

Notice of Review: Former Arniston Gas Works, Gorebridge Update Report

Report by Ian Johnson, Head of Communities and Economy

1 Purpose of Report

- 1.1 The purpose of this report is to provide an update for the Local Review Body (LRB) regarding an application for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge.

2 Background

- 2.1 Planning application 15/00335/PPP for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge was refused planning permission on 30 June 2015 for the following reasons:

1. The proposed development is sited outside any identified settlement boundary and without a proven agricultural, forestry, countryside recreation, tourism or waste disposal need the development is contrary to policies RP1 and DP1 of the adopted Midlothian Local Plan which seeks to protect the countryside.
2. The proposed development would lead to the direct and indirect loss of trees and woodland within a conservation area, to the detriment of the character of the locality, and as such the development is contrary to adopted Midlothian Local Plan policies RP5 (Woodland, trees and hedges) and RP20 (Conservation areas).
3. The indicative layout of the proposal does not comply with the terms of policy DP2 Development Guidelines, which seeks a high standard of development with access to open space and play facilities. The proposed indicative layout does not adequately demonstrate that ten dwellings can be accommodated within the application site and therefore constitutes an over-development.
4. As a result of the loss of trees and the density of the proposed development the proposal will have a significant adverse impact on the character and appearance of the conservation area and is, therefore, contrary to adopted Midlothian Local Plan policy RP22 Conservation Areas which seeks to protect the character and appearance of conservation areas.
5. The access to the proposed development is potentially sub-standard. The applicant has not demonstrated that an

acceptable access could be created to serve this development without adversely impacting on the landscape character of the area. The use of this access would potentially cause a hazard to the safety and free flow of traffic.

6. The proposal takes little cognisance of the Borders railway line, in terms of providing for its safe operation and for protecting the amenity of the dwellings proposed to be in close proximity to it.
 7. Allowing the proposed development will jeopardise the implementation of the restocking notice, served by the Forestry Commission. The required planting of trees supports the aims and objectives of policies RP5, RP7 and RP22 of the Midlothian Local Plan, which seek to protect woodland to the benefit of the countryside and to maintain the high quality of the environment.
 8. It has not been demonstrated, to the satisfaction of the Planning Authority, that the proposed development will not have a significant adverse impact on protected species. Therefore the proposed development is contrary to policy RP13 of the adopted Midlothian Local Plan.
- 2.2 A Notice of Review was submitted by the applicants and at its meeting of 20 October 2015 the LRB resolved to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities. A copy of the original report (excluding the attachments which can be viewed online via www.midlothian.gov.uk) to the LRB is appended to this report as Appendix A.
- 2.3 Despite the best endeavours of Council Officers the legal agreement was not concluded and as a consequence an update report was reported to the LRB at its meeting of 24 January 2017. A copy of the update report to the LRB is appended to this report as Appendix B. The LRB determined to write to the applicant directly outlining its disappointment with progress and expressing a desire to conclude the matter timeously. A copy of the letter sent by the Chair of the LRB, dated 30 January 2017, is appended to this report as Appendix C.
- 2.4 In response the applicants expressed a desire to conclude the legal agreement and instructed a solicitor to progress the matter. However, in preparing the legal agreement it became apparent that there were outstanding issues relating to land ownership - this stalled progress on concluding the legal agreement. The Planning Manager verbally updated the LRB at its meeting of 7 March 2017 and made a commitment to update the LRB prior to planning permission being issued.

3 Current Position

- 3.1 Since the LRB meeting in March 2017 the applicant's solicitor and the Council's solicitor have resolved the uncertainty regarding land ownership and are in a position to conclude the legal agreement.

- 3.2 The legal agreement has not been concluded or the planning permission issued because the Planning Manager made a commitment to update the LRB prior to planning permission being issued.

4 Recommendations

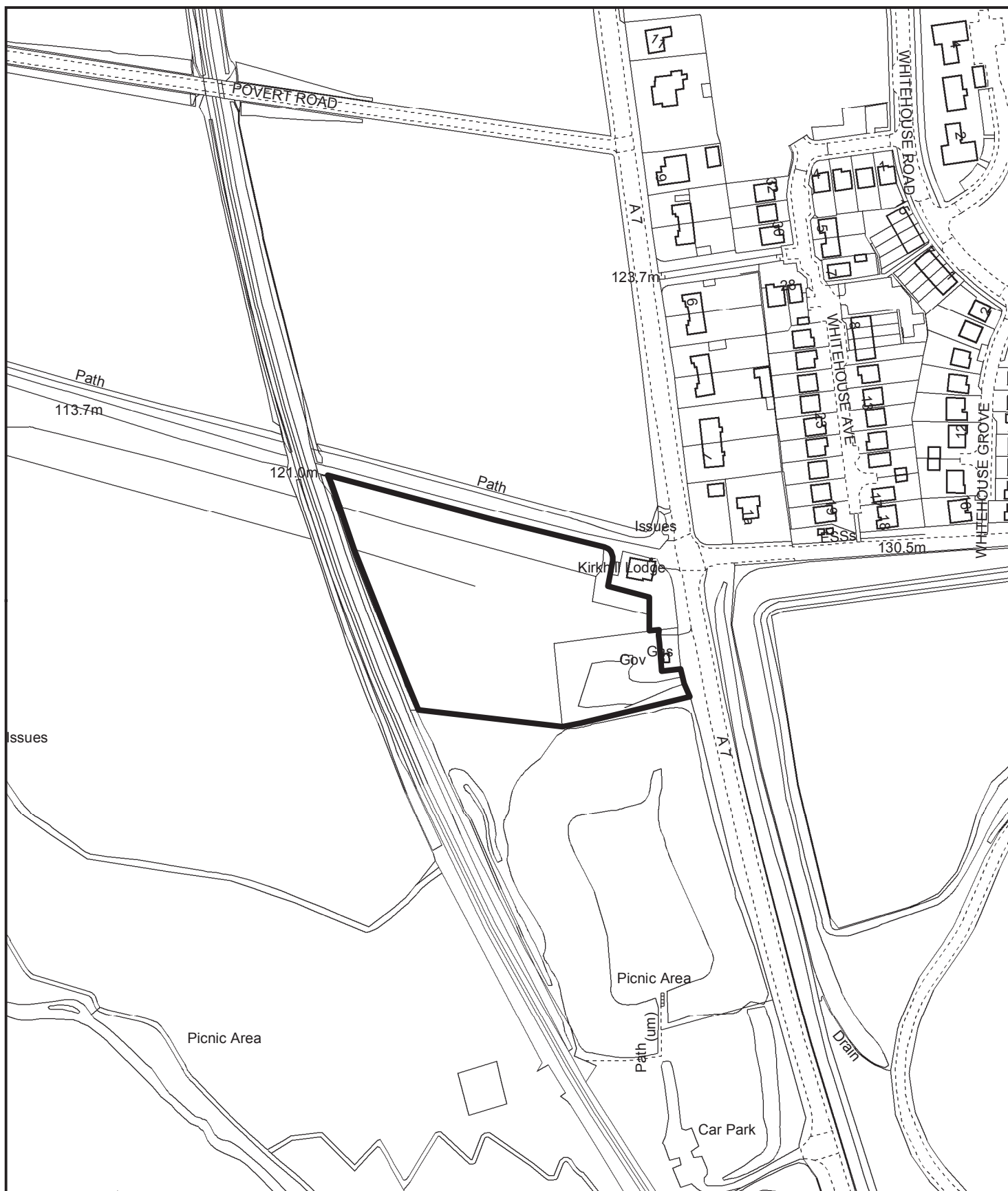
- 4.1 It is recommended that the LRB note the update and instruct officers to conclude the legal agreement and issue the planning permission in accordance with the decision taken by the LRB at its meeting of 20 October 2015.

Date: 15 August 2017

Report Contact: Peter Arnsdorf, Planning Manager (LRB Advisor)
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Tel No: 0131 271 3310

Background Papers: Planning application 15/00335/PPP available for inspection online.



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EH22 3AA

Application for planning permission in principle for the erection of 10 dwellinghouses; formation of access and associated works at Former Arniston Gas Works, Gorebridge

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File No. 15/00335/DPP

Scale: 1:2,500



Notice of Review: Former Arniston Gas Works, Gorebridge Determination Report

Report by Ian Johnson, Head of Communities and Economy

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge.

2 Background

- 2.1 Planning application 15/00335/PPP for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge was refused planning permission on 30 June 2015; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C);
 - A copy of the decision notice, excluding the standard advisor notes, issued on 30 June 2015 (Appendix D); and
 - A copy of the relevant plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

4 Procedures

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:

- Have scheduled an accompanied site visit for Monday 19 October 2015; and
 - Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that nine consultation responses and no representations have been received. As part of the review process the consultees were notified of the review. Three additional comments have been received. All the comments can be viewed online on the electronic planning application case file via www.midlothian.gov.uk.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported to the next LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 19 June 2012 and 26 November 2013, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. Development shall not commence until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:
 - i. existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;

- ii. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
- iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
- iv. location and design of any proposed walls, fences and gates;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi. a programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses/buildings on adjoining plots are occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August); and,
- vii. drainage details and details of sustainable urban drainage systems to manage water runoff.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the Planning Authority as per 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 RP7, RP22, RP25 and DP2 of the adopted Midlothian Local Plan and national planning guidance and advice. To ensure that there is no adverse impact on the operation of the adjacent railway.

- 2. Development shall not commence until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential units and other structures has been submitted to and approved in writing by the Planning Authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. 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 RP7, RP22, RP25 and DP2 of the Midlothian Local Plan and national planning guidance and advice.

- 3. Development shall not commence until an application for approval of matters specified in conditions for details of a scheme for 'Percent for Art', including a timetable for implementation, have been submitted to and approved in writing by the Planning

Authority. The scheme of 'Percent for Art' shall be implemented as per the approved details.

Reason: *To ensure that the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies IMP1 and DP2 of the adopted Midlothian Local Plan and national planning guidance and advice.*

4. Development shall not commence until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:
 - i. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii. proposed vehicular, cycle and pedestrian access;
 - iii. proposed roads (including turning facilities), footpaths and cycle ways;
 - iv. proposed visibility splays, traffic calming measures, lighting (including footpath lighting) and signage;
 - v. proposed construction traffic access and haulage routes;
 - vi. a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
 - vii. proposed car parking arrangements;
 - viii. an AutoTrack, vehicle swept path analysis, to demonstrate that the site is suitable for HGVs (refuse and recycling vehicles) to enter and exit in a forward gear; and,
 - ix. a programme for the completion of the construction access, roads, footpaths and cycle paths.

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

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

5. Development shall not commence until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site has been submitted to and approved in writing by the Planning Authority. The scheme shall contain details of the proposals to deal with any contamination and include:
 - i. a site survey (including bore hole testing where necessary) to establish that the level of contamination within the site is acceptable in relation to the proposed development, or that remedial and/or protective measures could be undertaken to bring contamination to an acceptable level in relation to the proposed development; and

- ii. a detailed schedule of any required remedial and/or protective measures, including their programming.

Prior to any part of the site being occupied for residential purposes, the measures to decontaminate/remediate the ground conditions of the site shall be fully implemented as approved by the Planning Authority.

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

6. Details of building levels on the site, to be submitted in terms of condition 1i above, shall show finished floor levels for buildings being raised above ground level.

Reason: *In order to prevent surface water runoff from surrounding roads from adversely impacting on the properties.*

7. Details of the means of drainage, to be submitted in terms of condition 1vii above, shall ensure that any SUDs system shall be located outwith 10metres of the adjacent railway infrastructure.

Reason: *In order to ensure that water from the proposed development does not drain on to the railway; in the interests of railway safety.*

8. Details of the siting of the buildings, to be submitted in terms of condition 2 above, shall ensure that no buildings are to be erected within 2m of the boundary with the railway.

Reason: *In the interests of railway safety.*

9. Details of the design of dwellinghouses, to be submitted in terms of condition 2 above, shall include measures to mitigate against noise and vibrations generated by the adjacent railway.

Reason: *In order to protect the amenity of future residents of the dwellings from noise and disturbance generated by the railway.*

10. Details of the materials to be used on the external surfaces of the buildings, to be submitted in terms of condition 2 above, shall comprise traditional materials, including natural slate, wet or smooth render, natural stone and timber.

Reason: *In order to ensure a high quality development which respects, and reflects, the character and appearance of buildings within the conservation area and designed landscape.*

11. Details of the means of enclosure, to be submitted in terms of condition 2 above, shall include a 1.8m high trespass proof fence along the boundary with the adjacent railway.

Reason: *In order to prevent unauthorised and unsafe access to the railway; in the interest of the safe operation of the railway.*

12. Details of the vehicular access, to be submitted in terms of condition 4ii above, shall ensure that the vehicular access shall measure 5.5m wide.

Reason: *To ensure the safe passage of pedestrians and vehicles in the interests of highway safety.*

13. Details of the proposed parking arrangements, to be submitted in terms of condition 4vii above, shall include space for five visitor parking spaces within the development site.

Reason: *In order to ensure that sufficient on-site parking is provided so that vehicles do not park in unsafe locations which would be potentially detrimental to highway safety.*

- 5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards education provision, the Borders Railway, town centre improvements, children's play provision and community facilities. The legal agreement shall be concluded prior to the issuing of the LRB decision.

6 Recommendations

- 6.1 It is recommended that the LRB:
 - a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Date: 13 October 2015

Report Contact: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk

Tel No: 0131 271 3310

Background Papers: Planning application 15/00335/PPP available for inspection online.

Notice of Review: Former Arniston Gas Works, Gorebridge Update Determination Report

Report by Ian Johnson, Head of Communities and Economy

1 Purpose of Report

- 1.1 The purpose of this report is to provide an update for the Local Review Body (LRB) regarding an application for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge. A copy of the original report to the LRB is appended to this report.

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1. The proposed development is sited outside any identified settlement boundary and without a proven agricultural, forestry, countryside recreation, tourism or waste disposal need the development is contrary to policies RP1 and DP1 of the adopted Midlothian Local Plan which seeks to protect the countryside.
 2. The proposed development would lead to the direct and indirect loss of trees and woodland within a conservation area, to the detriment of the character of the locality, and as such the development is contrary to adopted Midlothian Local Plan policies RP5 (Woodland, trees and hedges) and RP20 (Conservation areas).
 3. The indicative layout of the proposal does not comply with the terms of policy DP2 Development Guidelines, which seeks a high standard of development with access to open space and play facilities. The proposed indicative layout does not adequately demonstrate that ten dwellings can be accommodated within the application site and therefore constitutes an over-development.
 4. As a result of the loss of trees and the density of the proposed development the proposal will have a significant adverse impact on the character and appearance of the conservation area and is, therefore, contrary to adopted Midlothian Local Plan policy RP22 Conservation Areas which seeks to protect the character and appearance of conservation areas.

5. The access to the proposed development is potentially sub-standard. The applicant has not demonstrated that an acceptable access could be created to serve this development without adversely impacting on the landscape character of the area. The use of this access would potentially cause a hazard to the safety and free flow of traffic.
6. The proposal takes little cognisance of the Borders railway line, in terms of providing for its safe operation and for protecting the amenity of the dwellings proposed to be in close proximity to it.
7. Allowing the proposed development will jeopardise the implementation of the restocking notice, served by the Forestry Commission. The required planting of trees supports the aims and objectives of policies RP5, RP7 and RP22 of the Midlothian Local Plan, which seek to protect woodland to the benefit of the countryside and to maintain the high quality of the environment.
8. It has not been demonstrated, to the satisfaction of the Planning Authority, that the proposed development will not have a significant adverse impact on protected species. Therefore the proposed development is contrary to policy RP13 of the adopted Midlothian Local Plan.

- 2.2 A Notice of Review was submitted by the applicants and at its meeting of 20 October 2015 the LRB was minded to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities.

3 Current Position

- 3.1 To date the applicants have not concluded the legal agreement despite the planning authority's continued and consistent best efforts since October 2015 to reasonably engage with them. The view of the planning authority throughout that extended period is that there is no significant impediment to the completion of the legal agreement. However, there is no clear indication that the applicants will conclude the agreement within a reasonable timescale. All planning authorities in Scotland are consistently advised by Scottish Government to determine planning applications without undue delay, and to eliminate what are referred to as 'legacy' cases of applications remaining undetermined due to lack of progress on the conclusion of legal agreements. Having regard to these matters this application is being reported further to this meeting of the LRB.
- 3.2 The applicants and other relevant parties have been advised that this application is being referred back to the LRB.

4 Recommendations

- 4.1 At its meeting of 20 October 2015 the LRB was minded to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards,

education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities. However, as the application remains undetermined due to the required legal agreement not being concluded it is appropriate for the LRB to determine to follow one of the following courses of action, or an alternative course of action as may be stated by the LRB:

Options:

- a) uphold the review and grant planning permission subject to conditions, but not subject to the legal agreement to secure developer contributions; or
- b) provide a further 3 months for the applicants to conclude the legal agreement, failing which, and without further referral to the LRB the review would be dismissed and planning permission refused for the reasons outlined in the planning officers decision; or
- c) defer the review and maintain the LRB's original decision only to grant planning permission subject to securing developer contributions and that the review will be held in abeyance until such time a legal agreement has been concluded.

Date: 10 January 2017
Report Contact: Peter Arnsdorf, Planning Manager (LRB Advisor)
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Tel No: 0131 271 3310

Background Papers: Planning application 15/00335/PPP available for inspection online.

Midlothian Council
Midlothian House
40-46 Buccleuch Street
Dalkeith
EH22 1DN

30 January 2017

Mr Matthew James McHale
Dalhousie Lodge
43 Rosewell Road
Bonnyrigg
EH19 3PP



Dear Mr McHale

Notice of Review: Former Arniston Gas Works, Gorebridge

I am writing to you as the Chair of the Local Review Body (LRB).

I refer to your notice of review regarding an application for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge.

Your Notice of Review was considered by the LRB at its meeting of 20 October 2015 at which we were minded to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities.

At our meeting of 24 January 2017 the LRB considered an update report which advised that you have not concluded the legal agreement despite the best efforts of Council Officers. The LRB were disappointed that you had not yet progressed this matter to conclusion and as a consequence it was agreed that I shall write to you requesting an explanation as to why there has been a delay in progressing this matter and to request clarification with regard your intentions to conclude the outstanding agreement.

I note that since the LRB meeting of 24 January 2017 your Solicitor has been in contact with the Council's Planning Manager with the intension of concluding the outstanding legal agreement – please ensure this matter is now swiftly concluded.

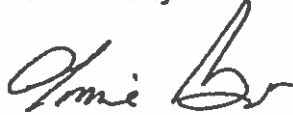
A further update report will be considered by the LRB at its meeting of 7 March 2017 at which a decision could be made to either refuse your review, or set a finite date to conclude the legal agreement. As such it would be prudent to conclude the outstanding legal agreement prior to the stated meeting of the LRB.

Your Ref:
Our Ref: 15/00335/PPF

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Fax 0131 271 3537
Legal Post LP4 - Dalkeith
www.midlothian.gov.uk

Could I please ask you to update Peter Amsdorf, Planning Manager (Advisor to the LRB), peter.amsdorf@midlothian.gov.uk with regard your intentions so that he can update the LRB at its meeting of 7 March 2017.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jim Bryant'.

Councillor Jim Bryant
Chair of the Local Review Body
Jim.Bryant@midlothian.gov.uk

Cc

Craig M Forster
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