses in 2016-17. The Proposed Midlothian LDP has not yet been submitted for examination. The council estimates that this will happen in March or April 2016. It would therefore be very late in 2016, at the earliest, before the plan could be adopted. If planning permissions for sites allocated in the plan (which include the appeal site) had to await its adoption, it would not be possible to achieve the 2015-16 and 2016-17 completions envisaged by the council.

16. SESplan Policy 6 requires the council to maintain a five years' effective housing land supply **at all times** (my emphasis). Planning Advice Note 2/2010, paragraph 45, states that housing land audits are the established means for monitoring housing land. Having regard to the most recent audit, I find that at the present time this requirement is not being met in Midlothian. SESplan Policy 7 therefore applies. This supports the granting of planning permission for greenfield housing development proposals, subject to satisfying each of the criteria listed in paragraph 7 above. I shall consider the criteria in turn.

### *The character of the settlement and local area*

17. The sites consists of two agricultural fields lying between existing modern residential development and the A7 road. The effect of the proposed development would be to extend the settlement of Eskbank westwards to the A7. Residents of existing houses to the east of the more northerly site would find that their outlook to the west would change from agricultural land, to built development. Residents east of the southerly site would be less

aware of this change provided the existing belt of mature trees, which provides effective screening, was retained.

18. Trees and hedgerows are important features of the surrounding landscape, including the river valley and main roads, and should be retained and enhanced. This would be possible with sensitive detailed design. I note the council's concern that the indicative masterplan shows houses being built close to existing woodland, with possible adverse effects on the latter. These effects could, however, be avoided through planning conditions requiring further approval of layout and landscaping. There is no inherent conflict between the principle of residential development and the character of the surrounding area, though it might not prove possible to accommodate as many as 120 units while protecting woodland features.

19. On the specific question of the Melville Castle designed landscape, I note that Historic Scotland (now succeeded by Historic Environment Scotland) did not object to the proposal, but commented that the woodlands of the designed landscape provide some scenic value from the surrounding roads and that new woodland planting would both reinforce this landscape character and screen the development from view. It recommended that careful consideration be given to the selection of trees for the new shelterbelts, and that a similar mix of broadleaves and conifers should be used (for example, lime, beech, Scots pine, etc) which would match the species composition of the existing mature policy woodland to the north of the development site. This would reinforce the designed landscape character of the new shelterbelts.

### *Green belt objectives*

20. The second criterion of SESplan Policy 7 is that the development will not undermine green belt objectives. SESplan Policy 12 sets out objectives for green belts to be defined in LDPs. The first is to maintain the identity and character of Edinburgh and Dunfermline and their neighbouring towns, and prevent coalescence. The proposal would not impact on the identity and character of Edinburgh, whose built-up area lies about 2 kilometres to the north and which would continue to be separated from Dalkeith/Eskbank by a broad corridor of undeveloped land. There would be a slight westward extension of Eskbank, but I consider that the A7 would represent a more natural and defensible boundary than the existing western edge of development, particularly at Larkfield West. The land to the west across the A7 is used as a golf course, and coalescence with Lasswade would not arise.

21. The second green belt objective is to direct planned growth to the most appropriate locations and support regeneration. Redevelopment of brownfield sites to support regeneration is a priority, but there is simply not enough brownfield land to accommodate the additional housing requirements identified in SESplan. Some greenfield sites will need to be developed. The proposal represents a logical extension of Dalkeith/Eskbank and, subject to infrastructure capacity, would be an appropriate location for new residential development.

22. The third green belt objective is to maintain the landscape setting of existing settlements. As noted above, the landscape setting of Eskbank to the west is to a large extent defined by trees and hedgerows and by the Esk Valley. Subject to retention of these features and sensitive detailed design, the landscape setting would be maintained.

23. The fourth green belt objective is to provide opportunities for access to open space and the countryside. The remaining green belt would continue to fulfil this function if the development took place. The existing use of the site for arable farming limits its recreational potential, and the objective would be maintained through other opportunities in the surrounding area. Taking all four objectives into account, I consider that the proposal would not undermine green belt objectives.

### *Infrastructure*

24. Road access to both parts of the site would be taken from Lasswade Road. The council's Policy and Road Safety Manager raised no objection, but would require to approve the details of access and parking, measures to reduce the current speed limit on Melville Dykes Road, and the provision of gateway features on Melville Dykes Road. (I observe that at different points along its length, the A768 appears to be known both as Lasswade Road and Melville Dykes Road. The section onto which the development would take access is already subject to a 30 mph speed limit.)

25. A scheme to improve pedestrian and public transport access on the adjacent sections of the A7 is currently being designed by the council. The first phase of this includes the provision of cycleways/footways on both sides of the section of the A7 running from Melville Dykes roundabout to the Bonnyrigg roundabout and the installation of two bus stops and pedestrian crossing points, with the reduction of the speed limit to 40 mph. The council's Policy and Road Safety Manager has advised that no residence on the appeal site be occupied before the first phase is complete.

26. There is currently a lack of school capacity in the area, but this could be remedied with the support of developer contributions. An extension would be required at either King's Park Primary School or Woodburn Primary School to provide additional capacity for this development. St David's RC Primary School is at or near capacity from committed developments in the Dalkeith area, and an extension may be needed. Again, developer contributions would be required. A significant amount of new housing has already been allocated to Dalkeith High School and an extension to that school would be required. A contribution to St David's High School would also be necessary.

27. The appellant has confirmed with Scottish Water that the development could be supplied with fresh water and foul drainage from existing networks. Surface water would require to be managed through sustainable drainage systems (SuDS). Consultation with the Scottish Environment Protection Agency (SEPA) has confirmed that the principles for a SuDS strategy, as set out in the documentation supporting the application, are acceptable. Details would be a matter for subsequent approval. SEPA raised no objection to the proposal on flood risk grounds.

28. It therefore appears to me that, subject to requirements that could be set out in planning conditions, and subject to financial contributions secured by a planning obligation, the proposal would meet the test that any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

### *Compliance with SESplan Policy 7*

29. For the reasons set out above, I consider that the proposal meets the requirements of SESplan Policy 7 and is consistent with the strategic development plan.

### *Midlothian Local Plan*

30. The adopted 2008 local plan locates the site within the green belt. Policy RP2 therefore applies. Since the proposal is not for a type of development listed in the policy, it would not comply. Policy RP4 restricts development which would lead to the permanent loss of prime agricultural land. The land has a Macaulay classification of 2, and is therefore of prime quality. However, SESplan sets a requirement for housing land which will inevitably require greenfield development, and I note that the council in the Proposed LDP has reached the view that there is a locational justification to develop the site for housing, implying that it considers the case for continuing agricultural use to be outweighed. I agree with that conclusion, and regard the proposal as acceptable in terms of Policy RP4.

### *Overall conformity with the development plan*

31. While the proposal would not conform with the adopted local plan, this plan is over seven years old, was prepared in the strategic context of the superseded structure plan, and cannot be considered up to date. I have found that the proposal would be consistent with SESplan, and take the view that the latter should outweigh the local plan. The proposal would therefore accord overall with the relevant provisions of the development plan.

### *Proposed Midlothian Local Development Plan*

32. The appeal site is allocated for housing development in the proposed plan. The Larkfield West site (Hs2) is shown as having an indicative capacity of 60 houses, and Larkfield South (Hs3) as accommodating 30-40 houses. If these allocations are confirmed, the land would be removed from the green belt, whose boundary would be moved to the A7. I note that the combined capacity of the site as shown in the proposed LDP is slightly less than that envisaged in the appeal proposal, but the final numbers would be a matter for detailed design and approval.

33. While the council therefore supports the principle of the development, it considers the application premature since there are representations against the allocation of the land for housing, which it considers need to be resolved through the LDP examination process, and road infrastructure improvements along the A7 corridor are considered necessary before the development could be occupied.

### *Sustainable development*

34. SPP sets out a presumption in favour of development that contributes to sustainable development. Where the relevant policies in the development plan are out of date, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Where a shortfall in the 5 year effective housing land supply emerges, then development plan policies for the supply of housing land will not be

considered up-to-date. The adopted local plan is over 7 years old, and there is a substantial shortfall in the supply of housing land.

35. SPP states that 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. Guiding principles include giving due weight to net economic benefit; supporting good design and the qualities of successful places; supporting delivery of accessible housing, business, retailing and leisure development; supporting delivery of infrastructure, including transport; supporting climate change mitigation and adaptation; protecting, enhancing and promoting access to cultural and natural heritage; and avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

36. The proposal would provide net economic benefit through construction employment and increased demand for local shops and services. Good design and successful place-making would be matters to be addressed at the detailed planning stage. The houses would be accessible, being within reasonable walking and cycling distance of bus and rail public transport. Necessary additional infrastructure would be provided. Climate change mitigation would involve balancing energy-efficient house design against the generation of additional road traffic, while adaptation would include provision of SuDS to control run-off. There would be a slight reduction of landscape quality. There would be a small loss of prime agricultural land, which SPP (paragraph 80) seeks to protect but which, as discussed in paragraph 30 above, I consider justifiable. There would be a slight loss of amenity for the residents of some existing houses.

37. There are therefore both positives and negatives, but I conclude that the former outweigh the latter and the proposal would be broadly consistent with the principles of sustainable development. It therefore derives support from SPP.

### *Prematurity*

38. Paragraph 34 of SPP states that, where a plan is under review, it may be appropriate in some circumstances to consider whether granting planning permission would prejudice the emerging plan. It further states that such circumstances are only likely to apply where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan. While the Proposed Midlothian LDP allocates the site for housing development, it has not yet been submitted for examination. It is the council's position that to approve the present proposal would be premature in these circumstances.

39. SPP states that the issue of prematurity will be more relevant the closer an emerging plan is to adoption or approval. In the case of the Midlothian plan, it appears to me that adoption is at least a year away. I accept that there is an argument that the representations against the inclusion of the site should be examined before the allocation is confirmed. However, in the meantime the requirements of SPP and SESplan for there to be a five years' effective housing land supply at all times are not being met. The appeal proposal would contribute land for up to 120 houses which would help to address the requirements for the period up to 2019. This would be a useful addition to supply, but not one that would



undermine the plan's strategy (with which it is consistent) or preclude other housing sites. It would not in my view undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan. In terms of SPP, I do not therefore consider the granting of planning permission in principle in this case to be premature.

### *Effectiveness*

40. PAN 2/2010 – Affordable Housing and Housing Land Audits sets out in paragraph 55 seven factors to be assessed in determining whether a potential housing site is effective. In terms of ownership, the appellant is understood to have agreements with the owners that would enable development to proceed. The site is free from constraints related to slope, aspect, flood risk, ground stability or vehicular access which would preclude its development. Previous use has not resulted in contamination of the site. There would not be a requirement for deficit funding. In terms of marketability, the site can be developed in the period to 2019 and no difficulty in selling houses is anticipated. Any required infrastructure can be provided realistically by (or with financial contributions from) the developer to allow development. In terms of land use, factors such as ownership and marketability point to housing being a realistic option. The site can therefore be considered effective.

### *Representations*

41. The proposal attracted five letters of objection. The matters raised include some that are not material planning considerations (concerning land ownership as it affects any link paths, and whether the existing medical practice in Dalkeith has spare capacity to meet the demand that would be generated by the development). Other matters such as the loss of greenfield land I have dealt with above. Concerns about road traffic and road safety have been considered by the council's Policy and Road Safety Manager, who raised no objection subject to conditions. Public transport improvements will be provided by the measures being undertaken by the council, including provision of bus stops on the A7. Concerns about drainage capacity do not appear to be supported by Scottish Water. Planting of trees can be secured by condition. The nature and scale of the proposed development is unlikely to generate extraordinary noise and disturbance during periods of construction. Protection of residents of the new houses against noise nuisance from traffic on the A7 can be addressed through detailed design.

### *Conditions and planning obligation*

42. The council has proposed a set of draft conditions, which are generally acceptable to the appellant and form the basis for the conditions listed below. I have omitted the council's proposed Condition 1, since the submitted masterplan is only illustrative and does not form part of the proposal for which planning permission in principle is sought. I have added the condition sought by the council's Policy and Road Safety Manager (see paragraph 25 above).

43. The matters to be covered by the planning obligation, as proposed by the council and agreed by the appellant, are as follows:

- (1) Provision of affordable housing.

- (2) A financial contribution to the Border rail line.
- (3) A financial contribution to the A7 urbanisation scheme.
- (4) A financial contribution to resolve educational capacity constraints.
- (5) Provision and future maintenance of open space and landscaping.

### *Conclusion*

44. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission in principle, subject to conditions and the completion of a planning obligation to address the matters specified in the previous paragraph.

45. I will accordingly defer determination of this appeal for a period of 3 months to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 3 month period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

*Michael J P Cunliffe*

Reporter

### **Conditions**

1. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each residential phase of the development, the provision of affordable housing, the provision of open space, structural landscaping, sustainable drainage systems (SuDS) provision and transportation 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.*

2. Development shall not begin on an individual phase of development (identified in compliance with Condition 1) until an application for approval of matters specified in



conditions for a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- a. existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
- b. existing trees, landscaping features and vegetation to be retained, removed, protected during development and in the case of damage, restored;
- c. proposed new structural landscaping, which shall include shelterbelts along the west boundary of the site, and planting in communal areas and open space, including trees, shrubs, hedging and grassed areas. The tree planting within the shelterbelts shall comprise broadleaves and conifers including lime, beech and Scots pine;
- d. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- e. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- f. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed before the houses on adjoining plots are occupied;
- g. drainage details and SuDS to manage water runoff;
- h. proposed car park configuration and surfacing;
- i. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- j. proposed play areas and equipment;
- k. proposed cycle parking facilities; and
- l. an area of improved quality comprising at least 20 per cent of the proposed dwellings.

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

*Reason: To ensure the quality of the development is enhanced by landscaping and that it relates well to its setting.*

3. Development shall not begin on an individual phase of development (identified in compliance with Condition 1) until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential units and other structures has been submitted to and approved in writing by the planning authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. These materials will also include those proposed in the area of improved quality identified under Condition 2 (l). No building shall have an under-building that exceeds 0.5 metres in height above ground level. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

*Reason: To ensure the quality of the development is enhanced by the use of suitable materials and that it relates well to its setting.*

4. Development shall not begin on an individual phase of development (identified in compliance with Condition 1) until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle paths and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- a. existing and finished ground levels for all roads, footways and cycle paths in relation to a fixed datum;
- b. the proposed vehicular, cycle and pedestrian accesses into the site;
- c. the proposed roads (including turning facilities), footpaths and cycle paths including suitable walking and cycling routes linking the new housing with the local primary school and the rest of Eskbank;
- d. proposed visibility splays, traffic calming measures, lighting and signage;
- e. proposed construction traffic access and haulage routes;
- f. a residential Green Travel Plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
- g. proposed car parking arrangements;
- h. a programme for completion of the construction of access, roads, footpaths and cycle paths; and
- i. proposed on and off site mitigation measures identified by the residential Green Travel Plan submitted with the application.

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.*

5. Development shall not begin until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved in writing by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

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

Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

*Reason: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

6. Development shall not begin until an application for approval of matters specified in conditions for 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 in accordance with the approved details.

*Reason: To ensure the quality of the development is enhanced by the use of art and that it relates well to its setting.*

7. No development shall take place on the proposed site until the applicant has secured the implementation of a programme of archaeological works (evaluation) of at least 8 per cent of the proposed development site in accordance with a written scheme of investigation which has been submitted to and approved in writing by the planning authority.

*Reason: To ensure that the development does not result in the unnecessary loss of buried archaeological material.*

8. Development shall not begin until an application for approval of matters specified in conditions for bat and badger mitigation measures has been submitted to and approved in writing by the planning authority. The application shall include separate bat and badger surveys undertaken by suitably qualified ecologists. The bat and badger surveys shall cover the site and the plantation woodland bounding the site, and shall include recommended mitigation measures.

*Reason: In the interests of safeguarding bats and badgers.*

9. The existing woodland immediately to the east of the Larkfield South site and the existing woodland to the immediate north of Larkfield West shall be retained and shall be protected during periods of construction in accordance with BS5837: 2012 'Trees in relation to design, demolition and construction'.

*Reason: To safeguard existing woodland neighbouring the site which makes an important contribution to the landscape character and amenity of the area.*

10. The breeding bird mitigation recommended in section 5 of the Habitat & Protected Species Survey Report by Wardell Armstrong submitted in support of the application shall be carried out in full.

*Reason: In the interest of safeguarding breeding birds.*

11. No residential unit on the site shall be occupied before the completion of the first phase of the A7 urbanisation scheme comprising the provision of cycleways/footways on both sides of the section of the A7 running from Melville Dykes roundabout to the Bonnyrigg roundabout and the installation of two bus stops and pedestrian crossing points, with the reduction of the speed limit to 40 mph.

*Reason: In the interests of road safety and of ensuring that residents have safe and convenient access to bus services.*







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## **PRE - APPLICATION REPORT REGARDING A PROPOSED RESIDENTIAL DEVELOPMENT AT LAND WEST OF CORBY CRAIG TERRACE, BILSTON (15/00936/PAC)**

Report by Head of Communities and Economy

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### **1.0 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise the Committee of a pre application consultation submitted regarding a proposed residential development on land west of Corby Craig Terrace, Bilston (western part of site Hs16 Seafield Road, Bilston).
- 1.2 The pre application consultation is reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.

### **2.0 BACKGROUND**

- 2.1 Guidance on the role of Councillors in the pre-application process, published by the Commissioner for Ethical Standards in Public Life in Scotland, was reported to the Committee at its meeting of 27 May 2014 and subsequent procedures were reported to the Committee at its meeting of 7 October 2014. The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 On the 25 November 2015 the Planning Authority received an Environmental Impact Assessment (EIA) Screening Opinion request for a proposed residential development at land 470M West of Corby Craig Terrace, Bilston. On 27 November 2015 the Planning Authority issued a screening opinion that the proposed development does not constitute an EIA development. Therefore, any future planning application for the proposed development is not required to be accompanied by an Environmental Statement.
- 2.3 As part of the pre application consultation process the applicants are to hold a public exhibition and a meeting with Damhead and District Community Council, Roslin and Bilston Community Council and the Ward Councillors for Midlothian West on a date in late January 2016 to

be confirmed. On the conclusion of the exhibition the applicant/agent could submit a planning application for the proposed development. It is anticipated that a planning application in principle would be submitted. It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance) not offer views, as the forum for doing so will be at this meeting of the Planning Committee.

- 2.4 Copies of the pre application notices have been sent by the applicant to both Damhead Community Council and Roslin and Bilston Commuity Council.

### **3.0 PLANNING CONSIDERATIONS**

- 3.1 The proposed development is situated on agricultural land to the immediate north of the village of Bilston. The land comprises approximately 8.8 hectares. No indicative masterplan has been submitted with the application.
- 3.2 In assessing any subsequent planning application the main planning issue to be considered in determining the application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise.
- 3.3 The adopted 2008 Midlothian Local Plan (MLP) identifies the site as being in the countryside and Green Belt and is prime agricultural land and any subsequent planning application will be subject to assessment against policies RP1: Protection of the Countryside, RP2 Green Belt and RP4: Prime Agricultural Land. A provisional assessment against this policy does not support the scheme on the basis that the proposed development is not necessary for agriculture or for any other rural business and there is no justification for the loss of prime agricultural land.
- 3.4 However, there is a significant material consideration to consider. This is as follows:

At its meeting of 16 December 2014 the Council approved the Midlothian Local Development Plan Proposed Plan. Although the proposed plan is subject to Local Plan Examination, which is anticipated to be in the Spring/Summer of 2016, the development strategy in the plan would be a material consideration which can be given weight. The proposed plan identifies the site together with a site to the immediate east of is as a potential housing site for 350 dwellings.

- 3.5 A consequence of the Proposed Plan being at an advanced stage is that if an application is submitted prior to the adoption of the MDLP the application will be considered as premature. The site is subject to representations from the local community and interested parties and will be tested at examination by a Scottish Government Reporter.



## **4.0 PROCEDURES**

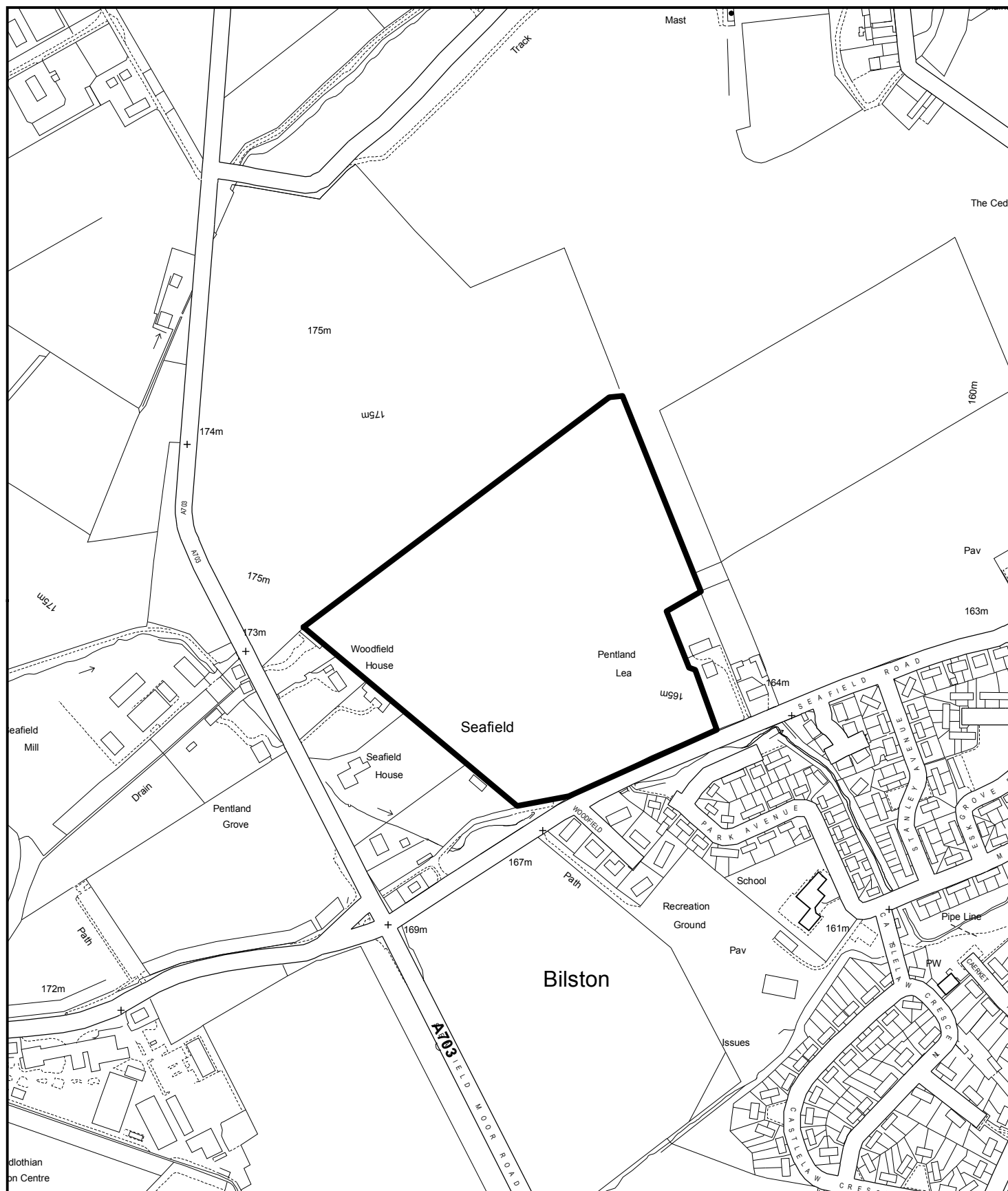
- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.
- 4.3 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures advises that Councillors are expected to approach their decision-making with an open mind in that they must have regard to all material considerations and be prepared to change their views which they are minded towards if persuaded that they should.

## **5.0 RECOMMENDATION**

- 5.1 It is recommended that the Committee notes:
  - a) the provisional planning position set out in this report; and
  - b) that any comments made by Members will form part of the minute of the Committee meeting; and
  - c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

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

**Date:** 5 January 2016  
**Contact Person:** Peter Arnsdorf, Planning Manager  
**Tel No:** 0131 271 3310



**Education, Economy  
& Communities**  
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Land West of Corby Craig Terrace, Bilston

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**APPLICATION FOR PLANNING PERMISSION 15/00503/DPP FOR INFILLING OF QUARRY AT MIDDLETON LIMESWORKS, GOREBRIDGE (THIS APPLICATION IS ACCOMPANIED BY AN ENVIRONMENTAL STATEMENT PREPARED UNDER THE ENVIRONMENTAL IMPACT ASSESSMENT (SCOTLAND) REGULATIONS 2011)**

Report by Head of Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1** The application is for detailed planning permission for the infilling of the former Middleton Limeworks Quarry (known as quarry No.1). Six representations have been received and consultation responses have been received from Scottish Natural Heritage (SNH), the Scottish Environment Protection Agency (SEPA), Transport Scotland and the Council's Policy and Road Safety Manager, Environmental Health Manager and the Council's Archaeological Advisor. The relevant development plan policies are policies 14 and 15 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies RP1, RP7, RP8, RP13, RP14, WAST3 and DP3 of the Midlothian Local Plan (2008). The recommendation is to grant planning permission subject to conditions.

**2 LOCATION AND SITE DESCRIPTION**

- 2.1** The application site is the former Middleton Limestone Quarry, located in the countryside in close proximity to the south of North Middleton.
- 2.2** The site measures approximately 7.7 hectares with the proposed infill area being 5.15 hectares. The site comprises the quarry void with quarry faces and soil storage bunds on the periphery and areas of quarry spoil within the void. Entrances to former underground workings are visible in the quarry faces.
- 2.3** The quarry is accessed from a point off an unclassified road that runs in an east to west orientation and which bounds the site to the north. The unclassified road is accessed off Guildiehowes Road which in turn is accessed off the A7 located nearby to the north of the site.

### **3 PROPOSAL**

- 3.1 The application proposes planning permission for infilling of the quarry void with inert materials. Materials to be imported to the site include bricks, soils and clays. The applicant confirms that the imported materials shall be checked and certified to ensure that there is no contamination. The source and geological location of soils will be dependent on waste becoming available and cannot be specified in advance. It is estimated that approximately 75% of the material would be sourced from Edinburgh with the remainder being from the surrounding area in Midlothian and East Lothian.
- 3.2 Planning permission for the infilling is sought for a 7 year period, including 6 years for the infilling and 1 year to complete the restoration. The 1 year restoration timescale allows for potential delays over the winter period.
- 3.3 The A7 is anticipated to be the principal route for vehicles bringing materials to site. It is proposed to utilise the existing site access, office, weighbridge and internal haul route. Prior to the commencement of works the site access will be surfaced for a distance of 20 metres back from the public road. On the basis of the proposed importation of materials, assuming a 6 day working week and 20 tonne loads, it is anticipated that there shall be an average of 66 HGV movements associated with the proposal on a daily basis [33 loaded vehicles entering, 33 empty vehicles leaving].
- 3.4 The proposed operating hours are 07:00-18:00 Monday to Saturday with no working on Sundays.
- 3.5 In support of their application the applicants state that they are a significant employer in the area and currently have 215 members of staff, 70 of whom reside within Midlothian. The company also generates an element of indirect employment for local firms who are used as suppliers, maintenance and specialist support. The current planning application is important to the operating company as it gives certainty with respect to infilling capacity over the next few years, which in turn provides job security.
- 3.6 The application is accompanied by an Environmental Statement (ES) prepared in terms of the Environmental Impact Assessment (Scotland) Regulations 2011.

### **4 BACKGROUND**

- 4.1 In March 1982 planning permission ref.198/81 was granted for the extraction and working of limestone on both Middleton No.1 and No.2 quarries. Planning permission 198/81 has now expired.

- 4.2 In December 2012 the Planning Authority served a Breach of Condition Notice on Leiths (Scotland) Limited; who were the operator of Middleton Quarry, requiring them to take action in relation to conditions attached to planning permission 198/81. The conditions require the infilling and restoration of the whole site to an agricultural use by the 19<sup>th</sup> December 2016. The breach of condition Notice only required the reinstatement of No.2 quarry. No.2 quarry (also known as the upper quarry) is presently being infilled in compliance with the Breach of Condition Notice.

## 5 CONSULTATIONS

- 5.1 The **Scottish Environment Protection Agency (SEPA)** initially objected to the application on the grounds of lack of information as to whether the proposal is potentially consentable under the relevant regulatory regime covered by SEPA. The applicant's proposal is to infill Middleton Quarry No.1 under an exemption from Waste Management Licensing for the reuse of inert waste. The proposed activity involves the infill of a void space of approximately 660,000 cubic metres. It involves reinstatement of land close to the original ground topography with infill of 1-2 metres in the north east to between 17-23 metres within the main void. SEPA do not view the infill of a former quarry to a depth of 17-23 metres with waste as a reuse activity, but as a disposal activity. As such the activity as originally proposed cannot be authorised under any exemption from Waste Management Licensing (Scotland) Regulations 2011, and would require a PPC/A permit under The Pollution Prevention and Control (Scotland) Regulations 2012 (PPC 20120) for an inert landfill activity. SEPA confirm that they have concerns about the potential impacts to groundwater as a result of the proposals and therefore they initially objected to the application. In order to determine that an inert landfill at this location would be consentable under the above stated regulatory regime, SEPA requested that the applicant undertakes a further assessment of impacts on groundwater.
- 5.2 In response to SEPA's objection the applicant submitted additional information to address SEPA's concerns. The applicant confirms the following: (i) the intention is to apply for an exemption under the Waste Management Licensing Regulations; (ii) waste acceptable to the site will be restricted to those waste types specified in the table at Schedule 2, paragraph 4 of the Landfill (Scotland) Regulations 2003. The applicant will operate a waste screening process, which will remain in place during infilling operations to ensure that only truly inert materials, with no leachable component, are accepted at the site. Records of waste acceptance will be maintained for inspection as required; (iii) the site entrance and main haulage road will have suitable drainage installed prior to commencement of infilling. The drainage will be subject to regular checks and maintenance to ensure it remains operational; (iv) post restoration drainage has been determined on the basis of the proposals outlined in the ES; (v) the ground water drainage proposals are appropriate to meet the relevant objectives in Schedule 4

of the Waste Management Licensing Regulations. In light of the additional information provided SEPA have confirmed to the Planning Authority that they withdraw their objection on the proviso that the following two conditions be imposed on a grant of planning permission:

*“(1) Only truly inert material, as specified in the table at Schedule 2, Paragraph 4 of the Landfill (Scotland) Regulations 2004, shall be used for infilling purposes and the material shall arrive at the site in a condition suitable for purpose.*

**Reason:** *To ensure that only appropriate materials are used for infilling and to ensure adequate protection of the water environment.*

*(2) Prior to commencement of any works, a site surface water drainage strategy and plan shall be submitted to and approved by the Planning Authority in consultation with SEPA. This shall include: (i) Full details of the drainage infrastructure serving the site entrance and haulage roads(s); ii) Design details of the temporary crossings to be installed within the working area; (iii) a copy of the wet weather working plan.*

**Reason:** *to ensure adequate protection of the water environment.”*

- 5.3 With regards to flooding SEPA confirm that given the proposal includes the provision of settlement ponds during work and that following works the site will be left to re-vegetate, it is not anticipated that there will be an increase in runoff to the North Middleton Burn. SEPA confirmed that they are not aware of flooding concerns in the area and they therefore do not object on flood risk grounds to the proposed works to infill the quarry site.
- 5.4 **Transport Scotland** does not advise against the granting of planning permission or the imposition of any conditions on a grant of planning permission.
- 5.5 **The Council's Policy and Road Safety Manager** raises no objection to the principle of the proposed development but recommends the following mitigation measures identified in the Transportation Assessment be secured by conditions on a grant of planning permission: (a) an advanced warning sign should be erected on the minor road on the eastern approach to the site access; (b) a minimum of the first 40 metres (not 20 metres as stated in the TA) of private access road within the site and behind the access into the site should be surfaced in non-loose material to reduce the volume of loose material being carried onto the public road; (c) details of the type and location of the wheel washing equipment should be submitted for approval with the waste water generated being recycled within the site; (d) given the large number of vehicle trips anticipated per day a road sweeping vehicle should be permanently based on the site to address the issues of loose material being deposited onto the public road; (e) various sections of the road carriageway/verge have suffered damage



over the years and the developer should undertake a programme of works to repair these sections prior to the infilling of quarry No.1 commencing. A meeting on site can be arranged with the developer to identify the various sections and to agree the necessary works.

- 5.6 **The Council's Environmental Health Manager** raises concerns regarding the potential impact of the development on air quality, water quality and noise. To mitigate these concerns it is recommended that the following controls be secured by conditions imposed on a grant of planning permission: (i) details of measures which will be taken to ensure that the wholesomeness of private water supplies in the vicinity of the proposed works are not affected by the infilling activities should be submitted for the prior approval of the Planning Authority; (ii) site operations, including vehicle movements shall be restricted to between 08:00 to 19:00 hours Monday to Friday and 08:00 hours to 12:00 hours Saturday unless otherwise agreed in writing by the Planning Authority; (iii) a dust management plan shall be submitted and agreed in writing by the Planning Authority. Additionally, following any substantiated complaints about dust or where visual inspection indicates significant dust emissions or dust tracked out of the site onto public roads, a programme of monitoring at the sensitive receptor(s) shall be undertaken by the operator over a period of time agreed in writing by the Planning Authority (following the results of an initial representative period of monitoring); and, (iv) a daytime limit of 55 dB  $L_{Aeq, 1h}$  (free field) shall be met at noise sensitive properties, with the exception of Sheilknowe at 10 Guildiehowes Road and Halkerston Farm Cottages where a daytime limit of 45 dB  $L_{Aeq, 1h}$  (free field) shall be met.

- 5.7 **Moorfoot Community Council (MCC)** confirms that whilst not objecting to the overall aims of the development they object to the means of delivery of the proposed restoration and the management of its effect. They raise the following concerns with the proposed development which are explained in turn:

- (i) road traffic and road safety;
- (ii) site operating conditions;
- (iii) the end use of the site;
- (iv) monitoring of the materials used for the infill; and
- (v) the provision for assuring the completion of the project.

MCC - Road traffic and road safety

- 5.8 MCC note that the applicant has made commitments on a number of points which they raised at pre-application stage, including the establishment of a community liaison group, explanation of the role of SEPA in monitoring the project and the upgrading of perimeter fencing and warning signs. In terms of road traffic and road safety they state that it is clear that the proposal has generated significant concern in the local community, particularly about the impacts arising from the additional road traffic that will be generated by the development, six days a week over a period of up to seven years. MCC inform that



concern has been expressed by local residents about the damage to verges on the Guildiehowes Road caused by existing lorry traffic. This makes it difficult or impossible for pedestrians to safely use the road or its verges. The proposed in-fill would exacerbate this impact over a further seven year period. MCC considers that this is not in compliance with the requirement of MLP policy WAST3, which states that proposals for waste disposal by landfill will only be permitted where “it can be demonstrated that the additional traffic generated by the development can be accommodated on the local road network without causing an unacceptable hazard or inconvenience to other road users, or damage to the surface of the road carriageway and adjoining verges.” The ES contains no proposals for mitigation of this impact. MCC note that the Transport Statement states that “the applicants would be willing to enter into a legal agreement to deal with this”. They also note that the PAC Report states that “The applicant is willing to contribute to the improvement of Guildiehowes Road, this being on a pro rata basis with respect to usage.” In addition, they note that the PAC Report states that “it is considered that pedestrians can safely use this route without further safety provision.” MCC considers that any Section 96 agreement or other means of contribution to repair and maintain the Guildiehowes Road must contain adequate provision for pedestrians, including maintaining the verges to allow continued safe pedestrian access throughout the duration of the project. MCC do not agree with the statement made by the applicant that there has been no record of accidents at the A7/Guildiehowes junction. MCC maintain that the TA does not give consideration to the additional hazards generated by HGV movements in relation to: (i) the speed differential of traffic at the junction of Guildiehowes Road and the A7; (ii) the staggered layout of the Guildiehowes Road and North Middleton village access junction; (iii) increased traffic flows at the school opening and closing times; and, (iv) the complex traffic dynamics that can arise from this mix. MCC raise concern that traffic turning right onto the A7 northbound from North Middleton (a junction with limited sight lines) will have to mix with fast-moving southbound and northbound traffic on the A7, HGV’s turning right into Guildiehowes Road, and further HGVs turning left on to the A7 from Guildiehowes Road. They inform that the dynamics of the junction has long been a concern to the local residents and has led to numerous calls for imposition of a 40mph limit on this part of the A7. MCC concur with this and consider that this should be made a condition of a grant of planning permission for the proposed development. MCC notes that the TA states that “detailed consideration of movements within the wider area in relation to the A7 is not considered necessary or appropriate. However, MCC maintain that at least 75% of the HGV movements to and from the site are predicted to route between the site and Sherrifhall Roundabout via the A7, a route which is subject to traffic generated by an ever-increasing number of planned and ‘windfall’ developments. Therefore MCC considers that a proper cumulative assessment of the impact of the development on traffic levels on the A7 up to and including the Sherrifhall Roundabout should be carried out. They maintain that this would be in keeping with policy TRANS2 of the proposed MLDP, which

states: "Contributions from all planned and windfall development within each Strategic Development Area (SDA) will be expected to contribute to the provision of the relevant strategic road interventions identified above by the SDA, as detailed in the Supplementary Guidance on Development Contributions." MCC considers that the proposed surfacing of the site access road for a distance of 20 metres back from the public road and installing a wheel wash at the edge of this area of surfaced road is inadequate to mitigate the significant effects of dust and mud on the public road, and the hazard of thrown stones to other road users. MCC consider that the site access road should be surfaced 170 back from the public road in order to reduce the carriage of mud and stones on the public road. They consider that the wheel washing should be installed adjacent to the end of this extended access road surfacing. They advise that the applicant make use of the remaining Leith's land to make room for a weighbridge and wheel wash in locations that adequately mitigate lorry queuing and mud/stones/dust hazards. In addition, MCC consider that road humps and cattle grids are used as an additional means of dislodging stones from wheels. MCC advise that the weighbridge should be re-located further into the site in order to allow any queues of lorries to remain fully within the site and not on the public road. Also, warning signs should be erected on the public road at an appropriate distance from the site entrance, especially prior to the bend on the public road to the south east of the site entrance. MCC notes that the applicant has expressed a willingness to accept a condition prohibiting parking outside the quarry gates when it is closed. They advise that the condition be worded to ensure that it includes waiting, as well as "parking" on the public road, and that it does not have the unintended consequences of shifting the queues of parked lorries to some other location.

#### MCC - Site operating conditions

- 5.9 With regards to site operating conditions MCC states that the proposed operating hours; which is 11 hours a day for 6 days a week, do not provide sufficient respite for local residents from the traffic, noise and dust impacts. They advise that site operations and movement of lorries into and out of the site should be restricted to 0700 to 1800 Monday to Fridays and 0700 to 1300 on Saturdays. In addition, they consider that in order to prevent lorries queuing on the public road as currently occurs, there should be a condition prohibiting lorries from approaching the site entrance before 0700 hours. In order to limit the maximum impacts of lorry movements, an upper limit of 100 HGV movements on any one day should be imposed as a planning condition. In order to avoid an unacceptable level of cumulative impact, no operations should be allowed to commence on the restoration of the lower quarry until the restoration of the upper quarry is confirmed as being completed to a standard acceptable to the Council and SEPA.

#### MCC - The proposed end use of the site

- 5.10 Regarding the proposed end use of the site, MCC notes that the application proposes restoration of the site to a recreational use. This is in contrast to the restoration requirements of the original planning permission (198/81) and the Breach of Condition Notice which requires that the current in-fill operations at the upper quarry which requires that land to be restored to “a condition suitable for agricultural use.” MCC considers that the applicant should have assessed the potential for agricultural use following restoration and that failure to do so constitutes an inadequate consideration of alternatives in the ES. In the event that the end-use of the site is recreational MCC propose that the applicant gift the site to a suitable community body. A road haulage company has no obvious interest in retaining ownership of a piece of recreational land with low development value. A long term safeguarding of the restored site, beyond the five year aftercare period is best achieved by community control and this would be in keeping with the Scottish Government policy encouraging community land ownership. MCC consider that in the event that the Council does not require the applicant to offer the restored land to the community and does not require the land to be restored to agricultural use then a condition should be imposed on a grant of planning permission requiring the “recreational” use of the land including free public access on foot, cycle or horseback.

#### MCC - Monitoring of the material used for the infill

- 5.11 With regards to monitoring of the material used for the infill MCC consider that it is critical that inappropriate material does not find its way onto the site. They consider that the statements in the ES on the nature of the imported materials and the arrangements for monitoring incoming truck contents contain a number of omissions and ambiguities. MCC submits that these arrangements should be clearly and unambiguously stated and underpinned by planning conditions. MCC consider that it is not clear how the applicant's proposed inspection of waste load can ensure that no unacceptable non-inert material enters the site, for example when unacceptable material may lie underneath the visible portion of an incoming load. It is also unclear whether the inspections would be carried out solely by individual drivers, or additionally by other personnel. Therefore, further details should be provided. MCC notes that paragraph 4.4.1 of the ES states that “It is envisaged that the majority of waste utilised to reinstate Middleton would be unsuitable for recycling”. This implies that as much as 49% of the waste could be recycled. The following should be clarified: (a) how much of the waste is expected to be recycled; (b) whether that material is appropriate for in-fill on this site; c) what opportunities there may be for recycling that material; and, (d) whether development in recycling facilities in the SESPlan area within the lifetime of this proposed development may alter the assumptions made about the proportion of the material that is recyclable. MCC consider that the importing of soils and soil forming material onto the site will

have the potential to have significant effects on: (a) the potential for contamination and (b) the volume of imported material required, and therefore the volume of traffic generated. Therefore it is necessary that the volumes are more closely specified. In addition they consider that the applicant should specify: (a) the expected source and geographical location of the soil material to be used in the restoration; (b) whether “soil forming material” will include materials such as sewage sludge; (c) if so, in what volumes; and, (d) what arrangements will be put in place to control its environmental effects.

#### MCC - Provisions for the completion of the project

- 5.12 Regarding provisions for assuring the completion of the project MCC confirm that they fully support the aim of the restoring the Middleton Lower Quarry to a use that is safe and environmentally acceptable. However they are concerned about the possibility of only a partial restoration being undertaken because of e.g. company failure or a major change in the availability of suitable in-fill materials, which could leave the quarry in a less safe and/or more environmentally damaging and/or less acceptable to the public and/or less useable for agricultural use and/or more unsightly than the site in its current condition. Therefore MCC disagree with the assertion in paragraph 4.5 of the PAC Report that “cession of the proposed operations at any stage would leave the site in a better condition than the current situation”. They note that the assertion is not repeated or backed up by the assessment in the ES. MCC considers that the applicant should be required to provide more robust justification of their claim that there will be enough material available to achieve full restoration in the specified time period. In addition, they consider that there should be a clear ‘Plan B’ set out, showing how the restoration will be achieved if the supply of waste arisings fails to meet the assumed levels. MCC points out the policy WAST3 of the MLP requires that for landfill development, “Applicants will be required to submit proposals for site restoration and aftercare and demonstrate that robust financial arrangements are in place”. MCC raise a concern that no such proposals have been submitted, and paragraph 4.5 of the PAC Report states: “the NWH Group considers that a requirement for a restoration guarantee is inappropriate.” MCC consider that experience from quarrying and surface mineral sites across Scotland and elsewhere in the UK, including recent experience in Midlothian demonstrates that robust financial guarantees are essential to ensure the full delivery of consented restoration programmes. Paragraph 112 of PAN64 (Reclamation of Surface Mineral Workings) states: “The Scottish Executive considers that financial guarantees are an appropriate means of reassuring local communities of operator’ commitment and ability to meet their restoration and aftercare obligations. Financial guarantees to ensure full restoration and aftercare should the mineral operator fail to implement the agreed works can be provided by a mutual funding scheme”. MCC inform that in Scotland it is common practice for operators to provide a restoration and aftercare bond as a financial guarantee. MCC submits that without a robust and

transparent proposal to guarantee the completion of the proposed restoration in the event of company failure or significant change in market conditions, the application should be refused.

- 5.13 **Scottish Natural Heritage** considers that the proposed development is likely to have an effect upon bats (European protected species) and badger (UK protected species). They inform that if the Council approve the application, protected species licences from SNH will be required by the applicant before they can proceed with the development. SNH advise that the proposal would affect bats and their access to an important winter hibernaculum (a hibernation site). The supporting documentation includes a "Bat Hibernaculum Monitoring 2013-2015 Report" that lays out measures to protect bats and retain their access to the hibernaculum. SNH inform that it is likely that they will grant a licence for the proposal on the basis that the mitigation measures detailed in the aforesaid report (section 6) are secured and implanted in advance of any works that might affect the bats or the hibernaculum. The applicant also proposes to infill an area where an active badger sett currently lies. This will require a protected species licence from SNH to exclude the badgers and destroy the sett. SNH inform that it is likely that they will grant a licence for this on the basis that suitable mitigation and compensatory measures are put in place in advance of exclusion and sett destruction.

## 6. REPRESENTATIONS

- 6.1 Seven letters of representation have been received in relation to this application. The following issues are raised:
- Concern that inadequate measures are being proposed by the applicant to ensure that only inert material is deposited;
  - Concern about fly tipping and the risk of unauthorised hazardous material being deposited into the site with a resultant risk of leeching to the water environment including North Middleton Burn;
  - It is necessary to have in place 24 hour CCTV of all vehicle number plates and vehicle unloading;
  - Concerns about mud from vehicles being deposited on road verges and hedgerows along the A7/Guildiehowes Road;
  - Concern about the poor state of repair of the road leading from the A7 to the site and rutted verges alongside it;
  - The volume of vehicles using the road leading from the A7 to the site has resulted in the road being unsafe for use by pedestrians and cyclists;
  - Concern that the speed limit in the vicinity of the junction where Guildiehowes Road meets the A7 is too high and that it should be reduced to 40 miles per hour for safety reasons;
  - It should be made a condition of a grant of planning permission that wheel washers are installed and operated on site;
  - Hours of operation should be restricted in the interests of safeguarding the amenity of the local community;
  - Concern that the use is permanent and not temporary;



- The former quarry has become a poorly regulated tip;
- Concern about dust nuisance from the infilling of the former quarry;
- Concern about harm to the amenity of neighbouring properties as a result in noise nuisance from the operations, including from lorries;
- Concern about wind-blown litter from HGVs associated with the operations;
- The hours of operation would result in significant harm to the amenity of neighbouring residences;
- When the land is restored to a recreational use, it should be transferred to the local community;
- Concern about pollution from liquid effluent from road washing activities and the impact on drainage;
- The scale of the development is not necessary;
- Concern about harm to the privacy of neighbouring properties;
- Harm to the setting of neighbouring listed buildings, conservation areas and areas of great landscape value;
- Concern about the possible impact of the development on flooding and drainage;
- Insufficient information has been submitted by the applicant to demonstrate how the site will be restored;
- An area of land to the east of the site which contains a bund of over-burden material has been omitted from the application site;
- The ongoing infilling of quarry 2 is not being carried out in accordance with the conditions imposed on the original grant of planning permission for the quarry;
- Insufficient details have been submitted of how material brought to the site will be managed to ensure good sub soil and topsoil layers in the final phase of the restoration;
- The drainage proposals are inadequate;
- The nature of the infill material will have a bearing on the drainage flows after the land is restored;
- Concern that some of the lorries currently accessing the site are un-sheeted;
- The proposed length of hard surfaced access road in to the site and the proposed wheel washing facility will have minimal beneficial use and may actually contribute to more dust on the road network;
- Concerns about noise nuisance from the road sweeper required to be in attendance;
- Concern about dust associated with the operations being deposited onto crops growing in fields around the access road, making the crops unfit for consumption;
- Concerns about there being poor supervision of the loads being tipped into Quarry 2 and no levelling being undertaken;
- Concern about lorries being queued on the road outside the site early in the morning;
- Safety concern for cyclists using the public access road to the site, which road forms part of a National cycle route;
- The land should be restored to arable land rather than for recreation;

- If planning permission is granted the Council should undertake spot-checks to ensure that the conditions imposed on a grant of planning permission are being complied with;
- The exposed limestone rock faces of the quarry are relatively rare and of geodiversity, biodiversity and landscape value. Therefore, the infilling of the quarry would result in harm to/ the loss of geodiversity and biodiversity and would harm the landscape.

## 7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) and the Midlothian Local Plan (MLP), adopted in December 2008. The Emerging Local Plan is the Midlothian Local Development Plan Proposed Plan 2014. The following policies are relevant to the proposal:

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

- 7.2 Policy **14: Waste Management and Disposal** states that Local Development Plans will consider proposals for landfill development where the need for the facility is supported by the Zero Waste Plan and SEPA Landfill Capacity Reports, and taking into account relevant economic, social, environmental and transport considerations.
- 7.3 Policy **15: Water and Flooding** states that Local Development Plans will make provision to prevent deterioration of the water environment resulting from new development and promote water efficiency in all development proposals. Where appropriate, promote enhancement of the water environment.

### Midlothian Local Plan (MLP):

- 7.4 Policy **RP1: Protection of the Countryside** states that development in the countryside will only be permitted if: it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation, tourism, or waste disposal (where this is shown to be essential as a method of site restoration); it is within a designated non-conforming use in the Green Belt; or it accords with policy DP1.
- 7.5 Policy **RP7: Landscape Character** which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required.
- 7.6 Policy **RP8: Water Environment** states that development will not be permitted which could adversely affect the water environment by:



A) having a damaging impact on fisheries, nature conservation, landscape, recreation of public access in a river corridor or other waterside area;  
 (B) polluting surface or underground water (including water supply catchment areas) as a result of the nature of the surface wastewater discharge or leachate;  
 (C) giving rise to pollution, resulting from the disturbance of contaminated land;  
 (D) being subject to unacceptable flooding risk, or by causing or exacerbating flooding problems either within the site, or upstream or downstream of the site;  
 (E) not meeting standards set in The SUDS Manual (Published by CIRIA, 2007) or successor document, or failing to take into account best practice on SUDS design and management; or.  
 (F) not meeting the requirements of policy DP3 relating to the protection of the water environment in relation to all new development proposals.

- 7.7 Policy **RP13: Species Protection** requires that any development that would affect a species protected by law will require an appropriate level of environmental and biodiversity assessment. Where development is permitted, proposals will require: A. measures for mitigation; and B. measures for enhancement or sustainable habitat replacement, where appropriate.
- 7.8 Policy **RP14: Habitat Protection Out with Formally Designated Areas** requires that where a development affects sites which contain habitat of some significance, effects on the habitat as well as mitigation measures will be taken into account.
- 7.9 Policy **WAST3** Sites for Waste Disposal has some relevance and advises that proposals for waste disposal by landfill will only be permitted where it can be demonstrated that a significant environmental benefit can be achieved through landfilling. Development should also fulfil a set of requirements covering land use, amenity of neighbours, water pollution, high standards of restoration and aftercare, traffic and visual impact.
- 7.10 Policy **DP3: Protection of the Water Environment** sets out development guidelines regarding flooding, treatment of water courses, drainage and Sustainable Urban Drainage Systems (SUDS);

#### Midlothian Local Development Plan Proposed Plan 2014

- 7.12 Policy **WAST 3 (Landfill)** presumes against new landfill development other than as part of a site restoration project. Proposals will only be allowed if there are no significant negative environmental impacts, including from traffic movements and cumulatively from other waste or mineral operations. A buffer of 250 metres will be required between a landfill site and any sensitive receptors. Applicant will be required to submit proposals for site restoration and aftercare and demonstrate that robust financial arrangements are in place.

## National Policy

- 7.13 The **SPP (Scottish Planning Policy)** sets out Government guidance for waste management including landfill. The SPP states that restoration should be designed and implemented to the highest standards. Furthermore it states that planning authorities should ensure that consents are associated with an appropriate financial bond unless the operator can satisfactorily demonstrate that their programme of restoration, including the necessary financing phasing and aftercare of the sites, is sufficient.
- 7.14 Also material to the consideration of the application is **Scottish Government's Planning Advice Note 64: Reclamation of Surface Mineral Workings**. Pan 64 also states that the then Scottish Executive (now Scottish Government) considered that financial guarantees are an appropriate means of reassuring local communities of operators' commitment and ability to meet their restoration and aftercare obligations.

## **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 located in the countryside where development is restricted to those uses which have a rural locational need such as agriculture, horticulture, forestry or recreation/leisure uses. Rural use can also include mineral extraction and quarrying which are dependent on the location of the natural resource to be extracted. Therefore the Council recognises that in supporting the former quarry operations it must address issues of restoration which include infilling if appropriate. The lime quarrying use has now ceased and it is necessary to restore the land. MLP policy RP1 supports waste disposal in the countryside where this is shown to be essential as a method of site restoration. The quarry has a void space of approximately 660,000 cubic metres and there are currently stability issues and consequently safety issue in relation to the former quarry faces which will be addressed by infilling it. The infilling is preferable as a method of site restoration. The proposals accord with the requirements of policy RP1.

### Infill operations

- 8.3 Approximately 660,000 cubic metres of infill material would be expected to be needed during the course of the development. Concern has been raised regarding the material used to infill the quarry including the potential impacts to groundwater as a result of any non-

inert material being used to infill the void. The ES acknowledges that to be exempt from Waste Management Licensing any infill materials would be inert and non-contaminative in nature. The transportation and acceptance of waste is regulated by SEPA. Paragraph 3.4 of the ES states: "All waste shall be subject to inspection and testing at source and shall only be transported by registered waste carriers. All waste tipped at the site will be inspected; any rejected loads will be reported to SEPA immediately, with a copy of the rejected note forwarded." Furthermore, the applicant confirms that when loads are tipped at the disposal point, on site operatives are trained to look for any adverse non inert material. If found, that particular load will be transported to a quarantine area on site to await investigation before being despatched to a final destination of an appropriate registered landfill site under the rejected load procedure outlined in the ES. The measures proposed by the applicant to ensure that only inert material is deposited into the quarry void are adequate. Subject to these measures being carried out and subject to the conditions recommended by SEPA in their consultation response, the proposed development would not result in contaminate pollution to the environment, including the water environment.

- 8.4 The proposal includes the provision of settlement ponds during infilling operations and that following these works the site will be left to re-vegetate. Given this, it is not anticipated that there will be an increase in runoff to the North Middleton Burn. The proposed development does not raise flood risk concerns.
- 8.5 Subject to the conditions recommended by SEPA the proposed development complies with SESplan policy 15 and MLP policies RP8, WAST3 and DP3.

#### Impact on air quality and noise

- 8.6 The Council's Environmental Health Manager raises concerns with regard to potential noise from the operations having a significant detrimental effect on the amenity of the nearest residential properties to the site which are Guildiehowes Farmhouse and Halkerston Farm Cottages, located some 175 metres and 700 metres away respectively from the site. The proposed operating hours of the infill operation are 07:00 to 18:00 hours Monday to Saturday with no working on Sundays. The Council's Environmental Health Manager advises that the standard operating hours which the Council imposes on other similar operations; which are more restrictive than those proposed by the applicant, be secure by a planning condition. These are 08:00 to 19:00 hours Monday to Friday and 08:00 hours to 12:00 hours on Saturday. Sheilknowe, 10 Guildiehowes Road is part of a working farm and is adjacent to an operating sand and gravel business. As such this property is already affected by noise and the proposed development will not exacerbate this situation. However, it is reasonable to impose the time restrictions to safeguard the amenity of the residents of Halkerston Farm Cottages. However, if the operator can demonstrate

with evidence to the Council that extended operating hours would not result in significant harm to the amenity of neighbouring noise sensitive properties, then they may not object to the extended hours. This allowance can be included in the planning condition. The recommended control in relation to dust management can additionally be secured by a planning condition.

### Site Restoration

- 8.7 The site is not located within any national or local landscape designated area and is well screened with only limited views in from surrounding road networks. Chapter 5 of the ES (Scoping the Assessment) has the landscape and visual impact of the proposed work as being negligible during the work with a low positive impact in the longer term. Due to the nature of the proposals the likely negative impact would only be when removing existing natural vegetation in the latter phases of the infill process and the restoration process. However this temporary disruption is balanced against the longer term environmental benefits of the infilling/restoration works.
- 8.8 The applicant proposes a scheme of restoration which complies with requirement D (site restoration and aftercare) of adopted MLP policy WAST3. The intention is for the void to be infilled both with existing on-site overburden and imported material spread evenly to a level approximately one metre below the finished restoration level, which would be similar to that which existed prior to the quarrying, and thereafter imported subsoil and topsoil would be spread to achieve an appropriate merge with the existing ground levels surrounding the site. The site would be restored to a mixture of grassland, given over to agricultural grazing, with woodland shelter belts connecting with the existing wooded areas abutting the site. Furthermore, it is the intention to retain existing paths within and on the periphery of the quarry area and create additional links to provide an enhanced path network which would be available for recreational use including walkers, cyclists and nature interest. The existing paths are informal routes and are not engineered paths that would require maintenance. The proposed additional paths would be of a similar format.
- 8.9 The restoration scheme would address stability and safety issues and restore the land to topography in keeping with the surrounding area. It is anticipated that the restoration scheme will result in an enhanced use of the site by people living locally. However the increase would be limited in scale and not result in road safety concerns as a result of increasing pedestrian crossings on the A7 or through additional traffic. The resultant recreational use would not be a country park or recognised public area. The applicant proposes that the agricultural areas be subject to a five year aftercare programme, the woodland areas three years. Thereafter the land would be subject to standard agricultural and woodland maintenance by the landowner. The applicant confirms that they will retain title to the site once it is restored to a mixture of grazing land and woodland. They do not consider that a

formal management agreement beyond this point is necessary. It is not proposed to install benches or bins which might require a long-term management agreement.

- 8.10 Prior to the site being quarried the land was in agricultural use. The ES includes an “Indicative Restoration Plan” which shows finished profiles and includes restoration of the site to a combination of agriculture and woodland. The proposed restoration is appropriate in principle and is compatible to its countryside location. The details of the landscape restoration including treatment of the soil prior to planting, trees and shrubs planting densities, plant species and plant sizes, boundary treatments and aftercare can be secured by a condition on a grant of planning permission. Subject to such a condition the proposed development would comply with MLP policy RP7 (Landscape Character - paragraph B). The nature of the proposed informal recreational use is also acceptable in principle in planning terms. The proposed site restoration including a mixture of woodland and agricultural land is appropriate and complies with adopted MLP policy WAST3. Neither Government guidance nor strategic or local planning policy requires that the former quarry be restored to a formal recreational use. It would therefore not be reasonable for the Planning Authority to insist that the applicant restore the land to a more formal recreational use such as a country park. Neither would it be reasonable for the Council to insist, as was suggested by the MCC, that following its restoration the applicant gift the land to a suitable community body. Furthermore, given the intended nature of the recreational use it would not be necessary or reasonable for the Planning Authority to impose a condition on a grant of planning permission requiring the recreational use of the land to include free public access on foot, cycle or horse.
- 8.11 To minimise cumulative visual impact on the amenity of the area MCC suggests that the Planning Authority impose a condition on a grant of planning permission prohibiting commencement of the proposed infill operations until the ongoing restoration of the neighbouring upper quarry is completed. The applicant confirms that whilst soil/spreading/restoration works might overlap, the infilling of the upper quarry shall be completed before infilling commences in the lower quarry. Notwithstanding, it would not be reasonable for the Planning Authority to secure this by a planning condition.
- 8.12 MCC raise concern that the applicant has not provided sufficient evidence that there will be sufficient material available to achieve full restoration in the time period which is being applied for in the planning application. They advise that a contingency plan is needed to show how restoration will be achieved if the supply of waste fails to meet the assumed levels. In response to this the applicant confirms that the proposed rate of infilling gives consideration to waste handling undertaken by NWH Waste Services over the last 5 years. The assumptions in relation to waste arisings are conservative and the proposed timescale is realistic and achievable. The applicant confirms

that in the event that it becomes apparent that operations would not be completed within the proposed timescale, an application would be made to the Council to extend the period of infilling. In assessing such an application the Council would decide whether allowing an extended period was appropriate or whether instead, revised restoration proposals should be submitted. The applicant maintains that because material would be deposited in layers the site would not at any point be left in a worse or less safe condition than currently exists. Furthermore, they state that if the Council were to consider reinstatement at a lower level was preferable to an extension in the duration of infill operations, an amended reinstatement than is currently proposed could be achieved and that would be an improvement on the current situation.

- 8.13 Owing to the topography of the area the quarry is not easily seen from any public views. However glimpses of the quarry are seen from a public road to the south, but it does not appear unduly unsightly. If the quarry was only partly infilled, to the top of the cliff faces; which are sited below the level of the land adjoin the quarry, this would address the safety and security concern of leaving the cliff faces exposed. Given the limited public views of the quarry, if it were only partly infilled and then topped with subsoil and topsoil to the same depths as proposed and then seeded with grass and planted with trees as detailed in the proposed scheme of restoration, the reduced level of restoration would not appear unsightly or harm the landscape character and amenity of the area. On balance, the landscape benefits of restoring the site by infilling the quarry outweigh any geodiversity, biodiversity and landscape benefits of retaining the rock faces of the quarry.
- 8.14 In order for the Planning Authority to monitor progress with the infilling it should be made a condition of a grant of planning permission that at the end of the month during which infilling commences and at the end of each month thereafter until the site restoration is complete, the developer shall send to the Planning Authority a written record of where each load of material being used to infill the site has come from, the type of material and the tonnage.

#### Financial Arrangements to Secure Site Restoration

- 8.15 The applicant has submitted information to support their position that their parent company the NWH Group Limited has the financial means to complete the restoration of the site. This includes: (a) a letter from NWH Group Limited's accountant informing the company is trading profitably and have significant assets over their liabilities; (b) a profit and loss account for 2012, 2013 and 2014; and, (c) a draft Parent Company Guarantee (PCG).
- 8.16 Whilst the information submitted by the applicant demonstrates the presently healthy financial position of the company, it is not in itself evidence that robust financial arrangements are in place to achieve site restoration and aftercare. Moreover, whilst a PCG would extend the



obligation beyond the operator company to the larger operator group, it would have no value if the company collapsed. The conclusion is that the information submitted by the applicant does not provide sufficient assurance of the full cost of the restoration scheme being secured.

- 8.17 Without a bond or other robust financial arrangement from a bank or other financial institution being in place, there is the possibility that either a full restoration or a lesser but still satisfactory restoration may not be carried out by the operator. In such a circumstance there is a risk to the Council that the full cost of restoration may not be met without expense to the Council or lengthy legal action to secure the funds. A consequence of this position is a potential safety concern with regard to the site being left un-restored. Therefore, If planning permission is to be granted for the proposed development it is essential that it be subject to a planning condition requiring that prior to the start of the development the developer provide the Planning Authority with details of a bond or other financial provision by a bank or other financial institution to be put in place to cover decommissioning, site restoration and aftercare costs on the expiry of the permission. Furthermore the condition should be worded to ensure that no works commence on site until the developer has provided documentary evidence that the proposed bond or other financial provision is in place and written confirmation has been given by the Planning Authority that the proposed bond or other financial provision is satisfactory. The developer shall ensure that the approved bond or other financial provision is maintained through the duration of the permission. Such a planning condition is the means of reassuring the local community of the operators' commitment and ability to meet their restoration commitments. Subject to this condition the proposed development would comply with Government guidance on infill given the Scottish Governments Scottish Planning Policy document and with policy WAST3 of the MLP. The securing of a restoration bond/financial guarantee by a planning condition is consistent with the approach taken in the past by other Scottish Councils and by Directorate for Planning and Environmental Appeal Reporters. It is not necessary to secure the bond/financial guarantee by a legal planning agreement.

#### Traffic and Transportation Issues

- 8.18 The A7 is to be the principal route for vehicles bringing materials to site. It is proposed to utilise the existing site access, office, weighbridge and internal haul route. The applicant informs that on the basis of the proposed importation of materials, assuming a 6 day working week and 20 tonne loads, it is anticipated that there will be an average of 66 HGV movements associated with the proposal on a daily basis (33 loaded vehicles entering, 33 empty vehicles leaving).
- 8.19 The Traffic Assessment (TS) submitted with the application demonstrates that the proposed development, either alone or cumulatively with other development, would not be likely to exceed the capacity of the road network in the wider locality. The TA has



considered the Guildiehowes Road/A7 junction in relation to usage by traffic accessing/leaving the site and it concludes that the proposed routes can be used safely. Transport Scotland has indicated that the proposed development would not have a significant impact on the trunk road network or its adjacent receptors. There is no justification in planning terms for the Council to impose a 40mph speed limit on the part of the A7 where it has a junction with Guildiehowes Road. The TA demonstrates that the A7 currently operates within its capacity and can satisfactorily accommodate the volume of traffic generated by the proposed operation and still have capacity to accommodate future development along this route. Therefore, it would not be reasonable for the Planning Authority to insist that the applicant submit details of a cumulative assessment of the impacts of this development on traffic levels up to the Sherrifhall Roundabout as is requested by Moorfoot Community Council.

- 8.20 To mitigate the potential for mud on the public road it can be made a condition of a grant of planning permission that the first 40 metres of the road within the site; measured back from the access into the site, be surfaced in a non-loose material. Furthermore, also to mitigate mud, it can be made a condition of a grant of planning permission that details of the proposed wheelwash facility, which should to incorporate shaker bars, be provided and made operational prior to the works commencing on the site in accordance with details to be approved in advance by the Planning Authority. The applicant confirms that in addition to the mitigation, the Code of Practice for Road Haulers makes provision for vehicles to be inspected to ensure that any stones stuck between wheels are removed prior to vehicles departing the site.
- 8.21 On the recommendation of the Council's Policy and Roads Safety Manager it can be made a condition of a grant of planning permission that advanced warning signs be erected on the eastern approach to the site access.
- 8.22 Concerns have been raised by MCC regarding incoming vehicles queuing on the public road awaiting access to the site because of the location of the weighbridge close to the site access. It would not be reasonable or enforceable for the Council to impose a condition on a grant of planning permission prohibiting the parking of vehicles outside the quarry gates when it is closed.
- 8.23 With regard to concerns raised over mud on the road, it is an offence for an operator not to address incidences of mud falling or being deposited onto the public road from their vehicles. Under the Roads Scotland Act 1984 the Council; as roads authority, could take enforcement action against any operator to ensure that incidences of mud on the public road is addressed.
- 8.24 Subject to the recommended mitigation detailed in the Transportation Assessment (TA) submitted with the application being carried out, the proposed development does not raise road safety concerns.

- 8.25 Moorfoot Community Council suggests that the Planning Authority impose a condition on a grant of planning permission restricting the number of HGV movements per day to an upper limit. Such a planning condition would not be reasonable or enforceable and thus it could not be imposed. Furthermore, it is reasonable to expect the number of HGV movements to fluctuate as material becomes available. Restrictions on the hours of operation are a more appropriate means of control to protect local amenity.
- 8.26 It is considered that there is insufficient justification for the Planning Authority to refuse the application on the grounds that there does not exist a 40mph speed limit over the North Middleton section of the A7 or that the Planning Authority can insist that the access road to the site from the A7 be upgraded, widened and a footpath provided alongside it.
- 8.27 Any incidences of fly tipping into the quarry void are a matter for the operator of the proposed infill operation. Fly tipping is controlled by Environmental Health Legislation and thus there is no requirement to control this through planning conditions.
- 8.28 It would neither be reasonable nor enforceable for the Planning Authority to impose a control on the development requiring that the operator have CCTV cameras installed on the site to ensure 24 hour CCTV of all vehicle number plates and vehicle unloading entering and exiting the site, as is suggested in a letter of representation. Access to the site is controlled by means of a locked gate.
- 8.29 Concern about some of the lorries currently accessing the site being un-sheeted is not a material consideration in the determination of this application.

#### Species Protection

- 8.30 The proposed development is likely to have effects on bats (European protected species) and badgers (UK protected species). The ES reports on protected species surveys that have been undertaken to identify potential impacts and appropriate mitigation. One of the submitted surveys concludes that the proposed development would affect bats and their access to an important winter hibernaculum (a hibernation site). The supporting documentation includes a "Bat Hibernaculum Monitoring 2013-2015 Report" that lays out measures to protect bats and retain their access to the hibernaculum. SNH confirm that it is likely that they will grant a licence for the proposal on the basis that the mitigation measures detailed in the report are secured and implemented in advance of any other works that might affect the bats or the hibernaculum. The applicant also proposes to infill an area where an active badger sett currently lies. This will require a protected species licence from SNH to exclude the badger and destroy the sett. SNH confirms that they will grant a licence for this on the proviso that

suitable mitigation and compensatory measures are put in place in advance of exclusion and sett destruction. The protected species mitigation referenced in the ES can be secured by conditions imposed on a grant of planning permission. Subject to the compliance with the recommended conditions the proposed development complies with adopted MLP policy RP13.

## **9 RECOMMENDATION**

- 9.1 It is recommended that planning permission in principle be granted for the following reason:

*Subject to the recommended planning conditions the proposed development does not conflict with the relevant policies of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESPlan), adopted Midlothian Local Plan, the emerging Midlothian Local Development Plan or with Government Guidance on waste management including landfill and site restoration.*

Subject to the following conditions:

1. Planning permission for the infilling of the quarry with inert material is granted for a limited period of seven years from the date when work commences on the site (such date to be advised by the applicant or their successors), or until the 17<sup>th</sup> November 2021, whichever is the earlier date.
2. Except as subsequently amended, or as otherwise required by the terms of this permission, the development hereby approved shall be carried out in accordance with the application plans, and the details contained in the accompanying Environmental Statement, dated June 2015, including the implementation of all the measures contained in that document for the mitigation of the environmental impact of the operations.

***Reason for 1 & 2:*** *To make clear the extent and specifications of the development for which planning permission is granted, and to ensure the full implementation of all the identified measures for mitigating its environmental impact.*

3. Only truly inert material, as specified in the table at Schedule 2, Paragraph 4 of the Landfill (Scotland) Regulations 2004, shall be used for infilling purposes and the material shall arrive at the site in a condition suitable for purpose.

***Reason:*** *To ensure that only appropriate materials are used for infilling and to ensure adequate protection of the water environment.*

4. Prior to commencement of any works, a site surface water drainage strategy and plan shall be submitted to and approved by the Planning Authority in consultation with SEPA. This shall include: (i) Full details

of the drainage infrastructure serving the site entrance and haulage roads(s); ii) Design details of the temporary crossings to be installed within the working area; and, (iii) a copy of the wet weather working plan.

***Reason:*** *to ensure adequate protection of the water environment.*

5. At the end of the month during which infilling commences and at the end of each month thereafter until the site is fully restored, the developer shall send to the Planning Authority a written record of where each load of material being used to infill the site has come from, the type of material and the tonnage.

***Reason:*** *To ensure that only appropriate materials are used for infilling and to ensure adequate protection of the water environment and so that the Planning Authority can monitor progress with the infilling.*

6. Prior to works commencing on site the following shall be carried out/implemented in accordance with details to be approved in advance by the Planning Authority:

- (a) A detailed working plan of the whole site, to a scale of 1:1250 or similar, showing the location and full extent of any plant, buildings, site offices, equipment compounds, the location and type of wheel washing equipment to be installed/erected, maintained and operated;
- (b) Details of the location and type of advanced warning sign to be erected at points on the minor road on the eastern approach to the site access, directing vehicles to the site access;
- (c) Details of the type, location on site and recycling of waste water of the wheel washing facility to be installed on site; which facility shall include shaker bars.

***Reason:*** *To ensure that full details are submitted and approved of working methods and environmental mitigation measures, to enable the Planning Authority to retain effective control over all matters which may have an adverse impact on the environment and amenity of the area, and to ensure that the eventual restoration of the site is adequately safeguarded; and,*

7. Within one year from the date when work commences on the site (such date to be advised by the Planning Authority), the applicants or their successors shall submit for the approval of the Planning Authority a detailed restoration plan of the whole site, including the haul road, showing the final contours to be achieved in restoration, and the location of any hedges, fences, gates, walls and access points on the restored site, together with a written specification where such details are not shown on the plan; the plan shall also include proposals for the removal or other treatment of areas of hardstanding, areas occupied by plant or buildings,

and the full length of the haul road, together with detailed landscaping proposals for the whole site, including the haul road, indicating the numbers, sizes, species, positions and planting densities of all trees and shrubs to be planted.

8. Notwithstanding the information contained within the Environmental Statement the restoration and landscaping of the site shall be completed in accordance with the restoration; including levels, approved under the terms of condition 7 by the 17<sup>th</sup> November 2022. The approved landscaping shall be maintained to the satisfaction of the Planning Authority for a period of five years from the time of any planting or construction. Maintenance shall include the replacement of any trees, shrubs or hedgerow plants which die, are removed, become seriously diseased or are severely damaged within that period, by others of a similar size and species to those originally required to be planted.

***Reason for 7 & 8:*** To ensure that all restored land is properly managed for a sufficient period to ensure its effective return to permanent agricultural/forestry use.

9. Prior to the start of the development, the developer shall provide the Planning Authority with details of a bond or other financial provision from a bank or other financial institution to be put in place to cover decommissioning, site restoration and aftercare costs on the expiry of the permission. No works shall commence on site until the developer has provided documentary evidence that the proposed bond or other financial provision is in place and written confirmation has been given by the Planning Authority that the proposed bond or other financial provision is satisfactory. The developer shall ensure that the approved bond or other financial provision is maintained through the duration of the permission.

***Reason:*** To ensure that there are sufficient funds available throughout the life of the development to carry out the full restoration of the site.

10. Notwithstanding that specified in the Transportation Assessment, the first 40 metres (not 20 metres as stated in the TA) of private access road into the site; measured back from the site access, shall be surfaced in non-loose material.

***Reason for conditions 10:*** To ensure that the public roads including the access road leading to the quarry and the A7 are kept free from loose material being deposited from vehicles entering or exiting the site in the interest of road safety.

11. The developer shall undertake a programme of works to repair the existing sections of the road carriageway/verge that has been damaged from the infilling of quarry No 2. The sections of the road carriageway/verge to be repaired shall be agreed in advance in writing by the Planning Authority. The agreed works shall be completed prior to the infilling of quarry No 1. Any identified damage to the highway

during infilling and restoration works shall be repaired within 3 months of the operator being notified of the required works.

**Reason:** *In the interests of road and pedestrian safety as various sections of the road carriageway / verge have suffered damage over the years*

12. Notwithstanding that stated in docketed application documents operations; including the access and egress of vehicles into and out of the site shall only take place during the hours of 08.00 to 19.00 Mondays to Fridays and 08.00 to 12.00 Saturdays with no working on Sunday. In addition, no work on the construction of the access road, or initial site preparation works, shall take place out with the hours of 08.00 to 19.00 Mondays to Fridays and 08.00 to 12.00 Saturdays inclusive. There shall be no variation there from unless with the prior written approval of the Planning Authority.

**Reason:** *In the interests of safeguarding the amenity of nearby noise sensitive properties and the character and amenity of the countryside.*

13. Prior to works commencing on site a dust management plan shall be submitted to and approved in writing by the Planning Authority. Additionally, following any substantiated complaints about dust or where visual inspection indicates significant dust emissions or dust tracked out of the site onto public roads, a programme of monitoring at the sensitive receptor(s) shall be undertaken by the operator over a period of time agreed in writing by the Planning Authority (following the results of an initial representative period of monitoring).

**Reason:** *To mitigate the potential impact of the development on air quality in the interest of safeguarding the amenity of neighbouring properties and the amenity of the area.*

14. A daytime limit of 55 dB  $L_{Aeq, 1h}$  (free field) shall be met at noise sensitive properties, with the exception of Sheilknowe at 10 Guildiehowes Road and Halkerston Farm Cottages where a daytime limit of 45 dB  $L_{Aeq, 1h}$  (free field) shall be met.

**Reason:** *To mitigate the potential noise impact of the development in the interest of safeguarding the amenity of neighbouring noise sensitive properties.*

15. The bat protection measures detailed in Section 6 (Recommendations) of the document titled 'Bat Hibernaculum Monitoring 2013-2015 Report' prepared by David Dodds Associates Ltd, Ecological Consultancy; including the construction of a shaft to the bat hibernaculum surrounded by gabion baskets, shall be implemented in full. There shall be no variation therefrom unless with the prior written approval of the Planning Authority.

**Reason:** *In the interests of safeguarding bats by allowing for the continued passage of them to the hibernaculum caves at the base of the former quarry faces.*

16. No mud, soil or debris shall be deposited on the public highway by vehicles entering or leaving the site. Any mud, soil or debris deposited on the public highway shall be removed and the highway cleaned within 24 hours of the operator being notified by the local authority.

**Reason:** *In the interests of highway safety.*

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

**Date:** 10 November 2015

**Application No:** 15/00503/DPP

**Applicant(s):** The NWH Group c/o agent William Booth,  
Dalgleish Associates Ltd, Cathedral Square,  
1 Sinclairs Street, Dunblane, FK15 0AH

**Validation Date:** 15<sup>th</sup> June 2015

**Contact Person:** Adam Thomson

**Tel No:** 0131 271 3346

**Background Papers:** 198/81





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

Infilling of quarry at Middleton Limeworks, Gorebridge

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File No. 15/00503/DPP

Scale: 1:5,000







# Midlothian

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## **APPLICATION FOR PLANNING PERMISSION 15/00715/DPP FOR FORMATION OF RAISED DECKING AND INSTALLATION OF ROOFLIGHT AT 4 MANSE ROAD, ROSLIN**

Report by Head of Communities and Economy

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

- 1.1 The application is for the formation of raised decking and the installation of a pyramid rooflight at 4 Manse Road, Roslin. There have been 14 representations objecting to the proposed development and seven in support. The relevant development plan policies are RP20, RP22 and DP6 of the adopted Midlothian Local Plan. The recommendation is to grant planning permission subject to conditions.**

### **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The application site is located on the south east side of Manse Road and comprises a detached single storey dwellinghouse finished externally in drydash render with white painted timber sash and case windows on the front and a slate hipped roof. There is an existing single storey brick flat roof extension at the south west side of the house, a rendered single storey flat roof extension at the rear of the house and a flat roof dormer at the rear of the house. There is an open field to the rear of the site which is located within the Roslin Conservation Area.**

### **3 PROPOSAL**

- 3.1 It is proposed to erect a raised timber deck (1.45m above ground level) at the rear of the flat roof extensions at the rear of the house measuring a maximum of 8.1m wide and 4.4m deep, with glass balustrades and a section of solid balustrade along the north east edge of the deck.**
- 3.2 It is also proposed to erect a pyramid rooflight on top of the flat roof extension at the side of the house.**
- 3.3 The submitted details also include rendering the walls of the brick extension at the side of the house, installing a window on the front elevation and applying timber cladding on this part of the building. A rooflight is also proposed on the south west facing roof plane of the original house and alterations are proposed to the windows and doors on the south west and south east elevations of the house. These**

works constitute permitted development and as such do not require a grant of planning permission from the Council.

#### **4 BACKGROUND**

- 4.1 In 2011 planning permission 11/00586/DPP was refused for the demolition of a garage and the erection of a dwellinghouse at 4 Manse Road, Roslin. Permission was refused on the grounds of the detrimental impact on the character and visual amenity of the surrounding area and the impact on the amenity of neighbouring properties contrary to the development plan.
- 4.2 The application has been called to committee for consideration by Councillor Coventry because of the volume of representation and the potential impact on the Conservation Area.

#### **5 CONSULTATIONS**

- 5.1 No consultations were necessary in relation to the application.

#### **6 REPRESENTATIONS**

- 6.1 Fourteen objections have been received in relation to the application, including from the neighbour at no 6 Manse Road (including correspondence and supporting information from an agent acting on their behalf) and the others from addresses across Scotland and England. The concerns raised are as follows:
- Significant detrimental impact on privacy to and amenity of no. 6's house and garden as compared to existing. It is considered that the proposed solid balustrade will not mitigate overlooking whilst a higher boundary fence would impact on the amenity of no. 6 and the visual amenity of the conservation area;
  - Noise pollution;
  - Detrimental impact on the character and appearance of the Conservation Area and the setting of Roslin Chapel including views from the Chapel and other notable/ listed buildings in Roslin;
  - The proposal is unsympathetic to the character of the house.
  - Reference is made to a previous planning application at no.4 by the previous owner for the erection of a dwellinghouse which was refused on the grounds of the impact on the amenity and privacy of neighbours and the detrimental impact on the Conservation Area; and
  - Proposals do not comply with planning policy.
- 6.2 Seven representations in support of the proposals have been received, six of which are from addresses in Roslin. They state:
- Proposals will enhance the appearance of the property;
  - Proposals will not impact on the view from Roslin Chapel;
  - There are other extensions, dormer windows, greenhouses and sheds at the rear of properties on this side of Manse Road; and

- At over 9m from the boundary with no 6 overlooking from the proposed decking will not be significant.

6.3 In response to the representations the applicant and his agent have submitted correspondence in support of the application. The issues raised are summarised as follows:

- They raise concern that there are factual errors in the submission made by the agent acting on behalf of the occupiers of no.6;
- There is already overlooking from no.4 to no.6;
- The deck will be 9m from the boundary with no. 6 and is intended as a seating area;
- They would be willing to erect a fence/raise the height of the solid balustrade to 1.6m which satisfies policy DP6 with regard to privacy;
- The decking will not give rise to noise issues;
- Alterations at no. 6 set a precedent for small scale development at this location;
- Timber decking is not an uncommon feature in domestic gardens;
- The ground floor area of the house is 150sqm, the garden area is 370sqm and the decking 27sqm ;
- The decking is to be attached to the later additions to the house and its design allows clear views to the existing rear elevation of the house and does not detract from the character of the property and located at the rear does not detract from the visual amenity of the surrounding area and will make a positive visual contribution to the area;
- Roslin Chapel is approximately 250m from the house.
- The rear of no. 4 Manse Road is not visible from Chapel Loan apart from the car/coach parking area near to the Chapel;
- Note that a number of objections are from addresses outwith Roslin;
- The proposals are not comparable to the previous planning application for a house at the site; and
- The proposals comply with local plan policy.

## 7 PLANNING POLICY

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

### Midlothian Local Plan (MLP)

7.2 Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area;

- 7.3 Policy **RP22: Conservation Areas** seeks to prevent development which would have any adverse effect on the character and appearance of Conservation Areas; and
- 7.4 Policy **DP6: House Extensions** requires that house extensions be well designed to maintain or enhance the appearance of the house and locality. The guidelines also relate to the size of extensions, external finishes, remaining garden area and impact on neighbouring properties.
- 7.5 The draft Roslin Conservation Area Appraisal para 6.1 states that part of the intention behind the conservation area boundary is to protect the setting of Roslin Chapel.

## **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 received are material considerations.
- 8.2 The central issues in the consideration of the application are the impact of the proposals on the character of the application property, on the visual amenity of the surrounding area, and the impact on the amenity of neighbouring properties.
- 8.3 Reference is made to a previous planning application at the site and for an extension at no. 6 Manse Road. Each application is to be considered on its own merits.
- 8.4 During the processing of the application the applicant was requested to square off the decking and to erect a 1.6m high screen along the north east edge of the deck and to reduce the depth of the area of decking in front of the dining room to 1m. The applicant has squared off the deck with a 1.6m high screen proposed along the north east edge but is not agreeable to reducing the depth of the deck stating that it is not practical and that the straight edge helps to visually tie the two extensions together. The occupiers of no.6 were satisfied with the Council's suggestion but still object to the proposal on the grounds that both measures have not been agreed.
- 8.5 Notwithstanding the correspondence submitted by the objectors and the applicant arguing their respective cases it is for the Planning Authority to assess the application.
- 8.6 The original house at the application site has been the subject of various alterations including a dormer on the south east (rear) elevation, a single story flat roof rendered extension at the rear of the house and a single storey flat roof brick extension at the side. The deck is proposed to the rear of the existing single storey extensions. In this context and taking into account that the structure is relatively light



weight in nature it will not detract from the form or character of the house.

- 8.7 The rear boundary of the application site is approximately 190m from the immediate environs of Roslin Chapel. The rears of the properties along Manse Road are visible from the field to the rear of the site and from an overflow car/coach park associated with the Chapel. A hedge along Chapel Loan screens views of the rear of the houses along Manse Road from the road leading to the Chapel.
- 8.8 There are various garden structures, extensions and dormers at the rear of the properties on this side of Manse Road. Taking into account the domestic scale of the proposal within this context the decking will not impact on the character of the Conservation Area or the setting of the Chapel or the adjacent College Hill property, which is also a listed building, as compared to the existing situation.
- 8.9 The rooflight will not have a significant impact on the character of the house, the visual amenity of the area or the amenity of neighbouring properties.
- 8.10 A hedge along the boundary of the property within the garden of no 2a next door will restrict overlooking to this property.
- 8.11 The proposed decking will be approximately 9.2m from the boundary with no 6. Whilst there is already an element of overlooking from no.4 to no. 6 as a result of the raised level of the deck platform without screening it would give rise to increased overlooking towards the rear extension and of the garden of no. 6. with a detrimental impact on the amenity of the occupiers of no. 6.
- 8.12 The applicant has however agreed to erect a 1.6m high screen on the north east edge of the deck nearest to no. 6 to reduce overlooking. It is the practice of the Planning Authority to take average eye level when standing as being 1.6m. As such the 1.6m high balustrade would minimise overlooking to the rear extension at no. 6 (which is 9.5m away from the boundary) and reduce overlooking to the rear garden. Whilst there would still be views from the rear of the deck to the bottom half of the garden of no 6 these would be at a more oblique angle and taking into account the distance to the boundary the impact on the privacy of no 6 is not sufficient to warrant refusal of planning permission.
- 8.13 There is no apparent reason why the deck would give rise to noise pollution.
- 8.14 The proposed development will not have a significant impact on the character of the existing building, the visual amenity of the surrounding area or the amenity of neighbouring properties and as such the proposal complies with policies RP20; RP22 and DP6 of the MLP.

## 9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

*The proposed alterations to the dwellinghouse by means of their form, scale and design are compatible to the host building and accord with Midlothian Local Plan policies RP20, RP22 and DP6.*

Subject to the following conditions:

1. Details of the design, materials and finish of the proposed screen to be erected along the north east side of the decking shall be submitted to the Planning Authority and no work shall start on the decking until this detail has been approved in writing by the Planning Authority.

**Reason:** To safeguard the character of the building.

2. Unless otherwise approved in writing by the Planning Authority the screen approved in terms of condition 1 shall be installed within two months of the deck being brought into use and thereafter shall not be removed.

**Reason:** In order to minimise overlooking and protect the privacy of the occupants of the adjoining property.

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

**Date: 10 November 2015**

<b>Application No:</b>	15/00715/DPP (Available online)
<b>Applicant:</b>	Mr Peter Clark, 4 Manse Road, Roslin
<b>Agent:</b>	KMW Architect
<b>Validation Date:</b>	31 August 2015
<b>Contact Person:</b>	Ingrid Forteath
<b>Tel No:</b>	0131 271 3316
<b>Background Papers:</b>	11/00586/DPP (Available online)



**Education, Economy  
& Communities**  
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Formation of raised decking and installation of roof lights at 4  
Manse Road, Roslin

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File No. 15/00715/DPP

Scale: 1:1,250







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**APPLICATION FOR PLANNING PERMISSION 15/00684/DPP FOR THE ERECTION OF COMMUNITY FACILITIES INCORPORATING PRIMARY SCHOOL, NURSERY SCHOOL, EARLY YEARS AND AFTER SCHOOL CARE, LIBRARY, HEALTH CENTRE, ALTERATIONS TO EXISTING LEISURE CENTRE, FORMATION OF CAR PARKING AND ASSOCIATED WORKS AT LAND AT LOANHEAD LEISURE CENTRE AND KING GEORGES FIELD, GEORGE AVENUE, LOANHEAD**

Report by Head of Communities and Economy

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

- 1.1** The application is for the erection of a new community facility to include a new primary school, nursery school and early years and after school provision. The new facility also includes a new health centre and library. The proposal also includes alterations to the existing leisure centre. The site includes the existing leisure centre and part of King Georges Field, Loanhead. There have been three letters of representation and consultation responses from the Scottish Environment Protection Agency (SEPA), Sport Scotland, the Coal Authority and the Council's Archaeology Advisor, Policy and Road Safety Manager and Environmental Health Manager. The relevant development plan policies are RP8, RP13, RP14, RP15, RP20, RP28, RP29, RP32, TRAN1, COMF1, COMF3, IMP1 and IMP2 of the Midlothian Local Plan. The recommendation is to grant planning permission subject to conditions.

## **2.0 LOCATION AND SITE DESCRIPTION**

- 2.1** The 3.19 hectare site is located centrally within Loanhead and fronts Mayburn Avenue to the north and George Avenue to the west. The topography of the site comprises a predominantly level piece of ground with a raised area with tree planting to the north east. There are a number of semi mature trees along Maybury Avenue and to the southern edge of the playing field.
- 2.2** The site comprises the Loanhead leisure centre, the adjacent equipped play area and Multi Use Games Area (MUGA), open playing field and parking and service area.

- 2.3 On the opposite side of Mayburn Avenue from the site sits is a small row of five retail units, two of which are vacant. The existing library and doctor's surgery also sits on the opposite side of the road from the application site. The site is in a residential area and is bounded by predominantly two storey houses.
- 2.3 The vehicular access is off George Avenue. There is also a pedestrian access to the south of the site which joins George Avenue.

### **3.0 PROPOSAL**

- 3.1 It is proposed to redevelop the existing leisure centre and build a adjoining new two stream primary school, nursery facilities and afterschool club/wrap around facilities. The new primary school element is a replacement and enlargement of the exiting Paradykes Primary School. It is also proposed to relocate Loanhead library and health centre onto the site. The primary school, library and doctors surgery are currently located nearby and on the other side of the road, off Mayburn Walk. It is proposed to retain the existing MUGA and open playing field which contains a pitch. The MUGA is to be resurfaced and open to the community outwith school hours. There are six lighting columns around the MUGA. The existing parking area (to the west) is to be resurfaced and configured and extended to the south to increase the number of parking spaces on site from 83 to 177. A service yard is also to be provided to the south of the site.
- 3.2 The main vehicular access to the site is to the west, onto George Avenue. George Avenue and Maybury Avenue are both currently limited to 20mph and have associated traffic calming measures.
- 3.3 The existing leisure centre building is of modern design with limited architecturally value and is finished externally with concrete blockwork, powder coated aluminium curtain walling and windows and has a profiled metal pitch roof. The roof is pyramidal and contains facilities over two levels. Retaining the leisure centre building on the site and joining further buildings onto it has been a design challenge. The Primary School and related nursery facilities front Maybury Avenue to the north. The health centre is to the west. The library (which has an area set aside for the school) is located between the new school and nursery facilities and the leisure facilities.
- 3.4 It is proposed to finish the building with fibre cement rainscreen cladding, aluminium framed curtain walling, aluminium framed glazing, white render and an aluminium standing seam roof. Other than the render colour, no other finish colours have been submitted.
- 3.5 A plan has been submitted showing a 1.8m high powder coated weld mesh fencing around the boundary of the site. The colour of the fencing is not specified, but is anticipated to be green; this can be secured by condition. Hedging is shown to the front of the site to form

an attractive boundary treatment and entrance feature. Surfacing includes concrete pavements and tarmac. Drop off lay-bys are shown on the plans along Mayburn Avenue and within the site parking area close to the site entrance. Disabled parking is close to the entrance of the health centre and to the entrance to the Leisure Centre. A community garden area is shown along the eastern boundary of the site. An external teaching area is sited between the new school building and Mayburn Avenue. Railway sleeper terraced seating is shown to the north of the grass football pitch.

## **4.0 BACKGROUND**

- 4.1 A Proposal of Application Notice has been considered for this application (ref no. 15/00226/PAC). This identified the pre-application public consultation that was required in relation to the proposed development.
- 4.2 A planning application (15/00712/PPP) has been received for the land on the opposite side of Mayburn Avenue/George Avenue which currently houses the primary school, health centre and library. The application is in principle for residential development (with related open space, existing MUGA and play facilities shown on an indicative plan). It is reported elsewhere on this agenda.

## **5.0 CONSULTATIONS**

- 5.1 **Scottish Environment Protection Agency (SEPA)** advise that there is no objection to the application however give the following advice:
- The discharge of surface water to the water environment should be in accordance with the principles of the SUDS (Sustainable Drainage Systems) Manual (C697) published by CIRIA.
  - Surface water drainage from the construction phase should also be dealt with by SUDS. Such drainage should be in accordance with C648 and C649, both published by CIRIA. It should be noted that oil interceptors are not considered SUDS in their own right but are beneficial as part of the treatment train.
  - Advice is given that the applicant should consult with Scottish Water regarding water quality/flooding and adoption issues.
  - Foul drainage from the site should be discharged to the public sewage network. They advise that the applicant should consult Scottish Water in this regard.
- 5.2 **Sport Scotland** does not object to the application, but note that the pitch area is marked on the plans as 'exempt from development'. This area should be protected during construction. The railway sleeper terraced seating near the grass pitch is noted and advise that the contractors should satisfy themselves of the safety of such seating.
- 5.3 Sport Scotland also notes the relocation of the two stream primary school and advise that they have non-statutory design guidance which



details recommended provision of sport facilities for schools (both internal and external). The recommended level of provision for this proposal would be 1 synthetic pitch (60m by 40m) or two grass pitches.

- 5.3 **The Coal Authority** advises that it concurs with the recommendations of the Report on Site Investigations; that coal mining legacy potentially poses a risk to the proposed development and that remediation works should be undertaken prior to development in order to ensure site stability. The Coal Authority recommends that the Local Planning Authority impose a planning condition, should planning permission be granted, requiring stability works to be undertaken prior to commencement of development.
- 5.4 The **Council's Archaeological Advisor** indicates that there are a number of recorded crop marks at Straiton to the west of the site. It is therefore recommended that a condition is attached to any consent granted that requires a programme of works (archive assessment and evaluation), which will record any historical remains and determine whether the development will disturb any buried archaeological deposits. If deposits are identified there may be a requirement for further work or mitigation.
- 5.5 The **Policy and Road Safety Manager** has no objection to the application and recommends that conditions are attached to any consent granted seeking approval of cycle and scooter parking, SUDs proposals, the schools Green Travel Plan and details of the proposed traffic calming and pedestrian crossing facilities on George Avenue/Mayburn Avenue. In addition it is noted that the works proposed may require a road opening permit.
- 5.6 **The Council's Environmental Health Manager** has no objections in principle to the proposed development and recommends that appropriate conditions are attached to any consent granted in relation to floodlighting and security lighting (including hours of operation), noise limits regarding plant and machinery, the acoustic design of the school and contamination and/or previous mineral workings.

## 6.0 REPRESENTATIONS

- 6.1 Two letters of representation have been received in relation to the application, both representors object to the application. The grounds of objection are as follows:
- The area is supposed to be protected (granted by 'Fields in Trust' previously known as the National Playing Fields Association). It is supposed to be protected for generations to come and to build on it is very saddening. It is not right to build on this area at the centre of the community.
  - One of the attractive things about Loanhead is the beautiful greenery and parks in close proximity to resident's homes. This should not be destroyed.

- The site is well used by all generations and it should be preserved as a green space for residents to enjoy without having to travel far.
- There are a number of benefits to preserving our green space, the health benefits are valuable and it helps with childhood obesity and children with ADHD.
- The green space is at the heart of the community and it should never be developed. Building on this area will make Loanhead less picturesque.
- Concern is expressed about protecting the environment and the local eco-system. The variety of grasses, trees and wild flowers support a variety of birds and insects, such as bees and butterflies. It also helps capture CO<sub>2</sub>, released from cars and lorries, improving the air quality for Loanhead residents.
- Brownfield sites, of which Loanhead has many, are more appropriate sites for development. There are more sensible and less detrimental sites for development than this which is at the heart of the community.

6.2 Paradykes Parents' Council submitted a letter of objection expressing concern about the nursery including reference to outdoor space, fencing, internal arrangements, and space in the nursery. They raised concerns about the reduction in outdoor space and access to King George's playing fields for events such as sports day. They raise concern about traffic and parking in relation to drop off areas and possible traffic congestion in the area and provision of a school crossing officer. They also made comment on fire safety related to the two storey building. In response to the comments the applicant responded to the matters raised (some of which are not material planning considerations) and as a consequence the Paradykes Parents' Council have confirmed that they no longer object to the application.

## 7.0 PLANNING POLICY

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

### Midlothian Local Plan

- 7.2 Policy **RP8: Water Environment** aims to prevent damage to water environment, including groundwater and requires compliance with SEPA's guidance on SUDs.
- 7.3 Policies **RP13: Species Protection**, **RP14: Habitat Protection** **Outwith Formally Designated Areas** and **RP15: Biodiversity Action Plan**, all are relevant. The first of these, policy RP13 requires that where development would affect species protected by law an appropriate level of assessment will be required and appropriate

mitigation measures will be required. Policy RP14 requires that where a development affects sites which contain habitat of some significance, effects on the habitat as well as mitigation measures will be taken into account. Policy RP15 requires that developments will demonstrate compatibility with the aims and objectives of the Midlothian Local Biodiversity Action Plan and related plans, by identifying appropriate measures to protect, enhance and promote existing habitats and/or the creation of new habitats, and provide for the effective management of these habitats.

- 7.4 Policy **RP20: Development within the Built-Up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area.
- 7.5 Policy **RP28: Site Assessment, Evaluation and Recording** states that where any development proposal could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the impact of the proposal on the archaeological resource.
- 7.6 Policy **RP29: Playing fields and sports facilities** does not permit development on existing playing fields and sports facilities unless it can be demonstrated that the development will not result in a material loss of amenity to the surrounding area. This policy seeks an enhancement of existing provision.
- 7.7 Policy **RP32: Public Rights Of Way and Other Access Routes**, protects established routes against development which could lead to the loss of a right of way, cycle path, bridleway, or other access route.
- 7.8 Policy **TRAN1: Sustainable Modes of Transport** states that major travel-generating uses will only be permitted where they are well located in relation to existing or proposed public transport services, are accessible by safe and direct routes for pedestrians and cyclists, and accord with the Council's Local Transport Strategy. All major travel-generating developments shall be accompanied by a Transport Assessment and a Green Travel Plan, setting out what provisions or measures shall be taken to provide for, and encourage the use of, alternative forms of travel to the private car.
- 7.9 Policy **COMF1 Education Facilities (Proposal)** supports the various implementation of new education facilities to serve new housing development, this includes an extension to Paradykes Primary School in Loanhead.
- 7.10 Policy **COMF3 Health Centres** supports the development of new health centre facilities where there is an identified need to enhance health services within a community.

- 7.11 Policy **IMP1 New Development** this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are transport infrastructure, landscaping, 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;
- 7.12 Policy **IMP2: Essential Infrastructure required to enable New Development to Take Place**, states that new development will not take place until provision has been made for essential infrastructure and environmental requirements, related to the scale and impact of the proposal. This includes essential roads infrastructure, protecting valuable environmental assets within or adjacent to the site and compensation for any losses including alternative provision where appropriate. In this case the need to upgrade junctions and access arrangements will come through a Traffic Assessment and specific requirements may arise from water and drainage and flood risk assessments.

#### Government Policy and Guidance

- 7.13 Scottish Planning Policy on Promoting Sustainable Transport and Active Travel states (in paragraph 287) that planning permission should not be granted for significant travel generating uses at locations which would increase reliance on the car and where direct links via walking and cycling networks are not made, access via public transport networks involve walking more than 400m or the transport assessment does not identify satisfactory ways of meeting sustainable transport requirements.
- 7.14 Creating Places - A policy statement on architecture and place for Scotland sets out the comprehensive value good design can deliver. Successful places can unlock opportunities, build vibrant communities and contribute to a flourishing economy.

### **8.0 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 within the built up area and is currently in use as a leisure centre, play area with sports facilities and playing field. The proposal is

to extend the existing building and incorporate a two stream primary school, library and doctors surgery. These facilities are currently provided nearby. The proposal will bring these facilities closer to the town centre and they will be served by pedestrian and cycle path links and public transport. The redevelopment of community and educational facilities on this site is acceptable in principle.

### Design

- 8.3 The development is sited within a built up residential area of Loanhead with views into the site from both Mayburn Avenue and George Avenue. There is a variety of building styles in the area ranging from the flat roofed parade of shops on the opposite side of the road, to the library which has a pyramidal style roof. The surrounding housing is of traditional style, predominately two storeys with pitched roofs.
- 8.4 The proposal involves the refurbishment and extension of the existing leisure centre. The existing building has no particular architectural merit and the extension of this building has been challenging. New wings are to be added to form the new school and the new library, to the north. The western wing contains the health centre. The leisure centre has a large pyramidal roof.
- 8.5 The proposed new building incorporates the various elements and uses into one building. The school fronts Mayburn Avenue. The design of this wing of the building comprises ten bays which are very similar, each bay is framed with fibre cement rainscreen cladding with white render around aluminium framed glazing. Some of the bays include aluminium solid spandrel panels in place of glazing. The main entrance to the school is at the north eastern corner of the building, under a high level canopy feature. The entrance to the nursery is to the west.
- 8.6 The library forms a large single storey link between the school and nursery and the leisure centre facilities. The walls of the library are aluminium framed curtain walling with aluminium solid spandrel panels intermittently along its elevation. The entrance to the leisure centre is white render at ground floor level with fibre cement rainscreen cladding to first floor level. There are a number of windows and glazing panels to surround the main entrance to the building. The fenestration is poor and should be re-considered. In addition, the entrance is set back and it will be difficult to find. The entrance should be re-considered to make it more prominent in this elevation. Furthermore, all of the entrances to the building should utilise slate material to signal the access feature to the building. The applicant has agreed to the redesign of the entrance to the leisure centre part of the building and to the introduction of slate detailing at the other entrances.
- 8.7 The health centre is to the western extent of the building and is also single storey. The external finishes include white render, aluminium solid spandrel panels. From the south the existing leisure centre will be

clearly visible with the various extensions around it. The Health Centre will be separated from the Leisure centre by a fenced courtyard. The highest elements of the school building (the dining and activity halls and the expressive arts hall) are immediately adjacent to the Leisure Centre and will be visible on the southern elevation. This elevation is not particularly visible and is some significant distance from the nearest houses. These have a playing pitch and car parking as intervening uses.

#### Residential Amenity

- 8.8 The proposed building containing the various elements of the development is distant from surrounding residential properties. The closest properties to the site will not have the new building significantly closer to their boundaries than the current situation, and some elements of the site (the playing field) are not going to be significantly altered.
- 8.9 The MUGA on the site is already lit and conditions can secure limiting both these lights and security lighting on the site, so that they do not cause nuisance to surrounding residential development. In addition appropriate conditions can limit noise generated at the site to ensure potential noise nuisance is mitigated.

#### Sports and Play Facilities

- 8.10 Sports Scotland has no objection to the application noting that the playing field and MUGA are not to be substantially altered on the site. The equipped play area on the site between the existing building and the road is large and well equipped and it is important that this provision is made elsewhere locally. This provision should not be lost. There is some scope to ensure such provision is made on the adjacent site where the school and other facilities are to be removed. The proposal is to develop this site for housing. Provision on the same scale (both in terms of site area and equipment) should be secured by the Council on this adjacent land as part of the redevelopment of this land.

#### Car, Cycle and Scooter Parking

- 8.11 The provision of appropriate parking at the site can be secured by condition. The provision of overflow car parking on the current library site can also be secured by means of a condition.

#### Landscaping

- 8.12 No detailed landscape plans have been submitted with the planning application and therefore a condition should be applied to any consent granted to ensure appropriate landscaping is approved prior to development commencing on the site. Replacement trees should be



planted to replace those that will be felled as part of the development. This will ensure compliance with policy RP5 of the adopted Midlothian Local Plan. Trees should be planted a suitable distance away from buildings and trees in hardstanding should be planted in an appropriate manner and with sufficient soil volumes to allow the trees to become established. Trees that are to be retained should be protected during the construction period; this can be secured by condition.

- 8.13 The proposal will result in the loss of a large play area and this should be compensated for elsewhere locally. Consideration should be given to the erection of ball stop fencing or other appropriate fencing to prevent conflict and potential safety issues caused by the playing pitch users running onto the neighbouring car park, this can be secured by condition. Whilst the existing playing pitch does not have fencing to the car parking side, the car parking is to be extended. SUDs proposals appear to comprise porous tarmac. Planted swales would help to deal with surface water run-off and would also enhance the biodiversity on the site, consideration can be given to this in the detailed SUDs scheme for the site required by condition.

#### Archaeology

- 8.14 There is potential for archaeological interest on this site and an appropriate condition can secure the necessary programme of works and consequential action.

#### Other Matters

- 8.15 The Coal Authority has suggested a condition related to the submitted Site Investigation report. The Council's Environmental Health Manager has recommended that a more general condition is attached to any consent granted. It is considered that the latter approach is favoured in that there may be an alternative approach to dealing with former coal mining in the area which is eventually favoured for this site and the more general condition allows for an appropriate alternative approach to be taken.
- 8.16 The representors have raised issues concerning the redevelopment of the site as proposed on the basis that it is contrary to the rationale of the original provision of the site as open space. This is not a planning matter; the issuing of a planning consent does not give any further legal rights than already applied. The matter of restrictions on the title of the land is not a matter to be considered in relation to this planning application. The planning process is concerned with the uses of land and their inter relationship. The proposed uses are compatible with each other and the surrounding land uses. It is not considered to be the case that the amenity of the area will be significantly adversely affected by the development and indeed, much of the green space and play provision (the playing fields and the MUGA) are to be retained virtually



unchanged. Conditions can be used to secure the appropriate provision of an equipped play area nearby.

## **9.0 RECOMMENDATION**

9.1 That planning permission be granted for the following reason:

*The site is situated within the settlement boundary of Loanhead and has an established leisure and associated sports and play use. The redevelopment of the site for the provision of a new school, health facilities and library and associated facilities which are currently located close to the site is compatible with its location and is supported in terms of development plan policies. Subject to conditions, the design and layout of the proposed development is acceptable and there are no material planning considerations which outweigh the presumption in favour of the development.*

Subject to the following conditions:

1. Notwithstanding that delineated on docketed drawings, development shall not begin until details of a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
  - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
  - iii proposed new planting, including trees, shrubs, hedging, wildflowers and grass areas.
  - iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures, this shall include provision of an appropriate fence to the northern side of the existing grass playing pitch;
  - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
  - vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the new building being completed or brought into use whichever is the earlier. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
  - vii drainage details, watercourse diversions, flood prevention measures and SUDS (Sustainable Drainage Systems) to manage water runoff;
  - viii proposed car park configuration and surfacing, including kerb details;
  - ix proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);

- x details of existing and proposed services; water, gas, electric and telephone;
- xi details of the floodlighting system and any security lights to be installed within the site. The floodlights and security lights shall be designed and installed such that there is no direct illumination of any neighbouring residential property and the lamp design shall be such that the actual lamps and inner surface of the reflectors are not visible from neighbouring houses which have a garden boundary with the application site. In addition, the lighting shall be designed to minimise the spillage of light up into the sky. The floodlighting system shall be fitted with an automatic cut out to ensure that the system cannot operate after 9pm unless otherwise approved in writing by the Planning Authority. The design and construction of the lighting shall take account of the Guidance contained within the Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008;
- xii the locations and design of security/CCTV cameras and mounting poles; and,
- xiii details, including the location of all street furniture.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

**Reason:** *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policy RP20 of the Midlothian Local Plan and national planning guidance and advice.*

**Reason for 1(iii):** *To safeguard the privacy and residential amenity of the neighbouring residential from users of the southern-most proposed playground of the new school.*

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

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

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

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

4. The discharge of surface water to the water environment shall be in accordance with the principle of SUDS (Sustainable Drainage Systems) Manual (C697) published by CIRIA and surface water drainage from the construction phases shall be dealt with by SUDS. Such drainage shall be in accordance with C648 and C649, both published by CIRIA.

**Reason:** *To ensure the provision of an appropriate SUDS strategy to serve the proposed development in the interests of safeguarding the water environment.*

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 proposed construction traffic access and haulage routes;
  - vi a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
  - vii proposed car parking arrangements;
  - x a programme for completion for the construction of access, roads, footpaths and cycle paths; and
  - xi the permeable paving and car park drainage system.

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. Detailed drawing and a written specification and/or a manufacturers brochure of proposed air handling equipment and extract flues to be installed on the building/on the site shall be submitted for the prior approval of the Planning Authority.

**Reason:** *To ensure that air handling equipment and extract flues are not unduly intrusive or conspicuous on the building, in the interest of safeguarding the character and visual amenity of the area.*

7. The design and installation of all plant and machinery shall be such that the combined noise level shall not exceed NR 30 daytime (07:00 to 23:00 hrs) and NR 25 night time (23:00 to 07:00 hrs) as measured from within any living apartment in any neighbouring noise-sensitive premises. For the purposes of this condition the assessment position shall be as identified by BS 7445 in relation to internal noise measurements.

**Reason:** *To ensure noise from plant at the site does not cause an unacceptable level of nuisance to nearby noise sensitive dwellings.*

8. A scheme for the protection of the outdoor grass pitch shall be submitted to and approved in writing by the planning authority prior to the commencement of development on the site. Thereafter the approved protection scheme shall be implemented at the site.

**Reason:** *To ensure the outdoor grass pitch is protected from damage during the construction period.*

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

**Reason:** *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policy RP20 of the Midlothian Local Plan and national planning guidance and advice.*

10. Unless otherwise approved in writing by the planning authority, any floodlights or security lighting on the site shall not be used between the hours of 9.00pm and 7am. The floodlights and security lighting shall be designed to minimise the spillage of light outwith the site boundaries or up into the sky.

**Reason:** *To minimise any impact on amenity of floodlighting and security lighting on the surrounding area.*

11. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority; or alternatively it has been confirmed in writing to the planning authority that there is no contamination/previous mineral working requiring mitigation. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
- i the nature, extent and types of contamination and/or previous mineral workings on the site;
  - ii measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
  - iii measures to deal with contamination and/or previous mineral workings encountered during construction work; and
  - iv the condition of the site on completion of the specified decontamination measures.

Before the new school building, new MUGA and new grass 7 aside kick about pitch are occupied/first come into use, the measures to decontaminate/remediate the site shall be fully implemented as approved by the planning authority.

***Reason:*** *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

12. Any floodlighting system and security lights shall be designed and installed such that there is no direct illumination of any neighbouring sensitive property and the lamp design shall be such that the actual lamps and inner surface of the reflectors will not be visible from the neighbouring sensitive receptors' properties. The design of the lighting shall take account of the Guidance contained within the Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008.

***Reason:*** *To ensure security lighting is designed and operated so that they do not cause unacceptable nuisance to neighbouring sensitive properties.*

13. The new school building hereby approved shall not come into use unless and until the car parking, cycle and scooter parking all delineated on docketed drawing No.LL(90)001 rev F, and the shelters over all of the cycle parking and scooter parking have

been formed/erected and are made available for use. Thereafter, the car parking, cycle and scooter parking and shelters shall be retained unless otherwise approved by the Planning Authority.

**Reason:** *In the interests of road and pedestrian safety and to safeguard the amenity of the area.*

14. Acoustic design of the school in relation to internal and external levels shall be in accordance with Building Bulletin 93: Acoustic Design of Schools.

**Reason:** *To ensure the acoustic design of the school is acceptable in relation to nearby noise sensitive properties.*

15. Prior to the commencement of development on the site the following details shall be submitted to and approved in writing by the planning authority:
  - I. Details of the proposed cycle and scooter parking;
  - II. Details of the SUDs proposals for the site;
  - III. Details of the school Green Travel Plan;
  - IV. Details of the required road markings and signs to enable the disabled parking bays to be legally enforceable; and,
  - V. Details of the proposed Traffic Calming and pedestrian crossing facilities on George Avenue / Mayburn Avenue.Thereafter the details approved in relation to this condition shall be implemented at the site prior to any part of the development being completed or brought into use, whichever is the earlier date.

16. Development shall not begin until a scheme of archaeological investigation has been undertaken in accordance with details submitted to and approved in writing by the planning authority. The investigation shall include an archive assessment and an evaluation of 5% of the total site.

**Reason:** *To ensure that this development does not result in the unnecessary loss of archaeological material in accordance with Policy RP28 of the Adopted Midlothian Local Plan.*

17. 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 IMP1 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

18. Development shall not begin until the applicant has secured appropriate and alternative accessible and secure equipped play



provision within the local area. Plans showing the alternative play provision as well as the equipment to be provided and details of surfacing and boundary treatment shall be submitted to and approved in writing by the planning authority. Thereafter the approved provision shall be implemented within six months of the approval being given by the planning authority or such other timescale as is approved by the planning authority.

**Reason:** *To ensure appropriate alternative play provision is made for local children. The existing play provision on the site is good and appropriate alternative and local provision should be made to address the loss of the existing play provision.*

19. Development shall not begin until details of overflow car parking for 39 cars on the site of the current library and medical centre has been submitted to and approved in writing by the planning authority. Thereafter the approved overflow parking area shall be implemented in accordance with the approved details within six months of development commencing at the site, or such other timescale as is approved in writing by the Planning Authority.

**Reason:** *To ensure adequate and appropriate car parking provision is made for the development, in accordance with the Council's parking standards.*

20. The entrance area to the community facility on the proposed new building shall be redesigned to improve its visibility and scale, and the fenestration details. Before the development commences, revised plans and elevation details shall be submitted to and approved by the Planning Authority. The approved details shall include external finish materials. The approved plans shall be implemented at the site in full.

**Reason:** *To ensure the entrance to the community facilities on the new building is legible on the new building.*

21. All of the entrance areas to the building shall incorporate slate detailing in panels, the details of which shall be submitted to and approved by the planning authority in writing prior to the commencement of development on the site. The approved detailing shall be implemented in full on the building.

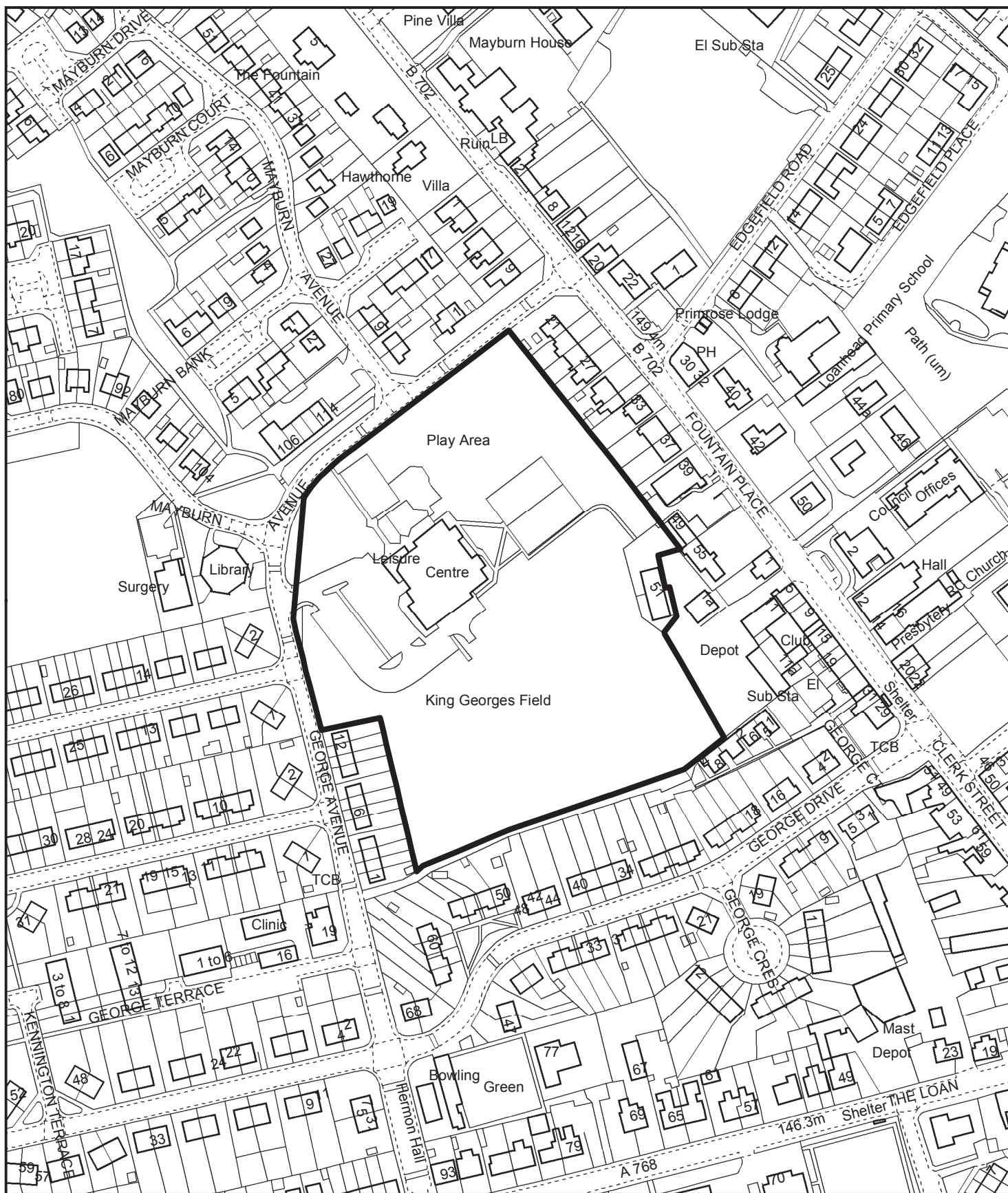
**Reason:** *To improve the design of the new building and to improve the legibility of the five entrances to the building.*



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

**Date:** 5 January 2015

**Application No:** 15/00684/DPP (Available online)  
**Applicant:** Midlothian Council  
**Agent:** AHR Architects Limited  
**Validation Date:** 19 August 2015  
**Contact Person:** J. Learmonth  
**Tel No:** 0131 271 3311  
**Background Papers:** 15/00684/DPP, 15/00712/PPP



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

Erection of community facility incorporating primary school; nursery school; early years and after school care; library; health centre; alterations to existing leisure centre; formation of car parking and associated works at Land At Loanhead Leisure Centre And King Georges Field, George Avenue, Loanhead

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File No. 15/00684/DPP

Scale: 1:2,500







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**APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE  
15/00712/PPP FOR RESIDENTIAL DEVELOPMENT AT LAND AT  
PARADYKES PRIMARY SCHOOL, MAYBURN WALK, LOANHEAD**

Report by Head of Communities and Economy

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**1.0 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1 The application is for planning permission in principle for residential development on the site of the Paradykes Primary School, Loanhead Library, Doctors Surgery and the Community Learning Centre at Mayburn Walk, Loanhead. There have been five letters of representation and consultation responses from the Coal Authority, Sports Scotland and the Council's Archaeological advisor, Environmental Health Manager and Policy and Road Safety Manager. The relevant development plan policies are RP20, RP28, RP29, RP31, HOUS3, HOUS4, TRAN1, IMP1, IMP2 and DP2 of the adopted Midlothian Local plan 2008 (MLP). The recommendation is to grant planning permission subject to conditions and securing developer contributions and the provision of affordable housing.**

**2.0 LOCATION AND SITE DESCRIPTION**

- 2.1 The site is the land that currently houses Paradykes Primary School, the Doctor's Surgery (Sutherland House), Loanhead Library and the Loanhead Community and Learning Centre at Mayburn Walk, Loanhead. The existing buildings are to be demolished and the uses and facilities relocated to the site on the opposite side of Mayburn Avenue/George Avenue which currently houses Loanhead Leisure Centre.**
- 2.2 The site fronts Mayburn Walk to the north and east, with Mayburn Avenue and George Avenue to the eastern extent of the site. Dalum Drive is to the western extent of the site, with the nursery fronting onto this road. The Kabin is to remain to the west of the site along with the Community Garden which is to the north west of the site fronting Mayburn Walk. The Multi Use Games Area (MUGA), which is located centrally on the site, is to remain.**
- 2.3 Housing on Gaynor Avenue backs onto the site and housing on Mayburn Avenue fronts the site. The site is within an established**

residential area with the majority of the housing around the site being two storeys in height. There is existing planting located to the northern and southern boundaries of the site.

- 2.4 Levels on the site are fairly uniform with the land to the north of the site dropping away. The site extends to just over 3 hectares.

### **3.0 PROPOSAL**

- 3.1 It is proposed to redevelop the site for housing. The application is accompanied by an indicative layout plan showing 86 house plots include terraced and semi-detached properties. The existing MUGA remains on the site with public open space adjoining it. The MUGA lighting is to be retained on a timer with the lighting collared to reduce spillage outwith the site. This central area (comprising the MUGA and the open space) is overlooked by housing.
- 3.1 The site will have two access points off Mayburn Walk. There is also a footpath link to the west of the site onto Dalum Drive. Car parking for the Kabin is shown to the west of the site along with a layby for two cars on Dalum Drive. A leisure centre overspill car park is shown on the indicative plan to the east of the site and close to the junction of Mayburn and George Avenue. This car park area will have a separated access to the residential development. A pedestrian crossing point between the site and the site of the relocated uses is also shown on the plan.
- 3.2 An equipped children's play area is located to the west of the site adjacent to the Kabin and the remaining Community Garden. Housing overlooks this play area to the east and south. Some planting is shown between the proposed housing and the play park.
- 3.3 A landscape buffer is shown on the plan separating the rear of the proposed dwellings and existing properties in Gaynor Avenue and between the proposed dwellings and Mayburn Walk. It is proposed to erect new fencing between the proposed dwellings and landscaped buffers.
- 3.4 In support of the planning application the applicant has submitted a Design and Access Statement, a Site Investigation Report, a Transport Assessment and the Pre Application Consultation (PAC) report (along with the PAC report for the redevelopment of the Loanhead Leisure Centre site).

### **4.0 BACKGROUND**

- 4.1 A planning application has been submitted to redevelop the site on the other side of Mayburn Avenue/George Avenue (15/00684/DPP) to replace the facilities demolished. The application is for the erection of a community facility incorporating a primary school; nursery school; early

years and after school care; library; health centre; alterations to existing leisure centre; formation of car parking and associated works. It is reported elsewhere on this agenda.

- 4.2 A Proposal of Application Notice has been considered for the application (ref no. 15/00228/PAC). This identified the pre-application public consultation that was required in relation to the proposed development.

## 5.0 CONSULTATIONS

- 5.1 The **Coal Authority** has no objections subject to appropriate conditions being imposed on a grant of permission.
- 5.2 **Sport Scotland** has no comment in relation to the planning application.
- 5.3 The **Council's Archaeological advisor** recommends that a condition requiring the prior undertaking of a programme of archaeological works at the site should be attached to any consent granted.
- 5.4 The **Council's Environmental Health Manager** advises that it is considered that a more suitable site layout minimising impact with regard to the MUGA pitch would be possible. Based on the current plans, the MUGA pitch would be surrounded on three sides by residential dwellings, raising concerns regarding noise and light nuisance to occupiers of neighbouring residential properties; particularly as the MUGA is a floodlit facility in use after daylight fades.
- 5.5 It is recommended by the Environmental Health Manager that the MUGA pitch is re-located to a more suitable location. If this is not possible, then the detailed site layout shall be designed to ensure there is no nuisance to future occupiers of the proposed residences from noise and light spillage. With regard to lighting, this will involve ensuring there is no direct illumination of any neighbouring sensitive property and that the inner surface of the reflectors are not visible from the proposed sensitive receptor properties, having regard to the guidance contained within the Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008. The floodlighting system should also be reviewed with a recommendation that the lighting is fitted with an automatic cut out to ensure that the system cannot operate after 9pm.
- 5.6 With regard to noise, this will involve a sensitive site layout, involving for example a combination of separation and acoustic barriers.
- 5.7 In relation to contaminated land an appropriate condition should be attached to any consent granted relating to the treatment of contamination and/or previous mineral workings at the site.



5.8 The **Council's Policy and Road Safety Manager** has no objection in principle to the application but recommends that the following conditions are applied to any grant of planning permission:

- The existing verge along Mayburn Walk should be widened to provide a continuous 2m wide pedestrian route from the proposed site access to the existing flat top table at the junction of Mayburn Vale where a pedestrian crossing point would be formed.
- Details of the proposed access points to the development should be submitted for approval at the detailed design stage.
- The existing signs, street furniture and road markings associated with the primary school should be removed and the public footway made good.
- Appropriate levels of residents and visitor parking (in line with current council parking standards) should be provided to serve the new housing.
- Details of the proposed SUDs should be submitted for approval at the detailed design stage.
- Details of the proposed overspill parking area should be submitted for approval at the detailed design stage.

## 6.0 REPRESENTATIONS

6.1 Five letters of representation have been received in relation to this application, one objection to the application and four neutral comments.

6.2 The neutral comments can be summarised as follows:

- What is planned for the 20m neighbour buffer around the site and who will be responsible for the upkeep and maintenance.
- Clarity over the access arrangements is required.
- Parking on surrounding streets is problematic and road markings have little or no effect. The opportunity should be taken as part of this application to improve the situation for users and local residents.
- The plan shows a 'vegetation barrier' between Mayburn Avenue and the site. Residents are 'plagued' by leaves from the existing garden area. It would make sense to border the site with a rustic style wall to prevent the accumulation of litter and leaves.
- It is important that the current screening between the houses on Mayburn Avenue and the site is retained to ensure privacy for both developments.
- Measures should be taken to ensure that the traffic on the road at Mayburn Avenue/Walk does not increase as a result of the proposed housing development.



- Further information should be provided or investigations undertaken in relation to contamination of the land. This should be fully explored and the results published before work starts on the site.

6.3 The letter of objection can be summarised as follows:

- The bend in the existing road at Nos 92/94 Mayburn Avenue is already a tight curve with poor visibility.
- The existing GP's entrance and overspill car park entrance/exit on Mayburn Avenue is already too near to the bend in the road.
- The existing play area in George V Park next to MUGA is unlikely to be attractive to children outwith proposed new housing area.

## 7.0 PLANNING POLICY

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

### Midlothian Local Plan (MLP)

- 7.1 Policy **RP20: Development within the Built-Up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area.
- 7.2 Policy **RP28: Site Assessment, Evaluation and Recording** states that where any development proposal could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the impact of the proposal on the archaeological resource.
- 7.3 Policy **RP29: Playing fields and sports facilities** does not permit development on existing playing fields and sports facilities unless it can be demonstrated that the development will not result in a material loss of amenity to the surrounding area. This policy seeks an enhancement of existing provision.
- 7.4 Policy **RP31: Open Space Standards** advises that the Council proposes to bring forward supplementary planning guidance based on the open space strategy outlining the minimum open space standards in respect of all new development, and until that is available the requirements for open space provision are as set out in policy DP2.
- 7.5 Policy **HOUS3: Windfall Housing Sites** advises that within the built-up areas, housing development on non-allocated sites and including the reuse of buildings and redevelopment of brownfield land, will be permitted provided that: it does not lead to the loss or damage of valuable public or private open space; it does not conflict with the

established land use of the area; it respects the character of the area in terms of scale, form, design and materials; it meets traffic and parking requirements; and it accords with other relevant Local Plan policies and proposals, including policies IMP1, IMP2, IMP3 and DP2;

- 7.6 Policy **HOUS4: Affordable Housing** requires that on residential sites allocated in this Local Plan and on windfall sites identified during the plan period, provision shall be required for affordable housing units equal to or exceeding 25% of the total site capacity, as follows:
- for sites of less than 15 units (or less than 0.5 hectares in size) no provision will be sought;
  - for sites of between 15 and 49 units (or 0.5 to 1.6 hectares in size) there will be no provision for the first 14 units thereafter 25% of the remaining units will be for affordable housing
  - for sites of 50 units and over (or larger than 1.6 hectares in size), there will be a requirement for 25% of the total units to be for affordable housing.
- 7.7 Lower levels of provision, or a commuted sum, may be acceptable where this has been fully justified. Supplementary planning guidance for the affordable housing provision shall provide advice on: the acceptable tenure split between social and low cost housing; possible delivery mechanisms; the scope for commuted sums; and other relevant matters as necessary. The Council's "Supplementary Planning Guidance on Affordable Housing" was published in March 2012.
- 7.8 Policy **TRAN1: Sustainable Modes of Transport** states that major travel-generating uses will only be permitted where they are well located in relation to existing or proposed public transport services, are accessible by safe and direct routes for pedestrians and cyclists, and accord with the Council's Local Transport Strategy. All major travel-generating developments shall be accompanied by a Transport Assessment and a Green Travel Plan, setting out what provisions or measures shall be taken to provide for, and encourage the use of, alternative forms of travel to the private car.
- 7.9 Policy **IMP1: New Development** this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are transport infrastructure, landscaping, public transport connections, including bus stops and shelters, parking in accordance with approved standards, cycling access and facilities, pedestrian access, acceptable alternative access routes, access for people with mobility issues, traffic and environmental management issues, protection/management/compensation for natural and conservation interests affected, archaeological provision and 'percent for art' provision.

- 7.10 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place**, states that new development will not take place until provision has been made for essential infrastructure and environmental requirements, including education provision, related to the scale and impact of the proposal. This includes essential roads infrastructure, protecting valuable environmental assets within or adjacent to the site and compensation for any losses including alternative provision where appropriate. In this case the need to upgrade junctions and access arrangements will come through a Traffic Assessment and specific requirements may arise from water and drainage and flood risk assessments.
- 7.11 Policy **DP2: Development Guidelines** sets out Development Guidelines for residential developments. The policy indicates the standards that should be applied when considering applications for dwellings;

#### Government Policy and Guidance

- 7.12 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing.
- 7.13 Creating Places - A policy statement on architecture and place for Scotland sets out the comprehensive value good design can deliver. Successful places can unlock opportunities, build vibrant communities and contribute to a flourishing economy.

### **8.0 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.
- 8.2 The proposed development is related to the planning application for the re-development of the Loanhead Leisure Centre site on the opposite site of Mayburn Avenue (15/00684/DPP). A report on this planning application is also on the Committee agenda.

#### Principle of Development

- 8.3 The site is within the built up area of Loanhead where there is presumption in favour of appropriate development. The area, within which the application site is located, is principally residential in nature. As such, the site is not inherently unsuitable for a residential development and the consultations carried out have not indicated any overriding reasons why the site could not be redeveloped for residential purposes. The objector to the scheme does not object to the principle

of a residential development on the site. Residential use of the site is compatible with the character of the area.

#### Indicative Layout

- 8.4 The layout plan submitted in relation to this planning application shows 86 residential units. The plan shows an area for play at the western end of the site adjacent to the Kabin; however the land identified is not sufficient compensation for the play area lost as part of the Loanhead Leisure Centre redevelopment proposals (see 15/00684/DPP) on the adjacent site. Additional land will be required to make the requisite provision for the housing approved on this site. It is essential that any children's play area is overlooked from neighbouring residential properties and roads and footways to allow for passive surveillance and better security for users. This approach will also help guard against anti-social behaviour and vandalism. The play area does allow for this, subject to the landscape details being clarified to ensure landscaping around the play area does not block views into it. In order to allow for sufficient play space to be identified it is likely that the number of houses on the site will have to be reduced from the indicative 86 units shown.
- 8.5 The indicative layout is submitted to show how the site could be developed. However, the layout does not create a sense of place or contribute to its location and is based on a preference of not wanting to reposition the existing MUGA pitch from the centre of the site. Parking is shown to the front of the houses and adjacent to the MUGA and open space. The layout shows houses facing onto the lit MUGA and the open space centrally located within the site. This however raises concern about the potential for noise and light nuisance which will have to be addressed in any final layout for this site. It would be appropriate to reposition the MUGA elsewhere in the site.
- 8.6 A landscape buffer is shown on the plan separating the rear of the proposed dwellings and existing properties in Gaynor Avenue and between the proposed dwellings and Mayburn Walk. Although tree planting and landscaping is to be encouraged, it needs to be of a form that enhances good design and sited to be overlooked by residential properties. The landscaping between the proposed dwellings shown on the indicative layout and Mayburn Walk is a consequence of the layout turning its back on the existing residential properties. This needs to be considered when the layout is designed in detail. The proposed landscaping strip between the proposed houses and Gaynor Avenue is also of concern as it is sited between two rows of fencing provided a landscaped alleyway contrary to 'secure by design' principles.
- 8.7 The layout plan is indicative only and is not approved by a grant of planning permission.

## Other Matters

- 8.8 The issues raised in the representations have been addressed in the report or can be considered at the detailed planning application stage.

## **9.0 RECOMMENDATION**

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

*The proposed development is in an established residential area and is considered to be an acceptable 'windfall site' in relation to the Midlothian Local Plan being compliant with Policy RP20. It is acceptable in this location in principle subject to appropriate conditions and the required developer contributions.*

Subject to:

Securing the provision of affordable housing, children's play and open space, including maintenance provision and securing developer contributions towards education provision (non denominational primary and secondary school provision and denominational secondary school provision), community and leisure facilities and any identified roads/transportation or road traffic order requirements.

Subject to the following conditions:

1. The 'Proposed Housing Site Layout' ( Drawing Number: L(00)200 1:500 HOUSING LAYOUT) submitted with the application is not approved.

***Reason:*** *The application is for planning permission in principle only and the details delineated within the site layout drawing are for illustrative purposes only.*

2. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each residential phase of the development, the provision of open space, structural landscaping, the SUDS provision and transportation 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.*

3. Development shall not begin until an application for approval of matters specified in conditions for a scheme of hard and soft

landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
- ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
- iii proposed new planting in communal areas and open space, including trees, shrubs, hedging and grassed areas;
- iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses on adjoining plots are occupied;
- vii drainage details 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);
- x proposed play areas and equipment;
- xi proposed cycle parking facilities; and
- xii proposed area of improved quality (20% of the proposed dwellings).

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

**Reason:** *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP8, RP20, RP31 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

4. Development shall not begin until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential units and other structures has been submitted to and approved in writing by the planning authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. These materials will also include those proposed in the area of improved quality (20% of



the proposed dwellings). Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

**Reason:** *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

5. Development shall not begin until an application for approval of matters specified in conditions for 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 accesses;
  - iii proposed roads (including turning facilities), footpaths and cycle ways;
  - iv proposed visibility splays, traffic calming measures, lighting and signage;
  - v proposed construction traffic access and haulage routes;
  - vi a green travel plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
  - vii proposed car parking arrangements;
  - viii proposed bus stops/lay-bys and other public transport infrastructure;
  - ix a programme for completion for the construction of access, roads, footpaths and cycle paths;
  - x proposed on and off site mitigation measures identified by the traffic assessment submitted with the application;
  - xi The existing signs, street furniture and road markings associated with the primary school shall be removed and the public footway made good; and,
  - xii The existing verge along Mayburn Walk should be widened to provide a continuous 2m wide pedestrian route from the proposed site access to the existing flat top table at the junction of Mayburn Vale where a pedestrian crossing point would be formed.

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 an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
  - ii measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
  - iii measures to deal with contamination and/or previous mineral workings encountered during construction work; and
  - iv the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

***Reason:*** *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

7. Development shall not begin until an application for approval of matters specified in conditions for 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 IMP1 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

8. Development shall not begin until an application for approval of matters specified in conditions for a programme of archaeological works (Metal Detector Survey and Evaluation) and scheme of investigation has been submitted to and approved in writing in by the planning authority. The approved programme of works shall be carried out by a professional archaeologist prior to any construction works, demolition or pre commencement ground works take place unless otherwise agreed in writing by the planning authority.

**Reason:** To ensure this development does not result in the unnecessary loss of archaeological material in accordance with Policy RP28 of the Adopted Midlothian Local Plan.

9. The existing verge along Mayburn Walk should be widened to provide a continuous 2m wide pedestrian route from the proposed site access to the existing flat top table at the junction of Mayburn Avenue where a pedestrian crossing point would be formed.
10. Development shall not begin until an application for approval of matters specified in conditions for details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse. The delivery of high speed fibre broadband shall be implemented as per the approved details.

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

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

<b>Date:</b>	<b>5 January 2016</b>
<b>Application No:</b>	<b>15.00172.PPP (Available online)</b>
<b>Applicant:</b>	<b>Midlothian Council</b>
<b>Agent:</b>	<b>AHR Architects</b>
<b>Validation Date:</b>	<b>1st September 2015</b>
<b>Contact Person:</b>	<b>J. Learmonth</b>
<b>Tel No:</b>	<b>0131 271 3311</b>
<b>Background Papers:</b>	<b>15/00172/PPP, 15/00684/DPP, 15/00228/PAC</b>



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

Application for Planning Permission in Principle for residential  
development at Land At Paradykes Primary School, Mayburn  
Walk, Loanhead

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File No. 15/00712/PPP

Scale: 1:2,500





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**APPLICATION FOR PLANNING PERMISSION 15/00616/DPP FOR THE  
ERECTION OF 60 DWELLINGHOUSES AND 22 FLATTED DWELLINGS,  
FORMATION OF ACCESS ROAD AND CAR PARKING AND ASSOCIATED  
WORKS AT LAND EAST OF CHARLES LETTS AND CO LTD, SALTER'S ROAD,  
DALKEITH**

Report by Head of Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.0** The application is for the erection of 60 houses and 22 flatted dwellings, the formation of an associated access road and sustainable urban drainage systems (SUDS) at land east of the Charles Letts and Co (Charles Letts) factory, Salter's Road, Dalkeith. There has been eleven representations and consultation responses from the Scottish Environment Protection Agency (SEPA) and the Council's Policy and Road Safety Manager, Head of Education and Environmental Health Manager. The relevant development plan policies are RP20, RP31, COMD1, HOUS3, HOUS4, IMP1, IMP2 and DP2 of the adopted Midlothian Local Plan 2008 (MLP). The recommendation is to grant planning permission subject to conditions and securing developer contributions and the provision of affordable housing.

**2 LOCATION AND SITE DESCRIPTION**

- 2.1** The application site is 3.8 hectares of ground to the east of the Charles Letts factory. The site is within Thornybank Industrial Estate which is on the north east edge of Dalkeith. The site is 350 metres long on a north/south axis and 170 metres wide at the north end. It gradually narrows towards the south reaching a 50 metre wide 'pinch point' two thirds of the way down the site before widening out again to the south east corner. The site comprises open meadow grassland and a tarmac car park associated with the factory on its northern part; and well maintained grass on its narrower southern part. There are woodland planting strips along the northern, eastern and southern edges of the site. The site is gently sloping with a steep grass embankment on the western edge of the site which slopes downwards to the access road of the Charles Letts factory.
- 2.2** The site is bound by woodland planting with houses in the Wester Cowden development to the north and east, woodland planting with Salters Road (the B6414 road) to the south west and a combination of the factory building

occupied by Charles Letts, the remaining grounds of that factory and the cleared site of the former Laidlaw and Fairgrieve building within Thornybank Industrial Estate to the west.

### **3 PROPOSAL**

3.1 The proposed development is for:

- (i) the erection of 60 two-storey houses;
- (ii) the erection of a three-storey block of flats containing 22 affordable housing flats; and
- (iii) the formation of an access to the site through the south west boundary off Salter's Road. The access will require the creation of an opening in the existing woodland belt on this boundary of the site.

3.2 The proposed development would result in the loss of a staff car park of Charles Letts, located in the north western corner of the site and also the tree belt immediately to west of that car park. The lost car parking is to be replaced within the Charles Letts site and was subject to a grant of planning permission, 15/00474/DPP.

3.3 All of the proposed houses have pitched roofs. The three-storey block of flats located on the north western part of the site has a hipped roof.

3.4 The proposal comprises 39 detached houses, 10 semi-detached houses and 11 terraced houses. Ten different house types are proposed. All the house types are high speed fibre broadband compliant. There are 22 two bed units, 23 three bed units, and 37 four bed units

3.5 The planting of landscaping and the erection of boundary fencing, including noise attenuation fencing on part of the site.

3.6 A new vehicular access is proposed off Salters Road (B6414) to the south. A proposed pedestrian footpath within the site and near to the southern end of the site would connect to an existing footpath within the neighbouring residential development to the east. A pedestrian footpath within the site would terminate at a point on the northern boundary of the site.

3.7 Materials specified for use out with the area of improved quality include white dry dash and cream chip on magnolia dry dash render, buff coloured reconstituted stone cills and lintels, dark grey concrete roof tiles, white UPVC soffits and fascias, white UPVC window frames and black UPVC rainwater goods.

3.8 Materials specified for use within the area of improved quality include white wet dash render, buff coloured reconstituted stone cills and lintels, slate roofs, white UPVC soffits and fascias, white UPVC window frames and black UPVC rainwater goods.



- 3.9 The road, mixer courts, parking courts and layby parking are to be finished in a combination of charcoal coloured and brindle coloured pavements.
- 3.10 There will be two levels of treatment for surface water including road drainage to porous pavements and driveways and roof drainage to filter trenches associated with a below ground cellar storage structure on part of the principal open space.
- 3.11 No details of the percent for art requirement have been submitted.
- 3.12 A design and access statement, a tree report, a noise impact assessment report and an ecology report have been submitted with the application.

#### 4. BACKGROUND

- 4.1 In July 2014 the applicant submitted a planning application 14/00178/DPP for the erection of 50 dwellinghouses, 31 flatted dwellings, the formation of access road and car parking on the site. This application has been withdrawn and replaced by the current proposal.
- 4.2 Pre-application consultation 13/00716/PAC for a residential development was received in July 2013.

#### 5 CONSULTATIONS

- 5.1 The **Head of Education** advises that the development of 82 dwellings could be expected to generate the following number of pupils:

Primary Non Denominational	23
Primary Denominational	02
Secondary Non denominational	16
Secondary Denominational	02

- 5.2 Non-Denominational Primary provision will be at Woodburn Primary School and the developer will be required to make a contribution towards this provision.
- 5.3 Primary Denominational provision will be at St David's RC Primary School, which is at or near capacity from committed development in the Dalkeith area. As a consequence of this development and others in the catchment area an extension will be required. A developer contribution will be required towards the cost of this extension.
- 5.4 Secondary Non-Denominational provision will be at Dalkeith High School. As a consequence of this development and others in the catchment area an extension will be required. A developer contribution will be required towards the cost of this extension.
- 5.5 With regard to Secondary Denominational provision a contribution towards St David's High School, Dalkeith is required.

- 5.6 The **Council's Environmental Health Manager** raises concern about potential for noise nuisance to the future occupants of dwellings erected on the site owing to their close juxtaposition to both the existing operations at Charles Letts and to potential future industrial uses on the vacant industrial site located to the immediate west of the northern part of the site and to the immediate north of Charles Letts. This is the cleared site of the former Laidlaw and Fairgrieve building. Whilst it is welcomed that proposal to erect an acoustic fence to the south and west to protect the west boundary of the amenity space and prevent diffraction around the barrier edge, it is considered that it is essential that substantial noise reductions to the existing noise emissions from Charles Letts be carried out and that this is secured by the Planning Authority. Furthermore, it is considered that the acoustic fence would not be sufficient in itself to mitigate noise nuisance from the vacant site of the former Laidlaw and Fairgrieve building if redeveloped.
- 5.7 The **Council's Policy and Road Safety Manager** does not raise an objection to the principle of the proposed development. However, advises that the developer should provide a 3m wide cycling/pedestrian link from the rear of Plot 43 to join the public road at the end of the cul-de-sac at Woodland View to the north. This link should be built to an adoptable standard with street lighting. If the developer is unable to construct this link then he should enter into a legal agreement to enable the Council to procure the land and construct the link.
- 5.8 The **Scottish Environment Protection Agency (SEPA)** does not object to the application.
- 5.9 **Dalkeith Community Council** was consulted on the application but did not make comment.

## 6 REPRESENTATIONS

- 6.1 Eleven representations were received in relation to the application. The points raised are as follows:
- Concern about title to, and access rights over the woodland on the southern extremity of the site;
  - Loss of trees;
  - New tree planting on the eastern edge of the site could intrude on parking areas and vehicle turning areas within Easter Langside Avenue;
  - Insufficient infrastructure to cope with the number of houses proposed including the road infrastructure, schools, doctor surgeries and bus service;
  - Loss of/harm to biodiversity;
  - Concern about urban sprawl;
  - The development is contrary to the Council's green space policy;
  - The site is industrial land and not residential land;
  - The houses erected on the northern part of the site would result in the loss of light and overshadowing to the rear gardens of houses in Sandyriggs



Gardens, harmful to the residential amenity and health of the occupants of those neighbouring houses;

- Loss of trees on the northern end of the site would result in overlooking and loss of privacy to the houses in Sandyriggs Gardens;
- The site should be developed as a community area including allotments, ponds and be used as an educational resource for schools;
- Concern that the existing neighbouring Wester Cowden housing development lacks a sense of community;
- Harm to the environment;
- There is already a lack of amenities, facilities and infrastructure within the Wester Cowden area;
- Insufficient bus service within the area;
- Concerns about lack of maintenance by the Council of existing roads within the area;
- Poor internet service;
- Noise nuisance;
- Safety and security implications of the proposed footpath link from the site to Sandyriggs Gardens to the north;
- Lack of shops in the area;
- Increased traffic in the area;
- Loss of green belt; and
- The footpath links from the site will increase incidences of anti-social behaviour and crime, to the detriment of the local community.

## **7 PLANNING POLICY**

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

### Midlothian Local Plan 2008 (MLP)

- 7.2 Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area.
- 7.3 Policy **RP31: Open Space Standards** advises that the Council proposes to bring forward supplementary planning guidance based on the open space strategy outlining the minimum open space standards in respect of all new development, and until that is available the requirements for open space provision are as set out in policy DP2.
- 7.4 Policy **COMD1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure and facilities. The application site is committed site e10.

- 7.5 Policy **HOUS3: Windfall Housing Sites** states that proposals for housing developments where they would involve the redevelopment of brownfield sites within the built-up area should be supported where:
- It does not lead to the loss or damage of valuable public or private open space;
  - It does not conflict with the established land use of the area;
  - It has regard to the character of the area in terms of scale, form, design and materials;
  - It meets traffic and parking requirements; and,
  - It accords with all other relevant Local Plan policies.
- 7.6 Policy **HOUS4: Affordable Housing** requires that on residential windfall sites identified during the plan period, provision shall be required for affordable housing units. 25% of the units will be for affordable housing.
- 7.7 Lower levels of provision, or a commuted sum, may be acceptable where this has been fully justified. Supplementary planning guidance with regard affordable housing provision provides advice on: the acceptable tenure split between social and low cost housing; possible delivery mechanisms; the scope for commuted sums; and other relevant matters as necessary. The Council's "Supplementary Planning Guidance on Affordable Housing" was published in March 2012.
- 7.8 Policy **IMP1: New Development**, seeks to ensure that appropriate provision is made for a need which arises from new development. Of relevance in this case are transport infrastructure, landscaping, parking in accordance with approved standards, cycling access and facilities, pedestrian access, acceptable alternative access routes, access for people with mobility issues, traffic and environmental management issues, protection/management/compensation for natural and conservation interests affected, archaeological provision and 'percent for art' provision.
- 7.9 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place**, states that new development will not take place until provision has been made for essential infrastructure and environmental requirements, related to the scale and impact of the proposal. This includes deficiencies with regards to school capacities and contributions towards the Waverley/Borders rail line.
- 7.10 Midlothian Local Plan Policy **DP2: Development Guidelines** sets out Development Guidelines for residential developments. The policy indicates the standards that should be applied when considering applications for dwellings.
- 7.11 The Council has prepared **Supplementary Planning Guidance (SPG)** on **Affordable Housing** and **Developer Contributions**. The SPG on Developer Contributions sets out guidance on when and where developer contributions are payable.

## Proposed Midlothian Local Development Plan (MLDP)

- 7.12 The proposed Midlothian Local Development Plan does not form part of the development plan for the Council's area however it is a material consideration in relation to a planning application which carries more weight the closer it gets to being adopted. The site is identified as **housing site Hs4 (Thornybank East)** in the Proposed Plan with an anticipated capacity of 65 units. The Settlement Statement states that the development must ensure that the location of housing next to a business use must not inhibit continuation of the business use, especially in respect of noise, and business/residential traffic mix. A path link through the site connecting with new development to the north should be created. There will be a need to ensure the layout provides for ready access to the Dalkeith Schools Community Campus and the new foodstore.

## National Policy

- 7.13 **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.
- 7.14 **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 currently proposed development complies with development plan policies unless material planning considerations indicate otherwise. The representation responses and the consultation responses received are material considerations.

## The Principle of Development

- 8.2 The site is within the settlement of Dalkeith and forms part of the Thornybank Industrial Estate. The site is allocated for business and general industrial use and therefore, in principle, the proposed housing development is contrary to the Midlothian Local Plan. However recent developments have taken place in close proximity to the site which have introduced residential, retail and other uses into the vicinity of the Thornybank Industrial Estate.
- 8.3 The land was acquired historically by Charles Letts to allow for future expansion of their business of manufacturing paper based products. However, the Company has advised that market and technology changes mean there is no prospect in the foreseeable future for expansion. Furthermore, the company also advise that disposal of the land is required to provide much needed working capital to sustain the financial stability of the Charles Letts business and to preserve the existing jobs. If planning permission is not granted the applicant advises that this would jeopardise the

continuing economic activity of Charles Letts and thus threaten jobs. They consider that there is no prospect of disposal of the land for employment use and maintain that the site is suitable for residential development. During the public consultation stage of the draft MLDP the applicant submitted a representation to the Council highlighting the said reasons why the site should be included as a housing site in the Proposed Plan. The Council decided to include the site as a preferred housing site within the Proposed Plan. Therefore, through its decisions on the Local Development Plan it is the settled opinion of the Council that the site be part of the Council's Strategic Housing Land allocation.

- 8.4 A decision to change the designation of use of land needs to be based upon sound planning reasons. This report explains these reasons which centre around the site being within the built up area of Dalkeith and adjacent to existing residential developments. For those reasons there is sufficient justification for the Council to grant planning permission for residential development on the site in advance of the adoption of the Proposed MLDP. It is also reasonable for the Council to have regard to the representations submitted by the Company relating to the future security of the business.

#### Layout and Form of the Development

- 8.5 Policy DP2 requires the provision of the following minimum useable private garden areas for houses: (i) 110 square metres for terraced houses of 3 or more apartments; (ii) 110 square metres for other houses of 3 apartments; and (iii) 130 square metres for houses of 4 apartments or more. 19 of the proposed houses have rear private gardens that fall below the Council's minimum requirement set out in the DP2 Guidelines in the MLP. The majority of those houses are small terraced houses. In the case of these terraced houses, if the minimum private rear garden size was adhered to the rear gardens would be overly long. In the case of the detached and semi-detached houses which have rear gardens that fall below the minimum set by Policy DP2, they only marginally fall below. Overall in the development the units with smaller rear gardens balance those with larger rear gardens. The mixture of properties with larger and smaller rear gardens creates variation in the layout and visual diversity to the development. This justifies allowing a relaxation in the size of the gardens in this particular case. In addition, the areas of open space on and off the site help to offset concerns about rear garden sizes. The distances between properties are in compliance with Policy DP2. The arrangement of buildings, disposition of open space and scale and massing of the proposed development is acceptable.
- 8.6 The development is laid out with a combination of traditional road and 5.5 metre wide shared surfaces in block paving with a 2 metre wide grassed service strips/verge. Shared surfaces encourage reduced vehicle speeds as motorists perceive that they do not have priority over any other users of the road space.

### Design and Materials

- 8.7 The mix of house types and size of dwellings is acceptable. The architectural styles of the houses are relatively traditional in form and complement the character and visual amenity of the area. Existing nearby dwellinghouses are similar in form and scale.
- 8.8 Midlothian Local Plan Policy DP2 requires that there be an added emphasis on the quality in design of a minimum of 20% of the dwellings on the site. This applies to individual buildings and the use of materials both in building finishes and also in walls and ground surfaces. The expectation is that such treatment is focused on prominent landmark groups or key individual buildings. The houses on the southern part of the site comprise the area of improved quality in terms of materials. The style and appearance of the buildings on these plots are relatively traditional, which is in keeping with the established character and amenity of the area. It should be made a condition of a grant of planning permission that enhanced quality of materials; including natural slate for the roofs, are used within the area of improved quality in accordance with samples to be submitted for the prior approval of the planning authority.
- 8.9 Elsewhere within the development, outwith the aforesaid plots the relatively traditional architectural style of the proposed houses is sympathetic to the neighbouring buildings. The proposed use of render walling and concrete roof tiles is acceptable in principle subject to samples being submitted for the prior approval of the planning authority.
- 8.10 The proposed three-storey flatted block is positioned on the northern part of the development site. In terms of its height, size, proportion and positioning it will not appear unduly dominant or imposing. The additional height creates a localised landmark and will contribute to creating a sense of place. It will not detract from the character and visual amenity of the area.
- 8.11 In terms of their size, height and position on the site the proposed houses and flatted properties would be so removed from all neighbouring properties so that there would be no significant overlooking or overshadowing. Furthermore, the house and flatted building would not unduly impose themselves on them or appear obtrusive within the street scene. The proposed dwellings are separated by a landscape strip from existing properties.
- 8.12 No details of 'percent for art' for the development have been submitted with the application. It can be made a condition of a grant of planning permission that details of artwork be submitted for the prior approval of the Planning Authority.

### Open Space and Play Areas

- 8.13 The development incorporates a grassed space on its northern part of the site, providing a key useable focal point in the development. As this area is

large enough to accommodate informal ballgames it is important that it is landscaped in a manner which reduces the impact of such activity on the adjacent properties. This can be secured by a condition imposed on a grant of planning permission. This area of open space will also accommodate a children's play area.

#### Noise

- 8.14 The noise impact assessment report prepared by the applicant identifies that owing to the close juxtaposition of noise sources from within the Charles Letts site and the closest residences on the proposed site; which are Plots 44 and 56 and the southern wing of the block of the flats (Plots 61 to 68), noise mitigation is required. The mitigation includes: (i) 2.2 metre high close-boarded boundary fencing along garden boundaries of plots 44, 56 and 68; and, (ii) Noise attenuation measures to the main and secondary plant areas to achieve the required noise reduction as outlined in the noise impact assessment report. The required noise mitigation can be secured by a planning condition. Subject to this condition, the future occupants of the dwellings on the site would not be significantly adversely affected by noise nuisance.
- 8.15 Neither Charles Letts nor the applicant has title to the neighbouring land of the former Laidlaw and Fairgrieve building. There could be potential noise nuisance to the proposed dwellings on the application site from an industrial use operating on that neighbouring site. However the site is identified in the MLDP Proposed Plan 2014 as housing site Hs5 with a capacity for 30 units. No objections have been received to the Proposed Plan in respect of proposed housing site Hs5 and thus there is a high probability of it being included as a housing site in the MLDP and in the future houses being built on it. Houses built on this site could coexist with houses built on the application site without any significant harm to amenity. Notwithstanding, in the unlikely event of it remaining in industrial use, an industrial building erected on that neighbouring site would require detailed planning permission. A material consideration in the assessment of such a planning application would be potential noise nuisance from industrial operations within the building and from any associated plant and machinery. The Planning Authority could impose controls to mitigate noise from that neighbouring site including requiring acoustic insulation of the industrial building(s) and of any associated plant etc.

#### SUDS

- 8.16 The proposed SUDS scheme, which is a combination of porous paving and underground cellular storm water storage within the principal open space will ensure that there will be no net detriment to the locality's drainage whilst having minimal visual impact.



### Landscaping

- 8.17 Individually the trees within the existing woodland belts around the site have limited amenity value. However the group value of the existing woodland tree belts around the site is significant as they provide an important setting to the site and for adjacent residential areas. The existing woodland tree belt is to be retained. The removal of some trees to form the access into the site and provide adequate sight lines at the access would not significantly harm the landscape integrity of the tree belt along the south west boundary. A woodland management plan for the retained woodland belts should be secured by a condition on a grant of planning permission.
- 8.18 The steep embankment leading down to the Charles Letts factory should be landscaped in a manner to help visually separate the proposed residential development for the industrial site.

### Transportation Issues

- 8.19 The proposed access arrangements are acceptable in transportation terms. The access and internal road geometry is suitable for access and manoeuvring by both service vehicles and residential vehicles and raises no material road safety concerns. The Council's parking requirement for this development has been met.
- 8.20 No details of the construction vehicle route and access has been submitted with the application. Given the close juxtaposition of the site to the Dalkeith Schools Campus, in the interests of road and pedestrian safety it should be made a condition of a grant of planning permission that the route of construction vehicles and the construction vehicle access into and out of the site is approved in advance by the Planning Authority. Furthermore, for the same reason the hours of construction, including construction vehicles accessing and egressing the site should be approved in writing in advance by the Planning Authority.
- 8.21 The desire line for pedestrians and cyclists egressing the site to Dalkeith Schools campus located nearby to the north west, is through the northern boundary of the site onto the footpath and cycle network at Woodland View. A 3m wide cycling/pedestrian link shall be provided from the site to the rear of Plot 43 to join the public road at the end of the cul-de-sac at Woodland View to the north. This link should be built to an adoptable standard with street lighting. This control can be secured by a planning condition. Neither the Council nor the applicant has title to the land on which the said cycleway/footway would be formed. However, the Council has an agreement with the landowner to acquire the land from them to form the cycleway/footpath. Subject to this footpath and cyclepath being formed within a reasonable timescale; which can be secured by a planning condition, adequate cycle and pedestrian links will be provided through the site for the convenience of the future occupants of the dwellings on the site.

### Ecology

- 8.22 The report on the ecological survey of the site submitted with planning application ref.14/00178/DPP does not recommend against the development on grounds of impact on biodiversity. No additional ecological surveys are required to be undertaken.

### Developer Contributions

- 8.23 A Section 75 legal agreement is required for the proposed development to secure developer contributions.
- 8.24 The development cannot be accommodated without increased primary and secondary educational capacity and, if approved, the applicant will be required to contribute towards the consequential cost of any additional school accommodation as part of the Section 75 legal agreement.
- 8.25 The affordable housing requirement for the site is 25%, which equates to 21 units. The specification of the affordable housing units within the development shall be secured through a Section 75 legal agreement.
- 8.26 The application site is within the A7/Borders Rail corridor and therefore a developer contribution is also required towards the Borders Rail Line.
- 8.27 An additional payment is required for the Council to secure servitude to enable the construction of the new cycleway/footway from the site to the public footway at Woodland View to the north.

### Other Matters raised by Representors and Consultees

- 8.28 Issues raised by the representors and by consultees have been largely addressed above. With regards to the matters raised which have not been addressed above:
- 8.29 The site is not within the green belt and thus the development would not result in the loss of green belt land.
- 8.30 Title to, and access rights over the woodland on the southern extremity of the site is a legal matter and not a planning matter and therefore is not a material consideration in the determination of this planning application.
- 8.31 Any incidences of anti-social behaviour and crime resulting from the development is not a planning matter.
- 8.32 The following matters raised are not material considerations in the determination of the planning application which needs to be considered on its own merits:

- Whether there is any potential for the site to be development for other uses including a community area including allotments, ponds or for an educational resource for schools;
- Concern that the existing neighbouring Wester Cowden housing development lacks a sense of community;
- Whether there is presently a lack of amenities, shops and facilities within the Wester Cowden area; and,
- Concern about there being a lack of maintenance by the Council of existing roads within the area.

## 9 RECOMMENDATION

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

*Although the site is not allocated for housing in the adopted local plan the provisions of the emerging local development plan and material planning considerations outweigh this policy position in favour of the development. The site is identified for housing in the Proposed Midlothian Local Development Plan and is within the settlement boundary of Dalkeith.*

Subject to:

the prior signing of a legal agreement to secure the provision of affordable housing and developer contributions towards education provision, children's play provision, a contribution towards Borders Rail and a payment to the Council to secure a servitude to enable the construction of the cycleway/footway from the site to the public footway at Woodland View to the north.

and the following conditions:

1. Development shall not begin until details of a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i notwithstanding that delineated on docketed drawings, existing and finished ground levels and floor levels for all buildings, open spaces, SUDS and roads in relation to a fixed datum;
  - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
  - iii a woodland management plan for the retained woodland belts including proposals for replacement tree planting for to compensate for trees that would be lost;
  - iv proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
  - v location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;

- vi schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vii programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses/buildings on adjoining plots are occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
- viii drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff;
- ix proposed car park configuration and surfacing;
- x proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- xi proposed cycle parking facilities; and,
- xii proposed area of improved quality.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

**Reason:** *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

2. 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 and structural landscaping, the SUDS provision and transportation 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.*

3. Prior to the first occupation of any dwelling on the site a 3m wide cycleway/footpath shall be formed from the site from a point at the rear of Plot 43 to the public road at the end of the cul-de-sac at Woodland View to the north. This cycleway/footpath shall be constructed to an adoptable standard with street lighting. There shall be no variation therefrom unless with the prior written approval of the Planning Authority.

**Reason:** *To ensure the provision of adequate cycle and pedestrian links through the site including to and from the local primary school and*

*neighbourhood children's play area in the interest of the residential amenity of the future occupants of the houses and flats built on the site.*

4. Prior to works commencing on site details of the construction vehicles route and access into and out of the site shall be submitted for the prior written approved of the Planning Authority. The construction vehicles route and access into and out of the site shall accord with the detail so approved.

**Reason:** *To ensure the safety and convenience of existing local residents and those visiting the development site during the construction process.*

5. The hours of construction, including times when construction vehicles can access and egress the site shall be approved in writing in advance by the Planning Authority.

**Reasons:** *In the interests of road safety; and,*

*In the interests of safeguarding the amenity of neighbouring noise sensitive properties, including the schools located at Dalkeith Schools Campus and neighbouring residential properties.*

6. No trees within the site shall be lopped, topped or felled unless otherwise agreed in writing with the Planning Authority.

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

7. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained and the trees overhanging the site in accordance with the recommendations of the British Standard BS 5837: 2012 'Trees in Relation to Design, Demolition and Construction'. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the trees canopy unless otherwise agreed in writing with the local planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

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

8. The external finishing materials and finishes specified for the buildings and hard surfaces are not approved. Notwithstanding the material specified on drawings docketed to this planning permission, development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Notwithstanding that specified on application drawings an enhanced quality of materials; including natural slate for roofs, shall be used in the area of improved quality which shall include plots: 1-16 inclusive. Development

shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

**Reason:** *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

11. 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 IMP1 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

12. Development shall not begin until the following has been submitted to and approved in writing by the planning authority:

- i. Existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
- ii Proposed lighting and signage;
- iii 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.*

13. Prior to any house or flat being occupied the following shall be formed/carried out and made available for use to the approval of the planning authority.
- a. The vehicular, cycle and pedestrian access details and routes delineated on docketed drawings;
  - b. The street lighting and signage approved by condition 12ii;
  - c. The driveway of the house or parking space of the flat associated with it;
  - d. The visitor parking spaces;
  - e. The cycleways/footways within the site; and,



- f. The cycle parking for the 22 flats with internal lighting and drainage as required.

**Reason:** *To ensure the safely and convenient access to the site and from the site in the interest of road safety.*

14. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
  - ii measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
  - iii measures to deal with contamination and/or previous mineral workings encountered during construction work; and
  - iv the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

**Reason:** *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

15. No house shall have an under-building that exceeds 0.5 metres in height above ground level unless otherwise agreed in writing by the planning authority.

**Reason:** *Under-building exceeding this height is likely to have a materially adverse effect on the appearance of a house.*

- 16 Detailed drawings of the building and details of the external finishing materials and finishing colour of the substation shall be submitted for the prior written approval of the Planning Authority.

**Reason:** *To ensure that any substation is unobtrusive and does not detract from the character and appearance of the development.*

17. Prior to the occupation of the houses on Plots 44 and 56 and the flats within the southern block (Plots 61 to 68), the noise mitigation requirements detailed in Section 5.0 (Mitigation Requirements) of the

RMP Environmental Noise Assessment report dated 23 March 2015 shall be carried out in full. Thereafter the noise mitigation measures shall remain in place for the duration of the operations of the Charles Letts and Co factory.

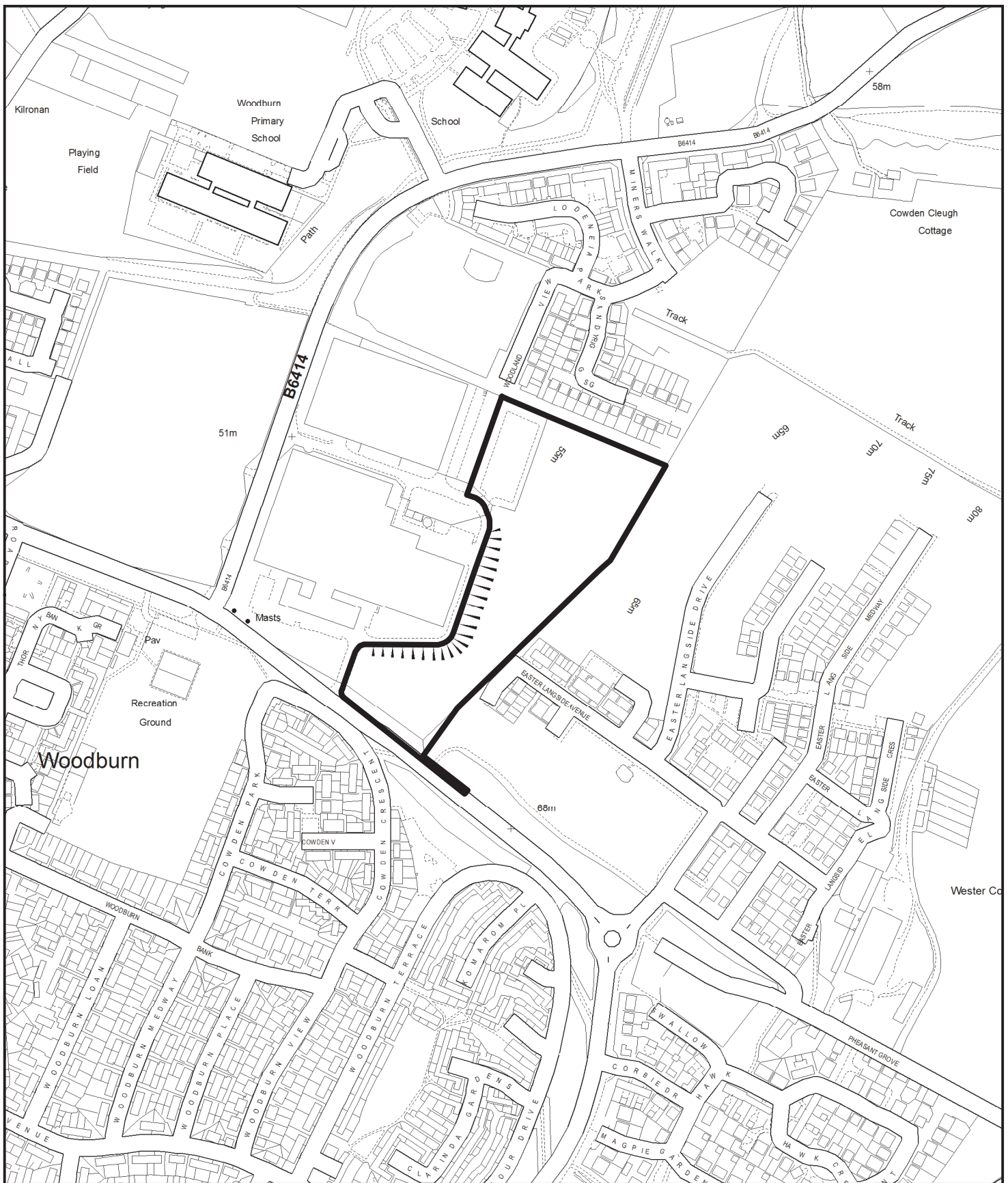
**Reason:** *To mitigate the potential effects of noise nuisance to residences on the site which otherwise could be significantly adversely affected by noise owing to the close juxtaposition of them to the Charles Letts and Co Ltd factory.*

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

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

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

<b>Date:</b>	<b>5 January 2016</b>
<b>Application No:</b>	<b>15/00616/DPP</b>
<b>Applicant:</b>	<b>Charles Letts And Co Limited, Thornybank Industrial Estate, Dalkeith, EH22 2NE</b>
<b>Agent:</b>	<b>Damian Smith, McLaren Murdock and Hamilton, 2 West Coates, Edinburgh, EH12 5JQ.</b>
<b>Validation Date:</b>	<b>02 June 2015</b>
<b>Contact Person:</b>	<b>Adam Thomson, Senior Planning Officer</b>
<b>Tel No:</b>	<b>0131 271 3346</b>
<b>Background Papers:</b>	<b>14/00178/DPP &amp; 13/00716/PAC</b>



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

Erection of 60 houses and 22 flats, formation of access road  
and car parking at Land 200M East Of Charles Letts And Co  
Ltd, Dalkeith

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File No. 15/00616/DPP

Scale: 1:5,000







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**APPLICATION FOR PLANNING PERMISSION 15/00692/DPP FOR THE  
DEMOLITION OF EXISTING BUILDINGS; ERECTION OF NEW RETAIL UNIT;  
FORMATION OF ACCESS AND CAR PARKING AND ASSOCIATED WORKS AT  
LAND AT MAYSHADE GARDEN CENTRE, ESKBANK ROAD, BONNYRIGG**

Report by Head of Communities and Economy

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

- 1.1 The application is for the demolition of existing buildings; erection of new retail unit; formation of access and car parking and associated works at land at Mayshade Garden Centre, Eskbank Road, Bonnyrigg. There have been three representations and consultation responses from the Scottish Environment Protection Agency (SEPA), the Coal Authority, the Council's Policy and Road Safety Manager and Environmental Health Manager. The relevant development plan policies are policies 3 and 12 of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) and policies RP1, RP2, RP4, RP5, RP7, RP21, ECON8, SHOP1, SHOP5, IMP1 and DP1 of the adopted Midlothian Local Plan 2008 (MLP). The recommendation is to grant planning permission subject to conditions and securing developer contributions towards the A7 Environmental Improvements Scheme.**

## **2.0 LOCATION AND SITE DESCRIPTION**

- 2.1** The application site is located between the settlements of Bonnyrigg and Eskbank, immediately adjacent to the roundabout on the A7 which serves Eskbank and Bonnyrigg (including the Community Hospital and Tesco superstore). The site extends to approximately 1.35 hectares and comprises a former garden centre (recently closed), builder's merchant's yard and some traditional cottages which had previously been converted into offices. The on-site uses have ceased.
- 2.2** The garden centre building was located along the Eskbank Road boundary and is a single storey with a low profile pitched roof. An area of car parking is located to the front, north east, of the garden centre building, with an external sales area to the south west. A builder's merchant yard and storage building is sited on the part of the site adjacent to the north west boundary. The storage building has the appearance of a large shed and the yard comprises walled storage areas. In addition to the above, there is a cottage, which has been converted into an office building at the western end of the site. This

building has the appearance of a traditional cottage and is finished in stone, slate and pan tiles.

- 2.3 The application site has a small road frontage along the A7; however the road frontage along Eskbank Road is larger and provides the existing access into the site at its south west end.
- 2.4 The site is enclosed along the Eskbank Road boundary by a mature hedge. The hedge continues along the A7 boundary, with a stone wall behind the hedge. Along part of the A7 boundary the hedge is supplemented by some mature trees. An area of trees continues along the other two boundaries of this rectangular site. Beyond the trees to the north west of the site is part of the Broomieknowe Golf Club and to the west is the practice ground for the golf club, which is currently subject to a planning application for a residential scheme (the site is referred to as allocated housing site Hs9 in the proposed Midlothian Local Development Plan).

### **3.0 PROPOSAL**

- 3.1 The proposed development is for the demolition of the buildings within the site and the erection of a retail unit, to be operated by Aldi, and associated other works.
- 3.2 It is proposed to demolish the buildings on the site, including the builder's merchant storage building and walls and the existing cottage/office.
- 3.3 It is proposed to replace the buildings on site with a single storey flat roof retail unit. The retail unit will be positioned in the western corner of the application site and will measure approximately 65m by 34m and 5.5m high. The building will have a generally rectangular footprint. The north east and south east elevations of the proposed building will be largely finished with horizontal timber cladding and powder coated aluminium framed glazing. Other elevations will be finished with a white smooth render. A canopy area will identify the entrance to the retail unit. The flat roof is to be partially covered by a solar panel array.
- 3.4 The gross floorspace of the retail unit is to measure 1,804sqm, with 1,254sqm being retail sales floorspace. Alongside the sales floor and the storage area there will be office, staff and toilet areas.
- 3.5 A delivery area and yard is to be located to the front of the south east elevation. This area provides a loading bay and some plant equipment and will be enclosed by a fence and landscape planting.
- 3.6 Vehicular access is to be taken from Eskbank Road and the vehicle parking area will be located to the north and east of the store. The 120 car parking spaces will comprise 105 standard bays, six accessible bays and nine parent and child bays. The car park includes pedestrian crossing points so that there is a continuous footway from the A7 boundary to the store entrance. A new



stone wall, to match the existing stone boundary wall, will be erected alongside part of the pedestrian route close to the A7 boundary.

- 3.7 The existing site access is proposed to be widened with new road markings provided. The access will be enlarged to the north east. The road of the enlarged access will be 9m wide at its narrowest point and there will be a footpath on either side.
- 3.8 It is proposed to erect a retaining cribblock wall along the north west boundary. This wall will range from 1.5m to 0.75m in height and will be constructed in timber with stone ballast. A 1.2m high brickwork retaining wall is to be erected in a position adjacent to the loading bay.
- 3.9 While the majority of the application site is proposed to accommodate some form of development there is an area, to the north east end of the site which is proposed to be a 'Grassed Area'. The road through the proposed car park appears to terminate at an access to this 'Grassed Area'. The applicant states that there are no plans for development in this area and that it is to be given over to soft landscaping.
- 3.10 A landscape plan and SUDs proposals have been submitted in connection with the planning application.
- 3.11 It is proposed that the store will be open between the hours of 8am and 10pm, Monday to Saturday, and 9am to 7pm on Sundays. The store will provide over 30 employment opportunities.
- 3.12 The applicant has submitted the following statements to support the planning application:
- Planning and retail statement;
  - Design and access statement;
  - Transport assessment and addendum;
  - Drainage statement;
  - Geo-environmental report;
  - Ecological appraisal
  - Bat survey
  - Tree survey and arboricultural constraints; and,
  - Air quality assessment.

#### **4.0 BACKGROUND**

- 4.1 Prior to 1974, the site was used as a market garden. After this date the use gradually changed to a landscape contractors and garden centre. The Council entered in to discussions to regularise the unauthorised use and planning permission was granted in April 1986 (ref. no. 0121/86) for the change of use of the site from a market garden to a landscape contractors' yard and garden centre. However, the conditions attached to the consent restricted the change of use to a two year period only and also required the restoration of the site to

a market garden. The intention was to allow opportunity for the business to be relocated.

- 4.2 In May 1987 a planning application was made to remove the abovementioned conditions. The applicants explained that there was no suitable alternative site and that considerable unemployment would result from the closure of the business. The lifting of the agreement was agreed by the Council subject to a legal agreement being used to regulate the use of the site, specifically what areas of the site might be built or used commercially and what landscaping was to be carried out. The applicant agreed to enter in to a legal agreement on this basis. In July 1990 the applicants advised that they were no longer willing to enter in to the agreement. Subsequently, discussions took place relating to the possibility of erecting a new building, rationalising the site and improving its appearance.
- 4.3 In 1996 a planning application (ref. no. 0501/96) was submitted for the erection of a garden centre building at Mayshade. The proposed development was considered by the Council's Regulatory Services Committee in March 1997. The Committee was minded to grant consent subject to conditions, provided the applicants first entered in to a legal agreement with the Council to limit the use of the site to partially a landscape contractors yard and partially the sale of plants and garden centre goods only and to limit the use of the new building to sale of plants and garden centre goods only.
- 4.4 A draft minute of agreement was prepared by the Council and forwarded to the applicants' solicitors. After considering the draft and consulting with their clients they advised the Council that their clients were not willing to enter in to the proposed agreement.
- 4.5 The Regulatory Services Committee reconsidered the proposal at a meeting in December 1997 and decided that it was minded to approve the application for planning permission, subject to conditions and without the need for a legal agreement. The Committee also decided that the Secretary of State should be notified of the intention to grant planning permission. The Secretary of State decided not to call in the application.
- 4.6 In December 2000 a planning application (ref. no. 00/00735/FUL) was received for the erection of a new garden centre building at the site. This proposed development was to supersede the previous application and was the development, when approved, which was implemented. The Committee's decision on the previous garden centre application was a material consideration in the assessment of the 2000 application, therefore no restriction was sought with regards the range of goods to be sold from the unit or on who could operate the business. This in effect granted an unrestricted retail use on the site.
- 4.7 In August 2007 a planning application (ref. no. 07/00579/FUL) was received for the erection and alterations to garden centre. This application was approved.

- 4.8 In July 2013 a planning application (ref. no. 13/00493/DPP) was submitted for an extension to garden centre. The application sought to enclose an area of external sales space and was granted planning permission.
- 4.9 In January 2015 a Certificate of Lawfulness application (ref. no. 15/00020/CL) was submitted to the Planning Authority. The owners of the site were seeking clarification on the formal planning status of the site and contended that the site could be operated as an unrestricted Class 1 retail use, and not just as a garden centre. On account of the decision taken on the 2000 planning application, which used the previous 1996 application as a material consideration, it was established that there was an unrestricted Class 1 retail use in place for the garden centre building. The Planning Authority issued a certificate confirming an unrestricted Class 1 retail use for the following reason:
- With the exception of the land taken up by the car parking area, which forms part of this application, implementation of the proposed use on the land subject of this application would neither have constituted 'development' or have represented a breach of planning control if instituted or begun at the time of application. As such – and with the exception of the extent of the application land taken up car parking – the same use would have been lawful if it had been implemented at the same date (9 January 2015).*
- 4.10 The emerging Midlothian Local Development Plan identifies the site to the south west as a potential housing site, Hs9: Broomieknowe. This site is part of the Council's current preferred strategy for development in Midlothian but is not yet considered committed development. A planning application (ref. no. 14/00405/DPP) has been submitted by Cala Homes for 56 dwellinghouses on the site. This application has not yet been determined.
- 4.11 This application has been called to Planning Committee by Councillor Young in order that matters of coalescence, traffic levels and impact on town centres can be more fully discussed.

## 5.0 CONSULTATIONS

- 5.1 The **Coal Authority** has advised that the site is located within an area at high risk from previous coal mining activities. The applicant has obtained appropriate up-to-date coal mining information for the site and has used this to inform their Coal Mining Risk Assessment, which accompanies the application. The Coal Authority state that the applicant's Phase II Geo-Environmental Assessment establishes that there is sufficient rock cover above the coal seam that void migration to the surface would be prevented. On this basis the Coal Authority has no objection to the planning application for this proposed development.
- 5.2 The **Scottish Environment Protection Agency (SEPA)** initially objected to the application on the grounds of lack of information in respect of surface water drainage. They subsequently removed their objection following the

submission of additional information on drainage submitted by the applicant's agent.

- 5.3 The **Council's Environmental Health Manager** has not objected to the planning application.
- 5.6 The **Council's Policy and Road Safety Manager** has not objected to the application but has requested further details of access, street lighting and SUDS. These details can be covered by condition. The Policy and Road Safety Manager has stated that the applicant should enter in to a Section 75 legal agreement (or similar) in order that a financial contribution to the Council's A7 Environmental Scheme can be secured. This scheme is designed to improve walking, cycling and public transport access on this section of the A7 and its implementation will improve access by non-car users to the proposed unit.
- 5.7 The Policy and Road Safety Manager has also stated that that the proposed improvements to the existing site access have been designed to safely accommodate the additional traffic the new retail unit may generate. In addition, it is also stated that while the improved access will operate satisfactorily within the existing road network there is no guarantee that this would remain the case if the new vehicle access proposed by the applicants for the adjacent housing site (Hs9) were to be introduced. The Policy and Road Safety Manager has formally objected to the proposed signalised junction proposed by the applicant for the neighbouring housing site.
- 5.8 The **Health and Safety Executive's** online system was consulted in respect to the nearby high pressure gas pipeline. The HSE system did not advise against approving the application.
- 5.9 **Scottish Water** has made no comment on the application.
- 5.10 **Bonnyrigg and Lasswade Community Council** has made no comment on the application.

## 6.0 REPRESENTATIONS

- 6.1 Three representations objecting to the application have been received. The main points of objection relate to:
- The potential severe adverse impact that traffic activity at the proposed store will have on Eskbank Road and the nearby A7 roundabout;
  - The potential cumulative impact of a number of proposed developments on the free-flow of traffic in the area;
  - Concern over the deliverability of the proposed realigned access given land ownership issues and potential lack of control over visibility splays;
  - Concern over the adequacy of the proposed visibility splays at the realigned access;
  - The submitted Transport Assessment does not take into account nearby potential development;

- Concerns regarding pedestrian safety, particularly at the access to the application site;
- The developer should contribute to pedestrian improvements to the A7 (linked to the A7 Environmental Improvements);
- Lack of compliance with SESplan and the Midlothian Local Development Plan's policies to support and protect town centres;
- The applicant has not adequately investigated alternative sites which are within or close to town centres;
- Concerns over the accuracy of the applicant's submitted documents to support the application; and
- Potential adverse impact, from deliveries to the site, on the amenity of future residents of the adjacent site to the west.

## 7.0 PLANNING POLICY

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

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

- 7.2 Policy **3 : Town centres and retail** requires Local Development Plans to:
- a) identify town centres and commercial centres clearly defining their roles;
  - b) support and promote the network of centres and identify measures necessary to protect these centres; and,
  - c) promote a sequential approach to the selection of locations for retail and commercial leisure proposals.
- 7.3 Policy **12 : Green Belts** requires Local Development Plans to define and maintain Green Belts around Edinburgh and to:
- a) maintain the identity and character of towns and prevent coalescence;
  - b) direct planned growth to the most appropriate locations and support regeneration;
  - c) maintain the landscape setting of settlements; and,
  - d) provide opportunities for access to open space and countryside.

### Midlothian Local Plan 2008

- 7.4 Policy **RP1: Protection of the Countryside** states that development in the countryside will only be permitted where it is required in connection with the furtherance of an appropriate and established countryside business or activity; is within a designated non-conforming use in the Green Belt; or, it accords with policy DP1. Policy RP1 also states that all development will need to demonstrate a requirement for a countryside location; be of a scale and character appropriate to the rural area; be well integrated into the rural landscape; avoid a significant permanent loss of prime agricultural land; and, take account of accessibility to public transport and services.

- 7.5 Policy **RP2: Protection of the Green Belt** states that development will not be permitted in the Green Belt except where proposals are necessary to agriculture, horticulture or forestry; provide for opportunities for access to the open countryside; are related to other uses appropriate to the rural character of the area; or, accord with policy RP3, proposal ECON1, policy ECON7 or are permitted through policy DP1. In addition, development must not conflict with the overall Green belt objectives to: maintain the identity of the city and Midlothian towns by clearly establishing their physical boundaries and preventing coalescence; provide countryside for recreation and institutional uses of various kinds; and maintain the landscape setting of the city and Midlothian towns.
- 7.6 Policy **RP4: Prime Agricultural Land** states that development will not be permitted where it will lead to the permanent loss of prime agricultural land.
- 7.7 Policy **RP5: Woodland Trees and Hedges** does not permit development that would lead to the direct or indirect loss of woodland or trees which have a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter.
- 7.8 Policy **RP7: Landscape Character** states that development will not be permitted where it may adversely affect the quality of the local landscape. Where development is acceptable, it will respect the local landscape and contribute towards its maintenance and enhancement. New developments will incorporate proposals to:
- Maintain the local diversity and distinctiveness of landscape character including natural and built heritage features of landscape value such as woodland, hedges, ponds, stone walls and historical sites; and,
  - Enhance landscape characteristics where they have been weakened and need improvement and create new landscapes where there are few existing features.
- 7.9 Policy **RP21: Community identity and coalescence** states that development will not be permitted which would result in the physical or visual coalescence of neighbouring communities unless mitigation measures are proposed which would maintain visual separation and protect community identity. Such measures, which may include landscape buffer zones and other community woodland, shall be tailored to the particular circumstances of the location.
- 7.10 Policy **ECON8: Rural development** states that development proposals that will enhance rural economic development opportunities will be supported provided they accord with other policies and are located adjacent to a settlement; is well located in terms of strategic road network; is of an appropriate character and scale; will not introduce unacceptable levels of noise and light into an undisturbed location; can be served by an appropriate access; is capable of being served by water and drainage at reasonable cost; and, is not primarily of a retail nature.



- 7.11 Policy **SHOP1: Town centres** states that proposals that bring about an improvement to the range and quality of retail facilities in town centres will be considered favourably.
- 7.12 Policy **SHOP5: Major retail and commercial leisure development outwith strategic town centres and Straiton** states that major retail development will only be supported outwith town centres if all of the following criteria are met:
- A. There are no suitable alternative sites available within, on the edge of, or sufficiently close to form an effective extension to a strategic town centre, referred to in policy SHOP2, or Straiton Retail Park to accommodate the proposed development or meet the identified needs;
  - B. They are within, on the edge of, or sufficiently close to form an effective extension to other Midlothian town centres;
  - C. The proposals will satisfy a qualitative or quantitative deficiency which cannot be met within or on the edge of a strategic town centre;
  - D. The proposals will not, either individually or cumulatively with other developments, undermine the vitality and viability of existing town centres or major shopping centres of strategic importance, within the expected catchment area of the proposed development;
  - E. The development has, or will be provided with, satisfactory pedestrian, cycling and public transport links;
  - F. Transport impacts are offset by mitigation measures; and,
  - G. The development accords with all relevant Local Plan policies and proposals.
- 7.13 Policy **SHOP7: New neighbourhood shopping facilities** states that new neighbourhood shopping facilities will be permitted where they are within the built-up area and they do not undermine the vitality and viability of any of Midlothian's town centres.
- 7.14 Policy **IMP1: New Development**, this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are transport infrastructure, landscaping, public transport connections, parking in accordance with approved standards, cycling access and facilities, pedestrian access, access for people with mobility issues, traffic and environmental management issues and 'percent for art' provision.
- 7.15 Policy **DP1: Development in the countryside** states that all new buildings in the countryside will respect the character of existing buildings in terms of design, scale and materials used, blend with the landscape, conform with the countryside policies and incorporate sustainable building design.

#### Midlothian Local Development Plan (MLDP)

- 7.16 While the MLDP has not yet been adopted it does represent Midlothian Council's preferred strategy for the future development of the local authority area. As such, the MLDP is a material consideration in the assessment of this application. Of particular relevance are the policies which cover Community

Identity and Coalescence (DEV1), Landscaping in new development (DEV7), Existing Employment Locations (ECON1), Transport Network Interventions (TRAN2), Location of New Retail and Commercial Leisure Facilities (TCR2), Development in the Countryside (RD1), the Green Belt (ENV1), Midlothian's Green Network (ENV2), New Development (IMP1) and Essential Infrastructure Required to Enable New Development to Take Place (IMP2).

- 7.17 The policies mentioned in the preceding paragraph are generally reflective of the policies already set out in the section on Midlothian Local Plan. However, the MLDP sets out requirements for the environmental improvement work for the A7. Also of relevance is the proposed allocation of the neighbouring land to the west as a site for housing (site Hs9).

#### National Policy

- 7.18 The **Scottish Planning Policy** sets out the Scottish Government's policies in respect to a number of planning related matters. The policy sets out the government's position with regards retail developments and development in the Green Belt. In general the SPP seeks to protect town centres from developments which may adversely impact on their vitality and viability.
- 7.19 **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.
- 7.20 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

### **8.0 PLANNING ISSUES**

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

#### The Principle of Development

- 8.2 The site is located within the countryside and Green Belt, as identified in the adopted Midlothian Local Plan.
- 8.3 The proposal for a new retail unit in this location does not comply with the terms of policy RP1 of the local plan as it is not one of the acceptable countryside activities or businesses identified in that policy. Should the principle of development in this location be established it is essential that the proposed development respects the policy requirements in terms of scale, character and integration with the landscape.

- 8.4 The proposal for a new retail unit in this location does not comply with the terms of policy RP2 of the local plan as it does not accord with the criteria set out in this policy. However, should the principle of development be acceptable it will be necessary for the development to comply with the criteria relating to Green Belt objectives. Despite the site already being developed it does not negate the need to comply with the Green Belt objectives. At some sites allocated by the Council in the 2008 local plan the Scottish Government Reporters required Green Belt status to be retained in order that the form of development respects Green Belt objectives.
- 8.5 The site is important, forming part of a buffer against coalescence between Bonnyrigg and Eskbank, and being highly visible from the A7. The nature of the previous garden centre in terms of use and appearance, with areas of outdoor plant sales, appeared less incongruent with the Green Belt designation than a proposed supermarket.
- 8.6 Given that the site has already been extensively developed the current proposal will not lead to the permanent loss of prime agricultural land and, therefore, does not conflict with policy RP4 of the local plan.
- 8.7 The site is not within a town centre, nor can it reasonably be described as being on the edge of a town centre. It is a requirement of Government and Council policy to follow a sequential approach to the assessment of this type of proposal. Policy SHOP5 of the local plan requires proposals to be within, on the edge of, or sufficiently close to form an effective extension to a town centre. This proposal does not meet this criterion, and therefore does not comply with policy SHOP5. Once the sequential options are exhausted, there is no allowance in policy to insert a further tier in the sequence.
- 8.8 Policy SHOP7 of the local plan allows for new neighbourhood shopping facilities, provided the vitality and viability of other centres are not compromised or undermined. This site, on the very edge of settlements and adjacent to a major road does not constitute a neighbourhood shopping centre. In addition, the proposed floorspace of the retail unit is larger than would be expected of one shop in a neighbourhood facility.
- 8.9 The applicant has submitted a Retail Impact Assessment (RIA) to accompany the planning application. An RIA can be a useful method to gauge the change resulting from new development and the potential impacts on town centres from that development. As part of the RIA the applicant has also submitted a sequential assessment of alternative sites. The sequential assessment is heavily influenced by Aldi's specific operational requirements. The sequential assessment submitted concludes that there are no sequentially preferable opportunities.
- 8.10 The conclusions set out in the RIA are highly dependant on assumptions and the applicant's assertions, which can be subjective. However, the RIA concludes that the main loss of trade will fall upon the Tesco store at Hardengreen and, to a lesser extent, at town centre locations. While competition between businesses is not a material consideration in the

assessment of planning applications consideration is given to the potential impacts on the vitality and viability of town centres, and there are numerous planning policies in place which relate to this issue.

- 8.11 The applicant has presented 'town centre health checks' for Bonnyrigg, Dalkeith and Newtongrange, and concludes that the town centres have low vacancy rates and appear to be performing well. The Council's own health checks appear to concur with this assertion.
- 8.12 Midlothian Council commissioned a study of retail patterns in 2012, from RDPC Ltd, which can be used to assist in the determination of planning applications. The study anticipated a continuing surplus in convenience expenditure in the A7 corridor by 2021 of £36m (after allowing for committed development such as at the former Dalkeith Bus Station) with scope for around 3,600sqm floorspace in the corridor. Since the study was completed convenience expenditure has grown more slowly than anticipated (based on available data on national trends and reflecting the changed retail conditions), but it is still anticipated that there is potential for around 2,700sqm gross floorspace in the corridor by the end of the RDPC study period (2021).
- 8.13 The RDPC study also found that in the case of the smaller town centres there was less trade than is required for these centres to continue to invest and prosper longer term. Concern regarding this has resulted in the proposed MLDP seeking to achieve a balance between growing the retail floorspace and protecting town centres, by supporting continuing development in town centres, new neighbourhood stores, a new town centre at Shawfair and a new retail location at Gorebridge or Redheugh.
- 8.14 The current planning proposal is for a retail store of 1,804sqm gross floorspace. There is sufficient potential trade in the corridor to support the new store, but this would leave little potential surplus convenience trade to support further growth in town centres as sites become available (e.g. former Dalkeith High School site or Bonnyrigg depot) or for neighbourhood centres (e.g. Hopefield) or the new retail facility in the southern part of the corridor, all of which would be preferable and comply with planning policy better than the proposal. The proposed development is likely to impact on the deliverability of retail facilities at Redheugh and other less well served settlements along the corridor.
- 8.15 It is likely that the proposed development will draw a small amount of trade away from town centres. While the development should not harm the town centres it is unlikely to support and protect those places. In terms of sustainable development principles and supporting Midlothian's town centres this proposal is not considered to be the right development in the right place.
- 8.16 Despite the assessment above it is necessary to take in to account the current planning status of part of the application site, as clarified by the recently issued Certificate of Lawfulness. The certificate establishes that the existing garden centre benefits from an unrestricted Class 1 retail use. In effect, this means that Aldi (or another retailer) could have operated from the former

garden centre building without the requirement for applying for planning permission. The applicant has advised that they investigated this option, but that it was not something that they wished to progress. The applicant states that they consider that an exception to local plan policies can be justified on account of the established unrestricted Class 1 retail use at the application site.

- 8.17 The siting of garden centres, and horticultural businesses, is appropriate in the countryside and Green Belt but there is an issue where garden centres can legitimately change to other retail uses by virtue of them being within the same use class order. This can result in a position where a business which has a legitimate requirement to be in the countryside and Green Belt can be replaced by an operation which has fewer requirements for such a location. It is for this reason that the Planning Authority generally seeks to restrict garden centres to the sale of goods which would be expected at such a store. As discussed in the Background section above, in 1997 the Regulatory Services Committee of the Council considered that it was appropriate to grant planning permission for the garden centre without applying any restrictions through a legal agreement. The absence of any restriction on the garden centre allows the building to be used as a Class 1 retail use.
- 8.18 The former garden centre building, along with consented extensions, provides for 1,335sqm of covered sales space. In addition to the covered retail space there is an external sales area which also contributes to the retail space at the site, giving a total sales area of 3,235sqm. The gross area of the proposed retail unit is smaller than the total area which could be used for retail on the site of the former garden centre, albeit the proposed building is larger than the existing garden centre building.
- 8.19 The applicant proposes the demolition of all buildings on site and the repositioning of the retail store from the front of the site, which is covered by the Certificate of Lawfulness, to the rear of the site, which is not covered by the certificate. While the new store is to be positioned on a part of the site which does not benefit from the unrestricted Class 1 retail use it would be unreasonable not to take it in to account as a material consideration.
- 8.20 The Certificate of Lawfulness is a significant material consideration in the assessment of this planning application. The decision not to restrict the garden centre to that specific use or to restrict the range of goods sold from the unit, at the time of the original approval has opened up the potential for this site to be used as a Class 1 retail unit. As such, despite the non-compliance with the aims and terms of the various planning policies, it is highly unlikely that the Council would be unsuccessful in seeking to resist the principle of the planning proposal being pursued through this application. In addition, it would not be appropriate to restrict the range of goods sold from the proposed unit as there exists an unrestricted Class 1 retail use on the site at present, albeit temporarily closed but not abandoned.

### Layout and Form of the Development

- 8.21 The applicant proposes to demolish all buildings on the application site and then erect a new retail store at the westernmost section of the site. The applicant claims that the siting of the store was partly influenced by the position of the overhead power lines which traverse the application site.
- 8.22 While it is good urban design practice to ensure that buildings address the street there is sound rationale for siting the new building to the rear of the site. The positioning of the retail unit will allow for strong landscaping to be implemented. A good quality landscaping scheme will mitigate the otherwise poor standard of urban design, which has the building set back in the site and the area in front of the store dominated by a large area of car parking and minimal softening through on-site landscaping.
- 8.23 A strong landscaping scheme will also help in defining the edge of the adjacent towns and will assist in protecting against the coalescence of the neighbouring settlements, which is a particularly acute issue at this section of the A7.
- 8.24 The application site includes a parcel of land referred to as a 'Grassed Area' on the submitted drawings. Despite this area being within the application site boundary the applicant states that it will be retained by the current owners of the site. It is not clear what the owners' aspirations for this part of the site are but it is essential that part of this area is retained as a landscape buffer between the retail unit and the A7. Any buildings on this 'Grassed Area' may struggle to comply with the Green Belt objectives as they will increase the density of development and could adversely impact on the landscape character of the area. While the development will not result in the loss of a green field site from within the Green Belt it is still necessary for the development to comply with the Green Belt objectives.
- 8.25 The applicant proposes to lay this 'Grassed Area' to soft landscaping. However, it needs to be part of the strategic plan for the whole site, by softening the impact of the development, improving settlement containment and protecting against coalescence. Despite the site being brown field previously it is essential to improve the landscaping in order to soften the impact of the larger building and parking area. The current application, if supported, should provide an opportunity to enhance the landscape and not degrade it.

### Design and Materials

- 8.26 The application is for a single storey flat roof retail unit with rectangular footprint. The proposed building is a standard product which utilises a non-standard palate of finishing materials. Given the sensitive location of the site, within the countryside and Green Belt, the applicant has proposed the use of timber cladding which successfully responds to its setting. Timber cladding is an appropriate finishing material for the development of sites which are remote from the built-up area.



- 8.27 Architectural interest is created in the regular form of the building through the treatment of the entrance canopy and fenestration, with large areas of glazing and high level windows.
- 8.28 While the quality of architecture employed for this proposal is better than the standardised product seen in other locations, the sensitive nature of the site required an improved standard of design. It would not have been appropriate to have proposed a building which took no account of its setting.
- 8.29 Improvements have been made to the appearance of the delivery area during the course of the proposal. The delivery area is to the front of the building, being the first feature seen when arriving at the site by car. There are logistical reasons for the delivery area requiring to be sited in this location but some effort has been made to effectively screen this functioning service yard area without compromising usability and safety.
- 8.30 The overall design of the proposal is appropriate for this site, and paired with a quality landscape plan will result in the proposed development not having a significant adverse impact on the character and appearance of the area.

#### SUDS

- 8.31 Appropriate measures have been proposed in order to adequately deal with surface water drainage. SEPA removed an earlier objection subsequent to an appropriate scheme being proposed. There are still some detailed matters regarding the SUDs system that is yet to be resolved, e.g. the combined landscape feature and filter trench adjacent to the delivery area.

#### Landscaping

- 8.32 The application site is located on land designated as being in the Green Belt. It is essential that a strong landscape buffer is achieved along the A7 corridor in order to provide visual separation between the settlements of Eskbank and Bonnyrigg.
- 8.33 The existing planting along the A7 corridor provides a good and robust landscape separation and this will need to be replicated on the application site. When the garden centre was originally allowed it was a requirement that there was continuous planting along the A7.
- 8.34 The existing mixed hedging along the boundary of the site was originally proposed to be removed and replaced with Portuguese Laurel. The proposed hedge was inappropriate as it is too suburban in character for this countryside location. The applicant has now agreed that the existing hedge should be retained. The hedge should be extended along the full roadside edge of the site, with the proposed ornamental shrubs and trees (indigenous tree species) planted on the inside of the hedge. The planting requires to be increased along the boundary adjacent to the area identified by the applicant as the 'Grassed Area'. In addition, the proposed density of the tree planting requires

to be increased in order to achieve a good and robust visual containment of the site, without completely screening it. Incorporating these amendments will ensure consistency of landscaping with the adjacent community hospital site.

- 8.35 The proposed planting along the western boundary consist solely of low growing shrubs. In order to ensure strong visual separation between the application site and neighbouring site this area should be planted up with larger growing species.
- 8.36 As mentioned in the SUDs section above it will be necessary for the applicant to provide more clarity regarding the landscaped strip which is located above the SUDs filter strip. It is necessary to establish whether it is technically possible to achieve the level of landscaping alongside such a SUDs feature.
- 8.37 The proposed landscape scheme requires to be amended in order to achieve the necessary separation between settlements and to ensure that the plant species selected are appropriate to their position in the countryside and Green Belt and not a suburban setting.

#### Transportation Issues

- 8.38 The owner of the neighbouring proposed residential site at Broomieknowe has stated that the applicant does not have control over the visibility at the access. The applicant has subsequently submitted additional information to demonstrate that there will be no significant impingement on the acceptable visibility splay at the access to the application site.
- 8.39 In terms of the transportation section of this report it is necessary to give some consideration to the proposed residential development of the adjacent site (by Cala), to the west, which is identified as site Hs9 in the proposed MLDP. An application is currently being assessed by the Planning Authority for this site. While the housing site forms part of the Council's preferred development strategy for Midlothian it is not yet a committed site and has attracted objections which are due for consideration by a Reporter at the forthcoming Examination into the MLDP (Proposed Plan).
- 8.40 The access proposed by the applicants to the neighbouring residential site is in close proximity to the existing access to the Mayshade application site. The Council's Policy and Road Safety Manager has formally objected to the signalised junction being proposed by the applicant for the residential scheme on account of the introduction of traffic signals on this section of road being unnecessary and resulting in unacceptable delays and potentially reducing road safety.
- 8.41 The Policy and Road Safety Manager is, however, satisfied that the proposed alterations to the access to the Mayshade site have been designed to safely accommodate the additional traffic the new retail unit may generate. There is, however, no guarantee that the access to the site will be successful should the proposed access to the neighbouring residential development be implemented. The introduction of a signalised junction in this area would likely

result in additional delays to traffic currently using Eskbank Road, and given the close proximity to the Mayshade access may have a negative impact on traffic using that access.

- 8.42 The applicant was asked to submit an addition to their Transport Assessment in order to provide information on whether the development of the Mayshade site will compromise the Council's preferred development strategy, in particular the Hs9 site.
- 8.43 The current unrestricted Class 1 retail use at the garden centre building permits the site to be used for food (or other) retail for up to 1,335sqm. The current proposal comprises the construction of 1,804sqm, representing an uplift of 469sqm over the consented building. The current proposal only represents a small scale increase in the retail floorspace, beyond the existing floorspace, which is a material consideration in the assessment of the application.
- 8.44 The detailed information submitted demonstrates that, based on traffic generation levels, it is possible for the retail development at Mayshade and the residential development at Broomieknowe to co-exist without having a detrimental impact on one another or on highway safety in the area. However, it would be necessary for the applicant for the residential development to reconsider the proposed access, which the applicant is already being asked to do by the Council as Roads Authority. The Council's Policy and Road Safety Manager has identified an alternative access to the neighbouring residential site which would have less impact on traffic using Eskbank Road than the proposed signalised junction.
- 8.45 The MLDP highlights that the Council is seeking to carry out some environmental improvements to the A7 corridor. These improvements include measures to make the A7, at the point near the application site, a public transport corridor with improved cycle and pedestrian links. The application will rely on these improved cycle and pedestrian links in order to ensure that the proposed development provides access to non-car users and to ensure it is as sustainable as possible. It will be necessary for the developer to provide a financial contribution to the A7 Environmental Improvements Scheme.
- 8.46 The proposed development should not have a significant impact on traffic movements in the area as compared to what would be experienced if the business were to operate from the existing garden centre building.

#### Ground Conditions

- 8.47 The Coal Authority is satisfied that the legacy coal mining issues are not significant and that there is no risk posed to the proposed development.

#### Ecology

- 8.48 The proposed development does not give rise to any significant concerns regarding unacceptable impacts on local biodiversity.

### Developer Contributions

- 8.49 As mentioned in the Transportation section above, it will be necessary for the developer to provide a financial contribution towards the A7 Environmental Improvements. This developer contribution can be secured through a planning legal agreement.

### Other Matters

- 8.50 Given that the neighbouring site to the west is currently part of the Council's preferred strategy for development as a potential residential site it is necessary to assess whether the proposed development will have an adverse impact on the amenity of any potential neighbouring properties. Given the presence of a high pressure gas pipeline between the proposed retail store and the residential site there is a reasonable space between the proposed retail unit and the nearest proposed houses. Given this, the proposed operating hours of the retail unit and the proposed arrangements for servicing the store there is unlikely to be any significant adverse impact on the amenity of the proposed residential units. Deliveries to the retail unit will not be so regular so as to have an adverse impact on amenity. In any event, the established use of the site could result in more vehicles than have been proposed.
- 8.51 Policy IMP1 of the local plan required new development to provide a percent for art. The applicant has not made any proposal to cover this matter but it can be secured through a planning condition.
- 8.52 The applicant has submitted an air quality assessment. The assessment indicates that air quality objectives will not be exceeded and is, therefore, considered to be acceptable.
- 8.53 Unfortunately the applicant's first planning statement made some references to a proposed development in Dundee. One objector has made reference to this error in their representation, also making the point that there may be other inaccuracies in the submission. The planning statement was amended by the applicant to remove references to the Dundee proposal.

## **9.0 RECOMMENDATION**

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

*The development's non-compliance with policies RP1, RP2, SHOP1, SHOP5 and SHOP7 of the adopted Midlothian Local Plan is justified on account of the site benefiting from an unrestricted retail use which was established by the former garden centre business. The siting of the proposed retail unit, layout of the site and scheme of landscaping will protect against the coalescence of settlements. The design of the proposed retail unit will positively contribute to the appearance of the site, which is in a sensitive countryside location.*

Subject to:

- (i) The prior signing of a legal agreement to secure developer contributions towards the A7 Environmental Improvements scheme.

(ii) and the following conditions:

1. Development shall not begin until details of a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
  - ii. proposed new planting, including trees, shrubs, hedging, wildflowers and grassed areas;
  - iii. schedule of plants to comprise species, plant sizes and proposed numbers/density;
  - iv. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the car park and open spaces shall be completed prior to the retail unit being open for business. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
  - v. location and design of any proposed walls, fences and gates, including those surrounding ancillary structures; and,
  - vi. drainage details and sustainable urban drainage systems to manage water runoff.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (iv). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

**Reason:** *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP1 and RP2 of the Midlothian Local Plan and national planning guidance and advice.*

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

**Reason:** *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP1*

*and RP2 of the Midlothian Local Plan and national planning guidance and advice.*

3. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
  - ii. proposed vehicular, cycle and pedestrian access;
  - iii. proposed visibility splays, traffic calming measures, lighting and signage;
  - iv. proposed construction traffic access and haulage routes;
  - 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.*

4. 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.

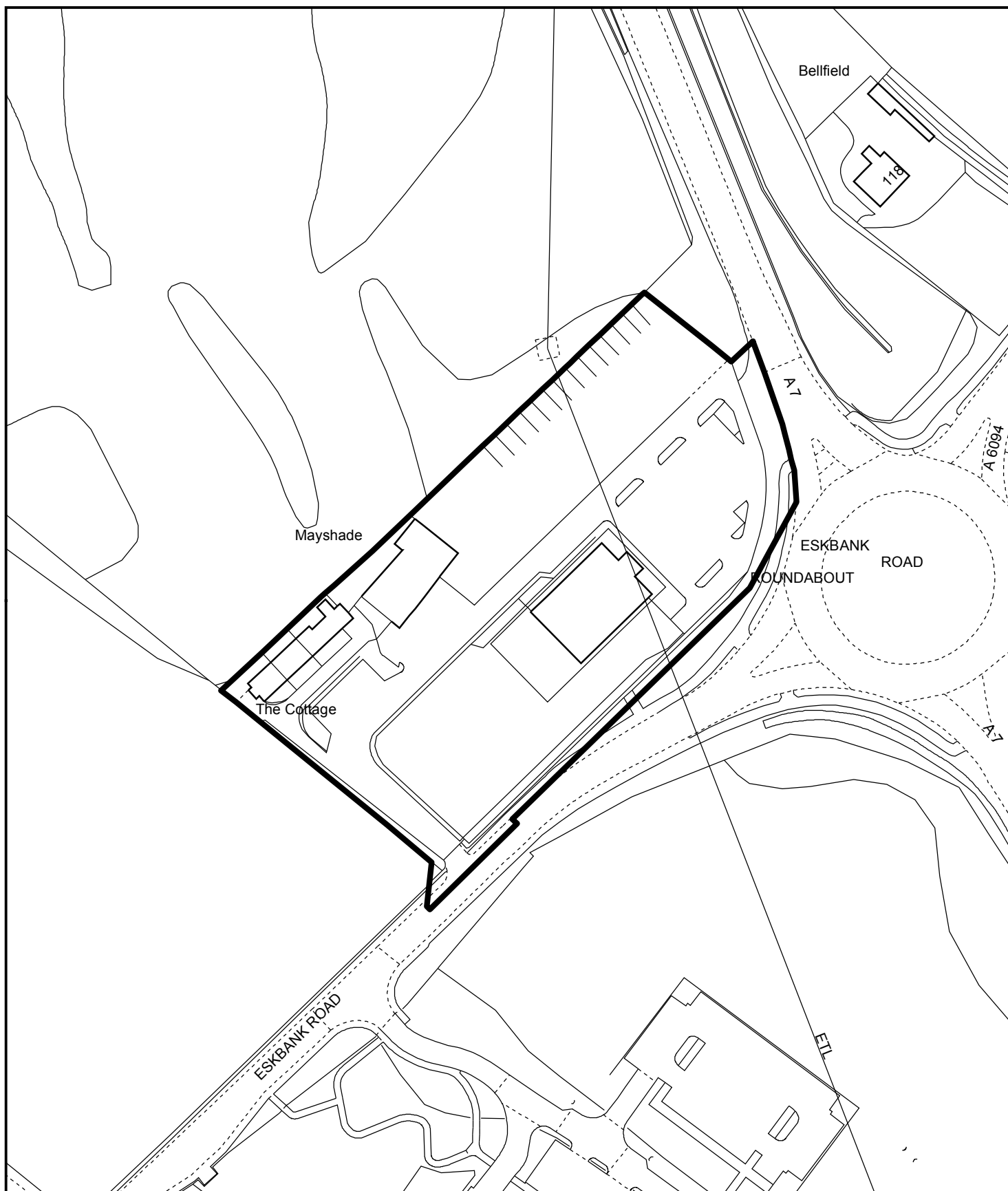
***Reason:*** *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policy IMP1 of the Midlothian Local Plan and national planning guidance and advice.*

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

<b>Date:</b>	<b>05 January 2015</b>
<b>Application No:</b>	<b>15/00692/DPP</b>
<b>Applicant:</b>	<b>Aldi Stores Ltd, c/o agent</b>
<b>Agent:</b>	<b>GVA Grimley Ltd, Quayside House, 127 Fountainbridge, Edinburgh, EH3 9QG</b>
<b>Validation Date:</b>	<b>24 August 2015</b>



**Contact Person:** Duncan Robertson, Senior Planning Officer  
**Tel No:** 0131 271 3317  
**Background Papers:** 0121/86; 0501/96; 00/00735/FUL; 07/00579/FUL;  
13/00493/DPP; 15/00020/CL



**Education, Economy  
& Communities**  
Midlothian Council  
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Dalkeith  
EH22 3AA

Land at Mayshade Garden Centre, Eskbank Road,  
Bonnyrigg

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File No. 15/00692/DPP

Scale: 1:1,500





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**APPLICATION FOR PLANNING PERMISSION 14/00405/DPP FOR THE  
ERECTION OF 56 DWELLINGHOUSES, ASSOCIATED INFRASTRUCTURE AND  
LANDSCAPING AT LAND 160M SOUTH WEST OF MAYSHADE GARDEN  
CENTRE, ESKBANK ROAD, BONNYRIGG**

Report by Head of Communities and Economy

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

- 1.1** The application is for the erection of 56 houses and associated access roads and sustainable urban drainage systems (SUDS) at land 160 metres South West of Mayshade Garden Centre, Eskbank Road, Bonnyrigg. There have been 89 representations and consultation responses from The Coal Authority, the Scottish Environment Protection Agency, The Health and Safety Executive, Bonnyrigg and Lasswade Community Council, the Council's Head of Education, Policy and Road Safety Manager and Environmental Health Manager. The relevant development plan policies are policies 5, 6, 7, 12 and 13 of the Edinburgh and South East Scotland Strategic Development Plan (2013) and policies RP1, RP2, RP4, RP5, RP7, RP8, HOUS4 and IMP1, 2 and 3 of the adopted Midlothian Local Plan (2008). The Midlothian Local Development Plan development strategy (approved at Council 16 December 2014) is a material consideration in the assessment of the application. The relevant policies of the Midlothian Local Development Plan are STRAT3, DEV1, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, DEV10, TRAN1, TRAN2, TRAN5, ENV1, ENV7, ENV9, ENV11, NRG3, NRG4, NRG6, IMP1, IMP2, IMP3 and IMP4. The proposed development is contrary to the current development plan. The Planning Authority considers that there is sufficient prejudice to the proper preparation and conclusion to the Midlothian Local Development Plan (MLDP) process that planning permission should be refused at this time.

## **2.0 LOCATION AND SITE DESCRIPTION**

- 2.1** The application site is located on the north-eastern edge of the built up area of Bonnyrigg. It extends to approximately 3.1 hectares and forms the practice ground for Broomieknowe Golf Club. The site slopes from its low point to the south east up to a high point at the north west, with a difference of 15m between lowest and highest points.

- 2.2 The site is bounded by Broomieknowe Golf Course to the north. A mature line of trees defines this boundary. The former Mayshade Garden Centre is sited to the north east of the application site. Eskbank Road runs along the south east boundary of the site, with the Midlothian Community Hospital beyond. To the south west of the application site are the residential areas of Viewfield, Viewbank Avenue, Pendreich Grove and Pendreich Avenue, comprising single and two storey post war housing stock.
- 2.3 Viewbank Avenue is located at the southern corner of the site and leads to a track which runs the entire length of the south-western boundary of the application site. The only vehicular access to the application site is taken from the north western end of this track. There is no vehicular access to the site from the Eskbank Road end of the site. A bus stop and shelter is located on Eskbank Road, at the front of the site.
- 2.4 A mature hedge (early-mature Leyland cypress trees) runs along the boundary that the site shares with Eskbank Road and the southern end of Viewbank Avenue. In addition, a strong hedge (Myrobalan plum) demarks almost the entire length of the south-western boundary of the site.
- 2.5 A high pressure gas pipeline runs in a north west to south east direction, parallel with the main axis of the site. It is located at the north-eastern part of the site.

### **3.0 PROPOSAL**

- 3.1 The application proposes detailed planning permission for a residential development of 56 two-storey dwellinghouses on the practice ground for Broomieknowe Golf Club at the north east side of Bonnyrigg.
- 3.2 All of the houses have pitched roofs which have ridgelines which, in general, run parallel with the road to which they front. Some of the house types have projecting gable features on their front elevations. Nine different house types are proposed. Six of the nine house types include integral garages, while one of the house types has an external, detached, garage on site.
- 3.3 The applicant proposes a palette of materials which includes reconstituted stone, dry dash render and grey concrete roof tiles. The applicant has no proposals for alternative materials in an Area of Improved Quality. Changes between materials are to be defined horizontally, with the reconstituted stone used generally at ground floor on the front elevations and render above.
- 3.4 The applicant proposes 42 dwellings for private sale and 14 affordable housing units. The proposal comprises 42 detached houses, six terraced houses and eight cottage flats (two four-in-a-blocks). It is proposed that there will be 8 one bedroom flats, 6 three bedroom dwellinghouses, 17 four bedroom dwellings and 25 five bedroom units.
- 3.5 Given the shape of the application site, a generally elongated rectangular shape, the developer has proposed a linear layout. The layout of the main part

of the development is of an extended cul-de-sac with properties on either side of the road. Within the cul-de-sac there are two areas where properties are arranged around a square, with a landscaped parking feature in the middle of the road. There is a further, much smaller, cul-de-sac within the site and two areas where the dwellings are laid out in a more regular, linear pattern, facing on to open space.

- 3.6 The applicant proposes a new access to the application site at a point directly opposite the existing access to the Midlothian Community Hospital. It is proposed that this new junction arrangement will be controlled by traffic lights.
- 3.7 There will be pedestrian access points into the site alongside the new vehicular access on Eskbank Road, at Viewbank Avenue and at the north end of the track alongside the south-western side of the application site.
- 3.8 The applicant proposes a surface water drainage system with two levels of water treatment. There will be porous paving on the roads and driveways, side of driveway filter trenches to treat roof water and an area for attenuation in a cellular system.
- 3.9 No details have been provided in relation to the provision of a children's play area.
- 3.10 The following reports have been submitted along with the planning application:
  - Planning Statement;
  - Design and access statement;
  - Transport Assessment;
  - Tree Survey and Arboricultural Constraints;
  - Consultation Report;
  - Site Investigation Report/Mining Report; and,
  - Ecological Report
- 3.11 The applicant has also submitted numerous references to appeal decisions for other planning proposals in nearby local authority areas, and one for a site in Midlothian.

#### **4.0 BACKGROUND**

- 4.1 The applicant carried out a Pre-Application Consultation exercise in May/June 2013 in connection with the proposed development. The applicant claims to have taken account of concerns voiced during the pre-application consultation process and has submitted a report of their findings to accompany their application.
- 4.2 The Midlothian Local Development Plan (MLDP): Proposed Plan was published in May 2015. Over 800 representations have been received and are currently being processed and considered. The sites allocated through the MLDP will be tested at examination by a Scottish Government Reporter.

- 4.3 In August 2015 the Planning Committee agreed a report which concluded that, in the interests of fairness and transparency, it was intended not to determine applications for sites being allocated through the MLDP process until it had progressed through examination and the Council had adopted the plan, unless the Committee wished to consider a particular application.
- 4.4 The applicant for the proposal has requested that the application be considered at this Planning Committee. The applicant is aware that the Planning Authority considers the positive determination of this application to be premature.

## 5.0 CONSULTATIONS

- 5.1 The **Coal Authority** has advised that the site is located within an area which is at high risk from legacy coal mining activities. The applicant has obtained appropriate up-to-date coal mining information for the site and has used this to inform their Coal Mining Risk Assessment which accompanies the application. On this basis the Coal Authority is satisfied with the broad conclusions of the applicant's report, that the coal mining legacy issues are not significant and do not pose a risk to the proposed development, and therefore has no objection to the proposed development.
- 5.2 The **Scottish Environment Protection Agency (SEPA)** does not object to the planning application.
- 5.3 The **Health and Safety Executive** online tool was consulted on the planning application, given the close proximity of the development to the high-pressure gas pipeline. The consultation tool did not advise against approving planning permission.
- 5.4 **Bonnyrigg and Lasswade Community Council** have adopted a neutral position with regards the planning application, after initially objecting. They state that this is to reflect the split in the community's views regarding the proposed development.
- 5.5 The Community Council were initially concerned that the site does not form part of the current Midlothian Local Plan and that the emerging plan has not yet been approved. They stated that the application should await the outcome of the emerging Midlothian Local Development Plan.
- 5.6 The Community Council have also raised some detailed concerns about the significant levels of growth in Bonnyrigg over the past 5/6 years and that it has grown nearly 20% in size. The Community Council are concerned that the services in Bonnyrigg are struggling to keep pace with the approved levels of development. The Community Council has requested that the Council accurately detail the developer contributions required towards the increased demand on existing services, such as roads, schools, recreation and health. The Community Council has also raised concerns regarding Green Belt



erosion, coalescence with Eskbank, loss of amenities and impact of traffic on the local road network.

5.7 The Community Council advise that the residents of Viewbank Avenue do not wish the access to be taken via this road and that the golf club would prefer to access the site via an entrance at the Community Hospital junction. However there was also some concern that a signalised junction may exacerbate rush hour tail backs. Ultimately the Community Council has stated that they would prefer to leave the access arrangements to the traffic experts, provided this will not adversely impact on traffic flow.

5.8 The Council's **Head of Education** advises that the development of 56 dwellinghouses would give rise to the following number of pupils:

Primary Non Denominational	16
Primary Denominational	2
Secondary Non denominational	11
Secondary Denominational	1

5.9 Primary Non-Denominational provision at Lasswade Primary School is at capacity and an extension will be required to make it a full two stream school.

5.10 Primary Denominational provision will be at St Mary's RC Primary School, which currently has spare capacity to accommodate this development.

5.11 Secondary Non-Denominational provision will be at Lasswade High School. Additional secondary school capacity will be required and as a consequence a developer contribution will be required towards the consequential costs of this additional provision.

5.12 With regard to Secondary Denominational provision a contribution of £135 per dwelling towards St David's High School, Dalkeith is required.

5.13 The **Council's Policy and Road Safety Manager** has objected to the planning application. The objection is not to the principle of the residential development but in relation to the detail of the proposed access arrangements.

5.14 The proposed access introduces traffic signals to this section of Eskbank Road. The Policy and Road Safety Manager considers that the traffic signals are unnecessary and would result in unacceptable delays, leading to a reduction in road safety at this location. The Policy and Road Safety Manager provides the following nine reasons for their objection:

- *Any delay to the public, that is unnecessary, is not acceptable (this is an 'A Class' commuter route);*
- *Signals bring with them a risk of shunt accidents. This is intensified by cycle time and not comparable to any delays arising from the existing pedestrian crossing;*

- *Currently there is a purpose built pedestrian route from the hospital to a signalised pedestrian crossing, with a bus stop lay-by each side of the road, downstream from the signals. The path within the hospital site exits at the crossing point, providing a safe crossing and encouraging walking and public transport use. The proposed layout shows this path leading out to two bus stop lay-bys, opposite each other. This would induce crossing away from the junction, possibly on the widest section (including the lay-bys) where there will be increased vehicle conflict (buses entering and exiting lay-bys);*
- *Buses would find exiting the lay-by prior to the signals difficult in a queue but also more risky as drivers will have their attention on the traffic signals;*
- *Two bus lay-bys opposite each other, not only provide a situation where pedestrians may cross and be on live carriageway on the widest section of road but are generally avoided as the conflict associated with buses pulling in and out is multiplied if they are both doing so at the same time;*
- *The traffic signals have taken into account current traffic, possibly natural growth in traffic, but not additional traffic that has been recently modelled for the proposed development plan (the cumulative effect);*
- *There are alternatives to the signalised and non-signalised junctions that were compared in the submitted road safety audit. The audit did not take account of other options, status quo, or the community hospital and its pedestrian and public transport routes;*
- *Eskbank Road has residential entrances on both sides at regular intervals that service 'way in excess' the number of vehicles proposed by this development. It does not sit well with this, could attract calls for more, could cause issues with drivers being less aware of vehicles coming from these accesses; and*
- *The additional equipment which would require to be installed as part of the new traffic signals would have to be maintained and serviced by the Council and would put an additional strain on limited Council budgets.*

5.15 The Council's **Environmental Health Manager** does not object to the planning application but does recommend that site contamination matters are adequately dealt with through planning conditions and that construction hours are limited.

5.16 **Scottish Water** has made no comment.

## 6.0 REPRESENTATIONS

6.1 There have been 89 letters of representation received in response to the planning application. There have been 46 letters of objection and 43 letters of support.

6.2 Among the letters of objection is a petition signed by 19 residents of Pendreich Grove and Pendreich Avenue. The signatories of this petition have also submitted their own letters of objection. The objectors to the application raise the following concerns:

- The site is allocated as Green Belt in the adopted local plan;
- The development will result in the coalescence of communities;
- The proposed development is a departure from the adopted planning policies;
- The proposed development will generate a level of traffic which will have a detrimental impact on the free flow of vehicles and road safety in the area;
- The size of the proposed houses is out of scale with the surrounding area;
- The proposed development will have an adverse impact on the character and appearance of the area;
- The height and proximity of the proposed houses will have a significant adverse impact on the privacy of existing residents;
- The proposed development will have an adverse impact on wildlife in the area;
- Bonnyrigg's health centre is at capacity and this development will result in longer waiting times for appointments;
- There is a concern regarding the loss of the land as a sports facility and it is considered that the land should be used for youth development; and,
- The proposed development will result in the loss of a countryside view for existing residents.

6.3 Those supporting the application have raised the following matters:

- The site is currently an eyesore and this development will ensure that it is tidied up;
- The proposed development will enhance the appearance of the area;
- The development will be a financial benefit to the golf club, which is an important local facility. The income will enable the upgrades required to the golf course and will ensure the longer term security of the club;
- The income from the development will ensure that the golf club does not need to sell off other land assets, thereby securing other parts of the Green Belt;
- The development will be a significant benefit to local area, economy and local businesses;
- There is a perception that the proposal is a quality development by quality builder;
- The proposed development includes much needed affordable homes; and,
- There will be no loss of Green Belt if the development goes ahead given the current appearance of site.

6.4 Of the 43 letters of support six are based on the access to the development being taken directly from Eskbank Road as proposed in the planning application. It is likely that those supporting the application based on the proposed access could object if the access is repositioned.

## 7.0 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan, approved in June 2013 and the Midlothian Local Plan, adopted in December 2008. Also relevant are the provisions of the Midlothian Local Development Plan (MLDP) development strategy approved by the Council at its meeting of 16 December 2014, as well as current and emerging Scottish Government Planning Policy. The following policies are relevant to the proposal:

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

- 7.2 **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.
- 7.3 **Policy 6** (Housing land flexibility) states that Planning Authorities shall maintain a five years' effective housing land supply at all times. Planning Authorities may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the Local Development Plan.
- 7.4 **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 granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria:
- The development will be in keeping with the character of the settlement and local area;
  - The development will not undermine green belt objectives; and,
  - Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.
- 7.5 **Policy 12** (Green Belts) requires Local Development Plans to define and maintain Green Belts around Edinburgh whilst ensuring that the strategic growth requirements of the Strategic Development Plan can be accommodated. Local Development Plans should define the types of development appropriate within Green Belts.
- 7.6 **Policy 13** (Other countryside designations) requires Local Development Plans to review and justify additions or deletions to other countryside designations fulfilling a similar function to those of the Green Belt as appropriate. Opportunities for contributing to the Green Network proposals should also be identified.

### The Midlothian Local Plan 2008 (MLP)

- 7.7 The MLP is the adopted Local Plan.

- 7.8 All of the land subject of this planning application is outwith the settlement boundary of Bonnyrigg and is designated as countryside, Green Belt and prime agricultural land.
- 7.9 Policy **RP1: Protection of the Countryside** states that development in the countryside will only be permitted if: it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation, tourism, or waste disposal (where this is shown to be essential as a method of site restoration); it is within a designated non-conforming use in the Green Belt; or it accords with policy DP1.
- 7.10 Policy **RP2: Protection of the Green Belt** advises that Development will not be permitted in the Green Belt except for proposals that:
- A. are necessary to agriculture, horticulture or forestry; or
  - B. are for opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
  - C. are related to other uses appropriate to the rural character of the area; or
  - D. are in accord with policy RP3, ECON1, ECON7 or are permitted through policy DP1.

Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt.

- 7.11 Policy **RP4: Prime Agricultural Land** states that development will not be permitted which leads to the permanent loss of prime agricultural land (Classes 1, 2 and 3.1 of the Macaulay Institute Land Classification for Agricultural system) unless: A. the site is allocated to meet Structure Plan requirements; or B. there is a location justification for the development which outweighs the environmental or economic interest served by retaining the farmland in productive use; and C. the development accords with all other relevant Local Plan policies and proposals.
- 7.12 Policy **RP5: Woodland Trees and Hedges** does not permit development that would lead to the direct or indirect loss of woodland which has a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter.
- 7.13 Policy **RP7: Landscape Character** which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required.
- 7.14 Policy **RP8: Water Environment** aims to prevent damage to water environment, including groundwater and requires compliance with SEPA's guidance on SUDs.

7.15 Policy **HOUS4: Affordable Housing** requires that on residential sites allocated in this Local Plan and on windfall sites identified during the plan period, provision shall be required for affordable housing units equal to or exceeding 25% of the total site capacity, as follows:

- for sites of less than 15 units (or less than 0.5 hectares in size) no provision will be sought;
- for sites of between 15 and 49 units (or 0.5 to 1.6 hectares in size) there will be no provision for the first 14 units thereafter 25% of the remaining units will be for affordable housing
- for sites of 50 units and over (or larger than 1.6 hectares in size), there will be a requirement for 25% of the total units to be for affordable housing.

Lower levels of provision, or a commuted sum, may be acceptable where this has been fully justified. Supplementary planning guidance for the affordable housing provision shall provide advice on: the acceptable tenure split between social and low cost housing; possible delivery mechanisms; the scope for commuted sums; and other relevant matters as necessary;

7.16 Policy **IMP1: New Development**, this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are transport infrastructure, landscaping, public transport connections, including bus stops and shelters, parking in accordance with approved standards, cycling access and facilities, pedestrian access, acceptable alternative access routes, access for people with mobility issues, traffic and environmental management issues, protection/management/compensation for natural and conservation interests affected, archaeological provision and 'percent for art' provision;

7.17 Policy **IMP2: Essential Infrastructure Required to enable New Development to Take Place**, states that new development will not take place until provision has been made for essential infrastructure and environmental requirements, related to the scale and impact of the proposal. This includes essential roads infrastructure, protecting valuable environmental assets within or adjacent to the site and compensation for any losses including alternative provision where appropriate. In this case the need to upgrade junctions and access arrangements will come through a Traffic Assessment and specific requirements may arise from water and drainage and flood risk assessments;

7.18 Policy **IMP3: Developer Contributions Towards Facility Deficiencies** states that in addition to essential infrastructure requirements set out in policy IMP2, contributions will be required from proposal HOUS1 and HOUS2 developers to remedy any deficiencies in local facilities and amenities identified within the community which result from the additional housing, including leisure, local shops (subject to favourable assessments of prospects for commercial viability) and open space. Legal agreements can be used to secure the appropriate developer contributions.



### Midlothian Local Development Plan (MLDP)

- 7.19 Midlothian Council's Local Development Plan development strategy was approved by the Council at its meeting of 16 December 2014. The development strategy supports the provision of an indicative 55 housing units on the Broomieknowe site (Hs9). The following policies, whilst not adopted, are relevant in the consideration of sites allocated in the emerging local development plan:
- 7.20 Policy **STRAT3** of the MLDP states that strategic land allocations identified in the local development will be supported provided they accord with all other policies.
- 7.21 Policy **DEV1** states that development will not be permitted where it would result in the physical or visual coalescence of neighbouring communities unless adequate mitigation measures are proposed. Policy **DEV2** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area. Policy **DEV3** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Policy **DEV5** sets out the requirements for development with regards to sustainability principles. Policy **DEV6** sets out design guidance for new developments. Policy **DEV7** sets out the requirements for landscaping in new developments. Policy **DEV9** sets out the necessary open space for new developments. Policy **DEV10** sets out the circumstances where the redevelopment of outdoor sports facilities for alternative uses would be acceptable.
- 7.22 Policy **TRAN1** aims to encourage sustainable modes of travel. Policy **TRAN2** highlights the various transport interventions required across the Council area, including the A7 urbanisation scheme. Policy **TRAN5** seeks the provision of electric vehicle charging points in new developments.
- 7.23 Policy **ENV1** seeks to ensure that development does not conflict with the overall objectives of the Green Belt. Policy **ENV7** aims to protect the landscape character of the area. Policy **ENV9** seeks to protect developments from flooding, both from rivers and surface water. Policy **ENV11** seeks to protect existing woodlands, trees and hedges where they contribute to the character, appearance, amenity, biodiversity, shelter or recreation in an area.
- 7.24 The **NRG** policies in the local development plan seek to reduce energy use and improve energy efficiency of developments.
- 7.25 The **IMP** policies in the MLDP identify where there are deficiencies in services, infrastructure and facilities as a result of developments that these should be resolved through those developments.

## Scottish Planning Policy

- 7.26 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing and development on the Green Belt.
- 7.27 **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.
- 7.28 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

## **8.0 PLANNING ISSUES**

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

### The Principle of Development

- 8.2 The application site is located within the Green Belt, as indicated in the adopted Midlothian Local Plan. Therefore, any development on this site must comply with the Protection of the Green Belt policy (RP2) of that local plan. Development will not be permitted in this area unless it is essential for the furtherance of agriculture, horticulture, forestry, outdoor sport or outdoor recreation and are related to other uses appropriate to the rural character of the area. The policy does not provide for residential developments in the Green Belt. The proposed residential development is not required in connection with an established use in the Green Belt. Thereby the proposed development is contrary to adopted Midlothian Local Plan policy RP2 (Protection of the Green Belt).
- 8.3 In addition, the proposed development is also contrary to policy RP1 (Protection of the Countryside) of the adopted local plan, as the development is not required for the furtherance of an agricultural use or other use appropriate to the countryside. Furthermore, the proposed development would result in the permanent loss of prime agricultural land. While the site has not been used as productive farmland for some time given its use the land has not been permanently lost to agriculture, which would have been the case had there been some form of physical development on the site. At this time there is no overriding justification for the development which outweighs the environmental or economic interests served by retaining the land in a condition which could see it revert to agricultural land. Therefore, the proposed development is contrary to policy RP4 (Prime Agricultural Land) of the adopted local plan.

- 8.4 The proposed development is clearly contrary to the adopted Midlothian Local Plan. It is therefore essential to consider any material considerations which could have a bearing on the assessment of the application.
- 8.5 The site is identified as a proposed housing site in the MLDP as part of the Council's preferred development strategy for the Midlothian local authority area. However, that plan has not yet been adopted. There are objections to the allocation of this site and to the loss of Green Belt land. There are also representations of support in connection with the allocation of this site. In terms of the allocation of site Hs9 in the MLDP there have been 129 objections and 107 supporters. The proposed allocation of the site for housing in the MLDP, and the wider issue of allocating housing on Green Belt land, have not yet been considered through the MLDP examination process.
- 8.6 While the allocation of this site does form part of the Council's settled preferred development strategy it is also the Council's desire, as expressed by Planning Committee on 25 August 2015, that, in the interests of fairness and transparency, no applications for potential allocated sites should be determined in advance of examination and adoption of the MLDP. This approach ensures that those engaged in the planning process are not disenfranchised by a decision being taken regarding the site before a Reporter has the opportunity to consider their representations. There have been more representations submitted in connection with the allocation of the site (236) than those submitted in connection with the planning application (89). The small scale economic benefit generated by approving this proposal has the potential to undermine the fundamental principals of a plan-led planning system which is open for public engagement.
- 8.7 SESplan policies provide some scope to support applications outwith plan allocation.
- 8.8 Policy 6 of SESplan states that the Planning Authority shall maintain a five years' effective housing land supply at all times. The applicant states that the Council does not have sufficient five year supply. The Planning Authority contests this. It is acknowledged that a Scottish Government Reporter recently found that there was a shortfall in Midlothian's housing supply. While the 2014 housing audit did show a shortfall in the housing land supply the figures emerging from the draft 2015 housing audit demonstrate that house building is growing in Midlothian. In this respect there is no requirement to give early consideration to brining the Broomieknowe site forward in advance of the adoption of the local development plan.
- 8.9 SESplan policy 7states that sites for Greenfield housing development proposals may be allocated in local development plans or granted planning permission to maintain a five year effective housing land supply, subject to satisfying 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.

- 8.10 Matters relating to criterion a, regarding the integration of the development with the character of the area, are discussed later in this report. However, while the development comprises larger houses than those in the local area the proposal does not have the appearance of a residential development, which is at odds with the character of the surrounding area.
- 8.11 Compliance with criterion b of SESplan policy 7 is a more contentious matter. Policy 12 of SESplan explains that the Green Belt serves to direct planned growth to the most appropriate locations, support regeneration objectives, protect and enhance the quality, character, landscape setting and identity of Midlothian's towns and the city of Edinburgh, and protect and give access to open space within and around Edinburgh. SESplan also recognises that the Green Belt may need to be modified to accommodate the development strategy. However, effort should be made to minimise the impact on Green Belt objectives and to secure long-term boundaries.
- 8.12 The decision on whether the removal of this site from the Green Belt, or whether development upon it, undermines the objectives of the Green Belt will ultimately be for the Reporter to decide at local development plan examination. The Council considers that the site can be developed without undermining the objectives of the Green Belt but this is a matter for the Reporter to consider, given the numerous representations to the plans to redraw the Green Belt boundary and allocate the site for housing. It would be premature to arrive at a positive determination of the application where such a fundamental issue, which would affect a number of sites across Midlothian, is yet to be examined by the Reporter. Whilst the determination of this application alone may not be considered significant the cumulative impact of the removal of a number of sites from the Green Belt, in the face of considerable levels of representation, may be considered unacceptable and early support for this approach could undermine the plan-making process.
- 8.13 Criterion c sets out that any additional infrastructure required as a result of the development must either be committed or be funded by the developer. Given the stage at which this application has been submitted it is currently unclear what proportion the developer for this development should contribute given the uncertainty over which sites will be contributing. Neither applicant nor Council should be subject to an unreasonable financial burden to deliver the infrastructure required to allow development to commence. Therefore, at this stage, the development does not comply with criteria c.
- 8.14 In summary it is considered that supporting this planning application in line with the, as yet to be examined and adopted, local development plan would be premature and would undermine the plan-making process. In addition, it is essential to consider that the Council has an adequate five year housing land supply and has no requirement to give early favourable consideration to this application.

### Site access and transportation matters

- 8.15 It is proposed to form a traffic light controlled junction at the entrance to the site. The access to the site is to be taken directly opposite the vehicular entrance to the community hospital, making this a crossroads. The applicant has submitted a Road Safety Audit (RSA) in order to support the planning application. The RSA gives some consideration to junction options, including signalised and un-signalised arrangements. The RSA considers that the signal controlled junction would provide a safer access solution than the un-signalised option.
- 8.16 The Council's Policy and Road Safety Manager (PRSM) has objected to the vehicular access to the site, as has been proposed in this application. The PRSM considers that the proposed signalised junction is unnecessary and would result in unacceptable delays and could lead to a reduction in road safety at this location. The PRSM states that signals could increase the risk of shunt accidents. This is countered by the applicant, who states that this is a risk at present given the pedestrian crossing.
- 8.17 In general there is a disagreement between the applicant's transport consultant and the Council's PRSM regarding the impact of the proposed junction. Various arguments and counter-arguments regarding the proposed access have been presented to the Planning Authority for consideration. Given the serious concerns being raised by the Council's transportation team the applicants' proposed access cannot be supported.
- 8.18 The proposed access arrangements are likely to have a detrimental impact on vehicle flow in the area. There is no justification to support a junction which could potentially impact on vehicle safety where a more appropriate alternative option is achievable. In addition to these technical reasons, it is also the case that the proposed signalised junction is unnecessary and therefore likely to result in unnecessary costs for the Council in terms of maintenance once it is adopted.
- 8.19 It is appreciated that there is a preference among some of those who submitted representation regarding the point of access, with some contributors having stated concerns regarding the potential of a site access via Viewbank Avenue. The factors to be considered in arriving at a decision are explained in this section of the report.
- 8.20 In the interests of clarity, there have been no concerns raised by the Council's transportation team regarding the level of traffic movements regarding the proposed development. The concern relates to the access only. In addition, the Council's transportation team are satisfied with the traffic levels projected at the proposed neighbouring retail development at the former garden centre site. That planning application is reported elsewhere on this agenda. There would, however, be a potential conflict between the proposed access to the residential site and the amended access to the proposed retail site. Given the planning history of the retail site, and that it is proposed to amend an existing access to that site, coupled with the concerns about the residential site's

proposed new access leads to a conclusion that the retail access can be supported with the residential access to be reconsidered by the applicant.

- 8.21 While there are fundamental concerns regarding the proposed vehicular access to the site it is still necessary to give consideration to other transportation matters related to this planning application.
- 8.22 There are to be cycleway/pedestrian footpaths linking the application site to the track which runs alongside the south-western boundary. These paths, along with the pedestrian footpath at the entrance to the site, provide good linkages to the surrounding area and should encourage more sustainable modes of transport and movement.
- 8.23 Each of the proposed private dwellings on the site will have driveways which can accommodate two vehicles. In addition there is to be a parking courtyard providing 21 parking spaces for the affordable homes area. Elsewhere in the site there are to be 16 parking spaces. Sufficient parking spaces have been included within the proposed development to ensure that inconsiderate and illegal parking should not be a significant issue.
- 8.24 It will be necessary to receive details which satisfy transportation concerns regarding HGVs and refuse vehicles negotiating the road layout.

#### Layout and Form of the Development

- 8.25 The applicant has responded to a number of constraints in arriving at the layout for the proposed residential development. The shape of the site has dictated, to a certain extent, the layout of the proposed development. In addition, the position of the high pressure gas pipeline has influenced the location of the open space, given that there is an effective no-development zone.
- 8.26 The curving nature of the main spine road through the site, with its associated parking and landscaped squares, creates some interest to what could otherwise have been an uninteresting linear street. The orientation responds to the positioning of the houses on Pendreich Grove, which do not front onto the road in a traditional way. This approach allows good levels of amenity for the proposed dwellings but also provides protection for the privacy of the existing residents of the neighbouring estate. The back to back distances required through policy DP2 of the local plan are achieved in respects to the proposed development.
- 8.27 Distances between buildings are an important factor in assessing the impact of new development on amenity. This matter is particularly acute on sloping sites. While more detail is required in connection with retaining walls and under building the distances between properties, as indicated on the submitted layout drawings, are generally acceptable and should not result in any significant detrimental impact on residential amenity.



- 8.28 The proposed garden sizes for the dwellinghouses are generous and generally in excess of the minimum required for these types of dwellings, as required in terms of policy DP2 of the local plan. The area of communal garden ground being made available to the flatted dwellings is quite restricted. However, overall there is sufficient space to ensure a good standard of amenity.
- 8.29 While the layout of the scheme is generally successful the frontage of the development on to Eskbank Road is weak, with two dwellings presenting uninteresting gables on to the main street elevation. This is an element of the development which requires a more appropriate treatment and could be redesigned should the application be supported. In addition, the orientation of the dwelling on plot 6 is unsuccessful, presenting its rear elevation to the main road entering the site. These aspects have not been addressed during the assessment of the application as the applicant has requested that the application be considered by the Planning Committee in advance of a redesign of the south east end of the site. It was expected that a redesign would be required in connection with revised access arrangements and in order to accommodate amendments to the layout.

#### Design and Materials

- 8.30 The mix of house types and size of dwellings is acceptable. The architectural styles of the houses are traditional in form and complement the character and visual amenity of the area. In terms of the number of units, their size, massing and positioning on the site the proposed development would not appear cramped or an unsympathetic development in this location.
- 8.31 MLP Policy DP2 requires that there be an added emphasis on the quality in design of a minimum of 20% of the dwellings on the site. This applies to individual buildings and the use of materials both in building finishes and also in walls and ground surfaces. The expectation is that such treatment is focused on prominent landmark groups or key individual buildings. It is suggested that the Area of Improved Quality be provided at the north east side of the application, where the dwellings front onto the open space.
- 8.32 Elsewhere within the development, outwith the aforesaid area the relatively traditional architectural style of the proposed houses is sympathetic to the neighbouring buildings. The proposed use of render walling and concrete roof tiles is acceptable in principle subject to samples being submitted for the prior approval of the planning authority. The introduction of a variety of coloured renders should be used to create a sense of place for future residents. In general, there is a preference in Midlothian for the vertical division of materials rather than the horizontal subdivision which has been proposed. This detail could be resolved by way of a planning condition should the application be supported.
- 8.33 In terms of their size, height and position on the site the proposed two-storey houses and the other proposed ancillary buildings would not give rise to significant overlooking or overshadowing of any neighbouring properties or

unduly impose themselves on them or appear obtrusive within the street scene.

- 8.34 Some concern has been raised by representors regarding the impact of the development on the surrounding area, given that the proposal comprises a development of two storey dwellings in close proximity to a principally single storey residential estate. While the immediately adjacent residential area is principally made up of single storey units the character of Eskbank Road is one of various residential schemes in different style. In this context a development of two storey family homes will not be significantly out-of-character with the general appearance of this part of Bonnyrigg.
- 8.35 No details of 'percent for art' for the development have been submitted with the application. It can be made a condition of a grant of planning permission that details of artwork be submitted for the prior approval of the Planning Authority.

#### Open Space and Play Areas

- 8.36 The development incorporates a principal landscaped open space incorporating the stand-off area from the high-pressure gas pipeline. A separate, smaller, area of open space is proposed at the South corner of the site. It is mainly laid out as an open grassed area. As this area is the only land large enough to accommodate informal ballgames it is important that it is landscaped in a manner which reduces the impact of such activity on the adjacent properties and road. This can be secured by a condition imposed on a grant of planning permission. The open space to be provided on site complies with policy DEV9 of the MLDP.
- 8.37 The nearest small play area is located in Viewbank Park to the north west of the site. Either this play area is expanded considerably or a new play area is located on the application site. No play area is currently proposed on site.

#### SUDS

- 8.38 The applicant has proposed two levels of treatment of surface water drainage. There will be porous paving on the roads and driveways, side of driveway filter trench to treat roof water and attenuation. The general approach to the surface water drainage has been agreed by SEPA. More details will be required to be submitted to the Planning Authority with regards the proposed SUDs system as further clarity is required, particularly where the flow is shown to be going uphill prior to entering the cellular storage system.

#### Landscaping

- 8.39 As the site is highly visible from a number of vantage points, and given its position at the edge of the settlement, it is essential that sufficient tree planting is incorporated into the scheme. The Leyland cypress trees are currently providing a strong local feature and successfully screen the site. It is accepted that the Leyland cypress trees have no long term viability, but that their removal will leave the site exposed visually and to the prevailing wind.

- 8.40 In order to soften the impact of the development, and to comply with the policies of the local plan, it is necessary that a line of large growing trees, such as lime, hornbeam and oak, are planted along the south-eastern roadside boundary of the site. As mentioned earlier in the report, this will require a redesign of the front part of the site.
- 8.41 Given the sloping nature of the site it is essential that trees be provided throughout the development. Trees identified within garden areas are problematic to secure but should be secured elsewhere in order to soften the impact of the development on the landscape. Trees within hardstanding require sufficient soil volume to survive and become successfully established.
- 8.42 The applicant proposes the replacement of the Myrobalan plum hedge along the south-western boundary with a beech hedge. There appears to be no strong reason to remove the existing hedge, therefore it should be retained. Retention of mature landscaping should be the preferred option, where it is providing a positive contribution, in developments such as this.
- 8.43 Strong planting should be secured along the site's boundary with the former garden centre, to the north east, in order to define the settlement boundary and protect against coalescence.

#### Ground Conditions

- 8.44 The site is in the likely zone of influence from workings in seven coal seams at 40m to 823m depth, last worked in 1981. The site is also in an area of likely historic unrecorded coal mine workings at shallow depth. The applicant has submitted a Coal Mining Risk Assessment. The report notes that the intrusive site investigations carried out on site consisted of a combination of trial pits, soil boreholes and mineral boreholes. The report states that eight rotary boreholes were drilled across the site to depths of 30m to 40m and that no evidence of shallow coal workings was encountered. The report concludes that on the basis of findings of the intrusive site investigations there is no risk to the development from coal mining legacy issues and no mitigation measures are required.
- 8.45 While the Coal Authority have not objected to the planning application they do note that the proposed house on plot 22 is within close proximity to a recorded mine entry. It is essential that, should planning permission be granted, the houses in the north west corner of the site be built in the approved locations.
- 8.46 The Council's Environmental Health Manager has requested that planning conditions be used to secure details of any potential land contamination.

#### Ecology

- 8.47 The report on the ecological survey of the site does not recommend against the development on grounds of impact on biodiversity. There will be no

significant adverse impact on protected species or biodiversity related land designations as a result of the proposed development.

#### Developer Contributions

- 8.48 A Section 75 legal agreement is required for the proposed development to secure developer contributions.
- 8.49 In terms of policy DEV3 of the local development plan there is a requirement for 25% of the total number of homes to be affordable housing. The applicant has complied with this requirement by proposing 14 affordable units.
- 8.50 The development cannot be accommodated without increased primary and secondary educational capacity and, if approved, the applicant will be required to contribute towards the consequential cost of any additional school accommodation as part of the Section 75 legal agreement.
- 8.51 The MLDP identifies that a developer contribution is also required towards:
- (i) Borders railway, including Eskbank station and related car park;
  - (ii) Access and junction improvements, including footpaths and cycleways;
  - (iii) A7 urbanisation;
  - (iv) New green network links; and,
  - (v) Equipped children's play provision.

#### Other Matters raised by Representors and Consultees

- 8.52 It is not envisaged that the removal of the golf practice area from the golf club will have a significant adverse impact on the sports facilities in this area. It has been argued that the sale of the land to the applicant will secure the future of the golf club. This will have the additional benefit of reducing the pressure on the golf club to sell other parts of their asset in the Green Belt.
- 8.53 The impact of the development on the market values of existing neighbouring properties is not a material consideration in the determination of this application. Neither is the impact of the proposed development on the views from neighbouring properties.

### **9.0 RECOMMENDATION**

- 9.1 It is recommended that planning permission be refused for the following reasons:
1. *There does not exist an operational requirement for the proposed residential development in the Green Belt and countryside and therefore the proposed development is unacceptable in principle, contrary to policies RP1 (Protection of the countryside) and RP2 (Protection of the Green Belt) of the adopted Midlothian Local Plan.*

2. *The proposed development would result in the permanent loss of prime agricultural land. There is at this time no overriding justification for the development which outweighs the environmental or economic interests in retaining the site for potential agricultural use. Thereby the development is contrary to policy RP4 (Prime agricultural land) of the adopted Midlothian Local Plan.*
3. *If planning permission were granted for the proposed residential development it would set an undesirable precedent for allowing residential developments on the edges of towns and villages, including in the Green Belt, in the countryside and on prime agricultural land, which is not in compliance with Strategic or Local Plan policy.*
4. *A decision to grant planning permission for the proposed development at this time is prejudicial to the emerging Midlothian Local Development Plan. The cumulative effect of granting planning permission for the proposed development and other proposed sites within the Midlothian Local Development Plan would undermine the plan-making process by predetermining decisions about the scale, location and phasing of new development and relevance and significance of representations that are central to the emerging plan.*
5. *The cumulative impact of proposed amendments to the Green Belt boundary, as a result of this and other proposed allocations in the local development plan, have yet to be considered through the local development plan examination process. The proposed development is sited within the Green Belt and it has not been demonstrated that the proposal will not undermine the Green Belt objectives.*
6. *The wider transportation infrastructure implications of the proposed Midlothian Local Development Plan, including the cumulative effects of this and other proposed allocations on transport infrastructure in the A7 corridor, have yet to be considered through the local development plan examination process.*
7. *The proposed signalised junction on Eskbank Road is unnecessary and would result in unacceptable delays to the free flow of traffic and could lead to a reduction in road safety at this location.*
8. *The layout and design of the dwellings at the south east end of the site is unacceptable in terms of urban design as it does not present a strong street frontage at this prominent site at the entrance to Bonnyrigg.*

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

**Date:** 05 January 2016  
**Application No:** 14/00405/DPP  
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**Education, Economy  
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Land 160m South-West of Mayshade Garden Centre,  
Eskbank Road, Bonnyrigg

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