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## APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Director of Education, Communities and Economy

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### 1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of an appeal decision received from Scottish Ministers. There were no notices of reviews determined by the Local Review Body (LRB) in January 2020.

### 2 APPEAL DECISIONS

- 2.1 An appeal against a refusal of planning permission (determined by the Committee at its meeting of June 2019) for planning permission in principle for Class 4 (Business) uses with ancillary Class 1 (Shops), Class 2 (Financial, professional and other services) and Class 3 (Food and drink) uses; residential development; and associated access, parking, landscaping and drainage infrastructure at land to the north of Hardengreen House, Dalkeith has been dismissed (refused planning permission). The Reporter appointed by the Scottish Ministers concluded that the proposed development is contrary to the development plan and there were no material considerations which outweighed this position. A copy of the appeal decision accompanies this report.

### 3 RECOMMENDATION

- 3.1 The Committee is recommended to note the appeal decision by Scottish Ministers.

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

**Date:** 14 February 2020  
**Contact Person:** Peter Arnsdorf, Planning Manager  
peter.arnsdorf@midlothian.gov.uk  
**Tel No:** 0131 271 3310

**Background Papers:** LRB procedures agreed on the 13 June 2017.



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Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2056
- Site address: Land to the north of Hardengreen House, Dalkeith
- Appeal by Hardengreen Estates Ltd against the decision by Midlothian Council
- Application for planning permission in principle 19/00099/PPP dated 6 February 2019 refused by notice dated 8 August 2019
- The development proposed: Class 4 (Business) use with ancillary Class 1 (Shops), Class 2 (Financial, professional and other services) and Class 3 (Food and drink) uses; residential development; and associated access, parking, landscaping and drainage infrastructure
- Date of site visit by Reporter: 8 January 2020

Date of appeal decision: 31 January 2020

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## Decision

I dismiss the appeal and refuse planning permission in principle.

## Preliminary matter

Under the terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 the council carried out an EIA screening. This concluded that the proposal did not require an environmental impact assessment. I have considered the screening decision carefully and find nothing to make me reach a different conclusion.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. As the proposed development may also affect the setting of the listed Hardengreen House I must also have special regard to preserving the setting of that building under the terms of section 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
2. The development plan in this case comprises the Edinburgh and South East Scotland Strategic Development Plan approved 2013, (SESplan) and the Midlothian Local Development Plan adopted 2017. SESplan policies 2 and 12 and local development plan policies STRAT1, ECON1 and ENV1 are quoted in the reasons for refusal. In brief these concern the supply and location of employment land, the safeguarding of land for economic land uses and the extent of and appropriate development in the green belt.



3. Having regard to the provisions of the development plan, the submissions before me and my site inspection, the main issues in this appeal are the impact of the proposal on an allocated economic use site and whether a development in the green belt would be justified.

4. The proposed site covers 2.4 hectares and is roughly triangular in shape with a narrow strip extending to the north-east that would provide the main access from the road leading to the Eskbank Park and Ride facility. The site is adjacent on its north-east side to that park and ride facility for the Borders railway, which runs along the west side of the site, including Eskbank station. To the east is a solar farm, part of the nearby Edinburgh College. To the south-east are the policies of Hardengreen House, a category C listed building now used as a children's nursery. A strip of land within the site that abuts the south-east boundary, covering some 0.77 hectares, about 32% of the overall site, lies within the green belt as designated in the local development plan.

5. The remaining 68% of the site is effectively within the Dalkeith and Eskbank built up area. It is designated in the local development plan as site e11 which forms part of the established economic land supply.

6. An indicative plan submitted with the application shows business uses, including car parking, as occupying the northern part of the site. This would occupy some 80% of the allocated site. The remaining 20% would be given over to residential use together with almost all the green belt area. Small parts of the green belt area would be used for the SUDS pond and associated use.

7. The council points out that an application for Class 4 business use on the allocated site would be acceptable in principle. As it would be in accordance with the development plan I accept this view. The proposed development would however include residential use of the site and this would conflict with SESplan policy 2 and local development plan policies STRAT1 and ECON1 as quoted in the reasons for refusal. Overall the proposal as it affects the allocated site would not therefore accord with the development plan.

8. Local development plan policy ENV2 sets out criteria for the support of development within the green belt. These include necessity for agricultural, horticultural or forestry uses; provision of facilities for outdoor recreation and sport and access to the countryside; relates to uses appropriate to the rural character of the area; provides essential infrastructure or forms part of a nationally required development for which no other site is available. None of these apply in this case.

9. The council acknowledges that the green belt part of the site is in poor condition. This is partly because it was occupied by a now demolished steading building and works associated with the construction of the Borders railway. Arguably part of the site could be classed as brownfield.

10. From my site inspection it is clear the greenbelt boundary is indistinct, with only a post and wire fence in poor condition demarcating it from the allocated site. It does not in my view contribute to the green belt in any significant manner. As the appellant points out it does not serve any useful purpose and is subject to antisocial behaviour. Evidence of graffiti on the adjacent railway overbridge seen during my site inspection supports this view.

11. The council states that a case could be made to amend the greenbelt boundary at this location but considers a planning application is not the appropriate method for this. I accept this view and consider a review of the local development plan would be the correct way to take this forward. As matters stand however the green belt part of the proposal does not accord with the development plan.

12. Turning to material considerations Hardengreen House is a category C listed building that dates from 1796. Originally built as a farm house it was extended on a number of occasions since then. The old farm steading, as referred to above, has now been demolished. The house is currently used as a children's nursery. Former stable buildings which lie on the edge of the application site do not form part of the listing.

13. The house itself is situated within a generous plot and separated from the proposed site by woodland. The policies have already been affected by the construction of outbuildings for nursery use and planning permission has been granted for a two storey detached nursery building of contemporary design. This would be located adjacent to the main house. The part of the proposed development nearest to the house would be residential and taking all the above into account, especially the level of screening, I consider any impact there may be on the house's setting would not be significant.

14. Ten representations were received by the council objecting to the proposed development. The grounds include the greenbelt and open space uses, traffic and access matters, lack of demand for commercial units, schools and health facilities. None of these provide any support for the proposed development. Matters relating to the council's processing of the application are not relevant to my determination and should be pursued if necessary through other channels.

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

16. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Trevor A Croft*

Reporter