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**SECTION 42 APPLICATION (17/00273/S42) TO EXTEND THE TIME PERMITTED FOR THE SUBMISSION OF APPLICATIONS FOR MATTERS SPECIFIED IN CONDITIONS IMPOSED ON A GRANT OF OUTLINE PLANNING PERMISSION (09/00354/OUT) FOR RESIDENTIAL DEVELOPMENT AND CLASSES 4, 5 AND 6 ECONOMIC DEVELOPMENT AT LAND BETWEEN LOANHEAD ROAD AND EDGEFIELD INDUSTRIAL ESTATE, LOANHEAD.**

Report by Head of Communities and Economy

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

- 1.1 In April 2013 outline planning permission 09/00354/OUT was granted for residential development and class 4, 5 and 6 business and industrial uses on land between Loanhead Road and Edgefield Industrial Estate (Ashgrove). This application seeks planning permission to extend the time permitted for the submission of applications for Matters Specified in Conditions imposed on permission 09/00354/OUT as condition 1. There have been no representations. Consultation responses have been received from the Scottish Environment Protection Agency (SEPA), the Council's Archaeological Advisor, the Coal Authority and the Council's Head of Education.**
- 1.2 The relevant development plan policies are policies 5 and 7 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT1, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV19, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to grant planning permission subject to conditions and the applicant entering into a Planning Obligation to secure contributions towards necessary infrastructure and the provision of affordable housing.**

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The application site is approximately 23.5 hectares. It is on the east side of the B702, Loanhead Road, to the south of Straiton Pond local nature reserve. To the west is Straiton Retail Park, to the south west are residential properties, to the south east is Edgefield Industrial Estate and to the east across a dismantled railway is Eldin Industrial Estate. There is a burn crossing the site. The southern/south eastern**

part of the site has predominantly been built-out with dwellings being occupied, the northern/north western part of the site is under construction, the central part of the site which was the grounds of the former Ashgrove House remains undeveloped and the eastern part of the site, allocated for economic uses, remains undeveloped.

- 2.2 The site comprises housing site H12 and employment site E6 (business/industrial site), allocated in the 2008 Midlothian Local Plan with continued commitment in the Midlothian Local Development Plan 2017 as housing site h54 and employment site e33. Part of the economic allocation E6/e33 was subsequently granted planning permission for residential development.

### **3 PROPOSAL**

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997, is to extend the time permitted for the submission of applications for matters specified in conditions imposed on a grant of planning permission (09/00354/OUT).
- 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 replace the planning consent 09/00354/OUT.
- 3.3 The application is accompanied by:
- a supporting statement;
  - a wildlife/ecology report;
  - a report on an archaeological assessment;
  - a transportation report addendum;
  - a flood risk assessment; and
  - a report on a tree survey.
- 3.4 Condition 1 of outline planning permission 09/00354/OUT states:

*“The development hereby permitted shall be begun within five 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 Condition to be approved. Applications for approval of Matters Specified in Condition shall be made to the planning authority within three 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.”*

- 3.5 The proposed replacement condition is:

*“The development hereby permitted shall be begun within five 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 Condition to be approved. Applications for approval of Matters Specified in Condition shall be made to the planning authority within five 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.”*

- 3.6 It is anticipated that a further matters specified in condition application would be submitted for 92 dwellings on the central part of the site, which was the grounds of the former Ashgrove House, if this Section 42 application is approved.

#### **4 BACKGROUND**

- 4.1 In July 2004 detailed planning permission 03/00862/FUL was granted for the construction of a relief road to link the B702/Straiton Retail Park roundabout junction with Edgefield Road (via Edgefield Industrial Estate). The relief road has been constructed.
- 4.2 Outline planning permission 09/00354/OUT for residential development and classes 4, 5 and 6 economic development was granted in April 2013.
- 4.3 Planning permission 11/00414/PPP for residential development (area 1 of previously allocated land, part of e33, for economic development) land adjacent to Loanhead Road, Loanhead, was granted in April 2013.
- 4.4 Planning permission 11/00415/PPP for residential development (area 2 of previously allocated land, part of e33, for economic development) land adjacent to Loanhead Road, Loanhead, was granted in April 2013.
- 4.5 Planning permission 13/00804/MSC for the erection of 115 dwellinghouses; formation of associated roads and car parking; formation of sustainable urban drainage systems (SUDS) features; and associated works (approval of matters specified in conditions 3, 4, and 5 of planning permission 09/00354/OUT) on land south west of Ashgrove House, Ashgrove House Road, Loanhead was granted in March 2014.
- 4.6 Planning permission 15/00754/MSC for the erection of 90 dwellinghouses; formation of access roads; and associated works (approval of matters specified in conditions 3, 4 and 5 of planning permission 09/00354/OUT) on land between Loanhead Road and

Edgefield Industrial Estate was granted in February 2016. The development approved is currently under construction.

- 4.7 Planning permission 15/00974/MSC for the erection of 92 dwellinghouses; formation of access roads and associated works (approval of matters specified in conditions 3, 4 and 5 of planning permission 09/00354/OUT) was withdrawn by the applicant in August 2016. This application was a joint application between the applicant and the identified house builder. However the house builder decided not to proceed with the project and as applicant and agent formally withdrew the application.
- 4.8 A Section 42 application 16/00800/S42 to extend the time permitted for the submission of applications for matters specified in conditions imposed on a grant of outline planning permission ref.09/00354/OUT was validated on 11 November 2016 and subsequently withdrawn on 7 April 2017.

## 5 CONSULTATIONS

- 5.1 In respect of the current application the **Scottish Environment Protection Agency (SEPA)** confirm that they have no objection to the application on the proviso that previous conditions as requested by SEPA (consultation response on application 09/00354/OUT) are imposed on any new grant of planning permission. With regards to flooding SEPA state that they have reviewed the floor risk assessments (FRA) (May 2016 and December 2016) submitted by the applicant and advise the FRA may require updating to take into account any updated methodology, policy/guidance, or alterations to the area as the individual phases of development come forward. The applicant should be made aware of this requirement.
- 5.2 SEPA's recommended conditions are as follows:
- i. measures are incorporated in the site layout to store, segregate, collect and manage waste. The developer should prepare a site waste management plan (SWMP) to identify how much waste will be produced, how this can be minimised and what might be done with the waste;
  - ii. prior to the commencement of development on the site a detailed documented construction method statement for the site is agreed by the planning authority, in consultation with SEPA. This method statement must address the temporary measures proposed to deal with surface water run-off during construction prior to the operation of the final SUDS;
  - iii. details of the proposed finalised SUDS which should provide sufficient attenuation so that the development would not cause or exacerbate flooding within the receiving catchment;
  - iv. the incorporation into the development of on-site zero and low carbon equipment in accordance with Government Policy and guidance aimed at reducing carbon emissions in new development published as Scottish Planning Policy 6: Renewable Energy (SPP6)

and Planning Advice Note 84: Reducing Carbon Emissions in New Development (PAN84).

- 5.3 The Council's **Archaeological Advisor** has advised that a previous archaeological recommendation letter (31/08/2009) written in relation to the original outline planning permission (09/00354/OUT) recommended a Programme of Works (Archive Assessment, 7% evaluation and a Historic Building Recording for Ashgrove/Mayshade House (if appropriate)). The current Section 42 application includes an archaeological desk-based assessment and walkover field survey report, undertaken by AOC Archaeology. The report indicated a change in the baseline condition for some heritage sites present within the proposed development area (namely Ashgrove House and its associated garden/estate Mayshade Estate) following a fire and subsequent demolition. Several elements associated with the house grounds (e.g. a sundial and glass house) were recorded in the report as being upstanding features. As a result of the updated information the Archaeological Advisor advises of a requirement for a change to the original recommended Programme of Archaeological Works condition that is necessary with the gardens to the application. The revised recommended Programme of Archaeological works is as follows: (i) a more detailed walkover field survey; (ii) a 7% trial trench evaluation; and, (ii) the protection and preservation prior to and during construction phase of the recorded remains of the sundial (former listed) associated with the house, including the incorporation of the sundial into the proposed development design layout.
- 5.4 The **Coal Authority** informs that the application site falls within the defined Development High Risk Area. The Coal Authority records indicate that within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this application. Their information indicates that underground coal mining has taken place beneath the site at shallow depth and the zone of influence of a recorded off-site mine entry encroaches into the site. Thick coal seams outcrop across the site which may have been worked in the past and historic unrecorded underground coal mining is also likely to have taken place beneath the site at shallow depth. The Coal Authority **objects** to this planning application, as the required Coal Mining Risk Assessment Report, or equivalent, has not been submitted as part of the application.
- 5.5 The Council's **Head of Education** advises that based on an estimated development of 92 dwellings there would arise a demand for the following number of pupils:
- |                    |    |
|--------------------|----|
| • Primary Pupils   | 29 |
| • Secondary Pupils | 21 |
- 5.6 The site lies within the following school catchment areas:
- |                              |                                   |
|------------------------------|-----------------------------------|
| Non-denominational primary - | Loanhead/Paradykes Primary School |
| Denominational primary -     | St Margaret's RC Primary School   |

Non-denominational secondary - Lasswade High School  
Denominational secondary - St David's RC High School

- 5.7 The new **Paradykes Primary School** has been built with additional capacity to provide for pupils coming forward from this development. Therefore a contribution will be required towards the costs of providing this additional capacity.
- 5.9 **St Margaret's RC Primary School** is at or near capacity from committed developments in the Loanhead/Roslin area. An extension may be required and a developer contribution would be required towards the cost of any extension.
- 5.10 A developer contribution will be required towards the cost of additional non-denominational secondary school provision. A further contribution will be required towards secondary denominational provision at St David's High School.
- 5.11 The **Midlothian Health and Social Care Partnership** were consulted on the application but have made no comment.
- 5.12 The **Loanhead & District Community Council (CC)** were notified of the application but have made no comment.

## **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). The following policies are relevant to the proposal:

Edinburgh 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 7** (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY) states that sites for Greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) The development will be in keeping with the character of the settlement and local area; (b) The development will not undermine Green Belt objectives; and (c) Any

additional infrastructure required as a result of the development is either committed or to be funded by the developer.

Midlothian Local Development Plan 2017 (MLDP)

- 7.5 Policy **STRAT 1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP.
- 7.6 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.7 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.8 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.9 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.
- 7.10 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.
- 7.11 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that Plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility). Supplementary Guidance on open space standards is to be brought forward during the lifetime of the plan.
- 7.12 Policy **ECON1: Existing Employment Locations** seeks to safeguard those sites allocated for economic land uses.
- 7.13 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.

- 7.14 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A701 realignment.
- 7.15 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.16 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.17 Policy **ENV2 Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the *Midlothian Green Network*.
- 7.18 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.19 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.20 **Policy ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.
- 7.21 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.



- 7.22 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.23 Policy **ENV19: Conservation Areas** states that development will not be permitted within or adjacent to conservation areas where it would have any adverse effect on its character or appearance.
- 7.24 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.25 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.26 Policy **NRG6: Community Heating** seeks to ensure developments deliver, contribute towards or enable the provision of community heating schemes.
- 7.27 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 education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.
- 7.28 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.29 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

#### National Policy

- 7.30 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. The individual and cumulative effects of infill must be sustainable in relation to the social and economic infrastructure of a place, and must not lead to over-development.
- 7.31 The SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of the SPP are developed within the local plan and local development plan policies.
- 7.32 The SPP states that *design is a material consideration in determining planning applications* and that *planning permission may be refused and the refusal defended at appeal or local review solely on design grounds*.
- 7.33 The SPP supports the Scottish Government's aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.
- 7.34 The SPP notes that "high quality electronic communications infrastructure is an essential component of economic growth across Scotland". It goes on to state that
- "Planning Authorities should support the expansion of the electronic communications network, including telecommunications, broadband and digital infrastructure, through the development plan and development management decisions, taking into account the economic and social implications of not having full coverage or capacity in an area"*.
- 7.35 The Scottish Government policy statement, **Creating Places**, emphasises the importance of quality design in delivering good places.
- 7.36 **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.
- 7.37 **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 issue to be determined is whether the proposal accords with the development plan, unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

### The Principle of Development

- 8.2 The site is allocated for housing and economic development uses and is located within the built up area of Loanhead where there is a presumption in favour of appropriate development. The principle of residential development on this site was first established by its allocation for housing (170 units) and economic development (10 hectares) within the now superseded 2008 Midlothian Local Plan.
- 8.3 The subsequent grant of planning permission in principle (09/00354/OUT) for housing and economic land uses on the allocated housing/economic site and the grant of planning permission in principle for housing, an indicative 98 units, on part of the economic land allocation (4.3 hectares) reaffirmed the principle of residential development across the application site.
- 8.4 The MLDP continues the commitment to residential development and economic uses, but revises the number of units to 268 (the original 170 allocation plus the additional 98 units) on site h54 and 5.7 hectares of economic land on site e33.

### Number of Residential Units

- 8.5 The residential development is split into three development areas running from north west to south east. The south east plot has permission for 115 residential units and is substantially complete with most units being occupied. The north west plot has permission for 90 residential units and is under construction with many units being complete and occupied. This gives a total of 205 units with detailed permission.
- 8.6 The central part of the site is without a detailed permission (matters specified in conditions (MSC)) and as the original planning permission in principle (previously called outline planning permission) has lapsed a MSC application cannot be submitted for the layout and design detail. As a consequence the applicant is seeking to extend the time period to submit MSC application/s to complete the site. This approach is acceptable in principle.
- 8.7 Discussions with the applicant and reference to a previously submitted and withdrawn application (15/00974/MSC) for the central development area indicates that a further 92 residential units are proposed. This will bring the total for the site up to 297, 29 units above the figure identified in the MLDP and anticipated in the original planning application

(09/00354/OUT) and the changes to the economic land allocation (11/00414/PPP and 11/00415/PPP). Application 09/00354/OUT did not set a limit on the number of residential units. The increase in unit numbers can be considered acceptable subject to the detailed layout and form of development being of good design and the development being mitigated in terms of its impact on education provision and other infrastructure.

### Layout and Design

8.8 Although the application is a Section 42 application it is in effect a planning application in principle. This means that the detailed layout, form and design of the development would be subject to further applications (matters specified in conditions) and assessment if the proposal is granted planning permission. In this case conditions would be imposed requiring the following details to be submitted by way of an application:

- layout, form and design of any proposed buildings;
- proposed materials to be used in the construction of the dwellinghouses, ground surfaces and ancillary structures – including those to be used in the area of improved quality (which would be the provision for the whole site);
- details of landscaping and boundary treatments;
- provision of open space and play areas/facilities (which would be the provision for the whole site);
- percent for art (which would be the provision for the whole site);
- sustainable urban drainage systems;
- details of road, access and transportation infrastructure;
- sustainability and biodiversity details;
- archaeology mitigation details; and
- the provision of broadband infrastructure.

8.9 The development strategy across the whole site, which was agreed with the applicants as part of the determination of the details for the north west and south east development areas, was one which would see the delivery of the site's open space, play areas/facilities, area of improved quality and percent for art being implemented in the central development area.

### Ground Conditions

8.10 The application is not accompanied by a coal mining risk assessment and as such it has not been demonstrated that residential development can safely take place on the site. There is an outstanding objection from the Coal Authority and as a consequence the Council cannot issue a planning permission until this issue is addressed and the objection withdrawn. A coal mining legacy is not unusual on a development site in Midlothian. It is usually mitigated by the applicant demonstrating what measures they will take to address any risk identified in a coal mining risk assessment. This is an outstanding

issue which could be resolved by the applicant. The risk was mitigated on the north west and south east development areas.

#### Requirement for a new Planning Obligation

- 8.11 In April 2013 the Council granted planning permission in principle (09/00354/OUT) for residential development and economic land uses. The indicative number of units envisaged from the allocated site was 170. At the same time the Council granted planning permission in principle (11/00414/PPP and 11/00415/PPP) for residential development on allocated economic land to improve the viability of the whole scheme, in particular to deliver the relief road connecting the B702/Loanhead Road to Edgefield Road. Consequently the number of dwellings was going to be higher than the allocated 170; based on the applicants submission it was anticipated to be 268 residential units (hence the number set in the MLDP).
- 8.12 The grant of planning permission was subject to a Section 75 legal agreement (S75) to secure developer contributions towards primary education, secondary education and road improvement contributions. Neither the grant of planning permission nor the S75 was capped in terms of unit numbers which could be delivered, although the quantum of contributions was fixed irrespective of the actual number of units. For example, the primary education contribution was fixed at £1,000,000, subject to indexation. The contributions were predicated on 268 units being delivered, though as noted above neither the planning permission nor the S75 agreement prevented a higher number being delivered.
- 8.13 Although the application is a 'Section 42 application' it is a planning application which has to be assessed in accordance with Section 37(2) of the Town and Country Planning (Scotland) Act (1997), which states "in dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations".
- 8.14 The appropriate procedural requirements are set out in Circular 3/2013: Development Management Procedures which confirms that a Section 42 is a new permission and that if permission is granted it should be subject to the conclusion of any appropriate planning obligation to secure developer contributions.
- 8.15 Although the MLDP was adopted after the original grant of planning permission for the site (09/00354/OUT) it does form the basis of the assessment of the current application. The settlement statement in the MLDP in relation to the site (with an indicative capacity of 268) identifies that "this development will require additional capacity to be provided for primary and secondary education for which developer contributions will be sought. Furthermore, Appendix 1E of the MLDP identifies the requirements for new developer funded recreational and community facilities to meet deficiencies exacerbated by additional

housing. The Council's Supplementary Planning Guidance (2012) on developer contributions is also specific about contributions towards leisure facilities being required from this site. SESplan and the MLDP identifies that the realignment of the A701 is a key strategic project to be funded by developer contributions from sites in the A701 corridor. This site is in the A701 corridor. Policy DEV 3 requires that a 25% affordable housing provision is made from residential development sites. On this basis it is appropriate to require developer contributions for the proposed residential development.

- 8.16 The S75 Heads of Terms which has been provided to the applicants is reflective of the above development plan requirements. What is being sought is only that which would arise from this planning permission and which has not already been provided for through the original grant of planning permission and S75. The applicant has agreed to make the required developer contribution to mitigate the impact of the additional 29 units (above the 268 units covered by the earlier agreement) with regard education provision, affordable housing and leisure.
- 8.17 The applicant has put forward a case that a contribution should not be made towards the A701 on the basis that the original permission and associated developer contribution negotiations were completed prior to the Council's commitment to the realignment of the A701 and as such the continued viability of the site is predicated on this consistency of approach. On the basis that there is a desire by all parties to see the residential component of the site progress to completion and that there is agreement over the contributions referenced above it is proposed to support the application on this basis.

## **9 RECOMMENDATION**

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

*The proposed development site is identified as being part of the Council's safeguarded/committed housing and economic land supply within the Midlothian Local Development Plan 2017 and as such there is a presumption in favour of the proposed development. This presumption in favour of development is not outweighed by any other material considerations.*

Subject to:

- i) the applicants submitting a coal mining risk assessment demonstrating that they can mitigate the risk from the coal mining legacy to the satisfaction of the Coal Authority and as such securing the removal of the outstanding objection from the Coal Authority, prior to planning permission being issued.
- ii) the prior signing of a legal agreement to secure contributions towards education provision, affordable housing and leisure facilities. The legal agreement shall be concluded within six

months. If the agreement is not concluded timeously the application will be refused.

iii) the following conditions:

1. No more than 297 dwellings shall be erected on the site.

**Reason:** *The application has been assessed on the basis of a maximum of 297 dwellings being built on the site. Any additional dwellings would have a further impact on local infrastructure, in particular education provision, and additional mitigation measures may be required. Any such measures would need further assessment by way of a planning application.*

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 and economic/industrial phase of the development, the provision of affordable housing, the provision of open space, structural landscaping, SUDS provision, transportation infrastructure and percent for art. 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 on an individual phase of development (identified in compliance with condition 2) 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/industrial buildings 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 (in the residential areas);
  - xi proposed cycle parking facilities; and
  - xii proposed area of improved quality (minimum of 20% (60 dwellinghouse) of the total number of proposed dwellings (297 dwellinghouses) across the whole site).

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 DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

4. Development shall not begin on an individual phase of development (identified in compliance with condition 2) until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential/industrial 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 total number of proposed dwellings across the whole site). 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 DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

5. Development shall not begin on an individual phase of development (identified in compliance with condition 2) 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 a programme for completion for the construction of access, roads, footpaths and cycle paths;
- ii existing and finished ground levels for all roads, footways and cycle ways in relation to a fixed datum;
- iii the proposed roads (including turning facilities), footpaths and cycle ways including suitable walking and cycling routes linking the new housing with the local primary school and the rest of Loanhead;
- iv proposed visibility splays, traffic calming measures, lighting and signage;
- v proposed construction traffic access and haulage routes; and
- vi proposed car parking arrangements.

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/commercial 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, including a timetable of implementation, of 'Percent for Art' has 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 DEV6 and IMP1 of the Midlothian Local Development Plan 2017 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 (field evaluation by trial trenching) has been carried out at the site by a professional archaeologist in accordance with details submitted to and approved in writing by the planning authority. The area to be investigated should be no less than 7% of the total site area with an additional 2% contingency should significant archaeological remains be encountered.

**Reason:** *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policy ENV25 of the Midlothian Local Development Plan 2017.*

9. Development shall not begin until an application for approval of matters specified in conditions setting out details, including a timetable of implementation, of high speed fibre broadband has 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/commercial building. The delivery of high speed fibre broadband shall be implemented as per the approved details.

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

10. Development shall not begin until an application for approval of matters specified in conditions for a scheme of sustainability/biodiversity for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

**Reason:** *To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan 2017.*

11. Development shall not begin until an application for approval of matters specified in conditions for the provision and use of electric vehicle charging stations throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

12. Development shall not begin until an application for approval of matters specified in conditions for a scheme setting out the scope and feasibility of a community heating scheme for the development hereby approved and; if practicable, other neighbouring developments/sites, in accordance with policy NRG6 of the Midlothian Local Development Plan, shall be submitted for the prior written approval of the planning authority.
13. No dwellinghouse/commercial building on the site shall be occupied until a community heating scheme for the site and; if practicable, other neighbouring developments/sites, is approved in writing by the planning authority. The approved scheme shall be implemented in accordance with a phasing scheme also to be agreed in writing in advance by the Planning Authority. There shall be no variation therefrom unless with the prior written approval of the planning authority.

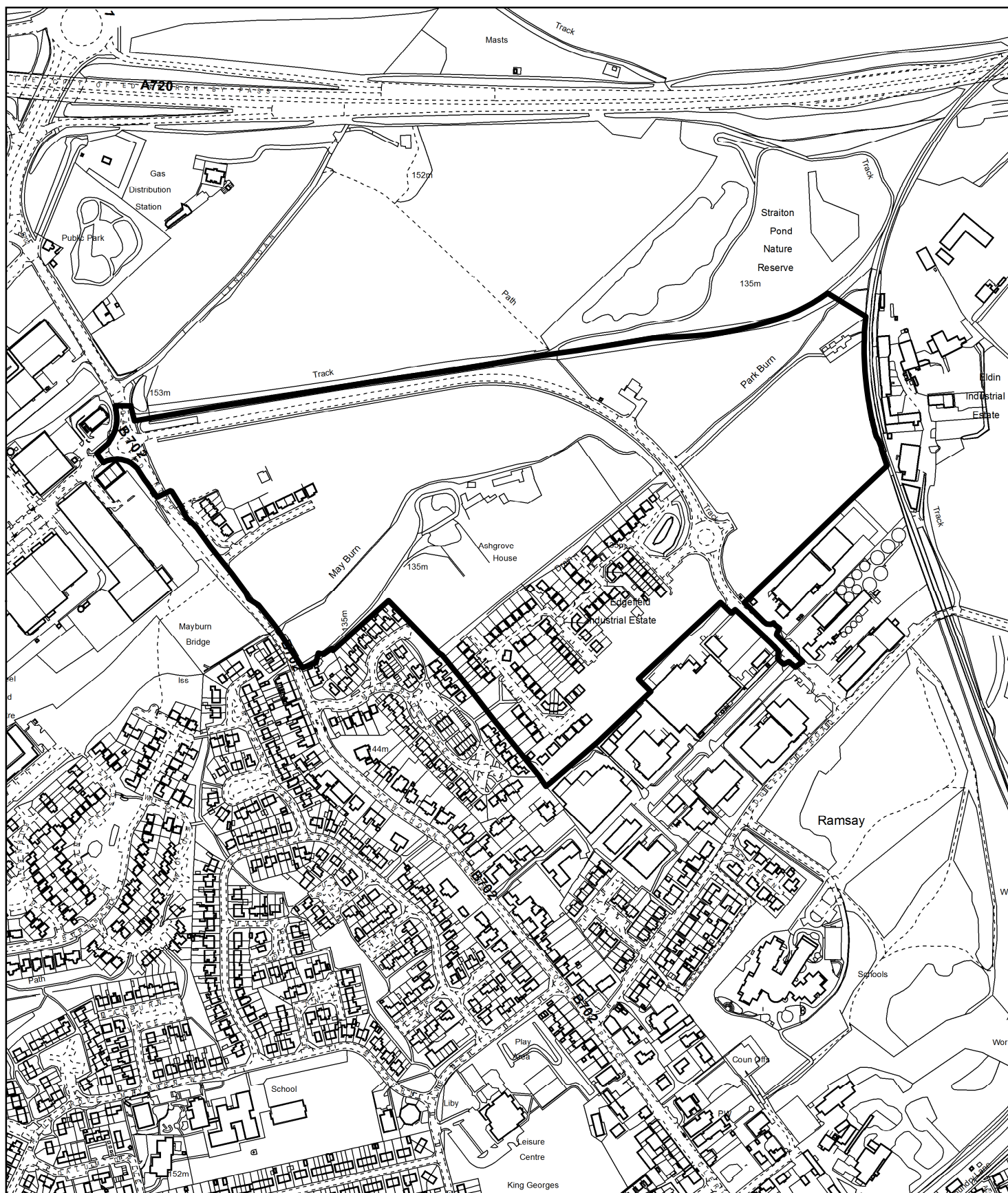
**Reason for conditions 12 and 13:** *To ensure the provision of a community heating system for the site to accord with the requirements of policy NRG6 of Midlothian Local Development Plan 2017 and in order to promote sustainable development.*

14. No building 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 building.*

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

**Date:** 28 November 2017  
**Application No:** 17/00273/S42  
**Applicant(s):** Straiton Park Ltd, The Captain's House, 2 William  
Burn Gardens, Rosewell, EH24 9ET  
**Validation Date:** 7 April 2017  
**Contact Person:** Adam Thomson  
**Tel No:** 0131 271 3346  
**Background Papers:** Planning Applications 03/00862/FUL,  
03/00862/FUL, 09/00354/OUT, 11/00414/PPP,  
11/00415/PPP, 13/00804/MSC, 15/00754/MSC,  
15/00974/MSC and 16/00800/S42.



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

Land between Loanhead Road and Edgefield Industrial Estate,  
Loanhead

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