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**SECTION 42 APPLICATION 19/00221/S42 TO REMOVE CONDITION 7, REQUIRING ENHANCED PUBLIC TRANSPORT FACILITIES, IMPOSED ON A GRANT OF PLANNING PERMISSION (17/00951/PPP) FOR A RETAIL UNIT AT SOUTRA MAINS FARM, BLACKSHIELDS, FALA, PATHHEAD**

Report by Director of Education, Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1 At its meeting in February 2018 the Committee granted planning permission 17/00951/PPP for the erection of a retail unit at Soutra Mains Farm, Pathhead subject to conditions. This section 42 application proposes to remove condition 7 which seeks improved public transport facilities adjacent to the A68 trunk road to ensure that there are safe public transport facilities to serve the approved retail unit. There have been no letters of representation and there have been consultation responses from Transport Scotland and the Council's Policy and Road Safety Manager.**
- 1.2 The relevant development plan policies are policies 3 and 8 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and Policies TRC2, RD1, ENV6, ENV7 and IMP1 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.3 The recommendation is to refuse planning permission.**

**2 LOCATION AND SITE DESCRIPTION**

- 2.1 The application site comprises a rectangular area of agricultural land at Soutra Mains Farm, measuring 0.44 hectares, which currently accommodates a large agricultural shed.**
- 2.2 The collection of buildings at Soutra Mains Farm includes four holiday cottages, a single storey cafe building, two farm houses and agricultural buildings. The holiday cottages and cafe are relatively recent additions (2014) to the group.**
- 2.3 Access and egress at the application site is taken via the existing new vehicle access road taken from the A68. This access was formed as part of the holiday cottage and café development.**

### **3 PROPOSAL**

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 (hereafter referred to as the Act), is to remove the requirement to enhance public transport facilities.
- 3.2 A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore if planning permission is granted for this application it will supersede planning consent 17/00951/PPP if implemented. It will therefore be a planning permission for a retail unit.
- 3.3 In this case, the applicant is requesting the removal of a planning condition which was attached to the previously approved planning application 17/00951/PPP, which sought improvements to public transport facilities adjacent to the A68. The planning condition was imposed in order to ensure that there would be safe public transport facilities to serve the retail facility which had been approved by Planning Committee.
- 3.4 Condition 7 of planning application 17/00951/PPP states:
- Prior to the commencement of development, an application for approval of matters specified in conditions for improved public transport facilities adjacent to A68 trunk road are to be submitted to and approved in writing by the Planning Authority. Unless otherwise agreed in writing with the Planning Authority prior to the commencement of development the application shall include siting, design and external appearance of a bus shelter at both northern and southern side of the A68 trunk road.; structures for the display of bus timetable information; and details of all hard surfacing and kerbing of vehicle laybys to be formed. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority prior to the occupation of the retail unit hereby approved.*
- Reason: To ensure that there are safe public transport facilities to serve the retail unit.*
- 3.5 The applicant has submitted a statement in support of their application to remove the condition.

### **4 BACKGROUND**

- 4.1 Outline planning permission, 08/00159/OUT, for the erection of holiday cottages, coffee shop, parking area and new access road at Soutra

was approved in May 2010. Permission was granted subject to a number of conditions, including a limit on the number of holiday cottages to four. The coffee shop was allowed as being ancillary to the main use of the site as holiday accommodation.

- 4.2 A detailed planning application 10/00538/DPP for the erection of a coffee/gift shop and four holiday lodges was refused in December 2010 for the following reasons:

1. *It has not been demonstrated that the proposed retail use has a requirement for a countryside location and it is not of a scale appropriate to its position in the countryside and area of great landscape value; for these reasons the proposal does not comply with the terms of policy RP1 of the Midlothian Local Plan.*
2. *The proposal does not comply with the terms of policy ECON8 of the Midlothian Local Plan as it primarily comprises a retail development of an inappropriate scale in the countryside.*
3. *The scale, form and design of the proposed development will have an adverse impact on the character and appearance of the landscape, which forms part of the area of great landscape value, and which convey a level of development inappropriate to the confines of this site; and is therefore contrary to the terms of policies RP6 and RP7 of the Midlothian Local Plan.*
4. *The proposed tourist accommodation dwellings have not been designed to enhance the area of great landscape value and results in buildings that are out of character with the rural setting ;and as such do not comply with the terms of policies DP1 and ECON7 of the Midlothian Local Plan.5. The increased level of traffic generated by the retail use would lead to an increased level of traffic leaving and entering the trunk road which may be detrimental to the safety of other road users.*

- 4.3 Application 11/00199/MSD to discharge the conditions of the original 2008 application was approved. However, it was only possible to discharge some of the conditions as information had not been submitted in connection with some of the outstanding conditions.
- 4.4 Application 12/00067/MSD was submitted to address the remaining outstanding matters relating to the 2008 and 2011 applications. However, insufficient information was submitted and a further grant of permission was issued, but not all the conditions were discharged.
- 4.5 Application 13/00274/MSD was submitted in order to discharge the outstanding matters from the 2008, 2011 and 2012 applications. This application was submitted with the same information as had been submitted previously. The planning authority refused the planning

application due to not being able to assess the proposal given the lack of information submitted by the applicant.

4.6 Planning application 13/00370/DPP for the erection of four retail units (part retrospective) was refused in September 2013 for the following reasons:

1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the Edinburgh and the Lothians Structure Plan (ELSP) policy ENV3 and adopted Midlothian Local Plan (MLP) policies RP1 and ECON8.*
2. *As the application site is in the countryside it is not in one of the locations specified in the ELSP policy RET1 - Sequential approach to the location of retail and commercial leisure development, as being potentially suitable for retail developments. Accordingly, the proposed development is contrary to ELSP policy RET1 and the adopted MLP policy SHOP5.*
3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*
4. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*

4.7 The applicant appealed the refusal of planning application 13/00370/DPP to the Local Review Body (LRB). The LRB dismissed the review request and upheld the decision to refuse planning permission on the following grounds:

1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Plan (2008) policies RP1, SHOP5 and ECON8;*
2. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead; and*

3. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*
- 4.8 Planning application 14/00293/DPP for the erection of four retail units (part retrospective) was refused by Midlothian Council's Planning Committee in September 2014 for the following reasons:
1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Plan (2008) policies RP1, SHOP5 and ECON8.*
  2. *As the application site is in a remote countryside location it is not in one of the acceptable types of locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy. As no sequential test has been submitted for assessment it has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Strategic Development Plan and policy SHOP5 of the adopted Midlothian Local Plan.*
  3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*
  4. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*
- 4.9 This applicant appealed against the Planning Committee's decision to refuse planning application 14/00293/DPP. The application was also refused at appeal by the Reporter on the 15 December 2014.
- 4.10 Application 14/00542/MS to discharge the conditions of the original 2008 application was approved in September 2014.
- 4.11 Pre-application advice was provided in December 2016 with regards to a development proposal seeking to erect a new building to incorporate a visitor centre comprising open retail space/retail units and a tourism facility. Overall, it was advised that it was unlikely that the development proposal would be supported.

4.12 Planning application 17/00641/PPP for planning permission in principle for the erection of retail unit was refused by the Committee at its meeting of 14 November 2017 for the following reasons:

1. *The proposed retail development would comprise of a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Development Plan (2017) policies TRC2 and RD1.*
2. *As the application site is in a remote countryside location it is not in one of the acceptable locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy (SPP). As no sequential test has been submitted for assessment it has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Strategic Development Plan and policy TRC2 of the adopted Midlothian Local Development Plan (2017).*
3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*
4. *It has not been demonstrated to the satisfaction of the Planning Authority that the required visibility splays (215 metres in each direction) can be achieved.*
5. *The indicative information submitted shows a building which, on account of its scale, form, design and materials will not be compatible to its location or to existing nearby buildings.*

4.13 Planning application 17/00951/PPP for planning permission in principle for the erection of retail unit was approved by the Planning Committee at its meeting of 20 February 2018 for the following reason:

*The benefits of the proposed development, include support for a local business, the provision of local jobs and the provision of a local facility, are significant material considerations which outweigh the policies in the Midlothian Local Development Plan 2017 and national planning policy which seek to restrict non countryside based developments in the countryside and to promote the principle of 'town centres first'.*

- 4.14 Application 18/00693/MSC was submitted in order to discharge the outstanding matters from application 17/00951/PPP. This application is currently still pending consideration.
- 4.15 The application has been called to Planning Committee for consideration by Councillor Smaill in order to discuss public transport access potential.

## **5 CONSULTATIONS**

- 5.1 **Transport Scotland** does not object to the application.
- 5.2 The Council's **Policy and Road Safety Manager** advised that following consideration of the information provided by the applicant, it is considered that the formalisation of bus stops at this location is clearly deliverable. No evidence has been submitted from the developer or from Transport Scotland to the contrary.

## **6 REPRESENTATIONS**

- 6.1 No representations were received.

## **7 PLANNING POLICY**

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

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

- 7.2 The Strategic Development Plan sets out some key aims, three of which are:
- Integrate land use and sustainable modes of transport, reduce the need to travel and cut carbon emissions by steering new development to the most sustainable locations;
  - Conserve and enhance the natural and built environment; and
  - Promote the development of urban brownfield land for appropriate uses.
- 7.3 **Policy 3** (Town Centres and Retail) aims to promote a sequential approach to the selection of locations for retail and commercial leisure proposals.
- 7.4 **Policy 8** (Transportation) seeks to ensure that new development minimises the generation of additional car traffic. Midlothian Local Development Plan (MLDP)

## Midlothian Local Development Plan 2017

- 7.5 Policy **TRC2: Location of New Retail and Commercial Leisure Facilities** is relevant to the siting of new retail and commercial leisure facilities. The policy and the role of centres are defined in the network of centres which give support to development in town centres, to Straiton where alternatives are not available in a town centre, and to a new out of centre location that is supported in the southern A7 corridor (Redheugh). Policy TCR2 also supports retail development (up to 1000sqm gross floor area) at local centres (these are identified in the network of centres). The policy also allows for new local centres to come forward serving housing developments where these are not served adequately by existing centres. There is no support for retail development in the countryside.
- 7.6 Policy **RD1: Development in the Countryside** sets out where appropriate development would be acceptable in the countryside subject to defined criteria. The policy states that proposals will not be permissible if they are of a primarily retail nature.
- 7.7 Policy **ENV6: Special Landscape Areas** states that development proposals will only be permitted where they incorporate high standards of siting and design and where they will not have significant adverse effect on the special landscape qualities of the area.
- 7.8 Policy **ENV7: 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.
- 7.9 Policy **IMP1: New Development** requires that planning conditions will be applied, and developer contributions sought, in relation to new developments in order to ensure that appropriate provision is made for essential and necessary infrastructure. This policy also requires developers to provide for connections to all forms of public transport services (including financial support for services), bus stops and shelters, rail stations and associated car parks.

## National policy

- 7.10 **The Scottish Planning Policy (SPP)** promotes a town centre first principle, which considers the health and vibrancy of town centres. The SPP promotes the use of the sequential town centre first approach, outlining the following order of preference for commercial development proposals:
- town centre (including local centres);
  - edge of town centre;
  - other commercial centres identified in the development plan; and



- out-of-centre locations that are, or can be made easily accessible by a choice of transport modes..

7.11 Scottish Government advice **Circular 4/1998 (The use of conditions in planning permissions)** sets out six tests which planning conditions must comply with:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

## 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 consultation responses received are material considerations.

### The Principle of Development

8.2 Planning application 17/00951/PPP for the erection of a retail unit at Soutra Mains Farm was presented to the Committee at its meeting in February 2018 for determination. The Committee granted planning permission for the reason set out in paragraph 4.13 of this report subject to conditions and a legal agreement (or equivalent) requiring appropriate developer contributions for community benefit or a community project and/or improvements to the existing public transport facilities.

8.3 Although a Section 42 application is a new planning application in law the Act states *“on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*. The principle of retail development is established by this grant of planning permission and cannot be reassessed as part of the consideration of this application.

### Current public transport situation

8.4 There is currently a ‘hail and ride’ bus service which operates near the application site adjacent to the A68. Bus services will often use hail and ride as a means of operating a remote bus stop or stops in rural locations. There is no fixed pole/flag or bus stop. Passengers are required to pick a safe place to wait and then hail the bus when it is in sight. The driver will then stop so that the passenger can board.

#### Planning Committee consideration of previous application

- 8.5 During consideration of the original planning application by the Committee the potential for improvements to the public transport facilities were discussed. It was suggested that in approving the scheme the site could be used to facilitate the no. 51/52 bus service with an off-road stop, with improvements to the drop off service. One elected member advised that the creation of a separate drop off area within the curtilage of the development would create a considerable advantage, as an inter-change for residents of the area. It was suggested that this would be made part of the permission should it be granted consent.

#### Post Committee agreement

- 8.6 Subsequent to the Committee's decision on application 17/00951/PPP agreement was reached between the planning authority and the applicant that improvements to public transport facilities should be secured. Condition 7 of the planning decision notice contains the final wording agreed between the planning authority and applicant which would secure the Planning Committee's aspirations for improved public transport facilities in the area.
- 8.7 Despite previously agreeing to the wording of condition 7 the applicant has now applied to have this condition removed so that development can be carried out without any contributions to, or improvement of, the public transport in the area.

#### The applicant's position

- 8.8 The applicant has questioned whether condition 7 complies with the tests set out by the Scottish Government with regards to a valid planning condition.
- 8.9 In addition, the applicant states that the requirements of condition 7 are more onerous than what was sought by the Committee when originally approving the retail unit.
- 8.10 The applicant states that the condition requires the applicant to carry out work on land that is outwith their control and will result in an adverse impact on road and pedestrian safety, particularly in terms of buses stopping on the A68, vehicles requiring to stop/pass stationary buses safely if there is no layby, obstruction of the visibility splays of the application site and pedestrians crossing the A68. The applicant states that pedestrians are already currently required to cross the A68 to utilise the existing 'hail and ride' service.
- 8.11 The applicant raises the following questions in their supporting statement:

1. *Is it preferable that people can use buses without crossing the A68?*
2. *Is the Roads Manager satisfied if people do have to cross the A68?*
3. *If so, then why is "hail and ride" not satisfactory here, when it has "worked smoothly for many years" everywhere else?*
4. *If bus stops are indeed required, do they have to be in lay-bys?*
5. *The stops (whether in a layby or not) will be in the visibility splays - that is surely unacceptable?*

#### Assessment of condition 7 against tests for conditions

- 8.12 Planning conditions must satisfy the tests set out within circular 4/1998. The circular states that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. The circular sets out six tests, namely that a condition shall only be imposed where it is:
- necessary;
  - relevant to planning;
  - relevant to the development permitted;
  - enforceable;
  - precise; and,
  - reasonable in all other respects.
- 8.13 Whilst each planning application must be considered on its own individual merits, the Council must reasonably consider the potential impact one decision has on future considerations. A core objective of the Council's protection of countryside policy is to protect the characteristics of the countryside. To ensure the benefits of the countryside are safeguarded and only sustainable development is supported it is important that strong controls are maintained. Whilst the retail unit was granted planning permission in principle, contrary to policy, this was subject to the requirement for improvements to the existing public transport facilities in the interest of sustainable development.
- 8.14 Planning application 17/00951/PPP was considered acceptable, by the Committee, on the basis that developer contributions (or equivalent) would be required for community benefit or improvements to the existing public transport facilities. It was clear that the applicant's proposal would result in an out-of-town retail facility, potentially giving rise to more unsustainable vehicle journeys, particularly by private car, than would have been the case had the development been proposed in a more sustainable location. For this reason, and in order to secure a more sustainable form of development, the planning authority considered that it would be appropriate to seek improvements to the local public transport facilities. These improvements would encourage more visitors to make use of more sustainable forms of transport to reach the proposed retail facility and would make the existing service safer.

- 8.15 It is clear that both national and local planning policies require new developments to be sustainable. In order to offset the potential for increased unsustainable car journeys, as a result of the proposed development, there is a clear need for improved and safer public transport in the area. The current arrangements will not encourage greater use of public transport and require to be augmented and formalised. Policy IMP1 of the MLDP states that where development gives rise to a need appropriate provision will be made for essential infrastructure improvements and connections to all forms of public transport services, bus stops and shelters.
- 8.16 It is therefore considered that condition 7 secures infrastructure necessary to support the development and, as a result, is necessary, relevant to planning, relevant to the development permitted and is reasonable in all other respects.
- 8.17 The remaining tests relate to whether the condition is enforceable and precise. The wording of the condition requires that, *'prior to the commencement of development, an application of matters specified in conditions for improved public transport facilities adjacent to the A68 trunk road are to be submitted to and approved in writing by the Planning Authority'*. Should the condition not be discharged prior to the commencement of development then the applicant would be in breach of the condition and enforcement action could be taken.
- 8.18 The condition then goes on to state that, *'unless otherwise agreed in writing with the planning authority prior to the commencement of development the application shall include siting, design and external appearance of a bus shelter at both northern and southern side of the A68 trunk road; structures for the display of bus timetable information; and details of all hard surfacing and kerbing of vehicle laybys to be formed.'* Not only is the wording of the condition precise and clear in terms of setting out what is required from the applicant, it is also flexible in terms of allowing the applicant to submit an alternative proposal to satisfy the condition.
- 8.19 Finally, in terms of the tests, the condition states that *'Development shall thereafter be carried out using the materials or such alternatives as may be agreed in writing with the Planning Authority prior to the occupation of the retail unit hereby approved'*. Should the development required by condition 7 not be completed as agreed prior to the occupation of the retail unit then the applicant would be in breach of the planning consent and enforcement action could be taken. The condition is therefore considered to be precise and enforceable.
- 8.20 Therefore, it is concluded that condition 7 meets all of the six tests set out within Circular 4/1998 (The use of conditions in planning permissions). The removal of condition 7 would result in the erection of a retail unit within the countryside without any improvements to public transport facilities as requested by the Committee.

### Further assessment

- 8.21 Beyond the assessment of condition 7 against the tests for conditions it is necessary to consider the applicant's complaints regarding the condition, which has resulted in this application to have it removed. As well as the current S42 application the applicant has also submitted an application (18/00693/MS) to discharge the planning conditions attached to application 17/00951/PPP. To date the applicant has submitted insufficient information as part of the MS application to have condition 7 discharged.
- 8.22 The applicant has failed to produce sufficient evidence to demonstrate that appropriate efforts have been made in order to investigate the various options which could result in the discharge of condition 7. The planning authority would have expected the applicant to provide evidence that they have considered the following:
- The development gives rise to a requirement to improve public transport facilities/services;
  - The existing hail and ride facility is not appropriate to support the proposed development;
  - Formalised bus stops and bus shelters are required;
  - If formalised bus stops are to be provided Transport Scotland have indicated that laybys on the A68 will be required;
  - The applicant should therefore have investigated delivery of formalised bus laybys adjacent to the road or investigated another alternative scheme for improving public transport facilities;
  - As an alternative scheme bus stops could be provided within the application site;
  - Should the applicant propose to accommodate bus stops within the application site the planning authority would have expected the applicant to make approaches to the local bus companies to ensure that they would be willing to bring buses into the site. It should also be demonstrated, by way of an autotrack, that a bus could negotiate a route through the site.
- 8.23 The applicant does not appear to have done any of the above. In addition, the applicant has offered no other alternatives to demonstrate support of local public transport or schemes to improve the sustainability of their development.
- 8.24 No details have been submitted to the planning authority to demonstrate that the formation of a bus stop at either side of the A68 will result in significant road safety implications.
- 8.25 The applicant states that the condition requires bus stops on both sides of the A68, on land over which neither the applicant nor the Council have control, and that the requirement for a bus shelter on the north and south side of the trunk road requires significant input from a number of land owners. It is unclear from the submission if the

applicant has attempted to consider locations for bus stops and or laybys and whether the applicant has attempted to ascertain who owns the land or if any negotiations have been attempted with the land owner(s). It has not been demonstrated to the satisfaction of the planning authority that the applicant is unable to form bus shelters and laybys on either side of the A68 trunk road due to issues surrounding land ownership. Furthermore, it is noted that the condition is written in such a way that would allow for alternative solutions on land within the applicants ownership to be considered.

### Summary

- 8.26 In summary, condition 7 has been imposed on the development at the request of the Committee, with the support of adopted planning policy, with the wording agreed between applicant and planning authority, in order to ensure that appropriate public transport improvements are secured in the interests of sustainable development and visitor safety. The condition complies with the necessary tests for conditions. While the applicant has indicated their dissatisfaction with condition 7 they have failed to propose a suitable alternative which would either support public transport or improve the development's sustainable credentials. As such, there is no overriding reason to agree to the removal of condition 7.
- 8.27 Should Committee agree to the removal of condition 7 it must be noted that the other conditions attached to planning permission 17/00951/PPP have yet to be discharged and should therefore be attached to any new grant of planning permission.

## **9 RECOMMENDATION**

- 9.1 That planning permission be refused for the following reasons:
1. *Permission 17/00951/PPP was approved on the basis that developer contributions (or equivalent) would be required for community benefit and/or improvements to the existing public transport facilities. The removal of condition 7 would result in the erection of a retail unit within the countryside without any improvements to the existing public transport facilities, which would be contrary to policy IMP1 of the Midlothian Local Development Plan 2017.*
  2. *It has not been demonstrated to the satisfaction of the planning authority that condition 7 fails to meet all of the six tests set out within Circular4/1998 (The use of conditions in planning applications). Condition 7 meets all of the six tests set out within Circular 4/1998. Furthermore, the condition is flexible so as to allow for reasonable alternative proposals for improvements to the existing public transport facilities to be considered by the local planning authority.*

3. *It has not been demonstrated to the satisfaction of the local planning authority that the requirements of condition 7 will result in significant adverse road and pedestrian safety implications.*
4. *It has not been demonstrated to the satisfaction of the local planning authority that the applicant is unable to resolve condition 7 due to land ownership disputes.*

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

**Date:** 2 May 2019

**Application No:** 19/00221/S42

**Applicant:** Mr George Russell

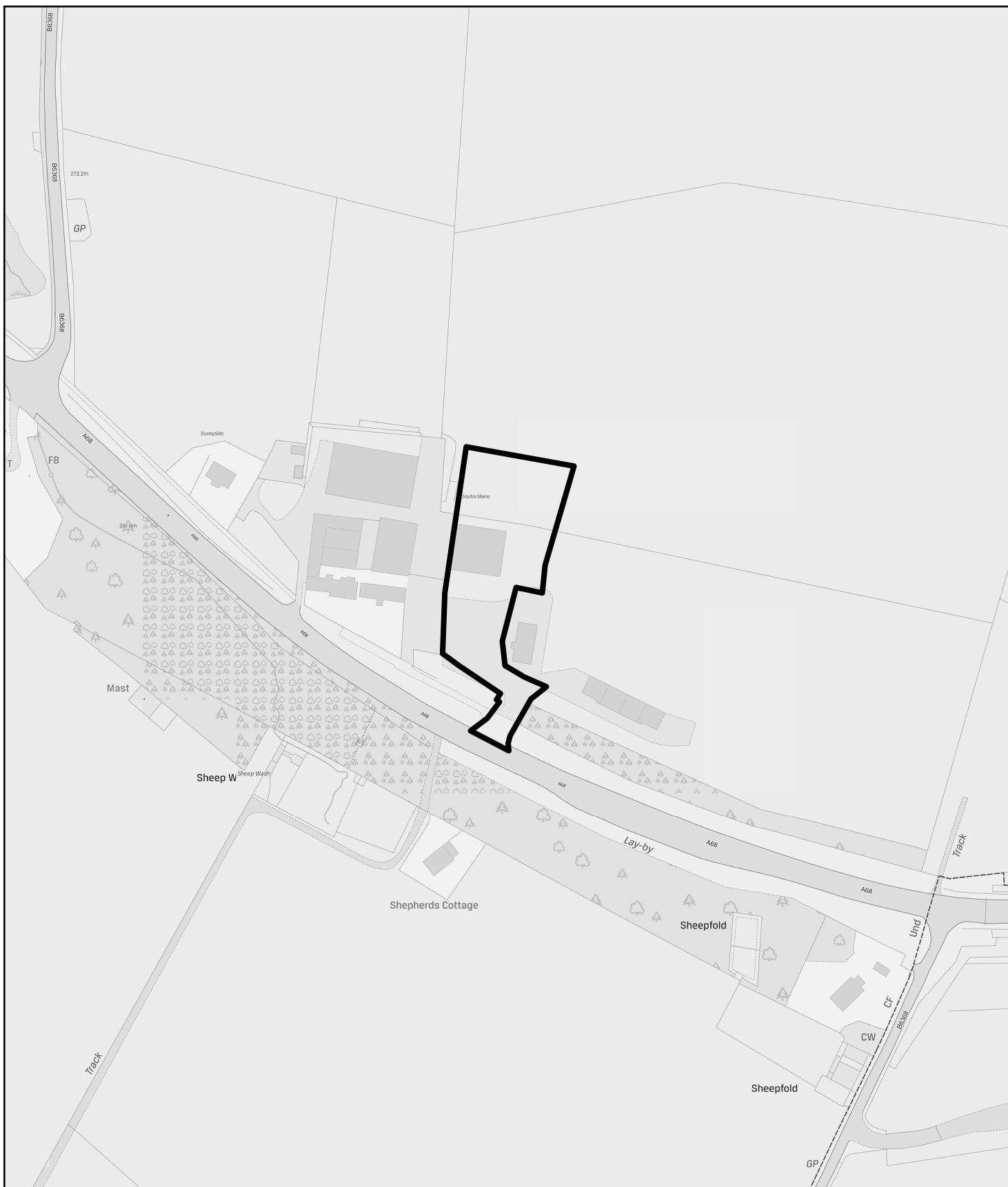
**Agent:** Suzanne McIntosh

**Validation Date:** 15 March 2019

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**Background Papers:** 08/00159/OUT, 10/00538/DPP, 11/00199/MSC,  
12/00067/MSC, 13/00274/MSC, 13/00370/DPP,  
14/00293/DPP, 14/00542/MSC,  
17/00641/PPP, 17/00951/PPP and  
18/00693/MSC.



**Education, Economy  
& Communities**  
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Section 42 application to remove condition 7 of planning permission 17/00951/PPP (to develop the site without providing improved public transport facilities) at Soutra Mains Farm, Blackshiels, Pathhead

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