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**APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE  
20/00774/PPP, FOR RESIDENTIAL DEVELOPMENT AND ASSOCIATED  
WORKS AT LAND AT WELLINGTON FARM, OLD CRAIGHALL ROAD,  
MILLERHILL, DALKEITH**

Report by Chief Officer Place

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

- 1.1 The application is for planning permission in principle for residential development and associated works on land at Wellington Farm, Old Craighall Road, Millerhill, Dalkeith. There has been one representation and consultation responses from The Coal Authority, Transport Scotland, Scottish Water, the Scottish Environment Protection Agency (SEPA), Historic Environment Scotland, East Lothian Council, the Danderhall and District Community Council, the Council's Archaeological Advisor, the Council's Policy and Road Safety Manager, the Council's Education Resource Manager and the Council's Environmental Health Manager.**
- 1.2 The relevant development plan policies are Policy 5 and 7 of the South East of Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT3, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, ENV1, ENV2, ENV4, ENV7, ENV9, ENV10, ENV11, ENV14, ENV15, ENV16, ENV17, ENV18, ENV20, ENV23, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.3 The recommendation is to grant planning permission in principle subject to conditions and securing developer contributions towards necessary infrastructure and affordable housing.**

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The site of the proposed development is a triangular-shaped area of ground some 18.5 hectares in size. The site lies to the south of Old Craighall Road, Millerhill. To the north east, the site is bound by agricultural land allocated for residential development which is subject to two planning applications for a total of 620 residential units (17/00408/DPP and 17/00409/DPP –reported to Planning Committee at its meeting of January 2019 and January 2021). A track runs down**

the length of the east boundary separating the application site with the adjacent development site. The south east boundary abuts the A720 Edinburgh City Bypass with the Dalkeith Country Park beyond. This boundary is marked by a post and wire fence. To the west, the site boundary follows the curve of a former railway line, now disused and overgrown - this boundary is marked by a chain-link fence at the foot of a steep embankment. The boundary is also marked by trees of varying species and age with scattered shrubs and other wild planting.

- 2.2 Crossing the site in an east to west alignment at its southern portion are two rows of high voltage electricity transmission lines. These are 275kV lines held by steel lattice towers. The north most line is held by two towers which fall within the site boundary whilst the south most line is held by one tower. The south most line crosses the A720 and enters the site at its south east extent. At the northern extent of the site, there is a double row of overhead wires crossing the site in an east to west alignment. These lines are a lower voltage (either 11kV or 33 kV) and held by wooden poles.
- 2.3 The site is generally flat with some variations in levels across long distances. The site sits at 43.23m AOD (above Ordnance Datum/mean sea level) at its northern point which rises to 51.96m AOD in the south west and 49.40m AOD in the south east. There is a low point approximately half-way along the eastern boundary, which does flood on occasion. The site is in active agricultural use.
- 2.4 The site is within a Coal Authority High Risk to Development Area. There are nine mine entries present within or adjacent to the site. Although the site has been in agricultural use for as long as historic maps show, the historic mine workings of the past present a risk of contamination and stability.
- 2.5 The site is identified in the Midlothian Local Development Plan 2017 (MLDP) as a site for future housing development and is safeguarded as such. It is the next phase of development following the delivery of new homes and other associated works on site Hs1: Newton Farm. This site is the subject of the aforementioned planning applications 17/00408/DPP and 17/00409/DPP. The settlement statement map for Danderhall/Shawfair notes the site's potential for future development as a subsequent phase of Hs1. But despite this indication of the potential for future development, the MLDP does not allocate the site for housing at this time and places it instead within the green belt. The MLDP also notes the classification of the site as prime agricultural land.

### **3 PROPOSAL**

- 3.1 This application is for planning permission in principle to develop the site for residential use. The residential area would link to the adjacent developments of 17/00408/DPP and 17/00409/DPP and is seen as a next phase of this development. Details would be the subject of further

application/s, but the applicant has provided a Development Framework (Dwg No. 18238(PL)001\_A, EMA, November 20) which sets out broad parameters for development in response to the site opportunities and constraints. To the north would be a sustainable urban drainage system (SUDS) basin/pond with two blocks of residential development separated by a belt of open space running east to west. To the south, the applicant proposes further open space which would be connected by a multi-user path through the site and beyond. They would also connect, through the landscape belt proposed along the west boundary, to the disused railway line route.

- 3.2 The proposal is supported by a transport assessment (TA) (Sweco, November 2020). It sets out the key connections the site currently benefits from, and those that are planned to be delivered in the area. This is arranged into a hierarchy starting with walking and cycling, then public transport and private vehicles. The TA finds that the site, despite its existing rural location, is close walking distance (1.6km or 20 minutes) to a wide range of planned amenities. A close cycling distance (c8km or 30 – 40 minutes) connects the site to a range of amenities and employment locations in the area. Existing bus services on Old Craighall Road will be enhanced by the planned new park and ride services within the neighbouring development. The Shawfair railway station provides rail services on a 30 minute frequency nearby (10 minute cycle). Public transport connections would connect the site to a wide catchment area of destinations within a 60 minute journey.
- 3.3 The adjacent development provides for north and south connections to the surrounding road network: Old Craighall Road to the north; and, to the A68/A720 City Bypass to the south. Vehicular access into the site is proposed to be a signalised junction with Old Craighall Road provided as part of the neighbouring developments (17/00408/DPP and 17/00409/DPP). The speed limit on Old Craighall Road would be reduced to 30mph as part of these works. The TA also notes the provision of a fourth arm to the A68/A720 roundabout which will provide a southern point of access into the neighbouring site. The applicant proposes to commence development after a construction access from phase 1 becomes available. No other details on phasing are provided. Two vehicular connections into the site would utilise proposed streets provided in the adjacent development. The TA goes on to discuss measures to promote sustainable modes of transport through the use of residential travel plans. But overall, with the delivery of the new link road in the neighbouring development, the development would contribute to the improvement of the road network.
- 3.4 The TA then undertakes modelling work to assess the impact of the trips generated by the development on the surrounding road network. The assessment assumes an opening year of 2024, models 400 homes and models the impact of these units in accumulation with planned (committed) developments. The MLDP requirements for Hs1

are for development to contribute towards mitigation of capacity issues at Sheriffhall roundabout.

- 3.5 The applicant has assessed the flood risk generated by the development (Kaya Consulting Ltd, November 2020). It does not consider the proposal to be at significant risk from fluvial sources of flooding. There is a risk of flooding from surface water entering the site from the north which should be addressed in the drainage strategy. There is a small risk that vehicular access points can act as flow pathways for flood waters - the detailed design of this part of the development should ensure that it mitigates this risk.
- 3.6 In terms of drainage, the applicant has presented a drainage strategy (Goodson Associates, May 2020) to address issues around water and waste connections as well as surface water treatment and attenuation. The strategy notes the presence of an existing sewer pipe within the site boundary. This will need to be relocated to facilitate development, but also provides a point of outfall for foul water. For surface water, a sustainable urban drainage system (SUDS) network is to be provided within the site which will attenuate flows to a 1:2 year green field runoff limit, during a 1:30 year storm event. This gives a maximum allowable flow rate of 81.3 litres per second. This volume would be held in a detention basin situated in the north portion of the site. Treatment would be provided as a sequential train comprising firstly road side swales providing a two-stage treatment before a further layer of treatment is provided by the basin prior to discharge.
- 3.7 The proposal is supported by an air quality impact assessment (The Airshed, October 2020) which examines the impact of development on local air quality. It adopts standard modelling methods to predict the rise in pollutants above existing baseline conditions and provides an assessment of significance of any change. Based on this approach, the report concludes that the development would not result in a significant loss of local air quality, nor would the residents of the development be subject to below-standard air quality.
- 3.8 The applicant has undertaken an archaeological assessment of the site (Written Scheme of Investigation, AOC Archaeology March 2020) comprising trial trench digs covering 8% of the site.

#### **4 BACKGROUND**

- 4.1 The proposal is classed as a Major Development, as defined by the Town and Country Planning (Scotland) (Hierarchy of Developments) Regulations 2009. Therefore, the applicant has certain obligations in relation to pre-application consultation with the community. In March 2020, the applicant submitted a Proposal of Application Notice to the Council (20/00231/PAC). The application is accompanied by a Pre-Application Consultation Report (Holder Planning, October 20) which

details the consultation methodology and the feedback gained from this process.

- 4.2 The applicant also submitted a request for a Screening Opinion under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (20/00602/SCR). It is the adopted opinion of the Council that the proposal is not an EIA Development as defined by the said Regulations.
- 4.3 The site has not been the subject of any planning applications which would be material to the consideration of this current application. The Council received a prior notification of the installation of a 20m high telecommunication mast (19/00637/PNCOM). This is on land adjacent to, but beyond, the boundary of the northern tip of the site near to Old Craighall Road.
- 4.4 To the north east, the site is bound by agricultural land allocated for residential development which is subject to two planning applications for a total of 620 residential units (17/00408/DPP and 17/00409/DPP – reported to Planning Committee at its meeting of January 2019 and January 2021). The Council is minded to grant planning permission for the developments subject to the signing of a legal agreement to secure financial contributions towards infrastructure and the provision of affordable housing – the legal agreement is at an advanced stage of preparation.

## 5 CONSULTATIONS

- 5.1 The **Coal Authority** does not object to the application. They reviewed the applicant's desk based Coal Mining Risk Assessment (DAM Geotechnical Services, November 2019) and concur with the findings. The report advises that further investigations (including borehole investigations) are required along with remedial measures to ensure that the development is not at risk from stability and mine gas from the sites historical coal mining activities. Conditions are recommended to be attached to any grant of planning permission.
- 5.2 **Transport Scotland** does not object to the application, subject to conditions regulating the connection to the trunk road network at the A720/A68 interchange.
- 5.3 **Scottish Water** does not object to the application, but note the existence of a combined water sewer pipe within the site. This will require a stand-off distance of 6m with no buildings or other restrictions allowed within this stand-off zone. The location of the sewer pipe has been identified by the applicant in their utilities plans (Appendix 10, Preliminary Environmental Assessment Report, Goodsons Associates November 2019).

- 5.4 The **Scottish Environment Protection Agency (SEPA)** does not object to the application. Concern about the lack of information on a field drain/culvert through the site is noted, however SEPA are satisfied that further investigations into the location of the culvert and possible diversion options could be undertaken/considered at the detailed design stage if planning permission was granted.
- 5.5 **Historic Environment Scotland** does not object to the application.
- 5.6 **East Lothian Council** does not object to the application.
- 5.7 The **Danderhall and District Community Council (DDCC)** object to the application for the following reasons:
- Prematurity, as the site is not allocated for residential development in the MLDP. Development of the site for new homes should be held for the long-term;
  - the transport impacts of development and how these have been assessed by the applicant; and
  - the application should not be granted ahead of the development of new policy provisions that could secure more social, economic and environmental benefits for the community.
- 5.8 The **Council's Archaeological Advisor** does not object to the application. The site is located in an area containing at least two known archaeological sites and lies within an area of high archaeological potential. Therefore, a condition is recommended which requires a programme of archaeological works based on an agreed written scheme of investigation (WSI).
- 5.9 The **Council's Policy and Road Safety Manager** does not object to the application.
- 5.10 The **Council's Education Resources Manager** does not object to the application. The application has been reviewed in the context of the expansion plans for the education estate in the area, primarily in response to the Shawfair developments. The expanded school estate would be able to accommodate the expected pupils generated by the development subject to developer contributions being secured.
- 5.11 The **Council's Environment Health Manager** does not object to the application. In reviewing the proposal it is noted that there is a risk to the development/future occupants from noise from the A720. There is also a risk to the development from air quality and contaminated land. In terms of noise, the conclusions of the noise assessment are noted and conditions are suggested to control the detailed design of new development. These aim to avoid any significant detrimental impacts on the amenity of future residents. In terms of air quality, the development would have no impact on air quality in and around the site. Control measures for the construction phase can be secured by conditions. For contaminated land, the Phase 1 Site Investigation

recommends further investigative work. This conclusion is agreed and any follow up work can be secured by conditions.

## **6 REPRESENTATIONS**

- 6.1 There has been one representation received, which can be viewed in full on the online planning application case file. A summary of the main points raised are as follows:
- active travel options within and around the site boundary should be considered;
  - detailed proposals should include provision for cycle parking.

## **7 PLANNING POLICY**

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan June 2013 (SESplan) and the Midlothian Local Development Plan 2017 (MLDP). The following policies are relevant to the proposal:
- 7.2 SESplan June 2013 is older than five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within a National Planning Framework (NPF) to be prepared by Scottish Ministers. Once approved, the NPF (which is currently subject to consultation) will form part of the development plan alongside local development plans. Until NPF is approved, SESplan remains part of the development plan albeit increasing out of date.
- 7.3 The following policies are relevant to the proposal:
- [Edinburgh South East Scotland Strategic Development Plan 2013 \(SESPlan\)](#)
- 7.4 **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.
- 7.5 **Policy 6 (HOUSING LAND FLEXIBILITY)** - each planning authority in the SESplan area shall maintain a five years' effective housing land supply at all times. The scale of this supply shall derive from the housing requirements for each local development plan area identified through the supplementary guidance provided for by SESplan policy 5. For this purpose planning authorities may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the local development plan.

- 7.6 **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)

- 7.7 Policy **STRAT3: Strategic Housing Land Allocations** states that strategic land allocations identified in the plan will be supported provided they accord with all other policies. The development strategy supports the safeguarding of the site for housing (220 units) for the longer term (beyond 2024) and provides scope for the early support of development if the site contributes to the five-year effective land supply.
- 7.8 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.
- 7.9 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.10 Policy **DEV6: Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.11 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.12 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.

- 7.13 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.
- 7.15 Policy **TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.16 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.17 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.
- 7.18 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.
- 7.19 The policy states that housing will normally only be permissible where it is required for the furtherance of an established Green Belt activity. The applicant will be required to show the need for the new dwelling is permanent; cannot be made within an existing settlement; and that the occupier will be employed full-time in the associated countryside activity. A planning condition limiting the occupancy of the house is likely to be attached in the event of approval.
- 7.20 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.

- 7.21 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.
- 7.22 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.
- 7.23 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 drainage systems (SUDS) 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.
- 7.24 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.
- 7.25 Policy **ENV11: Woodland, Trees and Hedges** protects against 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.
- 7.26 Policy **ENV14: Regionally and Locally Important Nature Conservation Sites** states that development will not be permitted where it could adversely affect the nature conservation interest of such sites, unless it can be demonstrated that appropriate mitigation measures are in place.
- 7.27 Policy **ENV15: Species and Habitat Protection and Enhancement** provides a presumption against development that would affect a species protected by European or UK law.
- 7.28 Policy **ENV16: Vacant, Derelict and Contaminated Land** supports the redevelopment of vacant and derelict land for uses compatible with their location. Developments will be required to demonstrate that the

site is suitable for the proposed new use in terms of the risk posed by contamination and instability from historic uses.

- 7.29 Policy **ENV17: Air Quality** states that the Council may require further assessments to identify air quality impacts where considered requisite. It will refuse planning permission, or seek effective mitigation, where development proposals cause unacceptable air quality or dust impacts
- 7.30 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.
- 7.31 Policy **ENV20: Nationally Important Gardens and Designed Landscapes** states development should protect, and where appropriate enhance, gardens and designed landscapes. Development will not be permitted which would harm the character, appearance and/or setting of a garden or designed landscape as identified in the Inventory of historic Gardens and Designed Landscapes.
- 7.32 Policy **ENV23: Scheduled Monuments** states that development which could have an adverse effect on a scheduled monument, or the integrity of its setting, will not be permitted.
- 7.33 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.
- 7.34 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.
- 7.35 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.
- 7.36 Policy **IMP1: New Development** ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; 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.

- 7.37 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.
- 7.38 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

#### National Policy

- 7.39 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.
- 7.40 SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to contribute towards good place-making. These qualities are places that are: 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.
- 7.41 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.
- 7.42 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.
- 7.43 SPP introduces a presumption in favour of development that contributes to sustainable development, but states:

*The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.*

- 7.44 SPP promotes a plan-led system and the starting point for any assessment of an application for planning permission, unless material considerations justify a departure. SPP requires planning authorities to maintain a five year supply of effective housing land at all times. Where a shortfall emerges, specific provisions within SPP allow for the assessment of additional sites not allocated for housing to be considered to make up the shortfall. Sustainable development can be defined by the 13 principles of sustainable development set out in paragraph 29 of SPP.
- 7.45 The Planning etc (Scotland) Act 2019 places a duty on Scottish Ministers to prepare a new National Planning Framework. This will replace the existing National Planning Framework (NPF3) and SPP. A draft NPF4 has been published for consultation. The content of NPF4 in the consultation draft underlines the continued support for a plan-led system in Scotland where the economic aspirations of the country are met in a way that is balanced by the needs of communities and the environment.
- 7.46 **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.
- 7.47 **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 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.

### The Principle of Development

- 8.2 The site is not allocated for residential development in the MLDP, but is safeguarded for potential future housing development, if deemed required through the review of the MLDP and/or depending on Midlothian's future housing targets to be set by Scottish Government through National Planning Framework 4 (NPF4) which is currently subject to consultation and scheduled for adoption in spring/summer 2022. But until then, in planning terms and for the purposes of this assessment, the site is located within the green belt and is prime agricultural land. The proposal does not comply with the acceptable forms and scale of development allowed for in the green belt, as defined by MLDP policies ENV1 and ENV4 and therefore the proposal is contrary to the development plan – unless there is an identified shortfall in the five year housing land supply (this point is discussed in

detail later in the report). The safeguarding of the site for possible future development is a material consideration in the assessment of the application and is also a matter which will be the subject of due process in the formation of the next MLDP (if not granted planning permission in advance of MLDP2) and could be used to meet any additional housing targets set by NPF4 (it will also contribute towards NPF4 targets if granted permission by way of this application).

- 8.3 The assessment must then turn to any material considerations which could potentially justify a departure from the development plan. The relevant material considerations are: 1) the supply of effective housing land; 2) site effectiveness; 3) prematurity; 4) infrastructure delivery; 5) sustainable development; and 6) other matters. Once these are set out, they are then balanced against the development plan to determine if they are of sufficient weight to overcome the presumption against development.

#### The Supply of Effective Housing Land

- 8.4 The Council is required to maintain a five year supply of effective housing land at all times (SPP paragraph 125). The number of homes required in a local authority area is identified through the Strategic Development Plan (SESplan) (to be replaced by NPF4) and is met by the development strategy and policies of the MLDP. Where a shortfall in the supply of effective housing land emerges, sites that are not allocated for residential development should be considered as possible additional sites to make up the shortfall. Sites accepted in this way are presumed in favour (in principle) subject to the applicant demonstrating that:

- they are effective;
- they contribute towards sustainable development;
- avoid any significant impacts on their locality in relation to amenity and environmental concerns; and
- the impact on local infrastructure can be mitigated.

- 8.5 The supply of effective housing land in Midlothian is subject to annual review in the Housing Land Audit (HLA). The HLA is reviewed and endorsed by Homes for Scotland, the umbrella body which represents the housebuilding industry. The effectiveness of the housing land supply is also reviewed in the MLDP Action Programme. This will identify the trigger for introducing actions to make up any shortfall, if one is identified. These actions will be set out in the latest Action Programme approved by Council. Similarly, the MLDP also sets out policies to address a shortfall in the housing land supply where this arises during the lifetime of the plan. One such action would be the support for early delivery of safeguarded sites, provided that a proposal can demonstrate it can/will contribute to new homes to make up the shortfall – this approach is supported by MLDP policy STRAT3. The Committee has previously approved housing development on

safeguarded sites for urban design and sustainability reasons – Hopefield Farm 2, Bonnyrigg (20/00151/PPP) considered by Committee at its meeting of April 2021 and land at Cauldcoats (20/00312/S42) also considered by Committee at its meeting of April 2021.

- 8.6 The most recent Housing Land Audit (HLA21) covers the period up to 31 March 2021. It identifies land for housing which can deliver 11,938 new homes in Midlothian. The five year supply of effective housing land equates to 4,500 homes due to be delivered between 2021 and 2026. Calculated against housing supply targets, this is a 5.1 year supply of effective housing land, meaning there is a small surplus of effective housing land in Midlothian (although it is acknowledged there are alternative ways to calculate an effective housing land supply). The application site is not part of this supply as it is not allocated for housing in the MLDP, but if supported would contribute to the housing land supply, buffering the Council against non-safeguarded sites if it's supply drops below set targets in future years.
- 8.7 The latest MLDP Action Programme was presented to the Committee in June 2021. It reviews the performance of policies of the MLDP and provides an update on development progress within Midlothian. The Action Programme reiterates the position that there is an effective five-year land supply in Midlothian (para 6.15).
- 8.8 This position confirms the assessment of Midlothian's Housing Land Supply in the Department of Planning and Environmental Appeals (DPEA) Examination of the MLDP. Paragraph 40 of the Reporter's Examination Report confirms that the "proposed plan would be sufficient to ensure the maintenance of a 5-year effective housing supply". Therefore, there is a surplus of housing land in Midlothian and the policies relating to housing land within the MLDP remain as the primary determining policies in the assessment of this application. This means that there is no need to allocate more land for housing and that the protective MLDP policies ENV1 and ENV4 cannot be easily set aside. It is however important to acknowledge that the Reporter's statement predates the adoption of the MLDP in 2017 and since this time there have been appeal decisions (not in Midlothian) which have taken an alternate approach to working out housing land supply.
- 8.9 A complication has recently emerged which must be considered as part of this assessment. SESplan was approved in 2013, with Supplementary Guidance on Housing Land Supply approved a year later. These documents are both more than five years old and are, therefore considered out of date under the terms of SPP 2014. SESplan was due to be replaced by SESplan2. However, Scottish Ministers rejected SESplan2 as its spatial strategy did not fully consider transport implications. The result of this is that the strategic plan is out of date with no new targets approved against which to measure the current supply. However, despite this position SESplan still forms part

of the development plan and is a material consideration. The other part of the development plan, the MLDP, allocates sufficient land to meet the Council's housing targets (set by SESplan) although they are increasingly becoming outdated and vulnerable to challenge at appeal. Also, they will be superseded by NPF4 which in draft sets an annual housing supply target for Midlothian of approximately 800 units (8,050 units for the period 2026-2036 and 805 units per year between the adoption of NPF4 and the adoption of MLDP2). Supporting this development would contribute towards NPF4 targets in a location already identified as suitable for housing in the MLDP.

- 8.10 For planning authorities in the SESplan area, and the Reporters for the DPEA, this situation has led to unique challenges. This is because the approach to determining an application for residential development that is not allocated in the development plan for housing differs significantly if there is a shortfall in housing land or not. The Reporters in these circumstances have taken slightly different approaches in each case. But, in general, they have adopted a presumption in favour of development, with the assessment focussing on the impacts of development. Where these impacts are demonstrably significant and adverse, then consent has been refused. But in the absence of these impacts, and where the proposal has been proven to be sustainable and effective, approval has generally been granted.
- 8.11 It is important to highlight two points at this stage. The first is that there have not been any appeals in Midlothian where this type of issue has been central to the consideration of the case. The second is that the appeal decisions that have emerged are in local authority areas like Fife and the City of Edinburgh Council. In both of these planning authority areas, the adopted local development plans (LDPs) acknowledge a shortfall in the five year supply of effective housing land after this was identified during the Examination of these LDPs. By contrast, the MLDP was adopted following the Examination by the DPEA which concluded the plan provided a surplus of effective housing land. So there are limitations in how applicable the approach taken in other planning authorities is to Midlothian.
- 8.12 The applicant's case in support of the proposal takes the Reporters approach in other locations, notably the Garden District appeal in the City of Edinburgh, and applies it to this case. The approach can be summarised as: it is impossible to determine if there is a shortfall or surplus, therefore we should presume there is a shortfall and approve a proposal that is sustainable development and effective, as this is what is directed by SPP. The applicant then provides evidence to show the proposal meets the definition of sustainable development provided by SPP. This is in part based on the position that SESplan is out of date and therefore it's policies are out of date; although this is the case SESplan1 still forms part of the development plan (until NPF4 is adopted) and therefore is material to the assessment of planning

applications – the dispute is with regard how material and how much weight the decision maker should give SESplan1 policies.

- 8.13 The applicant has provided analysis which, in their opinion, demonstrates that the Council is not maintaining a five-year supply of effective housing land (this is at odds with the HLA21 and the Council's Action Programme). The applicant then argues that more land is required to meet unmet need and this site should be brought forward early to bolster the supply.
- 8.14 As previously stated, adopting the approach taken in other planning authority areas is not the complete picture. Not least because each application must be determined on its own merits. But more pertinently, greater care must be taken by the Council to determine if there is a need for additional housing land to meet the demands of their area. This is because development places a burden on the natural capital of an area, a burden on supporting services provided by the Council and others and a burden on communities. These burdens can be offset by the benefits of well-designed, well-situated development that supports investment and economic growth of the area. But the purpose of housing need and demand assessments, strategic planning and local planning is intended to ensure that the benefits outweigh the burdens and that we only use the land that we need. It is intended to prevent unfettered growth at the expense of the environment and communities. Therefore, it is worth investigating the need for development more closely, in order to answer the basic question facing this application: do we need more land for housing?
- 8.15 The below table provides some analysis which measures the current supply audited in HLA21 against a variety of housing supply targets from different sources. The table shows, in the right hand column, the length of housing land supply depends on the method of calculation:

| Source of Housing Supply Targets (HST)                        | Annual HST                           | 5 x Annual HST | Supply of 4,500 (in years) |
|---|--------------------------------------|----------------|----------------------------|
| <b>Strategic Development Plan (SDP1) 2019 – 2024</b>          | 882                                  | 4,410          | 5.1                        |
| <b>SDP1 2019 – 2024 + generosity allowance +20%</b>           | 882 + 20%                            | 5292           | 4.3                        |
| <b>SDP1 2019 – 2024 + shortfall from previous plan period</b> | 882 + [8080 – 5601 / 5 (496)] = 1378 | 6,890          | 3.3                        |
| <b>As above + 20%</b>   | 1058 + 496 + 20% of 496) = 1,653     | 8,265          | 2.7                        |
| <b>SDP2 (rejected SESplan2)</b>                               | 534                                  | 2,670          | 8.4                        |
| <b>HNDA2 (lowest growth scenario)</b>                         | 411                                  | 2,055          | 10.9                       |

|   |     |       |     |
|---|-----|-------|-----|
| <b>HNDA2 (highest growth)</b>               | 467 | 2,335 | 9.6 |
| <b>SDP2 + 20%</b>                           | 641 | 3,205 | 7.0 |
| <b>HNDA2 (lowest growth scenario) + 20%</b> | 493 | 2,465 | 9.1 |
| <b>HNDA2 (highest growth) + 20%</b>         | 560 | 2,800 | 8.0 |
| <b>Draft NPF4 (November 2021)</b>           | 805 | 4,025 | 5.6 |

- 8.16 The second column shows a series of potential annual housing supply targets which are then multiplied by five to derive a 5-year housing supply target against which the current supply can be measured (column 4). The first four rows are variations of targets taken from SESplan1's Housing Need and Demand Assessment (HNDA). The remaining rows are taken from SESplan2's more up-to-date assessment. In some scenarios, an additional 20% is added which represents the generosity allowance promoted in SPP, but which was predated by SESplan1.
- 8.17 It is not the intention for this assessment to provide a definitive answer as to which method of calculation is correct. This question has been the subject of rigorous debate within the development industry, the Scottish Government and the courts. The Scottish Government had published a draft Planning Advice Note PAN 1/2020 which provided a definitive calculation methodology. However, the public consultation process involving this document and an amendment to SPP to remove the tilted balance in favour of sustainable development from national policy were deemed unlawful by the courts in the summer of 2021 and the guidance has been withdrawn. This leaves the question around methods to determine supply vs demand unresolved, albeit the courts appear to favour a compound/residual method as promoted by the applicant in this case. On the other hand, the updated assessments provided by SESplan2 and NPF4 supersede a compound method based on SESplan1 and by capturing unmet demand.
- 8.18 To guide the decision-making process through this uncertainty, it is instructive to note that in all but three scenarios, the Council's supply of housing land meets the five-year demand. The three scenarios where a shortfall emerges are based on: 1) the out-of-date SESplan HNDA with a 20% generosity allowance; 2) the out-of-date SESplan HNDA with the additional inflation of unmet shortfall from previous years; and, 3) the out-of-date SESplan HNDA with both the 20% generosity allowance plus the unmet shortfall added. These scenarios are considered to be unrealistic measures of demand in Midlothian in 2021. This unmet demand from previous years is captured by the more up-to-date SESplan2 targets. Furthermore, the recently published draft NPF4 sets a target of 8,050 homes over ten years in Midlothian. This equates to

an annual target of 805 homes or 4,025 over five years. The current supply of 4,500 homes is sufficient to cover these updated requirements if all the sites allocated and planned come forward and deliver.

- 8.19 The applicant's approach to analysing the supply of effective housing land is set out in their assessment dated July 2021. It takes the SESplan plan-period (2009 – 2024) requirement for Midlothian of 12,490 homes and takes away the total completions from 2009 to 2020, leaving an unmet requirement of 6,245 homes. As the current supply of effective housing land is merely 4,343 homes programmed from 2020 – 2024, then there is a shortfall of 2,002 homes. The applicant then updates this to include audit year 2025 in terms of supply, assuming a zero requirement for 2025 (beyond the SESplan plan period). These calculations are variations of the scenarios presented in the table above. The applicant's analysis is considered to be an inflation of requirement which presents an inaccurate representation of supply vs need.
- 8.20 The key message that an analysis of housing land supply provides is that, although we cannot say for certain if the Council is maintaining a five-year supply of effective housing land, it most likely is. SESplan2 provides a more up-to-date assessment of need than SESplan1. But, as the Plan was not approved, it cannot be solely relied upon to provide a definitive measure of demand. Nevertheless, the SESplan2 measure of demand suggests that a lower target would have been required of Midlothian than in SESplan1. This suggests that the Council's supply would remain in surplus if SESplan2 was approved. NPF4 updates the targets further and keeps the requirement below the current supply. However, this document is only in preparation stage and is indicative only. It is acknowledge also that NPF4 considers the targets to be minimum requirements which should not, in of themselves, be used as inhibitors to otherwise sustainable development proposals.
- 8.21 The analysis in the table above adds weight to the Council's position set out in HLA21, and the Reporter's conclusions in the Examination of the LDP, that there is no shortfall in the supply of effective housing land. To go back to the original question of do we need more land for housing, the answer is probably not. But no certainty can be provided without clear supply targets provided at strategic/ national level.
- 8.22 The effect that this position has is to maintain the primacy of the development plan in the determination of applications for residential development. Whilst part of the development plan, the SDP, is out-of-date, the LDP is less than five years old and is promoting a development strategy that meets the substantial needs of the county. If a shortfall were identified, then the protective policies in the plan (ENV1 and ENV4) would fall and there would be presumption in favour of the principle of development. But, there is likely to be a surplus of housing land within the plan area. This means that a proposal must identify

significant material considerations that would be afforded sufficient material weight to overcome the primacy of the development plan.

- 8.23 In brief the methodology for calculating the adequacy of the five year housing land supply in the SESplan region and elsewhere has been a very contentious matter over recent years, being the subject of many appeals and court judgements. The applicant uses what has been termed as the “residual” methodology, which takes into account the number of housing completions over the two SESplan periods for which housing requirements are set, from 2009 – 2019 and 2019 – 2024. It claims that this approach accords with SESplan policy 6, and that this approach is supported by appeal decisions. On this basis the applicant concludes that there is a five year housing land supply shortfall of approximately 750 homes, when one compares the supply of homes (completed and predicted) over the period 2009 – 2024 with the housing requirements for that period. Midlothian Council officer’s use what is known as the “average” methodology, which does not take into account the shortfall in house completions in Midlothian which occurred in the period 2009 – 2019. Instead consider the period 2019 – 2024, which is the current plan period and on this basis there is a surplus in the five year housing land supply of 90 homes (5.1 years supply). The use of the “average” methodology is consistent with that used by other SESplan Councils and continues to be the Council’s preferred approach. However, in the absence of a prescribed methodology for calculating the five year housing land supply in current national planning policy or guidance, it is accepted that the position is not clear-cut.

#### Site Effectiveness

- 8.24 Related to the above topic is the question of site effectiveness. This refers to the potential of a site to deliver housing in the short term in a way that is free from constraints to development. PAN 2/2010: Affordable Housing and Housing Land Audits provides a criteria for assessing the effectiveness of a site. The criteria comprises:
- Ownership: the land is in control of a party who can develop it or release it for development;
  - Physical: the site, or relevant part of it, is free from physical constraints such as topography, flood risk and access which would otherwise preclude its development;
  - Contamination: the site is either not contaminated, or commitments are secured to remediate a site for its proposed use;
  - Deficit Funding: relates to the security of any required public funds;
  - Marketability: the site, or a relevant part of it, can be developed in the period under consideration;
  - Infrastructure: the site is either free of infrastructure constraints or can be secured from the developer to allow development; and,
  - Land Use: housing is the sole preferred use of the land in planning terms, or is one of a range of possible uses.

The applicant has not provided an assessment of the site in terms of its effectiveness against the above criteria. But, from the information provided in the application, an assessment of site effectiveness can be made to corroborate the assertions of the applicant.

- 8.25 In terms of the ownership, physical and land use criteria, it is accepted that the site can be made available for residential development, is free from physical constraints, and that housing is a possible use for the land. The issue of contamination is addressed in latter sections of this report; but for the purposes here it is accepted that remediation of the site can be secured from the developer. There is no deficit funding required for market housing, and housing services have given no indication that the affordable homes could not be delivered in this location too.
- 8.26 The criteria of marketability and infrastructure relates to the requirement in paragraph 55 of PAN 2/2010, namely “To assess a site or a portion of a site as being effective, it must be demonstrated that within the five-year period beyond the date of the (housing land) audit the site can be developed for housing (i.e. residential units can be completed and available for occupation)”. To be considered effective, a site must demonstrate it has a reasonable prospect of having (some, not all) homes on it ready for sale and occupation within five years.
- 8.27 Further information from the applicant was sought in relation to this issue. The particular situation of the site is that there is no direct vehicular access connecting to the public road network. The site must take access through the adjacent land. This neighbouring site benefits from a minded to grant detail planning consent for residential development and associated works. The two applications at Newton Farm (17/00408/DPP) and Wellington Farm (17/00409/DPP) would provide a total of 620 homes (504 and 116 homes respectively). The Council is minded to grant subject to the signing of a legal agreement and a number of conditions. Condition 1 relates to the phasing of the development and the supporting infrastructure. As the consent has not been released, no further details of phasing have been formally submitted and agreed with the Council. However, the house builder seeking to develop the neighbouring site has advised that discussions with the applicant have taken place and there is an intention to deliver access to the site timeously to enable units to be delivered. Furthermore, the site can positively contribute to local infrastructure (in particular contributions towards road connections) to enable the delivery of needed housing and will be designed as the latter phase of the wider development area.
- 8.28 In the absence of an agreed phasing plan, the application documents can be examined to gain an understanding of where the application site could be phased in relation to the approved development at Newton and Wellington. This phasing only relates to vehicular access and does not consider any other factors which may alter the sequencing of

elements of Newton and Wellington. The Transport Assessment submitted in support of the application (SWECCO, Sept 2018) assesses the development in two phases. Phase 1 would complete up to 500 homes with phase 2 the remainder up to c.600. A new priority junction/roundabout is proposed on Old Craighall Road to allow the first phase of development. Thereafter, the Newton Farm Link Road connecting Old Craighall Road to the A68/ A720 interchange via a fourth arm to the roundabout would be provided.

- 8.29 HLA21 programmes the Newton and Wellington Farm sites from 2023/24 onwards. By 2027/28, the development would be expected to deliver 450 homes. If the rate of completions is extrapolated out, then 540 homes would be delivered by the audit year 2028/29. The applicant was invited to provide information which would demonstrate that the grant of additional land for housing would bring the delivery of the Newton Farm Link Road forward. However, understandably the applicant has no control over the phasing of the adjacent development which is a matter for that applicant (CALA Homes). A letter (dated 24 May 2021) from CALA Homes was submitted to the Council in relation to the application which provides broad commitment to collaborative working once the planning obligation/S75 legal agreement negotiations are concluded. A further letter was received (dated 23 July 2021) which indicates that a vehicular connection to the site boundary from the adjacent land could be made within two years and therefore enabling development to commence and residential units to be delivered within five years of any grant of planning permission. However, these assurances are contradicted by the technical assessments of the two proposals provided in the transport assessments. The letters from CALA Homes provide no update on this information which justifies setting their conclusions aside.
- 8.30 Attempts to “phase” the application in sequence with Newton Farm and Wellington Farm are complicated by the lack of an agreed phasing plan and firm agreement on infrastructure contributions through a planning obligation. Based on vehicular access alone, it would appear to the Council that 500 homes would be delivered on site whilst accessing the Old Craighall Road junction. Scottish Government policies such as Designing Streets promote permeability within the block structure of new development where larger developments have multiple points of access based on the desire lines to destinations in the area. To deliver any more than 500 homes on a single point of access would conflict with these well-established national design principles. It is also noted that Transport Scotland recommend a condition that would prohibit development of the site until the link road from the Old Craighall Road to the A720/ A68 interchange is installed.
- 8.31 Therefore, the site is not considered effective as defined by Scottish Government PAN 2/2010. This means that the site is not capable of delivering homes within five years. This does not mean that the proposal should be refused, it just means that the proposal cannot be

justified as a departure from the development plan to make help up a shortfall in the supply of housing land.

### Prematurity

- 8.32 SPP paragraph 34 discusses the concept of prematurity, where the decision making on individual proposals prejudices the outcome of a plan-making process. This issue was raised by the Danderhall and District Community Council in their objection to the proposal. However, SPP warns that this would apply only where the scale of development is substantial enough (either individually or cumulatively) to undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan.
- 8.33 The latest Development Plan Scheme published by the Council (DPS 13) timetables the production of a replacement MLDP for adoption by 2026, with a proposed plan published in 2024. It is noted then that MLDP2 is in an early stage of production. The proposal in this application is limited in scale to around 360 homes. This does not breach the substantial test set by SPP in relation to prematurity. A decision can be taken on the application without undermining the plan-making process.
- 8.34 Furthermore, it is worth noting again that the Committee has previously approved housing development on safeguarded sites for urban design and sustainability reasons – Hopefield Farm 2, Bonnyrigg (20/00151/PPP) considered by Committee at its meeting of April 2021 and land at Cauldcoats (20/00312/S42) also considered by Committee at its meeting of April 2021. This site is safeguarded for residential development, seen as the next phase of the Newton and Wellington Farm development and is in a sustainable location.
- 8.35 Whilst a decision would not be premature in terms of plan-making, it may be better to wait for MLDP2 to consider this site as part of the development strategy for Midlothian in response to the updated housing requirement set by NPF4 – but this approach is a process based argument rather than a place-making decision. It is anticipated that NPF4 will be adopted later in 2022 at which point it and the housing targets it sets will form part of the development plan. Regardless, the issue of prematurity does not weigh against the proposal in this case.

### Infrastructure Coordination

- 8.36 Key to determining whether a site is an appropriate location for new residential development is infrastructure. A focus on infrastructure is required in the assessment of non-allocated sites as site-specific requirements of allocated sites is typically expressed in the settlement statements of the MLDP. SESplan Policy 7 has traditionally been used

to bring this consideration into the assessment of non-allocated housing sites and should be applied in this case.

- 8.37 If infrastructure constraints suggest a site cannot be developed then permission should not be granted. Conversely, if developing a site would release development value that could help fund shared infrastructure then this could weigh in favour of granting planning permission. Relevant infrastructure required to support residential development includes vehicular access, education, drainage, strategic landscaping, open space and play facilities, green networks and active travel routes and other utilities.
- 8.38 These issues will be examined in more detail in subsequent sections of this report. This section will focus on shared or external infrastructure provision with the understanding that landscaping, open space/play and utilities can be provided solely by the developer within the boundary of the site.
- 8.39 In relation to education, the catchment non-denominational primary school is Danderhall Primary School. The neighbouring development of Shawfair (MLDP proposal h43 and 17/00650/S42) gives rise to new pupils which necessitate an expansion of the school estate in three locations. The first of these is an expansion of Danderhall Primary School. The second is part of the education campus described in application 19/00112/PPP which is due to be delivered by 2026 (secondary and primary school provision). The third is a separate school site within the new town. In addition, the site at Newton Farm includes land safeguarded for an additional non-denomination primary school should this need emerge. Analysis by the Council's Education Services confirms that the addition of new homes on the application site could be accommodated within the expanded school estate planned for the area. Developer contributions would be sought from the development to assist in the delivery of this expansion strategy if planning permission was granted.
- 8.40 This is a significant point. The Council is required to expand the school estate in this location to match the increase in homes that are coming forward. This expansion represents a significant capital investment in the area by the Council. Whilst contributions from developments in the area have been secured, it makes sense to locate more homes around new schools to ensure there is a viable pupil population to use the new facilities. This factor weighs in favour of an early release of the land for housing.
- 8.41 The issue of site access has been touched on previously in relation to site effectiveness. Access to the site is entirely dependent on the development of land to the east at Newton Farm. As part of the neighbouring development, a link road will connect Old Craighall Road in the north to the A68/A720 interchange to the south. It would also provide land for a park and ride facility to the south of the site, for the

benefit of promoting sustainable modes of transport. This new link has the potential to significantly reduce queues and delays expected to arise in the local road network generated by existing and new development. Early delivery of this link road as a result of additional development on the application site would be of significant benefit to the local area. It would also benefit the development strategy of the MLDP by sharing the burden of infrastructure delivery with the neighbouring allocated site.

- 8.42 Although there is no certainty that this application would bring forward this link road earlier than is currently committed, it is accepted that connecting more homes to new roads is an efficient use of investment in transport infrastructure. This supports the sustainable credentials of the proposal.
- 8.43 Another factor to consider is the issue of displacement. This is the idea common to economic impact analysis, whereby development in one location displaces economic gain from somewhere else instead of providing net economic gain. But the concept is also true of infrastructure delivery as spare available capacity within infrastructure is simply displaced from one location to another. For residential development in addition to a development strategy where a shortfall has been identified, displacement is not an issue as there is unmet need which allows the additional development to come forward in concert with MLDP sites. However, this situation does not apply to the circumstances in this assessment as we have indicated that a shortfall in housing land is unlikely to exist, although it is marginal.
- 8.44 In the scenario where the application site represents a surplus of housing land, as is the case at this point in time but maybe not in the future, care needs to be taken to ensure that approval of this site would not undermine the delivery of sites within the development strategy by displacing spare capacity in infrastructure. In this location, significant expansion is planned in the area through the neighbouring site and the Shawfair allocation. Infrastructure provision is planned to step in and support the occupation of new homes, specifically in relation to transport and education provision as well as other amenities to be located in the town centre and in Millerhill. Approval of the site is not considered to be of sufficient scale to affect the planned provision of infrastructure in a significant way that would justify a refusal of the application on this basis alone. The application would make financial contributions proportionate to the scale of development and impact generated. But these would neither undermine the expansion plans, nor accelerate their delivery. The issue of displacement does not weigh against the proposal in terms of infrastructure investment and delivery.
- 8.45 Therefore, in considering infrastructure coordination as a whole, this assessment finds that this consideration provides weight that could justify a departure from the development plan.

## Sustainable Development

- 8.46 SPP promotes sustainable development as a key policy feature cutting across a range of central government concerns. Planning has a role to play in determining the right development in the right place, where the economic benefits of development are balanced with the protection of the environment and neighbouring communities. The presumption in favour of sustainable development is a nationally applied policy tool that ensures the planning system places a central focus on promoting economic growth. At times where the development plan fails to allocate enough land for housing then SPP provides 13 principles which can be used to assess additional sites. If a proposal meets these tests, then we can presume in favour. If not, then other sites should be sought.
- 8.47 The application of this provision of Scottish Planning Policy (SPP) has been the subject of recent judicial review cases. The most recent case quashed the Scottish Government's update of SPP and a Planning Advice Note concerned with the calculation of the five-year supply of effective housing land. The Government's update of SPP was made in response to the decision of the Inner House, Court of Session 3 June 2020. It attempted to remove the "tilted balance" from decision making. However, the Courts found the update of SPP2020 was unlawful and so the approach to determining residential applications where there is a shortfall in the supply of effective housing land is as Lord Carloway sets out. In short, the presence of a shortfall is a significant determining factor in an application for residential development. The decision maker must then take into account any adverse impacts in their assessment of the proposal as sustainable development, and balance this assessment against the presence of a shortfall.
- 8.48 In practical terms, where there is a shortfall in housing land, the planning authority must presume in favour of all residential developments unless there are demonstrable and significant adverse impacts that would result from development. The applicant has argued that this approach should be adopted in this application. However, this assessment considers this to be unreasonable. The Council is most likely maintaining a surplus of housing land and the site in this application is not effective. Therefore, the site does not benefit from the sort of tilted balance in favour which the courts have interpreted that SPP provides.
- 8.49 SPP's presumption in favour of sustainable development does not only apply to housing developments where there are doubts over the supply of effective housing land. It is a catch all policy designed to ensure that those investment proposals that avoid significant impacts on the environment or amenity of local communities can be given due consideration, even where these were not anticipated by the plan-making process. It provides the necessary flexibility to planning

authorities to react to opportunities in times when the development plan has failed to keep pace with wider circumstances.

8.50 SPP paragraph 33 requires proposal not in accord with the development plan to be assessed against the principles of paragraph 29. These are set out in turn below:

- Giving due weight to economic benefit – all development has an economic benefit. But, as described above, the development is not able to confirm net economic benefit as in instances of a housing land surplus, the degree that displacement reduces net benefit cannot be assumed;
- Responding to economic issues etc. – again, all development has an economic benefit in providing jobs through investment;
- Supporting good design – the application is in principle and design is a matter to be secured by conditions. Notwithstanding the assessment in latter sections of this report, the applicant's Development Framework provides an acceptable framework for the design of detailed matters to follow;
- Supporting the delivery of accessible housing etc. – the proposal would inherently meet this principle;
- Supporting delivery of infrastructure etc. – as discussed in previous sections, the development would provide its own infrastructure whilst contributions sought for off-site infrastructure;
- Supporting climate change mitigation and adaption/flood risk – again, this is examined in detail below but there are no issues in relation to this principle that the detailed application(s) could not overcome;
- Improving health and well-being etc. – this principle is also a matter of detailed design;
- Accord with the principles of the Land Use Strategy – the third Land Use Strategy for Scotland (2021 – 2026) aligns with NPF4 which is currently in production. It is a high level document which draws together a wide variety of policy concerns. It recognises the competing demands on land and advocates balance in decisions taken on land use. The site is prime agricultural land and in the green belt and is not planned for nor needed for development to satisfy unmet demand for housing as part of the MLDP, but as it is safeguarded it is clearly the long term intention to see housing being brought forward on the site as the site is within a sustainable location;
- Protecting the historic environment – the proposal should be able to comply with this, subject to conditions relating to archaeology;
- Protecting natural heritage – the proposal should be able to comply with this, subject to conditions relating to ecology, landscaping, open space and active travel arrangements;
- Reducing waste etc. – the proposal should be able to comply with this, subject to conditions relating to construction works and domestic waste provision; and

- Avoiding over-development and protecting amenity, particularly water, air and soil – the proposal should be able to comply with this, subject to conditions relating to noise, air quality and the detailed design of new development.

8.51 Therefore, the proposal is broadly compliant with the principles of sustainable development. The one area of concern relates to the Land Use Strategy and the site's designation as prime agricultural land. SPP paragraph 80 states that "where it is necessary to use good quality land for development, the layout and design should minimise the amount of such land that is required. However, the Council has already determined that the site can be released in the future for development. The proposal in this application would be long-term prospect, sequenced behind developments on neighbouring land. Therefore, there is no direct conflict with the development plan in this regard as the release of green belt and prime agricultural land has already been accepted to a degree. Deciding whether or not a proposal is sustainable development under the direction of SPP must balance competing demands on land across all factors. It should not be used as a checklist which requires complete compliance with all 13 principles.

8.52 One further point on sustainable development should be added to the definition of the term provided by SPP. The spatial strategy of the MLDP is derived from the out of date SESplan. The updated spatial strategy of SESplan2 was not approved by Scottish Ministers and so limited material weight can be applied to these policies. However, a balanced view of sustainable development can be adopted based on general principles of planning policy found at national, regional and local plans. These principles could be summarised as locations for development that are: well-connected in terms of transport and infrastructure; can be accommodated within the capacity of the natural environment; and, would protect the amenity of existing communities. If this view is taken, then this site has potential to come forward in the future to meet updated growth requirements. According to MLDP, the site is within the Shawfair Strategic Development Area on the basis that it meets these high-level principles for the location of new development and in safeguarding the site the Council has accepted that in principle the site should be used for housing at the right time if there is a need.

8.53 Therefore, based on the above, it is concluded that the proposal can be considered sustainable development and appropriate for housing development. The Council has a duty to meet the county's growth needs by identifying sufficient land for housing, in sustainable locations. The site is in a sustainable location and can be designed and developed in a way that will reduce reliance on the private car, support the development of new infrastructure and provide a decent standard of amenity within its boundaries, whilst protecting the amenity of existing residents. The development would also avoid significant impacts on the environment, subject to the assessment of detailed matters required by further application(s).

## Other Matters

- 8.54 Representations and consultation responses made are material consideration in the determination of an application. The DDCC points are noted and summarised as prematurity, transport concerns and prejudicing future policy initiatives required of future developments. Prematurity has been addressed, whilst transport issues are discussed below. The final point is not sustained as the Planning Act requires the assessment to be based on the policy position at the time the application is determined. It is unreasonable to expect applicants or decision makers to anticipate future policy content and requirements.
- 8.55 It is noted that the application did not attract a significant number of objections. However, this cannot be given any weight in this assessment as it is the content of representations that are important, rather than volume.
- 8.56 The applicant's case is summarised in paragraph 7.4 of their planning statement submitted with the application. They cite support in the following matters:
- The proposal allows for development to come forward in this and the adjacent site in a coordinated manner;
  - It allows the Council to effectively plan for education infrastructure requirements;
  - It enables coordination of strategic landscaping between the allocated and safeguarded site;
  - It allows for an integrated road network across both the allocated and safeguarded site;
  - It delivers Green Network/open space requirements on both the allocated and safeguarded site; and
  - It accords with the 13 principles of sustainable development and wider provisions of SPP.
- 8.57 These points are noted and have formed the basis of extensive discussions between the applicant and Council officers. In addition to this, the applicant has provided a letter of comfort from the developer of Newton Farm to support these points. This reflects decisions taken by the Committee on other safeguarded sites in Midlothian – Hopefield Farm 2, Bonnyrigg (20/00151/PPP) considered by Committee at its meeting of April 2021 and land at Cauldcoats (20/00312/S42) also considered by Committee at its meeting of April 2021.
- 8.58 It is acknowledged that there is merit in coordinating development in the interests of good place-making and promoting sustainable development. The process of developing land across multiple landowners is not generally considered to be a significant material consideration, in terms of adopted planning policy. However, in practice it can be a significant and costly barrier to development and an inhibitor to the proper and coordinated planning of an area. To grant planning permission in principle for this site at this stage, whilst the neighbouring

site is gearing towards site preparation works, would be to give the developers/ landowners of the area comfort to proceed. This has implications for phasing and infrastructure development which could increase the effectiveness of both sites. These matters are of significant weight and the planning authority must acknowledge these commercial realities if development is to be managed in an effective and efficient way.

### Balanced Assessment

- 8.59 The above discussion is a comprehensive examination of the pertinent matters in this assessment. It is a complex discussion because the facts of the case are not straight forward. The policy position in the absence of an up to date strategic development plan is a significant contributor to this complexity. The safeguarding of the site for future development also demands careful examination. The underlying support the planning system must give to sustainable development is another key factor. To navigate this complexity, it is important to focus on the material weight of competing factors which lead to a decision. The material weight given to a particular factor is for the decision maker.
- 8.60 This assessment finds that the MLDP presumes against the development in favour of protecting rural areas from unplanned development protecting areas within the Edinburgh Green Belt (ENV1) and avoiding the loss of prime agricultural land from sites not allocated for development (ENV4). The weight that these policies are given is dependent on whether or not the development strategy provides enough land for housing to meet demand. This is complicated in the absence of firm targets from the strategic development plan and ahead of the adoption of NPF4. The applicant asks the Council to accept that it cannot determine whether there is a surplus and therefore assume there isn't for the reasons set out elsewhere in this report. As the safeguarding designation indicates potential for future development, there is sufficient reason to approve the application to allow for the coordination of supporting infrastructure.
- 8.61 The applicant's arguments are noted and this assessment agrees that the situation in relation to planning for housing is in a policy vacuum whilst we await updated national policy coming out of new legislation. However, this assessment does not accept the applicant's arguments on several key issues. This assessment finds that it is likely the adopted MLDP is providing enough land for housing and the site is not effective.
- 8.62 That being said, this assessment does agree that, if approved at this stage, then the joint infrastructure requirements and costs could be better coordinated with the neighbouring site. The site would take its place within the phasing of the larger development and become part of the supply of housing land for the county. The developers in the area

have confirmed that an early grant of planning permission in principle will assist in the coordinated delivery of the long term development strategy of these sites and assist in securing the required infrastructure. Locating new homes where there is a planned expansion of infrastructure will help to secure the viability of this investment, for both the developer and the Council. This pragmatic approach is good placemaking, supports the delivery of new homes and responds positively to new investment opportunities, which are all values at the core of the planning system in Scotland and, therefore, given significant material weight.

- 8.63 In addition to this, draft NPF4 indicates there is a continued demand for housing in the period up to 2036 which this site could help meet. SESplan allocated the area within the South East Edinburgh Strategic Development Area and the adopted MLDP allocates the site for future growth. This assessment also finds that the development is consistent with the criteria of sustainable development provided by SPP paragraph 29. The development would also avoid any significant adverse impacts on the amenity and environment of the area, subject to mitigation secured through detailed design. Again, the status of the site as “sustainable development” with no clear conflicts with amenity or environmental protections, is a factor which weighs significantly in favour of the proposal.
- 8.64 Refusing the application over *timing* (on the presumption the safeguarding allocation will change to a full allocation in time) does not outweigh the benefits of good place making and a coordinated approach to infrastructure. On balance, although the proposal is contrary to the development plan, there are sufficient material considerations to justify a departure in this instance and accept the principle of development in this instance.

#### Indicative Layout, Form and Density

- 8.65 The application is for planning permission in principle which, if granted, would be subject to conditions requiring the submission of details relating to layout, form and density. Nevertheless, it is appropriate at the planning permission in principle stage to examine the constraints and opportunities of a site and capture these so that they can inform the design of detailed matters.
- 8.66 The applications design and access statement identifies the design constraints to development and makes provision to incorporate mitigation by avoidance. Development parcels are located at a suitable buffer distance from the A720, the overhead power lines to the north and south of the site and the railway embankment to the west. The design and access statement also makes suitable provision for detailed design to follow which could secure a high quality of built environment. These measures include an appropriate landscape framework, with strong frontages to open space areas to strengthen the relationship

between the new homes and green spaces. Other design parameters are provided relative to form and materiality, access and active travel and community growing provision.

- 8.67 These principles are carried forward in to the development framework. It sets out how the site could be developed with restricted development areas set back from constraints. The framework and design process set out in the design and access statement would protect the amenity of neighbouring properties whilst providing a high quality development within the site. Detailed design matters would be subject to further assessment as required by conditions. Therefore, the proposal is in accordance with MLDP policies DEV5, DEV6, DEV7 and ENV2.
- 8.68 The applicant makes the case that the principle of development should be supported on the basis that this will allow for the coordination of design with the neighbouring site. This argument is accepted and conditions imposed which will require the details of the development to be submitted through further applications.

#### Access and Transportation Issues

- 8.69 The MLDP prioritises sustainable modes of transport over trips by private car, whilst acknowledging that the impacts on the local road network from new development must be considered. The applicant's transport assessment provides an overview of the connections available to the site, and mitigation measures to address impacts on the road network. The applicant's submission discusses active travel options and connections to active travel and public transport routes in the area.
- 8.70 Transport Scotland has no objection to the application and suggests conditions to be applied if planning permission is granted. The Council's Policy and Road Safety Manager also do not have any objection, subject to conditions. The access requirements of this site are entirely reliant on the neighbouring development to provide the necessary road network capacity to serve the site. These are committed improvements secured from Newton Farm and Wellington Farm and are programmed to be delivered in a phased manner within these sites. The design of these two sites makes provision to access the application site to allow for future development.
- 8.71 The application is in accordance with MLDP policies relative to transport, by encouraging sustainable travel, by contributing to network interventions in the area and by avoiding significant detrimental impacts on the road network.

#### Landscape and Visual Impact

- 8.72 Policy ENV7 protects local landscape character whilst ENV1 (Green Belt) seeks to protect the landscape setting of Edinburgh and

Midlothian's towns. The applicant's landscape and visual impact assessment appraises the landscape character around the site and notes the key objectives for maintaining this setting. These features include a mix of agricultural and industrial uses with development set within extensive woodland. The electricity transmission cables and major roads also contribute to the character of the area. It notes too that the character of the area will change as substantial new development around the site is brought forward. It then provides for landscape design measures which are brought forward into the development framework, specifically enhancing the woodland planting to the south to soften views from the A720.

- 8.73 The applicant's analysis is accepted. The site and its surroundings are appropriately appraised and the mitigation measures appropriate to provide a landscape setting for new development that ties in with the area. It is accepted that the MLDP allocates land that will alter the green belt in this location. The site is well-contained and could also be developed in a way that maintains the setting of Edinburgh and Midlothian's towns.

#### Ground Conditions

- 8.74 The application is in principle and so a phase 1 site investigation has been submitted. The report's conclusions are accepted and the further investigations required to assess the contamination and stability risks to development can be secured by conditions.

#### Flood Risk and Drainage

- 8.75 The site is distant from watercourses and the coast which typically present the greatest flood risk. A review of the SEPA flood risk maps confirms the lack of flood risk from these sources. SPP and MLDP policies require applicants to assess all potential sources of flooding. The information provided suggests there is a field drain, in a culvert, running through the site. Culverts present a constraint to development, as there needs to be a setback provided to allow for maintenance or emergency works to clear a blockage. Despite the flood risk in terms of volumes of water being low, the inability of the applicant to locate and plan for this constraint meant that the proposal initially conflicted with policies relating to flood risk.
- 8.76 Further information submitted by the applicant reported on attempts to locate the field drain culvert within the site. This was unsuccessful. However, further discussions with SEPA have led to a pragmatic solution, whereby a condition would secure further analysis of the field drain and its potential re-routing through the site within landscaped areas so that it avoids development areas. It is expected that the drain would be uncovered during site preparation works (if not before) at which time further information can be submitted to secure the mitigation of risk.

- 8.77 In terms of drainage, the applicant's strategy is to attenuate surface water to 1 in 2 year greenfield rates in accordance with Midlothian Council requirements. A new SUDS basin to the north of the site will provide one stage of treatment and attenuation. Discharge thereafter is to the existing site drainage system.
- 8.78 In principle, the applicant's SUDS basin is appropriately sized and located to receive the surface water run-off from the development. Further details on the system, including arrangements for discharge to the nearest watercourse (North Esk) can be secured by conditions. The proposal therefore meets the requirements of MLDP policy ENV10.

#### Cultural Heritage

- 8.79 There are no historic environment statutory designated assets within the site. The closest sites are Newton House (Category B listed), Newton Manse (Category B) Newton Church remains (Scheduled Ancient Monument) and Dalkeith House & Park Conservation Area and Garden and Designed Landscape. Whilst these sites are close to the application site, there is sufficient distance and intervening development (including planned) which would reduce any effects on their setting.
- 8.80 The site has significant potential for archaeological sub-surface deposits which would be impacted by development. Therefore conditions should be applied to secure a programme of archaeological works to further investigate this potential. A Written Scheme of Investigation has been submitted and accepted by the Council's archaeological consultants. Overall, the proposal could come forward without any significant negative impacts on the cultural heritage of the area.

#### Natural Heritage

- 8.81 The site is not subject to any natural heritage designations which would inhibit development. The nearest site is in Dalkeith County Park. The site is likely to contain habitats of protected species, such as badgers, hedgehogs and breeding birds. Further surveys/ watching briefs are proposed to maintain the information on these habitats through the development cycle of the site. Mitigation measures are proposed for the construction phase whilst mitigation and enhancement measures are matters for detailed design. Overall, the natural heritage properties of the site do not present a barrier to the principle of development in this case.

#### Amenity

- 8.82 The development itself is not a type or scale that is likely to significantly impact on the amenity of existing sensitive receptors in a negative

sense. There could be impacts during the construction phase relating to dust, noise and construction vehicle movements. However, appropriate measures to mitigate can be secured by condition.

- 8.83 The question then is the level of amenity the site could provide for future occupants. The applicant has submitted a noise report which is based on field recordings within the site. The clear noise source is from the A720 to the south which is a heavily trafficked arterial route through the area. The assessment then plots the noise levels from this source north through the site and predicts likely internal noise levels of proposed building types using accepted methodology. This analysis has informed the setback distances adopted in the development framework.
- 8.84 The analysis also examines external noise in proposed gardens within the site. Guidance suggests that a 50dB – 55dB LAeq is an acceptable upper limit. There are some instances, however, where this upper limit would be breached. The guidance quoted in the noise assessment discusses balancing this with a range of factors so that an overly noisy environment does not preclude development that would otherwise be a desirable location. The same principle applies to internal noise levels experienced which would breach acceptable limits if windows were kept open for ventilation. Therefore, the applicant applies a closed window assessment to demonstrate a suitable level of amenity for future residents. This would require some homes needing acoustic attenuation treatment and/ or mechanic ventilation so that facades reduce internal noise levels.
- 8.85 In both circumstances, the balance of judgement relates to the overall planning assessment. Developments on sites subject to increased environmental noise can be accepted if there are compelling reasons to allow this. These include the reuse of brownfield land and and/ or well-connected sites that are typically found in larger urban areas.
- 8.86 The Council's Environmental Health Manager has stated their concerns in relation to the noise environment the site would be subject to. However, they rightly highlight that a standard has been set on the neighbouring development (17/00408/DPP & 17/00409/DPP) which could be applied in this case, if planning considered the site to be otherwise acceptable.
- 8.87 On this basis, the proposal is acceptable in principle but the issue of environmental noise and the amenity provided to future residents will be a key determining matter in the assessment of detailed design. The mitigation of anonymous noise may require specific built structures or landscaping interventions which should be the subject of detailed assessment. Further noise assessments of detailed layouts should also be secured by conditions to demonstrate the ways in which amenity for future residents has been designed-in to the development.

## Infrastructure and Developer Contributions

- 8.88 The infrastructure requirements of new residential development have been discussed in the previous section of this report, as it pertains to the principle of development. This section will examine the specifics in more detail.
- 8.89 In terms of transport infrastructure, the MLDP sets out a series of measures which all developments in the area must contribute towards in order to make them acceptable in planning terms. Each individual proposal's contribution would be by way of a financial contribution towards improvements to the Sheriffhall Junction and the Borders Railway. The site also relies on access infrastructure provided within the adjacent Newton Farm site. This includes junction improvements to the A720/ A68 interchange by way of a fourth arm to the roundabout. The link road connecting this to Old Craighall Road will be provided entirely within the site of Newton Farm. But it would be expected that the application site would make a contribution to the cost of this. Further to this and in the interests of supporting sustainable travel choices, the site is expected to make a contribution towards public transport provision in the area.
- 8.90 In terms of education infrastructure, the application site is expected to make a contribution towards the planned increase in education provision for both primary and secondary and both denominational and non-denominational capacity. Again, Newton Farm is expected to safeguard land for a non-denominational primary school should this be required by the Council. If this school were built, then the catchment area would likely include the application site. Therefore, a contribution towards the land costs is expected to be made by the applicant.
- 8.91 The development would also generate a requirement for an affordable housing contribution. The applicant has anticipated this and proposes a 25% affordable housing contribution within the site in accordance with MLP policy DEV3. This would be secured within a legal agreement.
- 8.92 The applicant has considered the green network opportunities relative to development of the site. These include linkages south to Dalkeith Country Park (via the adjacent site), a perimeter path to the south and footpath connections to the planned route to the west and east. The provision also includes community growing space within the site, landscaping to the south and west and open space between development parcels. These proposals accord with the requirements set out in the Council's Green Networks Supplementary Guidance, to be secured by conditions.
- 8.93 In terms of community facilities, there is a requirement to contribute towards the provision/ enhancement of sports pitches within the area. These would be provided within the Shawfair new town within close proximity to the application site. Therefore, a contribution towards these

facilities proportionate to the scale of development proposed should also be secured.

- 8.94 The infrastructure requirements of the site can either be secured on-site through detailed proposals, or financial contributions made to off-site provision. Matters such as car parking, cycling provision, electric vehicle charging, high-speed broadband and public art contributions can be secured by conditions. Therefore, the proposal is in accordance with MLDP policy IMP1.
- 8.95 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The circular advises that planning obligations should only be sought where they meet all of the following tests:
- necessary to make the proposed development acceptable in planning terms (paragraph 15)
  - serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
  - relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)
  - fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)
  - be reasonable in all other respects
- 8.92 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements are set out in the 2017 Midlothian Local Development Plan and Midlothian Council Developer Contributions Guidelines (Supplementary Planning Guidance) and Supplementary Planning Guidance on Affordable Housing both approved in March 2012.
- 8.93 The proposed development has been assessed in relation to the above guidance and it is considered that a planning obligation is required in respect of the following matters:
- A contribution towards primary (including nursery) and secondary education provision (both the construction of buildings and securing land);
  - A contribution towards public transport (including Borders Rail);
  - A contribution towards road infrastructure (including the Sheriffhall Roundabout and the A720/A68 interchange);
  - A contribution towards community facilities;
  - Maintenance of open space including children's play areas/open space, allotments and SUDS; and
  - Provision of affordable housing (25%).

## 9 RECOMMENDATION

9.1 It is recommended planning permission be granted for the following reason:

*The site is: safeguarded for housing within the Midlothian Local Development Plan 2017 (MLDP); has the potential of contributing towards the Council's housing land supply; will help to facilitate local infrastructure identified in the MLDP, including the A720/A68 interchange; and can be seen as the next phase of the wider Newton and Wellington Farm development to the benefit of good place-making in the area. These reasons justify supporting the development ahead of its future allocation when the MLDP is reviewed and support for the scheme for the stated reasons is consistent with the Council's approach taken with regard other safeguarded sites in the district.*

Subject to:

- a. the prior signing of a legal agreement to secure:
  - A contribution towards primary (including nursery) and secondary education provision (both the construction of buildings and securing land);
  - A contribution towards public transport (including Borders Rail);
  - A contribution towards road infrastructure (including the Sherifffhall Roundabout and the A720/A68 interchange);
  - A contribution towards community facilities;
  - Maintenance of open space including children's play areas/open space, allotments and SUDS; and
  - Provision of affordable housing (25%).

The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.

- b. the following conditions:
  1. The proposed indicative layout submitted with the application is not approved.

**Reasons:** *To ensure the development is implemented in a manner which mitigates the impact of the development on existing land users, future occupants and addresses potential landscape and visual impacts. This requires consideration of separate Matters Specified in Conditions Planning Application(s) once a detailed design has been progressed.*

2. No more than 360 residential units shall be erected on the site unless otherwise agreed by way of a planning application. The housing mix, densities across the site and the detailed layout is

not approved and is subject to matters specified in conditions application/s, which will determine the final number of dwellinghouses on the site.

**Reason:** *The application has been assessed on the basis of a maximum of 360 dwellings being built on the site. Any additional dwellings would have a further impact on local infrastructure, in particular education provision and local transport routes, and additional mitigation measures may be required. Any such measures would need further assessment by way of a planning application.*

3. 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 phase of the development, the provision of affordable housing, the provision of open space, children's play provision, allotments and/or community growing space, structural landscaping, SUDS provision, transportation infrastructure and other utilities. The said transportation infrastructure shall include, but not be limited to, the proposed Link Road connection between Old Craighall Road and the A720/A68 interchange as illustrated on Dwg No P12644/701 (Goodson Associates) and the proposed upgrade to signalised control of the eastern roundabout of the A720/A68 interchange, generally as illustrated on Dwg No 115688-DG-APP (SWECO). Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

**Reasons:** *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.*

4. Development shall not begin on an individual phase of development (identified in compliance with condition 3) 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, footways and cycle ways in relation to a fixed datum;
  - ii. the proposed vehicular, cycle and pedestrian accesses into the site;
  - iii. the proposed roads, footways and turning facilities (designed to an adoptable standard) and cycle ways including suitable walking and cycling routes;

- iv. proposed visibility splays, traffic calming measures, external lighting and signage;
- v. proposed car parking arrangements, including details of electric vehicle charging stations;
- vi. proposed cycle parking/storage facilities;
- vii. details of a 3m wide cycling/ pedestrian link to Old Craighall Road to the north and the adjacent development to the east; and,
- viii. proposed alignment, surface materials and widths (3m wide cycleway/footpaths) for Core Path upgrades.

All transport infrastructure works shall be undertaken in accord with the relevant Midlothian Council guidance and to the satisfaction of the planning authority and trunk roads authority where appropriate. 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 have safe and convenient access to and from the site.*

- 5. Development shall not begin on an individual phase of development (identified in compliance with condition 3) 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. a tree and hedgerow survey (in accord with BS5837) and (where appropriate) root protection plan showing existing trees, landscaping features and vegetation to be retained; removed, protected during development (including details of this protection) 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. details of the frontage landscaping treatment, including any fencing/ barrier proposals, along the trunk road boundary;
  - vi. schedule of plants to comprise species, plant sizes and proposed numbers/density;
  - vii. 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 on adjoining plots are occupied and the planting along the northern boundary shall be carried out in the first planting season following commencement of development on the site;

- 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;
- xi. allotments and/or community growing space;
- xii. proposed cycle parking facilities;
- xiii. proposed area of improved quality (minimum of 20% of the proposed dwellings); and,
- xiv. a public art strategy detailing the proposals and budget.

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 (vii).

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, to be undertaken by the developer.

All landscaping shall be located such that it can be installed and maintained from within the development without requiring access to the trunk road.

***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. Also to ensure planting is carried out timeously to improve the amenity and setting of the development and to help to reduce CO2 emissions as part of a response to the Climate Change Emergency.*

6. Development shall not begin on an individual phase of development (identified in compliance with condition 3) 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. These materials will also include those proposed in the area of improved quality (20% of the proposed dwellings). 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.*

7. Prior to the commencement of development (with the exception of site investigation works), the developer shall submit a report that confirms or otherwise the existence and location of the field drain (in culvert), referred to in Section 4.1 of the approved Flood Risk Assessment (KAYA Consulting Ltd, November 2020), all for the written approval of the planning authority, in consultation with SEPA. Thereafter, the developer shall demonstrate that the detailed design of new residential development required by Conditions 3, 4 and 5 avoids co-locating new homes on the route of the said field drain.

***Reason:*** *In the interests of flood risk mitigation; to allow for the location of the field drain to be established and incorporated in to new development.*

8. Development shall not begin until an application for approval of matters specified in conditions for a scheme of effective drainage and flood management for the site has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i. drainage details and sustainable urban drainage systems to treat and attenuate surface water runoff;
  - ii. existing and proposed levels across the site using at least 1m contours and cross sections, where applicable;
  - iii. finished floor levels of dwellings; and,
  - iv. details of the replacement field drain channel as directed by the site investigation report required by condition 7.

For the avoidance of doubt, no drainage connections shall be made with the trunk road drainage system.

***Reason:*** *The planning application is in principle and the details required are to ensure the surface water from the whole site can be appropriately treated and to ensure that levels on the site are appropriate in relation to flood risk.*

9. Prior to the submission of any application for approval of matters required by Conditions 3, 4 and 5 above, intrusive investigations shall be carried out in accord with the recommendations contained in the approved Preliminary Environmental Assessment Report (Goodson Associates, November 2019) and the Coal Mining Risk Assessment report (DAM Geotechnical Services, November 2019). Thereafter, a report on the aforementioned intrusive investigations shall be submitted for the written approval of the planning authority, the said report shall include the following:

- i. the nature, extent and types of contamination and/ or previous mineral workings on the site;
- ii. indicate the exact situation in respect of coal mining legacy at the site, including but not limited to the location, dimension and general characteristics of former mine entries and/ or shallow mine workings within and around the site;
- iii. 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;
- iv. measures to deal with contamination and/ or previous mineral workings encountered during construction work; and,
- v. the condition of site on completion of the specified decontamination measures.

The intrusive site investigations shall be carried out in accord with all relevant authoritative UK guidance.

10. Any application submitted to gain approval of matters reserved by conditions 3, 4 and 5 shall include a remediation strategy to address the risk to development from coal mining legacy and other sources of contamination identified in the approved Preliminary Environmental Assessment Report (Goodson Associates, November 2019). The approved remediation strategy shall be based on the findings of the report approved in Condition 8 and the approved Preliminary Environmental Assessment Report, and include a proposed layout plan at an appropriate scale identifying the positions of recorded mine entries, their zones of influence over surface stability and defined “no build” zones around these features. The development
11. No later than three months following completion of the decontamination/remediation works within Condition 8 and 9 above, a validation report confirming that the works have been carried out in accordance with the approved scheme shall be submitted for the written approval of the planning authority, prior to the occupation of any residential home subject to the said remediation works.

***Reason for conditions 8, 9 and 10: 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.***

12. 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. 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. The provision of appropriate digital infrastructure allows some residents to work from home more often. Homeworking helps to reduce travel, reducing CO2 emissions, important in terms of the Climate Change Emergency.*

13. Development shall not begin until an application for approval of matters specified in conditions for a biodiversity enhancement plan for the site, including but not limited to, the provision of house bricks and boxes for bats and birds throughout the development, a programme of ecological surveys (repeat survey work no more than 12 months in advance of the commencement of development on the site) and management proposals for any Invasive Non Native Species 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.*

14. 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.

15. No dwellinghouse on the site shall be occupied until a community heating scheme for the site, if practicable and feasible (as determined by condition 14), is approved in writing by the planning authority. An 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 14 and 15:*** 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.

16. Development shall not begin until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
- i. details of a construction access, the approved route shall minimise disruption to residential properties in the vicinity of the site;
  - ii. signage for construction traffic, pedestrians and other users of the site;
  - iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
  - iv. details of piling methods (where appropriate);
  - v. details of any earthworks, including significant re-profiling of the site and temporary soil storage where relevant;
  - vi. control of emissions strategy;
  - vii. a dust management plan strategy in accord with Appendix 4 of the approved Air Quality Impact Assessment (The Airshed, October 2020);
  - viii. material and hazardous material storage and removal, waste management and disposal of material strategy;
  - ix. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
  - x. prevention of mud/debris being deposited on the public highway;
  - xi. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

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:*** In order to control the construction activity on the site, ensure environmental impact during the construction period is appropriately mitigated.

17. Any application submitted for approval of matters reserved by conditions 3, 4 and 5 shall be supported by a noise impact assessment for the written approval of the planning authority. The approved noise impact assessment shall adopt established methods and assumptions to model the expected noise levels

that would be experienced on site, including details of the effects of any mitigation measures required to reduce the environmental noise levels. For the avoidance of doubt, the planning authority expects any home approved in a detailed layout to be able to demonstrate the following noise standards:

- 55 dB Laeq(16hr) for daytime external garden amenity
- 35 dB Laeq(16hr) for daytime internal living apartment
- 30 dB Laeq(8hr) for night time internal living apartment
- 42 dB Lamax (fast) (internal) night time living apartment

The details of any mitigations, including plans, elevations, layout, specifications, shall also be included where these are deemed to be necessary to reduce environmental noise to within the above tolerances, all for the written approval. Thereafter, the development shall be undertaken in accord with the approved details, unless otherwise varied with the written agreement of the planning authority.

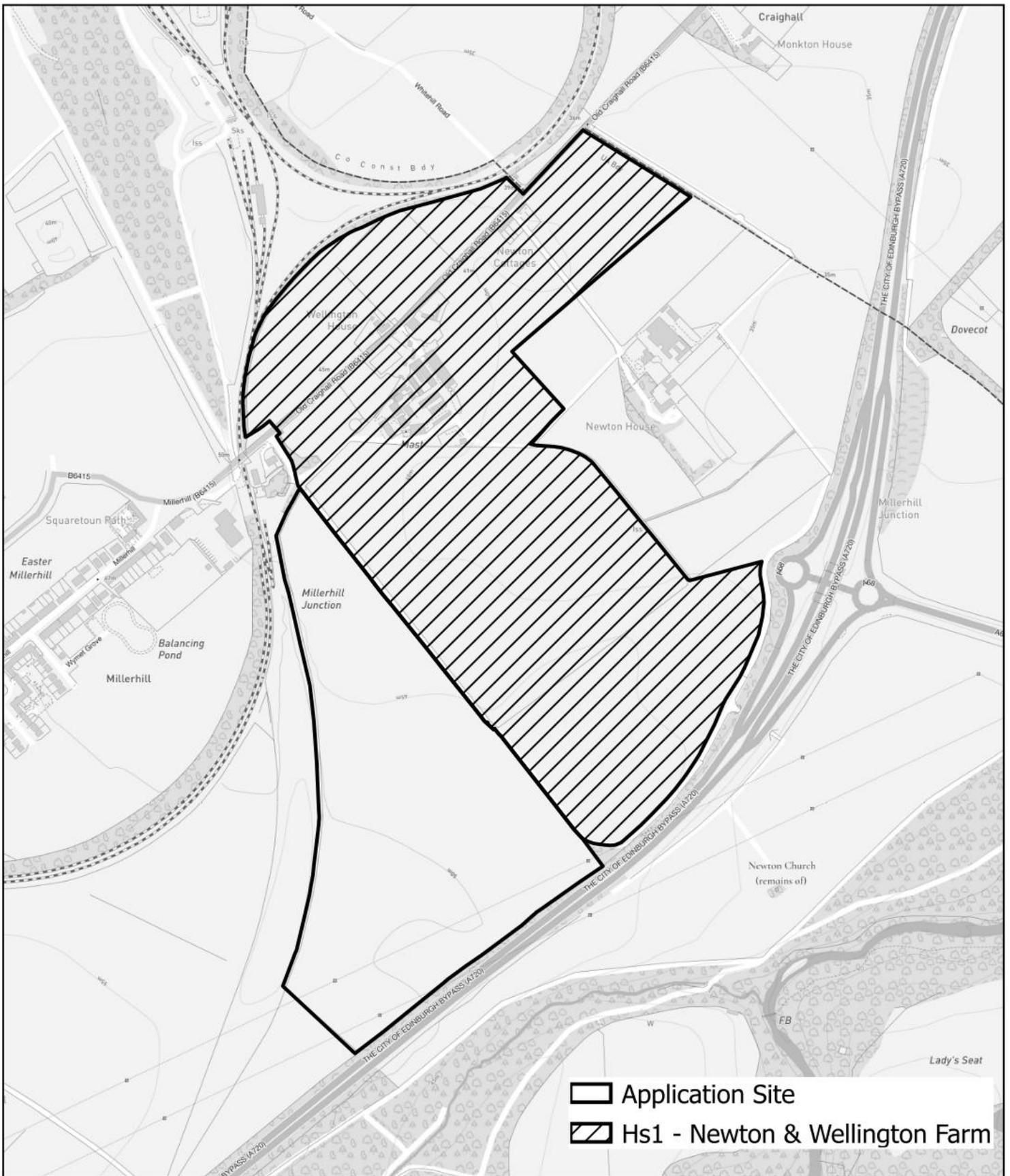
***Reason:*** *There is concern that the A720 may impact negatively on the residents of the proposed development.*

18. Development shall not begin until an application for approval of matters specified in conditions for a programme of archaeological works (Trial Trench Evaluation) in accordance with a written scheme of investigation has been submitted to and approved in writing by the planning authority.

***Reason:*** *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with Policies ENV24 and ENV25 of the Midlothian Local Development Plan 2017.*

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 4 March 2022  
**Application No:** 20/00774/PPP  
**Applicant:** Wellington Farms Ltd  
**Agent:** Holder Planning Ltd  
**Validation Date:** 10 November 2020  
**Contact Person:** Martin Patrick  
**Email:** Martin.Patrick@midlothian.gov.uk  
**Background Papers:**



**Planning Service  
Place Directorate**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

Application for planning permission in principle for residential development and associated works | Land At Wellington Farm  
Old Craighall Road Millerhill Dalkeith

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