

Notice of Review: Land at Rosebery Farm, Gorebridge

Determination Report

Report by Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' to vary conditions 8 and 15 of planning permission 18/00582/DPP at land at Rosebery Farm, Gorebridge.

2 Background

- 2.1 Planning application 18/00582/DPP for the change of use from farm steading to an events facility incorporating weddings and functions and associated external alterations; formation of hardstanding and car parking (variation of planning permission 17/00554/DPP) was granted permission 5 November 2018 subject to a condition limiting the use of music to the permanent buildings (condition 8) and a condition limiting events to the permanent buildings rather than the use of additional buildings or marquees (condition 15):

8. Amplified music shall only be permitted within the hayloft, pumphouse, and threshing barn as detailed on approved drawing number R35(ph2)L03 E and at no other location within the site.
15. The events use shall hereby be permitted within the buildings shown on the approved drawing number R35(ph2)L03 E: no new or additional buildings or marquees shall be permitted for use in association with the events use hereby approved.

Reason for both conditions: *These details are required to ensure that the events use is restricted to a level to protect the amenity of the surrounding residential properties; to ensure these mitigation measures are in place before any events at the site and that these remain in place whilst this use takes place.*

- 2.2 Planning application 23/00308/S42 to vary conditions 8 and 15 of planning permission 18/00582/DPP, to allow amplified music and the siting of marquee within courtyard, was refused planning permission on 3 November 2023; a copy of the decision is attached to this report.
- 2.3 A Section 42 application, is in itself, a planning application - a particular kind of planning application for development without complying with or amending the condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the

original permission if implemented. Therefore, if planning permission is granted for this application it will supersede planning permission 18/00582/DPP if implemented.

2.4 Although a Section 42 application is a new planning application in law the Act states “on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”. The principle, layout and form of development are not subject to assessment. Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply. In this case a number of the conditions attached to the earlier permission have been discharged and are no longer relevant.

2.5 The review has progressed through the following stages:

- 1 Submission of Notice of Review by the applicant.
- 2 The Registration and Acknowledgement of the Notice of Review.
- 3 Carrying out Notification and Consultation.

3 Supporting Documents

3.1 Attached to this report are the following documents:

- A site location plan (Appendix A);
- A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
- A copy of the case officer’s report (Appendix C); and
- A copy of the decision notice, issued on 3 November 2023 (Appendix D).

3.2 The full planning application case file and the development plan policies referred to in the case officer’s report can be viewed online via www.midlothian.gov.uk.

4 Procedures

4.1 In accordance with agreed procedures, the LRB:

- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
- Have determined to progress the review by written submissions.

4.2 The case officer’s report identified that there were two consultation responses and no representations received. As part of the review process the interested parties were notified of the review – no additional comments have been received. All comments can be viewed online on the electronic planning application case file.

4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:

- Identify any provisions of the development plan which are relevant to the decision;
- Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;

- Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following condition has been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. Unless otherwise approved in writing by the planning authority, the events use hereby approved shall only operate between the hours of 8am 1am. All guests not residing in the related self-catering accommodation on site shall vacate the application site by 1am on the morning following the related event.
3. All staff members shall vacate the site by 2am on the morning following the related event, with the exception of any staff living on site.
4. All music on site shall cease at 00.30am and no music shall be played between 00.30am and 8am.
5. The units shown as farmhouse, dovecot and dairy on drawing number R35(ph2)L03 E on planning permission reference 18/00582/DPP shall either be used as accommodation for staff working at the events or self-catering accommodation. In the instances where there are events taking place at the site, this self-catering accommodation shall only be occupied by guests attending the event taking place and by no other person.

6. Guests attending any events shall not access any other area within the site other than that indicated by the red dash line on approved drawing number R35(ph2)L07 A on planning permission reference 18/00582/DPP.
7. Amplified music shall only be permitted within the hayloft, pumphouse, and threshing barn as detailed on approved drawing number R35(ph2)L03 E on planning permission reference 18/00582/DPP and the marquee hereby approved: this shall not be played at any other location within the site.
8. There shall be no live acoustic music played within the marquee hereby approved.
9. Prior to the use hereby approved being implemented, the sound insulation improvements and glazing enhancement detailed in the submitted noise impact assessment dated 12 January 2018 on planning permission reference 18/00582/DPP shall be in place.
10. Unless otherwise approved in writing by the planning authority, prior to the use hereby approved being implemented, the external doors to all areas where music is permitted as per condition 7 above shall be fitted with a self-closing device which ensures a controlled closing of the door and it shall not be propped open.
11. Unless otherwise approved in writing by the planning authority, prior to the use hereby approved being implemented, the door system providing access to the hayloft and pumphouse shall include internal lobby doors to the doors on the steading building as shown on the southwest elevation on approved drawing number R35(ph2)D02B on planning permission reference 18/00582/DPP and shall be operated so that the external door and the internal lobby door are not open at the same time and this door system shall not be removed without the prior written approval of the Planning Authority.
12. Prior to any event taking place within the marquee, a suitable sound limiter capable of controlling the overall sound output and bass frequencies shall be installed within the marquee. The limiter shall be installed, calibrated, set and maintained at a level to be agreed in writing by the planning authority. All amplified music shall be channelled through the limiter to ensure that no amplified music or vocals are audible within any neighbouring noise sensitive living apartment.
13. The events use shall hereby be permitted within the buildings shown on the approved drawing number R35(ph2)L03 E on planning permission reference 18/00582/DPP and the marquee hereby approved: no new or additional buildings or more than one marquee are approved for use in association with the use hereby approved.
14. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when

measured within any nearby living apartment and no structure borne vibration is perceptible in any neighbouring living apartment.

15. The soundproofing of the buildings detailed in conditions 11, 13 and 14 and 15 and control of amplified sound detailed in condition 7 shall ensure that no amplified music or sound reproduction equipment used in associated with the use hereby permitted shall be audible within any noise sensitive property.

Reason for conditions 2 to 15: *These details are required to ensure that the events use is restricted to a level to protect the amenity of the surrounding residential properties; to ensure these mitigation measures are in place before any events at the site and that these remain in place whilst this use takes place.*

16. The events at the application site shall be carried out in compliance with the approved supporting statement and noise impact assessment.

17. The noise impact assessment is only approved in relation to application 23/00308/S42 for events at Rosebery Farm and no other areas.

Reason for conditions 16 and 17: *In the interests of clarity; the report is acceptable in relation to the events at Rosebery Farm; however the report also makes reference to events at Rosebery House, Chapel and marquee which are not part of the application under consideration and has not been assessed.*

18. The siting of one marquee hereby approved shall only be positioned within the courtyard of Rosebery Farm steading, outlined in red on the site plan submitted 15 May 2023.

Reason: *The current application is for the siting of a marquee within the courtyard and it is on this basis that the application has been assessed; if a marquee is sited elsewhere within the site, this may have a detrimental impact on the amenity of nearby residents through noise and the setting of this A listed building which have not been assessed in this application.*

19. The marquee hereby approved shall not be fixed onto or attached to the surrounding buildings or hardstanding.

Reason: *In the interests of clarity; the applicant's agent has confirmed that marquees will not be fixed onto the surrounding buildings or hardstanding and it is on this basis that this is acceptable. If the marquee is fixed onto to surrounding buildings or hardstanding, this may have an adverse effect on the fabric of this A listed building which needs to be assessed.*

20. Unless otherwise approved in writing by the planning authority, the maximum number of guests attending any events in total at the site shall be restricted to 100.

Reason: *To ensure there is adequate drainage facilities on site.*

6 Recommendations

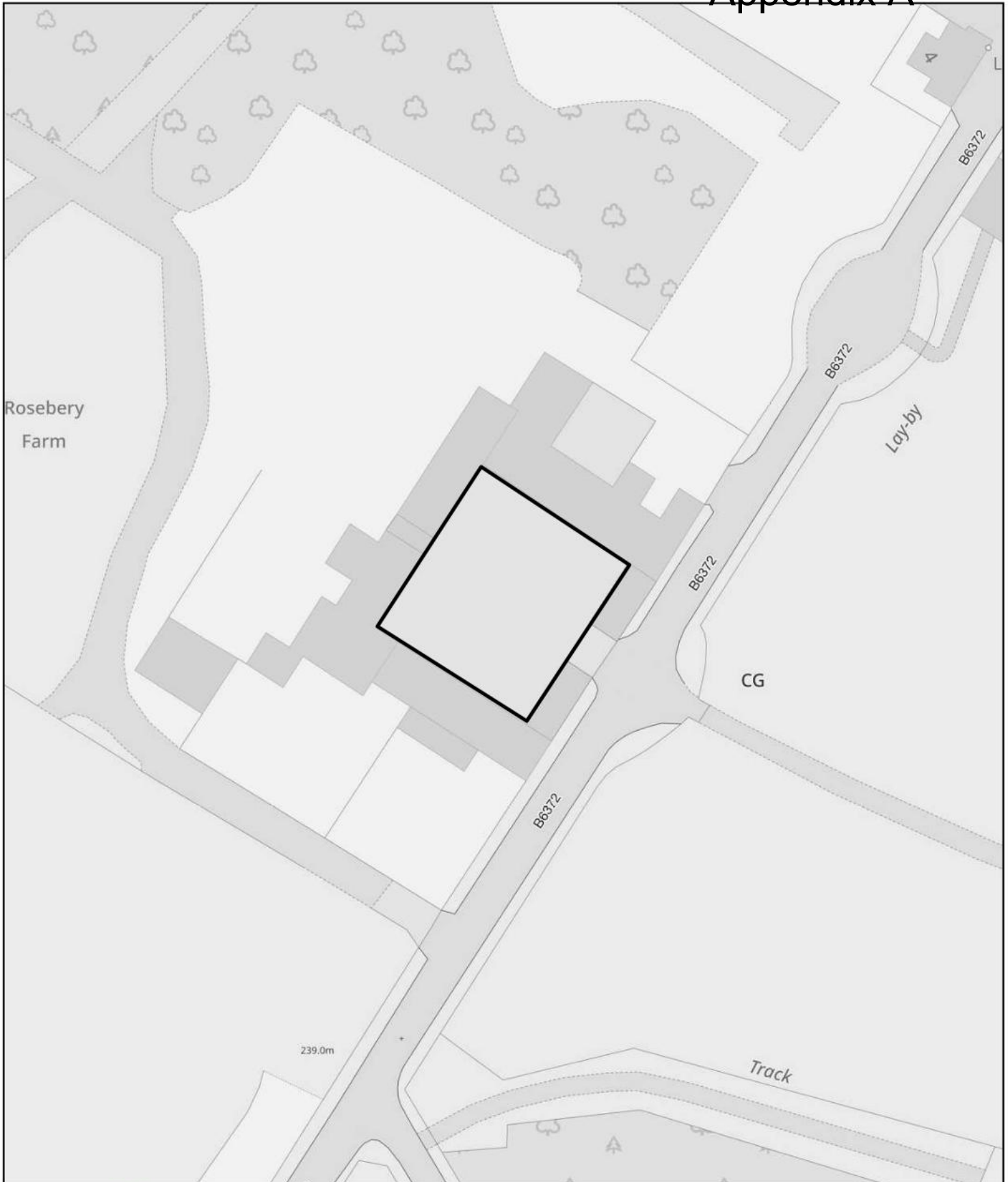
- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 26 January 2024
Report Contact: Mhairi-Anne Cowie – Planning Officer
Mhairi-Anne.Cowie@midlothian.gov.uk

Background Papers: Planning application 23/00308/S42 available for inspection online.

Appendix A



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

Section 42 application to amend condition 8 and 15 of planning permission 18/00582/DPP (to allow amplified music and siting of marquee within courtyard) at Rosebery Farm, Gorebridge, EH23 4SP

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File No: 23/00308/S42

Scale: 1:750

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Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: planning-applications@midlothian.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100653359-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Wright Planning & Development Ltd"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="John"/>	Building Name:	<input type="text" value="Norma Villa"/>
Last Name: *	<input type="text" value="Wright"/>	Building Number:	<input type="text" value="26"/>
Telephone Number: *	<input type="text" value="07980992740"/>	Address 1 (Street): *	<input type="text" value="Wilson Street"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text" value="Lower Flat"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Perth"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
		Postcode: *	<input type="text" value="PH2 0EX"/>
Email Address: *	<input type="text" value="john@wrightpdl.co.uk"/>		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Norma Villa"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text" value="26"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="Wilson Street"/>
Company/Organisation	<input type="text" value="The Rosebery Estates Partnership"/>	Address 2:	<input type="text" value="Lower Flat"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Perth"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text" value="REDACTED"/>	Postcode: *	<input type="text" value="PH2 0EX"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="REDACTED"/>		

Site Address Details

Planning Authority:	<input type="text" value="Midlothian Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="ROSEBERY FARM"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="GOREBRIDGE"/>
Post Code:	<input type="text" value="EH23 4SP"/>

Please identify/describe the location of the site or sites

Northing

Easting

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Section 42 application to amend condition 8 and 15 of planning permission 18/00582/DPP (to allow amplified music and siting of marquee within courtyard)

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See attached Appeal Statement

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Grounds of Appeal Application as submitted (with updated plans subsequently submitted). Decision Notice and Report. Research Article "Assessing the impact of festival music on bat activity"

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

23/00308/S42

What date was the application submitted to the planning authority? *

15/05/2023

What date was the decision issued by the planning authority? *

03/11/2023

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

Operating commercial enterprise, advance notice would avoid a clash with an event.

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr John Wright

Declaration Date: 21/12/2023

**Appeal under s43A(8) of the Town and Country Planning (Scotland) Act 1997
against a decision of Midlothian Council.**

**S42 Application to amend condition 8 and 15 of planning permission
18/00582/DPP (to allow amplified music and siting of marquee within courtyard) at
Rosebery Farm, Gorebridge, EH23 4SP**

Application Reference: 23/00308/S42

Grounds of Appeal on behalf of:

Rosebery Estates Partnership

Prepared by:

Wright Planning & Development Ltd

John Wright (BSc Hons) MRICS

21 December 2023

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APPENDIX 2 – DELEGATED REPORT

APPENDIX 3 – DECISION NOTICE

APPENDIX 4 – ASSESSING THE IMPACT OF FESTIVAL MUSIC ON BAT ACTIVITY

1.0 INTRODUCTION

Wright Planning & Development Ltd (WPDL) are instructed by Rosebery Estates Partnership, owner of the appeal site, to prepare and submit this appeal.

This appeal is against the refusal, under delegated powers, by Midlothian Council of an application (Appendix 1) for variation of planning permission to enable amplified music and siting of a marquee within the courtyard. The application was validated on 15th May 2023 (Ref: 23/00308/S42) and refused by Decision Notice (Appendix 3) issued on 3rd November 2023. The delegated report is submitted for context (Appendix 2).

The Decision Notice received confirms the sole reason for refusal as being;

“It has not been demonstrated to the satisfaction of the Planning Authority that the proposal would not have an adverse impact on protected species at the site and so the proposal is contrary to policy ENV15 of the adopted Midlothian Local Development Plan 2017 and policy 4 of the National Planning Framework 4.”

This appeal statement comprises our grounds for appeal.

2.0 Grounds of Appeal

The Reason for Refusal references two policies that the proposal was considered contrary to being MLDP Policy ENV15 - Species and Habitat Protection and Enhancement, and NPF4 Policy 4 - Natural Places.

As stated in the Transitional Arrangements published by the Scottish Government in February 2023, where there is an incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail (Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”); section 24(3)). It is our view that as NPF4 Policy 4 applies different tests, and is the more up to date Policy expression by Ministers reflecting their positive aspirations for rural areas, it would be applicable in place of ENV15 as the more up to date.

Policy ENV15 - Species and Habitat Protection and Enhancement

Development that would affect a species protected by European or UK law will not be permitted unless:

- A. there is an overriding public need and there is no satisfactory alternative;
- B. a species protection plan has been submitted, which is based on survey results and includes detail of the status of protected species on site and possible adverse impacts of development;
- C. appropriate and effective mitigation is proposed and agreed;

and if European protected species are present:

- D. the development is not detrimental to the maintenance of European protected species at a favourable conservation status.

In the assessment of planning applications for development that would affect habitats of conservation value (although insufficient to justify a formal natural heritage designation), effects

on the habitat, including the expected results of mitigation measures, will also be taken into account.

Development proposals will be expected to demonstrate compatibility with the aims and objectives of the Midlothian Local Biodiversity Action Plan and related plans, by identifying appropriate measures to protect, enhance and promote existing habitats and/ or the creation of new ones, and provide for the effective management of these habitats.

Whilst we have not been able to undertake a survey to confirm the presence or otherwise of bats, we have sought to demonstrate through the research article provided that the proposal will not affect bats should they be present, nor will it be detrimental to the maintenance of European protected species at a favourable conservation status. Therefore, we do not feel that the proposal is in conflict with Policy ENV15.

NPF4 must be read as a whole, and it is important to bear in mind that the spatial principles for future places which include Rural Revitalisation to support the planning and delivery of productive places. Other policies encourage development (such as this) that will contribute to rural economies and communities and support development proposals that contribute to the viability sustainability and diversity of rural businesses.

NPF4 Policy 4 – Natural Places

- a) Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.
- ~~b) Development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an “appropriate assessment” of the implications for the conservation objectives.~~
- ~~c) Development proposals that will affect a National Park, National Scenic Area, Site of Special Scientific Interest or a National Nature Reserve will only be supported where:
 - i. The objectives of designation and the overall integrity of the areas will not be compromised; or
 - ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance. All Ramsar sites are also European sites and/ or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.~~
- ~~d) Development proposals that affect a site designated as a local nature conservation site or landscape area in the LDP will only be supported where:
 - i. Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or
 - ii. Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.~~
- e) The precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance.
- f) Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation must be factored into the planning

and design of development, and potential impacts must be fully considered prior to the determination of any application.

~~g) Development proposals in areas identified as wild land in the Nature Scot Wild Land Areas map will only be supported where the proposal:~~

- ~~i. will support meeting renewable energy targets; or,~~
- ~~ii. is for small scale development directly linked to a rural business orcroft, or is required to support a fragile community in a rural area.~~

~~All such proposals must be accompanied by a wild land impact assessment which sets out how design, siting, or other mitigation measures have been and will be used to minimise significant impacts on the qualities of the wild land, as well as any management and monitoring arrangements where appropriate. Buffer zones around wild land will not be applied, and effects of development outwith wild land areas will not be a significant consideration.~~

Whilst we acknowledge that we have been unable to undertake a Bat Survey as requested to confirm the presence, number and species of bats, this was in part due to the timing of the request coming close to the end of the survey season and the potential complexity of the evidence requested. It is now not possible to undertake the required survey until the start of the survey season in the spring 2024.

In the interests of expediency and practicality, we had sought to progress matters on the basis of the previous findings, accepting that bats were present but seeking to demonstrate the impact of the proposed level of music would not be unacceptable. We feel that in accordance with the findings of the Research Paper provided there would be no unacceptable impact, and therefore the precautionary principle need not apply here.

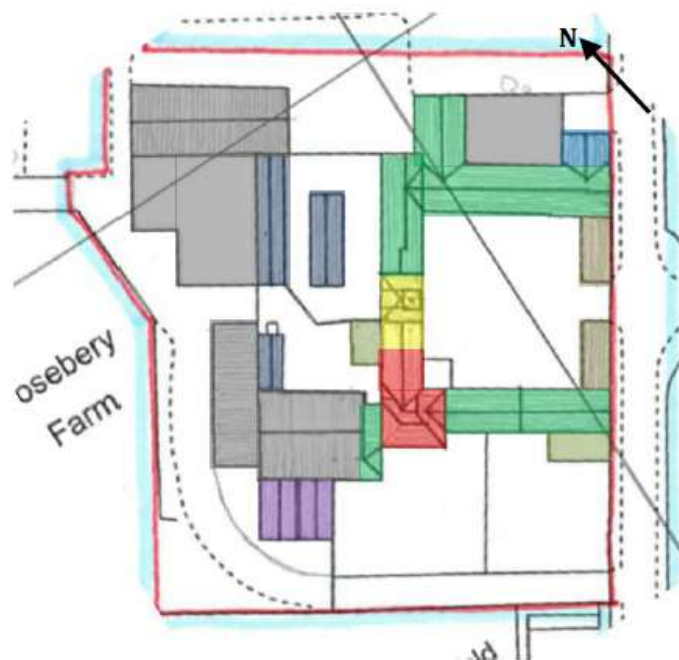
Whilst we have been unable to find the 2017 report on the portal, the Officer provided the above and below extracts of the report showing the findings. It is interesting to note that these findings are reflected in a previous 2012 assessment of the property with the same type of bats, and lower number of bats, found.

The roost locations are as follows:

1. Approximately seven Soprano Pipistrelles found roosting under slates on both sides of the farmhouse roof. These were identified during the first emergence survey. Given the low number and dispersed locations it is highly likely that these are individual males.
2. Approximately four Common Pipistrelles found roosting under slates on the steading building at the South-East corner of the site. Again, the numbers suggest that this roost is used by male bats.
3. Two Soprano Pipistrelles found roosting under slates at the west side of the cattle byre. Again, the numbers suggest that this roost is used by male bats. This roost was found to contain a solitary Pipistrelle species in 2017.
4. A roost site under lead flashing on the farmhouse roof, probably used by a single Myotis bat, most probably a Natterer's Bat. Again, this was most likely a male. Although the bat was not seen to enter the roost, its swarming behaviour at dawn was clearly focussed on this location indicating a roost site.
5. A solitary Soprano Pipistrelle was found roosting at the wall-head of the South elevation of the Farmhouse.

Due to the low numbers of bats found, and the time of year, it can be concluded that these roosts are non-breeding bat summer roosts.

APPENDIX I – SITE PLAN



KEY

 Farmhouse	 Steading buildings
 Audit room & clock tower	 Open-fronted barn
 Bothy	 Derelict outbuildings
 Byre	 Steel-roofed sheds
 Modern agricultural buildings	

As a result of previous consents granted, only the green (steading), blue (bothy), purple (byre), yellow (clock tower) and red (farmhouse) buildings remain, and the mitigation consented at the time (likely bat boxes in nearby trees) implemented as required. As part of the conversion of the remaining units to their current use, further work was carried out to the roofs of these buildings, and the identified mitigation at the time (likely bat boxes in nearby trees) implemented as required.

Whilst we believe that the mitigation implemented previously, and the works undertaken to the steading over the years, would have resulted in the activity moving away from the steading building, but accept that may not be the case. Accepting that there are bats using the buildings, we have sought instead to demonstrate that the proposed development will not adversely affect them.

The Research Article published by the British Ecological Society “Assessing the impact of festival music on bat activity” (Appendix 4) that we highlighted to the Officer, we feel, confirms (at Section 3 – Results) that the impact of the proposal would be minor reduction in activity limited to the duration of the event returning to normal shortly thereafter.

3.0 Material Considerations

The timing of the request for a survey was unfortunate and finding a suitably qualified ecologist with time available towards the end of the season resulted in us missing the opportunity to get a survey done. In an attempt to secure consent to enable this additional provision to feature in marketing for the 2024 wedding season we had attempted to address these points in other ways.

We feel that the requested information is overly onerous given the limited scale and decibel level proposed compared to, for example, the Vogrie Country Park “Woodland Dance Project” with far more lighting, louder music and larger crowd (1,500 capacity) for longer duration, in a location which will almost certainly have bat (and other) habitat present which is, as the Council indicate in the Delegated Report under “Impact on Protected Species” potentially an offence. The Dance Project is undertaken without planning permission thereby avoiding the need for survey work or assessment of impact, despite the impact being far more significant.

4.0 Proposed Conditions

The Delegated Report, under the heading Noise Impact on Neighbouring Properties, suggests a Condition requiring a limiter which is accepted, however, the reason for the condition is not.

The Report indicates that this could be subject to further Control. The Noise Assessment submitted considered not only the impact of this venue playing amplified music (at the restricted 98db) but also the walled garden at Rosebery House (with no requirement for a limiter) across the road at the same time, and concluded no adverse impact at that level. The purpose of the condition is to secure compliance with that limit (which has been justified and shown to be acceptable), not to enable a reduction of it in the future.

5.0 Proposed Appeal Procedure

We are happy for this appeal to be considered on the basis of written submissions, if a site visit is required, we are happy for that to proceed unaccompanied.

6.0 Conclusion

We believe that in this case, the impact on bats (accepting that they are present) is a minor reduction in activity during the event, returning to normal following the event and that the proposal complies with Policy. We feel that there are material considerations which support a grant of consent.

We would therefore respectfully request the Local Review Body overturns the Officers refusal of planning permission and grants consent in this instance.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 23/00308/S42.

Site Address: Rosebery Farm, Gorebridge.

Site Description: The site comprises a former farm complex which has been converted to an events venue and associated accommodation. There is a steading located centrally within the site which has stone walls, slate roof and timber windows. There are also some rooflights on these buildings. The steading buildings form a courtyard, with the central building being a clocktower and dovecot. The buildings in this courtyard range from single, to single storey and accommodation within the roofspace to two storeys high. The buildings are category A listed.

Proposed Development: Section 42 application to amend condition 8 and 15 of planning permission 18/00582/DPP (to allow amplified music and siting of marquee within courtyard).

Proposed Development Details: It is proposed to vary conditions 8 and 15 of planning permission 18/00582/DPP (Change of use from farm steading to an events facility incorporating weddings and functions and associated external alterations; formation of hardstanding and car parking (variation of planning permission reg no. 17/00554/DPP) which read as follows:

8. Amplified music shall only be permitted within the hayloft, pumphouse, and threshing barn as detailed on approved drawing number R35(ph2)L03 E and at no other location within the site.
15. The events use shall hereby be permitted within the buildings shown on the approved drawing number R35(ph2)L03 E: no new or additional buildings or marquees shall be permitted for use in association with the events use hereby approved.

Reason for both conditions: *These details are required to ensure that the events use is restricted to a level to protect the amenity of the surrounding residential properties; to ensure these mitigation measures are in place before any events at the site and that these remain in place whilst this use takes place.*

The application includes a Noise Impact Assessment (NIA), planning statement and reference to NPF4, as well as documents related to protected species. The planning statement considers there would not be a significant impact on the amenity of nearby residents as a result of the proposed marquee or the details included in the NIA. The marquee would be sited within the steading courtyard. There is no one marquee type proposed as this would depend on the event organiser, however these would be relatively standard in appearance. These would be freestanding with no attachment

to the listed buildings. The marquee would be erected for the event only and then removed, meaning this would not be a permanent feature.

Background (Previous Applications, Supporting Documents, Development Briefs): Application site

20/00348/DPP Extension to building. Permitted.

20/00346/LBC Extension to building. Permitted

18/00583/LBC Extension to building and alterations to roof. Consent with conditions.

18/00582/DPP Change of use from farm steading to an events facility incorporating weddings and functions and associated external alterations; formation of hardstanding and car parking (variation of planning permission ref no.

17/00554/DPP). Consent with conditions.

17/00554/DPP Change of use from farm steading to an events facility incorporating weddings and functions and associated external alterations; formation of hardstanding and car parking. Consent with conditions.

17/00552/LBC External and internal alterations and erection of canopy. Consent with conditions.

16/00666/LBC Installation of window to existing window opening and internal alterations. Consent with conditions.

16/00110/DPP Erection of and alterations to roof and external alterations to roof and external alterations to building. Consent with conditions.

16/00109/LBC Erection of and alterations to roof, formation of patio doors and window opening and rendering of wall. Consent with conditions.

15/00541/LBC Removal of pitched roof. Permitted.

13/00821/LBC Demolition of outbuildings. Consent with conditions.

12/00152/LBC Demolition of outbuildings, internal and external works to existing farmhouse and internal and external works to farm steading buildings associated with conversion to residential use. Consent with conditions.

12/00151/DPP Conversion of and alterations to farm steading buildings to form an additional 5 dwellinghouses, change of use of agricultural outbuildings to provide ancillary buildings and associated works. Consent with conditions.

07/00017/LBC Internal and external alterations to farmhouse. Consent with conditions.

Consultations:

The Council's **Senior Manager Protective Services** has some concerns over the proposed marquee and music noise affecting nearby residential properties. They have considered the submitted NIA and state if permission is approved this should be subject to conditions relating to: amplified music and vocal be controlled to their satisfaction; the installation of a suitable noise limiter to be used for all events featuring amplified music within the courtyard; no acoustic music within the courtyard; and marquees may only be situated within the courtyard. The Planning Issues section assesses these comments in more detail.

The Council's **Biodiversity consultant** states due to the nature of the application to allow amplified music in the courtyard, there may be an impact on bats. Two species of bat roosts have been recorded in the building immediately adjacent to the courtyard and a third bat species has been recorded roosting within 50 metres of the site. Amplified music, lighting etc. may cause disturbance to the roosts which would

potentially constitute an offence. They therefore advised that the applicant seek advice from a suitably qualified Bat Ecologist regarding the proposals and prepares an ecology statement/ report/ mitigation plan as relevant. Further to this, there was some discussion with the case officer and applicant's agent about this requirement that is detailed in the Planning Issues section below. In summary, the requested ecological works have not been submitted for consideration.

Representations: No representations have been received.

Relevant Planning Policies: The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017. The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

- Policy **1 Tackling the climate and nature crises**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis;
- Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change;
- Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks;
- Policy **4 Natural Places**; sets out to protect, restore and enhance natural assets making best use of nature-based solutions;
- Policy **7 Historic assets and places**; sets out to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places;
- Policy **13 Sustainable Transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably;
- Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle;
- Policy **15 Local Living and 20 minute neighbourhoods**; sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options;
- Policy **23 Health and Safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing; and
- Policy **29 Rural development**; sets out to encourage rural economic activity, innovation and diversification whilst ensuring that the distinctive character of the rural area and the service function of small towns, natural assets and cultural heritage are safeguarded and enhanced.

The relevant policies of the **2017 Midlothian Local Development Plan** are;

RD1 Development in the Countryside states development in the countryside will only be permitted if: it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; it accords with other Local Development Plan policies; or forthcoming Supplementary Guidance related to Development in the Countryside and Green Belt.

In addition, all such development will need to: be of a scale and character appropriate to the rural area and be well integrated into the rural landscape; be capable of being serviced with an adequate and appropriate access; be capable of being provided with drainage and water supply; and be accessible by public transport.

Business opportunities that will enhance rural economic development opportunities will be permitted provided that they accord with the abovementioned criteria.

Proposals will not be permissible if they are of a primarily retail nature or harm the amenity of nearby residents through unacceptable levels of noise, light or traffic;

ENV6 Special Landscape Areas states development proposals in such areas will only be permitted where they incorporate high standards of siting and design and where they will not have an unacceptable impact on the special landscape qualities of the area;

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;

ENV15 Species and Habitat Protection and Enhancement states that development that would affect a species protected by European or UK law will not be permitted unless: there is an overriding public need and there is no satisfactory alternative; a species protection plan has been submitted, which is based on survey results and includes details of the status of protected species on site and possible adverse impact of development; suitable mitigation is proposed and agreed; and the development is not detrimental to the maintenance of European protected species at a favourable conservation status;

ENV18 Noise states that the Council will seek to prevent noisy developments from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or required to be modified so that no unacceptable impact at sensitive receptors is generated. Applicants may be required to carry out a noise impact assessment either as part of an Environmental Impact Assessment or separately. Where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of the established operation is not adversely affected; and

ENV22 Listed Buildings states development will not be permitted which would adversely affect the character or appearance of a listed building, its setting or any feature of special or architectural or historic interest that it possess. Proposals for alterations to listed buildings will only be permitted where their siting, design, materials and detailing do not detract from and, wherever appropriate, enhance the original character of the building.

Planning Issues: The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

Principle of development

It is proposed to use a marquee at the site for some events and allow amplified music at more areas in the site than previously permitted. The principle of the events use at the site has been established in the previously approved permission and so it is only the proposed changes which are assessed in this current application.

The previous permission only proposed for events to take place within the steading, in no other areas. The application was only assessed on this basis. The inclusion of marquees or other temporary structures were not assessed by the Planning Authority or Environmental Health. As holding events in marquees or other temporary structures and allowing amplified music here may result in noise emissions and impact on nearby residential properties, these were conditioned out of this permission. This would allow a detailed assessment of such structures and the impact these might have on the surroundings.

With regard to NPF4, the proposal is purely for the use of a marquee and to allow amplified music in association with an established events venue use. This fully relates to the established use, would expand the range of facilities already offered and would not result in a new or more intensive use of the site than already approved and established. Given the nature and scale of the proposal, it is not considered that the application would contradict with the sustainability and climate aims of NPF4 compared to the established use as approved.

While the principle is established, the details of the proposal need to be considered. Due to the nature of the proposed variations, a number of issues may arise from this. Issues arising from these. These relate to noise impact on neighbouring properties, the impact on the A listed steading and the impact on protected species.

Noise impact on neighbouring properties

While the site is within a remote area, there are residential properties in the surrounding area which could be affected by noise from amplified music played on site and the siting of a marquee as proposed. Given the music on site would stop at 12.30am, the low background noise levels and the weekly frequency of events could cause noise disturbance to nearby residents.

The application submission includes a NIA to provide limits for amplified music in the courtyard area. This states that if the volume of the music is suitably restricted within the courtyard, noise is unlikely to cause noise disturbance to nearby residents. However the authors of the NIA state the assessment is only an indication that music noise will not be an issue and that this is not a guarantee.

In order to limit ensure there is no noise disturbance to nearby residential properties from amplified music, should permission be approved it should be conditioned that a suitable noise limiter be installed and used for events featuring amplified music within the courtyard. If the limiter is initially set up using the levels used in the NIA modelling, this could be adjusted if noise causes problems in future, which would

give control over the music noise levels. However noise limiters do not work for live acoustic instruments such as drums. Therefore live music shall not be allowed within the courtyard.

The positioning of the marquee within the courtyard is crucial to containing the noise. If the marquee was positioned outwith the courtyard this could create more noise in the wider area and disturbance to nearby properties. Therefore the marquee should only be sited within the courtyard and no other position within the site.

It is important to note that the NIA only assesses amplified music within the courtyard and no other part of the application site. Should condition 8 be amended, it would be important to continue to restrict the use of amplified music here to the courtyard, as assessed in this application, and the hayloft, pumphouse, and threshing barn approved in 18/00582/DPP. The site includes a wider area of land around the steading buildings which have not been assessed in terms of noise impact to nearby properties and is likely to cause disturbance to these.

Impact on listed building, rural area and special landscape area

The supporting statement confirms there is no one marquee type proposed as this would depend on the event organiser, however these would be relatively standard in appearance. The applicant's agent also confirms the marquee would be free-standing, no larger than 18 metres by 20 metres within the courtyard, which measures 23 metres by 27 metres. There would be no attachment to the listed structure or hardstanding. The marquee would be erected for the event only and removed once this is over, meaning this would not be a permanent feature. Given the siting within the enclosed courtyard and that this would only be erected for the specific event, the marquee would not have a detrimental impact on the setting of the A listed steading.

In order to ensure there is no detrimental impact on the fabric of the A listed steading, it would be prudent to attach a condition to any permission stating there shall be no fixings to the courtyard buildings or hardstanding.

As previously stated, given the siting within the enclosed courtyard and that this would only be erected for the specific event, the marquee would not have a detrimental impact on character or appearance of the surrounding rural area, special landscape area or landscape character of the area.

Impact on protected species

The previously approved application for the change of use of the site to an events venue considered the impact on protected species, namely bats. The submitted and approved ecology report found two bat roosts within the steading buildings, as well as another within 50 metres of the site. Given the proposal is for the erection of a marquee and amplified music within the courtyard adjacent to where the bat roosts were previously found, this application needs to assess the impact of the proposal on bats. Amplified music, lighting and associated works may cause disturbance to roosts which would potentially constitute an offence. The most recent records of bats at the site date from 2017 and, as bats move between roost sites, the situation at the site may have changed. Therefore the applicant's agent was asked to seek

advice from a suitably qualified Bat Ecologist regarding the proposals and prepare an ecology statement/ report/ mitigation plan as relevant.

The applicant's agent was not forthcoming with this information despite repeated requests and explanations why this was required. They submitted an article about the impact of festival music on bat activity and stated that this does not seem to be a concern for outdoor festivals and events such as the Edinburgh Military Tattoo, Hogmanay events and outdoor events in Vogrie. The agent also states that this requirement is not proportionate to the amount of times there would be amplified music as proposed. They state this could end up being a reasonably significant piece of work and the cost is unlikely to be justified by the benefit.

There is evidence that the site has been used for bat roosting within the last 6 years. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. While it is acknowledged that bats move between sites, it remains to be demonstrated that these are not on site at present and therefore that protected species would not be adversely affected by the proposal. The Council has to be entirely satisfied that the proposal would not have an adverse impact on protected species or habitat. It has not been demonstrated that this is the case and so the application cannot be supported.

Recommendation: Refuse planning permission.

Reg. No. 23/00308/S42

Wright Planning And Development Ltd
Norma Villa
26 Wilson Street
Lower Flat
Perth
PH2 0EX

Midlothian Council, as Planning Authority, having considered the application by The Rosebery Estates Partnership, Norma Villa, 26 Wilson Street, Perth, PH2 0EX, which was registered on 15 May 2023 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Section 42 application to amend condition 8 and 15 of planning permission 18/00582/DPP (to allow amplified music and siting of marquee within courtyard) at Rosebery Farm, Gorebridge, EH23 4SP

in accordance with the application and the following documents/drawings:

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location plan	1:1250	16.10.2023
Supporting statement		15.05.2023
Noise Impact Assessment		15.05.2023

The reason(s) for the Council's decision are set out below:

It has not been demonstrated to the satisfaction of the Planning Authority that the proposal would not have an adverse impact on protected species at the site and so the proposal is contrary to policy ENV15 of the adopted Midlothian Local Development Plan 2017 and policy 4 of the National Planning Framework 4.

Dated 3 / 11 / 2023



.....
Duncan Robertson
Lead Officer – Local Developments
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison
Direct Telephone: 01623 637 119 (Planning Enquiries)
Email: planningconsultation@coal.gov.uk
Website: www.gov.uk/coalauthority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing coal mining features at surface or shallow depth. These features may include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such features are seldom readily visible, they can often be present and problems can occur, particularly as a result of new development taking place.

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Informative Note valid from 1st January 2023 until 31st December 2024