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**SECTION 42 APPLICATION 19/00223/S42 TO AMEND CONDITION 9 OF PLANNING PERMISSION 14/00203/DPP (TO EXTEND THE TIME PERIOD FOR COMPLETION OF THE INFILLING OF LAND BY A FURTHER 36 MONTHS) AT LAND BETWEEN PENTLAND BURN AND THE A720 CITY BYPASS, PENTLAND ROAD, DAMHEAD**

Report by Director of Education, Communities and Economy

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**1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1** In August 2014 planning permission was granted for the infilling of land at land between Pentland Burn and the A720 City Bypass, Pentland Road subject to conditions. This Section 42 application seeks to amend condition 9, which specifies the duration of the operations, to allow an additional 36 months for completion of the operations. There have been no representations and there have been consultation responses from the Health and Safety Executive, Historic Environment Scotland, Scotia Gas Networks, Scottish Environment Protection Agency, Scottish Natural Heritage, Transport Scotland, the Council's Archaeology Advisor, the Council's Biodiversity Advisor and the Council's Policy and Road Safety Manager.
- 1.2** The relevant development plan policies are policy 12 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies ENV1, ENV4, ENV7, ENV15, ENV18 and ENV25 of the Midlothian Local Development Plan 2017.
- 1.3** The recommendation is to grant planning permission subject to conditions.

**2 LOCATION AND SITE DESCRIPTION**

- 2.1** The main part of application site is a 15 hectare field situated approximately 1.1 km west of Loanhead. The site is adjacent to the A720 Edinburgh City By-pass. Access to the field is via a 710m long unsurfaced track off Pentland Road. The track joins Pentland Road at a point 280m south east of the A702/A703/Pentland Road junction at Hillend.
- 2.2** The site sits within agricultural land within the green belt. The fields surrounding the site are used for grazing and growing of crops. The

Damhead area comprises dispersed dwellings and small agricultural holdings.

### **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 extend the timeframe for completion of the infilling operations by a further 36 months.
- 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 14/00203/DPP.
- 3.3 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, layout and form of development are not subject to assessment. Planning Authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply.
- 3.4 Planning permission was granted in 2014 for a scheme to improve the drainage of a 15 hectare field by importing inert soil and stone material in order to raise the level of the land by two metres. It was envisaged that the scheme would result in approximately 190,000 cubic metres (323,000 tonnes) of material being brought onto the site. Condition 9 of the planning permission granted consent for a period of 60 months from the date of permission. The consent is due to lapse in September 2019.
- 3.5 The infill operations have not proceeded as quickly as was originally envisaged and consent is now being sought for an additional 36 months of infilling operations. The infill area and depth will remain as per the original consent.

### **4 BACKGROUND**

- 4.1 A pre application consultation (reference 13/00593/PAC) for the infilling of land on land between Pentland Burn and the A720 City Bypass was carried out in August – October 2013. This consultation relates to the original proposal that was later subject to application 14/00203/DPP. A new consultation process is not required for a Section 42 application.

- 4.2 An Environmental Impact Assessment (EIA) Screening Opinion request, 13/00162/SCR, for the infilling of land was submitted 7 March 2013. The applicant was advised that an EIA was required under schedule 2 of the regulations.
- 4.3 Planning permission 14/00203/DPP for the infilling of land at land between Pentland Burn and A720 City Bypass was granted in September 2014. The permission was implemented and operations are ongoing. The current application relates to this site and permission.
- 4.4 As part of the application process for the current planning application an EIA screening was carried out to comply with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The screening conclusion was that an environmental impact assessment was not required and therefore no EIA Report was requested.
- 4.5 The area of the field is 15 hectares. As the site area exceeds the two hectare threshold set out in Class 9 of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 the application is considered to be a major development.

## 5 CONSULTATIONS

- 5.1 The **Health and Safety Executive** does not object to the application.
- 5.2 **Historic Environment Scotland** does not object to the application.
- 5.3 **Scotia Gas Networks (SGN)** does not object to the application and are satisfied that the high pressure gas pipeline that passes through the site is not at risk with the works and that agreement has been made to consider appropriate protection measures as works approach that area. The extension to the timescale does not concern SGN, they will continue to monitor the site as works progress towards the pipeline.
- 5.4 **Scottish Environment Protection Agency** does not object to the application.
- 5.5 **Scottish Natural Heritage** does not object to the application.
- 5.6 **Transport Scotland** does not object to the application.
- 5.7 The Council's **Archaeology Advisor** has confirmed that they have no record of any intrusive archaeological work being undertaken within the site. Given the amount of infilling that has been carried out there is little value in attempting to investigate or record any archaeology.
- 5.8 The Council's **Biodiversity Advisor** does not object to the application.

- 5.9 The Council's **Policy and Road Safety Manager** does not object to the application.

## 6 REPRESENTATIONS

- 6.1 No representations have been received in connection with this application.

## 7 PLANNING POLICY

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

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

- 7.2 **Policy 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.

Midlothian Local Development Plan 2017

- 7.3 Policy **ENV1: 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. provide 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. provide for essential infrastructure; or
- E. form development that meets a national requirement or established need of no other site is available.

Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt which is to maintain the identity and landscape setting of Edinburgh and Midlothian towns by clearly identifying their physical boundaries and preventing coalescence.

- 7.4 Policy **ENV4 Prime Agricultural Land** does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification to do so.

- 7.5 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.6 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.7 Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.
- 7.8 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.

## **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.
- 8.2 Approximately 65% of the intended infill area has currently been infilled. Granting consent to amend condition 9 would allow an additional 3 years in which to complete the operations and allow time for sufficient material to be brought onto the site to achieve the previously consented finished landscape. None of the consultees raised significant issues about the operations that have been carried out so far and none of the consultees have objected to the application.
- 8.3 Two local community councils (Damhead and District; and Loanhead and District) were consulted; no comments were received from the community councils. The site has been the subject of periodic enforcement enquiries, primarily relating to mud and dust being deposited on local roads. The planning authority and the roads authority are satisfied that the applicant is complying with relevant conditions; and the site is the subject of continuing periodic enforcement monitoring. Neither the Council's Policy and Road Safety Manager nor Transport Scotland raised any concerns in their consultation responses.

- 8.4 The principle of this form of development at this location was established by the granting of planning permission 14/00203/DPP. Granting the Section 42 consent would allow the existing operations to continue for an appropriate time period to complete the works. There has been no material change in planning circumstances since the granting of the original permission which would warrant refusal of the Section 42 application.
- 8.5 As is noted above a Section 42 consent is a new permission in law and planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply. A number of conditions that were attached to the original permission were pre-commencement conditions that required the submission of additional information, where these conditions have been discharged it will not be necessary to include the conditions in the new permission.

## 9 RECOMMENDATION

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

*The proposed re-engineering of the ground levels will improve the condition of the land for agricultural use, will introduce an area of improved wetland habitat, will have no long term adverse impacts upon landscape quality or ecological value of the site, and any adverse impacts upon traffic or residential amenity will be both of an acceptable level and of a temporary nature. The proposal therefore complies with the policies of the Midlothian Local Development Plan 2017.*

Subject to the following conditions:

1. Operation of the site shall comply with the access road details; road cleaning method; and traffic management plan included in the approved 'Supporting Statement to Discharge Conditions'.

**Reason:** *In the interest of road safety, and to reduce the possibility of loose material being carried from the site onto the public road, and to ensure that the movement of heavy goods vehicles is safely managed and so as to mitigate any risk to pedestrians and other road users and to ensure that vehicles adhere to the most appropriate route to the site.*

2. Operation of the site shall comply with the 'Dust Management Plan' included in the approved 'Supporting Statement to Discharge Conditions'.

**Reason:** *To prevent dust particles from being blown onto the Trunk Road Network.*

3. The resultant ground levels after infilling and restoration shall at no

point exceed the original ground levels by any more than 2.0 metres.

**Reason:** *In order to protect the landscape character of the area, and to accord with the terms of the SEPA license exemption.*

4. Only inert soil and stone shall be used for infilling purposes and the material shall arrive at the site in a condition suitable for purpose and no crushing or breaking up of material shall be carried out on or adjacent to the site.

**Reason:** *To ensure that only appropriate materials are used for land raising and to ensure there is no pollution of the ground or nearby watercourses and prevent any contamination that may lower the quality of the soil for agriculture or wildlife.*

5. Within 6 months of the cessation of infilling operations the drainage strategy detailed in the approved 'Supporting Statement to Discharge Conditions' shall be implemented in full.

**Reason:** *In order to ensure that restoration is successfully carried out and adequate drainage provided.*

6. This planning permission for land raising operations is granted for a limited period until Midnight 10 September 2022 (36 months from the expiry of application 14/00203/DPP), with restoration following immediately after this period.

**Reason:** *Due to the temporary nature of the proposed development and to mitigate the visual impact on the locality.*

7. Within 12 months of the cessation of infilling operations the site restoration shall be implemented in full, as per the details shown on the approved 'Re-instatement Plan' (Drawing no. 8.1) and the approved Sections (Drawing no. 8.2).

**Reason:** *In order to ensure that restoration is successfully carried out and adequate drainage provided.*

8. No operations shall take place outwith the hours of 08.00 to 18.00 on Mondays to Fridays inclusive and 08.00 to 13.00 on Saturdays. Operations shall include offloading and spreading of fill material, final restoration, initial preparation of the site, wheel washing, vehicle servicing, plant delivery, and the movement of vehicles entering or leaving the site. No work shall be carried out on Sundays, public holidays or bank holidays.

**Reason:** *To minimise the effect the impact of the development on the amenity of residents living in the vicinity of the site or the route to the site.*

9. The free-field Equivalent Noise level ( $LA_{eq}$ , 1 hour) due to the operations shall not exceed 45dB as recorded at any existing noise sensitive property, as detailed in section 17.2 of the Environmental Statement.

**Reason:** *To minimise the effect the impact of the development on the amenity of residents living in the vicinity of the site or the route to the site.*

10. At all times that the site is operational; including site preparation, land raising operations and site restoration, all reasonable measures shall be taken to minimize the transmission of dust from the site. These measures include all the mitigation proposals detailed in Section 17.4 (Air Quality) of the Environmental Statement. Where justified dust complaints are received, mitigating action, to be agreed in writing with the planning authority, shall be carried out as soon as is practicable.

**Reason:** *To minimise the effect the impact of the development on the amenity of residents living in the vicinity of the site or the route to the site.*

11. Within 12 months of the granting of this planning permission the applicant or their successors shall submit details of the proposed wetland habitat area detailing all ground engineering works, final levels, details of all water bodies, and a full specification of all planting, to be agreed by the planning authority in consultation with relevant wildlife organisations.

**Reason:** *In order that the wildlife interests of the site are enhanced or at least preserved.*

12. The wetland area agreed under condition 11 above shall have been fully implemented to the agreed specification within 12 months of the completion of land raising operations. The wetland area shall thereafter be monitored for a period of no less than 5 years during which time any loss of planting or deterioration in the condition of the wetland shall be made good by the applicant or their successors.

**Reason:** *In order to ensure that the wetland area becomes successfully established and provides the wildlife benefits that will ensure that the wildlife interests of the area are enhanced or at least preserved.*

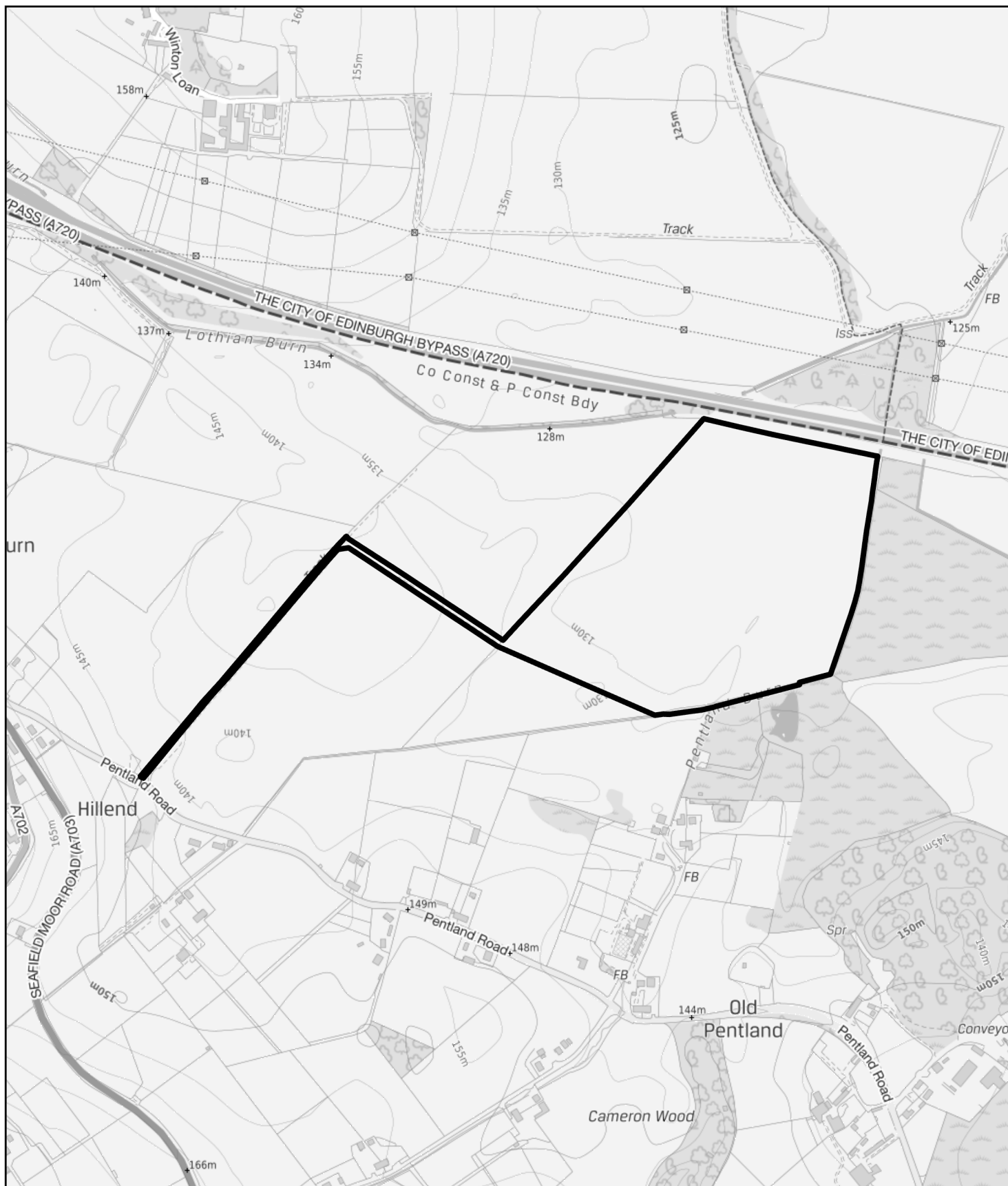


13. No trees or hedges within or adjoining the site shall be removed or lopped without the prior written approval of the planning authority.

***Reason:*** *In order to protect trees on site and in the interest of local landscape character.*

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

<b>Date:</b>	7 June 2019
<b>Application No:</b>	19/00223/S42
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<b>Background Papers:</b>	14/00203/DPP



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Section 42 application to amend condition 9 of planning permission 14/00203/DPP (to extend the time frame for completion by a further 36 months) at Land between Pentland Burn and A720 City Bypass, Pentland Road, Edinburgh

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