

Notice of Meeting and Agenda



Planning Committee

Venue: Council Chambers,
Midlothian House, Dalkeith, EH22 1DN

Date: Tuesday, 18 June 2019

Time: 13:00

Director, Resources

Contact:

Clerk Name: Mike Broadway

Clerk Telephone: 0131 271 3160

Clerk Email: mike.broadway@midlothian.gov.uk

Further Information:

This is a meeting which is open to members of the public.

Privacy notice: Please note that this meeting may be recorded. The recording may be publicly available following the meeting. If you would like to know how Midlothian Council collects, uses and shares your personal information, please visit our website: www.midlothian.gov.uk

1 Welcome, Introductions and Apologies

2 Order of Business

Including notice of new business submitted as urgent for consideration at the end of the meeting.

3 Declaration of Interest

Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

4 Minute of Previous Meeting

- 4.1** Minute of Meeting held on 14 May 2019 - For Approval. 5 - 14

5 Public Reports

- 5.1** Strategic Development Plan for Edinburgh and South East Scotland (SESplan) – Report by Director, Education, Communities and Economy. 15 - 20

- 5.2** Proposed Developer Contributions Committee – Report by Director, Resources (To Follow).

- 5.3** Major Applications: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage – Report by Director, Education, Communities and Economy. 21 - 28

- 5.4** Appeals and Local Review Body Decisions - Report by Director, Education, Communities and Economy. 29 - 54

Pre-Application Consultation - Report by Director, Education, Communities and Economy.

- 5.5** Proposed Residential Development with Associated Access, Drainage Infrastructure and Open Space on Land at the Former Wellington School, Penicuik (19/00252/PAC). 55 - 60

Applications for Planning Permission Considered for the First Time – Reports by Director, Education, Communities and Economy.

- 5.6** Section 42 Application to Remove Condition 7, requiring enhanced Public Transport facilities, imposed on grant of Planning Permission 17/00951/PPP for a Retail Unit at Soutra Mains Farm, Blackshiels, Fala, Pathhead (19/00221/S42). 61 - 76

- | | | |
|------------|---|-----------|
| 5.7 | Application for Planning Permission in Principle for Class 4 (Business) Uses with Ancillary Class 1 (Shops), Class 2 (Financial, Professional and Other Services) and Class 3 (Food and Drink) Uses; Residential Development; and Associated Access, Parking, Landscaping and Drainage Infrastructure at Land to the North of Hardengreen House, Dalkeith (19/00099/PPP). | 77 - 94 |
| 5.8 | Section 42 Application to Amend Condition 9 of Planning Permission 14/00203/DPP (to extend the time period for completion of the infilling of land by a further 36 months) at Land between Pentland Burn and the A720 City Bypass, Pentland Road, Damhead (19/00223/S42). | 95 - 104 |
| 5.9 | Application for Planning Permission for the Erection of Dwellinghouse/Café and Amenity Building; the Siting of five Yurts; the Formation of Pond and Associated Works on Land At Netherton, East of the A701, Penicuik (18/00741/DPP). | 105 - 118 |

6 Private Reports

No Private Reports to be discussed at this meeting.

7 Date of Next Meeting

The next meeting will be held on Tuesday 27 August 2019 at 1.00pm

Plans and papers relating to the applications on this agenda can also be viewed online at www.midlothian.gov.uk.

Minute of Meeting



Planning Committee

Date	Time	Venue
14 May 2019	1.00 pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Baird	Councillor Cassidy
Councillor Curran	Councillor Hackett
Councillor Hardie	Councillor Lay-Douglas
Councillor McCall	Councillor Milligan
Councillor Muirhead	Councillor Munro
Councillor Parry	Councillor Russell
Councillor Smail	Councillor Wallace

In Attendance:

Mary Smith, Director, Education, Communities and Economy	Peter Arnsdorf, Planning Manager
Alan Turpie, Legal Services Manager	Jim Gilfillan, Consultant Policy & Planning, Policy & Road Safety
Mike Broadway, Democratic Services Officer	

1. Apologies

Apologies for absence were intimated on behalf of Councillors Johnstone and Winchester.

2. Order of Business

The order of business was confirmed as outlined in the agenda.

3. Declarations of interest

In light of the recent Standards Commission decision to sanction two Councillors for breaches of the Councillors' Code of Conduct, a number of Members of the Committee raised concerns regarding the process for engaging with individuals and/or groups who may have an interest in a planning related matter. It was felt that guidance was required in order to clarify the position, in order that Members could participate in the planning process without fear of falling foul of a similar breach.

The Monitoring Officer, having advised that a full report on the Standards Commissions ruling would be submitted to the June Council meeting, attempted to offer the clarification sought by Members.

In response to a suggestion that the business on today's agenda be carried forward to the June meeting, the Chair advised that he was not minded to suspend today's meeting. Further advice was then offered by the Monitoring Officer and the Planning Manager regarding the timescales for determining applications and the potential for applicants to appeal on grounds of non-determination in the event that the meeting did not proceed.

After further discussion, the undernoted Members indicated that in the absence of formal clarification of the Standards Commissions decision they were not prepared to proceed and withdrew from the meeting at 1.16pm – Councillors Alexander, Baird, Cassidy, Hardie, Lay-Douglas, McCall, Munro, Parry, Smail and Wallace.

In terms of Standing Order 7.1, it was confirmed that there were sufficient Members remaining to constitute the required quorum of 6, so the meeting could proceed.

4. Minutes of Previous Meetings

The Minute of Meeting of 2 April 2019 were submitted and approved as a correct record.

5. Reports

Agenda No	Report Title	Presented by:
5.1	Major Applications: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage	Peter Arnsdorf

Outline of report and summary of discussion	
<p>There was submitted a report dated 2 May 2019 by the Director, Education, Communities and Economy updating the Committee with regard to 'major' planning applications, formal pre-application consultations by prospective applicants, and the expected programme of applications due for reporting to the Committee.</p> <p>The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants was outlined in Appendices A and B attached to this report.</p>	
Decision	
<p>The Committee noted the major planning application proposals which were likely to be considered by the Committee in 2019 and the updates for each of the applications.</p>	
Action	
<p>Planning Manager</p>	

Agenda No	Report Title	Presented by:
5.2	Appeals and Local Review Body Decisions	Peter Arnsdorf
Outline of report and summary of discussion		
<p>There was submitted a report dated 2 May 2019 by the Director, Education, Communities and Economy informing the Committee of the notices of review determined by the Local Review Body (LRB) at its meeting in April 2019 and advising that there were no appeals determined by Scottish Ministers to report.</p>		
Decision		
<p>The Committee noted the decisions made by the Local Review Body at its meetings on 16 April 2019.</p>		
Action		
<p>Planning Manager</p>		

Agenda No	Report Title	Presented by:
5.3	Supplementary Guidance: Housing Development in the Countryside and Green Belt	Peter Arnsdorf
Executive Summary of Report		
<p>With reference to paragraph 5.2 of the Minutes of 9 October 2018, there was submitted report, dated 2 May 2019, by the Director of Education, Communities and Economy, advising the Committee of the responses received to the public consultation on the proposed supplementary guidance on 'Housing Development in the Countryside and Green Belt' and seeking agreement to the adoption of the Housing Development in the Countryside and Green Belt Supplementary Guidance.</p>		

The report explained that the consultation period had run for eight weeks from 22 November 2018 to 18 January 2019 with discussions with interested parties continuing after the specified period. Responses had been received from a wide range of consultees including, Community Councils, landowners, developers, Government agencies and members of the public. A summary of the consultation responses, together with details of the Council's proposed response and a track change copy of the draft Supplementary Guidance document showing proposed deletions and additions (shown in red) to the document arising from the consultation were appended to the report.

Summary of Discussion

The Committee, having heard from the Planning Manager, welcomed the comments received as a result of the public consultation on the proposed Supplementary Guidance.

Decision

After further discussion, the Committee agreed:-

- a) to adopt the Housing Development in the Countryside and Green Belt Supplementary Guidance (as amended following the consultation process);
- b) that the Housing Development in the Countryside and Green Belt Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
- c) to instruct the Planning Manager to undertake the required notification/advertisement advising that the Housing Development in the Countryside and Green Belt Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
- d) to instruct the Planning Manager to notify the Scottish Ministers of the Council's intention to adopt the Housing Development in the Countryside and Green Belt Supplementary Guidance; and
- e) to be advised of the outcome of the notification of the Scottish Ministers procedure.

Action

Planning Manager

Agenda No	Report Title	Presented by:
5.4	Proposed Development of Mountain Bike Trail Centre, Indoor and Outdoor Leisure Facilities, Food and Drink Uses, Professional Service Suites, Offices, Retail, Visitor Accommodation and Associated Site Access Parking, Landscaping and Other Works at Former Lothianburn Golf Club, 106 Biggar Road, Edinburgh (19/00126/PAC).	Peter Arnsdorf

Outline of report and summary of discussion

There was submitted report, dated 2 May 2019, by the Director, Education Communities and Economy advising that a pre application consultation had been submitted regarding the proposed development of a mountain bike trail centre, indoor and outdoor leisure facilities, food and drink uses, professional service suites, offices, retail, visitor accommodation and associated works at the Former Lothianburn Golf Club, 106 Biggar Road, Edinburgh (19/00126/PAC).

The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.

Summary of Discussion

The Committee, having heard from the Planning Manager, discussed the possible potential impact of the retail element and whether or not it would be possible to restrict the goods/products being sold to items having a connection to the activities taking place, e.g Indoor and Outdoor Leisure pursuits. In response the Planning Manager advised that as the proposed site straddled the boundary with the City of Edinburgh Council and the land on which this part of the development was likely to occur fell within their jurisdiction it would be for them to determine such matters, however Members' concerns in this regard could be draw to their attention as part of the pre-application process.

Decision

The Committee noted:

- (a) The provisional planning position set out in the report;
- (b) The comments made by Members; and
- (c) That the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Planning Manager

Agenda No	Report Title	Presented by:
5.5	Proposed Residential Development with Associated Engineering Works, Open Space and Landscaping at Land North of Oak Place Mayfield Dalkeith (19/00106/PAC).	Peter Arnsdorf

Executive Summary of Report
<p>There was submitted report, dated 2 May 2019, by the Director, Education Communities and Economy advising that a pre application consultation had been submitted regarding a proposed residential development with associated engineering work, open space and landscaping at land north of Oak Place, Mayfield (19/00106/PAC).</p> <p>The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.</p>
Summary of Discussion
<p>The Committee, having heard from the Planning Manager, discussed the potential number of units, it being acknowledged that in terms of the Midlothian Local Development Plan 2017 (MLDP) the indicative capacity was for 63 units, and also the access arrangements, both in terms of the design of the site layout and also during construction. In response to Members questions, the Planning Manager advised that although the site history would be reviewed as part of consideration of the current application, anyone who had made representations regarding previous applications would be best advised to submit these afresh if they wish their views to be considered as part of determination of the current application.</p>
Decision
<p>The Committee noted:</p> <ul style="list-style-type: none"> (a) The provisional planning position set out in the report; (b) The comments made by Members; and (c) That the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.
Action
<p>Planning Manager</p>

Agenda No	Report Title	Presented by:
5.6	Application for Planning Permission for the Erection of 247 Dwellinghouses; Formation of Access Roads and Car Parking; SUDs Features and Associated Works on part of Site HS11 Dalhousie South Bonnyrigg (18/00740/DPP).	Peter Arnsdorf
Outline of report and summary of discussion		
<p>There was submitted report, dated 2 May 2019, by the Director, Education, Communities and Economy concerning the above application.</p>		

Having heard from the Planning Manager, the Committee in discussing the background to the inclusion of the proposed development site in the Midlothian Local Development Plan 2017, acknowledged the importance of developer contributions to help offset the growing pressures being put on infrastructure in the area. In particular, improvements to public transport through a contribution towards the proposed orbital bus service, use of the contribution towards leisure to help fund upgrade of the all-weather pitch and the opportunity to make future provision for the extension of the very popular Cockpen cemetery which adjoined the site.

Decision

After further discussion, the Committee agreed to grant the planning permission for the following reason:-

The proposed development site is allocated in the Midlothian Local Development Plan 2017. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions and subject to appropriate conditions. The presumption for development is not outweighed by any other material considerations.

subject to:

i) the prior signing of a legal agreement to secure:

- the provision of affordable housing equal to, or greater than 25% of the total number of residential units across site Hs11 as a whole;
- a financial contribution towards education provision;
- a financial contribution towards community facilities (which could include the provision/upgrading of sports pitches);
- a financial contribution towards public transport/Borders Rail;
- a financial contribution towards the Council's A7 urbanisation scheme;
- maintenance of open space; and
- a financial contribution towards the promotion of roads orders to secure safe routes to school.

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

ii) the detailed conditions set out in the report.

Action

Planning Manager

Agenda No	Report Title	Presented by:
5.7	Application for Planning Permission in Principle for Residential Development on part of Site HS11 Dalhousie South Bonnyrigg (18/00743/DPP).	Peter Arnsdorf
Outline of report and summary of discussion		
There was submitted report, dated 2 May 2019, by the Director, Education, Communities and Economy concerning the above application.		

The Committee, having heard from the Planning Manager, considered that as this site was an integral part of the wider development site dealt with as part of the proceeding item of business the same comments equally applied in terms of the importance of the developer contributions.

Decision

The Committee, after further discussion, agreed to grant the planning permission in principle for the following reason:

The proposed development site is allocated in the Midlothian Local Development Plan 2017. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions and subject to appropriate conditions. The presumption for development is not outweighed by any other material considerations.

subject to:

- i) the prior signing of a legal agreement to secure:
 - the provision of affordable housing equal to, or greater than 25% of the total number of residential units across site Hs11 as a whole;
 - a financial contribution towards education provision;
 - a financial contribution towards community facilities (which could include the provision/upgrading of sports pitches);
 - a financial contribution towards public transport/Borders Rail;
 - a financial contribution towards the Council's A7 urbanisation scheme;
 - maintenance of open space; and
 - a financial contribution towards the promotion of roads orders to secure safe routes to school.

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

- ii) the detailed conditions as set out in the report.

Action

Planning Manager

Agenda No	Report Title	Presented by:
5.8	Section 42 Application to Remove Condition 7, requiring enhanced Public Transport facilities, imposed on grant of Planning Permission 17/00951/PPP for a Retail Unit at Soutra Mains Farm, Blackshiels, Fala, Pathhead (19/00221/S42).	Peter Arnsdorf
Outline of report and summary of discussion		
With reference to paragraph 5.5 of the Minutes of 20 February 2018, there was submitted report, dated 2 May 2019, by the Director, Education, Communities and Economy concerning the above application.		

Councillor Hackett advised the Committee that, in view of the early discussion regarding the decisions of the Standards Commission (paragraph 3 above refers), having visited the site, he would be declare a non-pecuniary interest in this item. He indicated that notwithstanding this he still felt that he could reach an objective, impartial decision and therefore intended to participate in consideration of the current application. However following advice from the Monitoring Officer, he accepted that in the absence of clarification of the Standards Commission decisions, he would err on the side of caution and withdraw from the meeting.

In terms of Standing Order 7.11, there being insufficient Members present to constitute the required quorum of 6, the meeting was adjourned and no further business was discussed.

6. Private Reports

No private business was discussed.

7. Date of Next Meeting

The next meeting will be held on Tuesday 18 June 2019.

The meeting terminated at 1.47 pm



STRATEGIC DEVELOPMENT PLAN FOR EDINBURGH AND SOUTH EAST SCOTLAND (SESPLAN)

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of the Minister's decision to reject the Strategic Development Plan (SDP2).

2 BACKGROUND

- 2.1 SESplan is the Strategic Development Plan for Edinburgh and South East Scotland and covers six Council areas including City of Edinburgh, East Lothian, Midlothian, West Lothian, the Scottish Borders and the southern half of Fife. SESplan works in partnership with the six member authorities to prepare the strategic vision for the region for the next 20 years. The Strategic Development Plan is used to inform local development plans.
- 2.2 The first strategic development plan (SDP1) was prepared in response to the Planning etc. (Scotland) Act 2006 and was adopted in June 2013 with supplementary guidance setting housing targets for the member authorities being adopted in November 2014 (the housing targets covered 2009 – 2024). The sites to deliver Midlothian's housing requirements were identified in the adopted Midlothian Local Development Plan 2017.
- 2.3 Strategic development planning authorities (SDPAs) are required by section 4(1) of the Act to prepare and review strategic development plans (SDPs), and submit these to Scottish Ministers within four years of the approval of the existing plan (section 10(8)). SESplan complied with this requirement. The rejection of SDP2 by the Minister results in the current SDP (SDP1) remaining the adopted strategic development plan, but being out of date.

3 THE MINISTER'S DECISION

- 3.1 On 26 June 2017 the SDP2 Proposed Plan was submitted to the Scottish Government's Directorate of Planning and Environmental Appeals (DPEA) for Examination. The Examination commenced in August 2017 and the report of Examination was published on 20 July 2018. Following consideration of the report the Minister issued his

decision letter on SDP2 on 16 May 2019. The letter advised that SDP2 had been rejected. The decision letter is attached as Appendix A.

3.2 The decision letter sets out three reasons for rejection of the Plan:

1. The Scottish Ministers were not satisfied that the Plan has been informed by an adequate and timely transport appraisal;
2. The plan does not take sufficient account of the relationship between land use and transport; and
3. The Scottish Ministers do not support the use of supplementary guidance to resolve this issue.

The Minister found that the requirements of Scottish Planning Policy (SPP), specifically paragraphs 272-275 had not been met and that therefore the plan was deficient.

3.3 Whilst Section 13(1) of the Planning Act (the Town and Country Planning (Scotland) Act 1997 (as amended)) provides for rejection of a Plan by the Minister, such occurrences in terms of SDP preparation are unprecedented. It is now for SESplan to determine what action, if any, it intends to take in light of the Minister's decision. The options are currently being investigated with a view to reporting to the SESplan Joint Committee at a future date (the next meeting of the Joint Committee is scheduled for 24 June 2019).

3.4 In the absence of an up to date development plan SESplan and the member authorities are exposed to risk in terms of development proposals which are contrary to the development plan and with regard the need to maintain an effective five year housing land supply (Midlothian has a 5.9 year housing land supply).

3.5 In September 2015, an independent panel was appointed by Scottish Ministers to review the Scottish Planning System with the objective of bringing together ideas to achieve a quicker, more accessible and efficient planning system. The report of the panel "Empowering Planning to Deliver Great Places" was published 31 May 2016. Scottish Ministers published their response to the report on 11 July 2016 which included a commitment to consult on a White Paper outlining proposed reforms to the Planning System with the ambition of enabling a Planning Bill to be brought forward late in 2017. The Planning (Scotland) Bill was originally introduced to the Scottish Parliament on 4 December 2017. The Planning Bill is scheduled for 'stage 3 scrutiny' in June 2019 and if passed, the Planning Bill, with royal assent, could come into effect in late 2019. The Bill, as drafted, proposes to disband SESplan and cease the requirement to prepare strategic development plans. This requirement would be replaced with the introduction of regional strategies - the details of which are not yet defined. In addition, the Scottish Government is considering setting future housing targets via its National Planning Framework 4 which is likely to be published in draft in the summer of 2020.

4 RECOMMENDATION

4.1 The Committee is recommended to:

- a. note the Scottish Minister's decision; and
- b. receive a further update once the SESplan Joint Committee has considered its options and determined a course of action.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 7 June 2019
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

Background Papers: SDP2

set out in National Planning Framework 3. The Examination confirmed that the plan does not include sufficient information on transport interventions required to support the spatial strategy. Ministers do not consider that it is acceptable to approve the plan as to do so would be to adopt a spatial strategy which is not supported by an adequate assessment of the transport impacts or by an adequate strategy to mitigate its impact on the strategic transport network.

- **The Scottish Ministers do not support the use of supplementary guidance to resolve this issue.** Paragraph 274 of the Scottish Planning Policy states that the Transport Appraisal should be carried out in time to inform the spatial strategy of the plan. Adoption of the plan, ahead of the preparation of supplementary guidance on transport, is not considered by Scottish Ministers to be an acceptable solution. Supplementary guidance brought forward after the plan has been adopted will not be able to change the spatial strategy that would already be embedded in the adopted plan. Scottish Government policy is clear that the plan's spatial strategy should be informed by an appraisal, prior to being adopted.

It is for the SDPA to decide the next steps for strategic planning in their area. It is open to the SDPA to prepare a new SESplan 2 informed by a full Transport Appraisal addressing strategic transport infrastructure issues, including cross-boundary requirements. In considering their position, authorities will wish to be mindful of the implications of the Planning (Scotland) Bill and any future transitional arrangements.

I recognise that the authorities will have significant concerns about the implications of this decision for planning in their areas. I can assure you that the Scottish Government continues to support a plan-led system and that we are committed to working with you to address the implications of this decision with respect to future local development plans across the area.

Yours sincerely

John McNairney
Chief Planner



MAJOR DEVELOPMENTS: APPLICATIONS CURRENTLY BEING ASSESSED AND OTHER DEVELOPMENTS AT PRE-APPLICATION CONSULTATION STAGE

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report updates the Committee with regard to 'major' planning applications, formal pre-application consultations by prospective applicants, and the expected programme of applications due for reporting to the Committee.

2 BACKGROUND

- 2.1 A major application is defined by regulations and constitutes proposed developments over a specified size. For example; a development comprising 50 or more dwellings, a business/industry use with a gross floor space exceeding 10,000 square metres, a retail development with a gross floor space exceeding 5,000 square metres and sites exceeding 2 hectares. A major application (with the exception of a Section 42 application to amend a previous grant of planning permission) cannot be submitted to the planning authority for determination without undertaking a formal pre application consultation (PAC) with local communities.
- 2.2 At its meeting of 8 June 2010 the Planning Committee instructed that it be provided with updated information on the procedural progress of major applications on a regular basis.
- 2.3 The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants is outlined in Appendices A and B attached to this report.

3 DEVELOPMENT PLAN UPDATE

- 3.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan June 2013 (SDP1) and the Midlothian Local Development Plan 2017 (MLDP). The MLDP was adopted by the Council at its meeting of 7 November 2017.

4 RECOMMENDATION

- 4.1 The Committee is recommended to note the major planning application proposals which are likely to be considered by the Committee in 2019 and the updates for each of the applications.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 7 June 2019
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

Background Papers: Planning Committee Report entitled 'Major Developments: Applications currently being assessed and other developments at Pre-Application Consultation stage' 8 June 2010.

APPENDIX A

MAJOR APPLICATIONS CURRENTLY BEING ASSESSED

Ref	Location	Proposal	Expected date of reporting to Committee	Comment
17/00435/DPP	Land at Newbyres, River Gore Road, Gorebridge	Erection of 125 residential units; formation of access roads, SUDS features and associated works	Being held in abeyance	Pre-Application Consultation (13/00609/PAC) carried out by the applicants in August - November 2013. The application has been held in abeyance for a significant period of time whilst the applicant considers amending their layout.
18/00099/DPP	Land at Gore Avenue and Newbyres Crescent, Gorebridge	Erection of 46 flatted dwellings; 17 dwellinghouses and 12 extra care units associated works	Being held in abeyance pending additional information from the applicant	Pre-Application Consultation (17/00913/PAC) carried out by the applicants in November 2017 – February 2018. This application is being held in abeyance subject to the applicant submitting additional information regarding mine gas mitigation measures.
18/00403/DPP	Land between Rosewell Road and Carnethie Street, Rosewell	Erection of 100 dwellinghouses and associated works	August 2019	Pre-Application Consultation (15/00774/PAC) carried out by the applicants in September 2015 – December 2015. The applicant has submitted (in May 2019) an amended layout, drainage details and landscape plan which is subject to consultation.
18/00495/DPP	Land west of Burnbrae Terrace Bonnyrigg	Erection of resource facility including offices; training suites, stores, workshops, ambulance depot and enterprise units; formation of car parking, access roads and external storage areas; and associated works	August 2019	Pre-Application Consultation (17/00721/PAC) carried out by the applicants in September 2017 – December 2017. Additional information from the applicant in relation to noise mitigation, the operation of the facility and other environmental matters has been submitted and is subject to consultation.
18/00528/S42	Land at Calderstone, Biggar Road, Lothianburn	Section 42 Application to amend conditions 3, 4, 5, 6 and 10 of planning permission 15/00113/PPP, for the erection of hotel (to amend the phasing of the development).	August 2019	Section 42 applications do not require to go through the Pre-Application Consultation process. The conditions relate to the phasing of development, landscaping, building design and layout and transportation matters. This application was held in abeyance for a significant period of time pending additional information being submitted by the applicant.

18/00628/S42	Land at Calderstone, Biggar Road, Lothianburn	Section 42 Application to amend conditions 4 and 5 of planning permission 15/00113/PPP, for the erection of hotel (to amend the phasing of the development)	August 2019	<p>Section 42 applications do not require to go through the Pre-Application Consultation process. The conditions relate to the landscaping and building design and layout.</p> <p>This application was held in abeyance for a significant period of time pending additional information being submitted by the applicant.</p>
19/00112/PPP	Land at the former Monktonhall Colliery Site, Monktonhall Colliery Road, Newton, Danderhall	Erection of a community facility incorporating secondary and primary school; early years provision; family learning provision; library, leisure and healthcare facilities, sports pitches and associated works.	August 2019	Pre-Application Consultation (18/00558/PAC) carried out by the applicants in August 2018 – October 2018.
19/00299/DPP	Land between Deanburn and Mauricewood Road, Penicuik	Erection of 91 dwellinghouses and associated works (amendment to house numbers, house types and layout approved in terms of planning permission 17/00068/DPP)	October 2019	This application seeks to amend the house numbers, house types and layout of part of the development approved by planning permission 17/00068/DPP which was considered by the Committee at its meeting in November 2017.
19/00099/PPP	Land to the north of Hardengreen House, Dalkeith	Planning application in principle for mixed use development including Class 1 (Shops); Class 2 (Financial, Professional and Other Services); Class 3 (Food and Drink); Class 4 (Business); and Class 9 (Houses).	June 2019	<p>Pre-Application Consultation (17/00670/PAC) carried out by the applicants in August 2017 – October 2017.</p> <p>This application is reported to this meeting of the Committee.</p>
19/00223/S42 <i>New addition to the table</i>	Land between Pentland Burn and the A720 City Bypass, Pentland Road, Damhead	Section 42 application to amend condition 9 of planning permission 14/00203/DPP (to extend the time frame for completion by a further 36 months)	June 2019	<p>Section 42 applications do not require to go through the Pre-Application Consultation process.</p> <p>This application is reported to this meeting of the Committee.</p>

19/00432/S42 <i>New addition to the table</i>	Land 470M West of Corby Craig Terrace, Bilston	Section 42 application to remove condition 15 of planning permission 17/00968/DPP (not to provide electric vehicle charging stations)	October 2019	Section 42 applications do not require to go through the Pre-Application Consultation process.
--	--	---	--------------	--

APPENDIX B

NOTICE OF PRE-APPLICATION CONSULTATIONS RECEIVED AND NO APPLICATION HAS BEEN SUBMITTED

Ref	Location	Proposal	Date of PAC submission	Earliest date for receipt of planning application and current position
16/00830/PAC	Land east of junction with Greenhall Road Barleyknowe Road Gorebridge	Residential development This site is not allocated for housing	24 November 2016	10/02/17 - no application yet received. A pre-application report was reported to the January 2017 meeting of the Committee.
17/00296/PAC	Land to the east of Lawfield Road and to the north of Ash Grove, Mayfield	Residential development This site is not allocated for housing	19 April 2017	06/07/17 - no application yet received. A pre-application report was reported to the June 2017 meeting of the Committee.
17/00367/PAC	Site Hs12 Hopefield Farm 2 Bonnyrigg	Residential development The site is identified for an indicative 375 residential units in the MLDP.	9 May 2017	02/08/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00606/PAC	Land south east of Auchendinny, The Brae, Auchendinny (Site Hs20)	Residential development The site is identified for an indicative 350 residential units in the MLDP.	27 July 2017	20/10/17 - no application yet received. A pre-application report was reported to the November 2017 meeting of the Committee.
17/00663/PAC	Land bounded by A7, Stobhill Road and Pentland Avenue, Gorebridge	Mixed use development comprising residential and commercial land uses	16 August 2017	09/11/17 - no application yet received. A pre-application report was reported to the October 2017 meeting of the Committee.
18/00894/PAC	Land at Wull Muir, Gorebridge	Erection of up to 9 wind turbines (wind farm)	9 November 2018	02/02/19 - no application yet received. A pre-application report was reported to the January 2019 meeting of the Committee.
18/00962/PAC	Land east and west of Easthouses Road, Easthouses	Residential development and erection of school, with associated engineering works, open space and landscaping	14 December 2018	09/03/19 - no application yet received. A pre-application report was reported to the February 2019 meeting of the Committee.

18/00970/PAC	Midlothian Snow Sports Centre	Redevelopment of existing snowsports centre to include leisure facilities; tourist accommodation; hotel; function suite and ancillary retail and restaurant; formation of access and car parking	21 December 2018	16/03/19 - no application yet received. A pre-application report was reported to the February 2019 meeting of the Committee.
19/00012/PAC	Land east of Salters Road, Dalkeith	Mixed use development comprising film and TV studios including workshops/offices; reception/commissary; gatehouse; backlot; trailer park; film academy and associated student accommodation; and associated access, parking and infrastructure	9 January 2019	04/04/19 - no application yet received. A pre-application report was reported to the January 2019 meeting of the Committee.
19/00076/PAC	Land south east of Tynewater Primary School, Crichton Road, Pathhead	Erection of 64 dwellinghouses; car parking and associated works	1 February 2019	27/04/19 - no application yet received. A pre-application report was reported to the April 2019 meeting of the Committee.
19/00106/PAC	Land north of Oak Place, Mayfield, Dalkeith	Residential development The site is identified for an indicative 63 residential units in the MLDP.	8 February 2019	04/05/19 - no application yet received. A pre-application report was reported to the May 2019 meeting of the Committee.
19/00126/PAC	Former Lothianburn, Golf Club, 106 Biggar Road, Edinburgh	Mixed use development comprising mountain bike trail centre, indoor and outdoor leisure uses, food and drink, professional services, retail, visitor accommodation and associated works	14 February 2019	10/05/19 - no application yet received. A pre-application report was reported to the May 2019 meeting of the Committee.
19/00252/PAC	Land at Wellington School, Penicuik	Residential development The site is identified as an 'Additional Housing Development Opportunity' for an indicative 50 - 60 residential units in the MLDP.	20 March 2019	13/06/19 This pre application consultation is reported to this meeting of the Committee.
19/00445/PAC <i>New addition to the table</i>	Former Site of Newbattle Community High School, Easthouses Road, Easthouses	Erection of primary school	27 March 2019	20/08/19 This pre application consultation will be reported to the August meeting of the Committee.
19/00489/PAC <i>New addition to the table</i>	Whitehills, Whitehill Road, Millerhill	Change of use from Class 4 (Business) and 5 (General Industry) to Classes 1 (Shops), 4, 5, 6 (Storage and Distribution), 11 (Assembly and Leisure) and sui generis uses	30 May 2019	23/08/19 This pre application consultation will be reported to the August meeting of the Committee.



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of three appeal decisions received from Scottish Ministers. There were no notices of reviews determined by the Local Review Body (LRB) in May/June 2019.

2 APPEAL DECISIONS

- 2.1 An appeal against a refusal of planning permission for the erection of a single dwellinghouse and associated works on land to the rear of 180 Main Street, Pathhead has been dismissed (refused planning permission). The Reporter appointed by the Scottish Ministers concluded that the proposal is overdevelopment, out of keeping with its setting and would detract materially from the character and amenity of the Conservation Area. Furthermore, the proposed development would have a detrimental impact on the privacy and amenity of the neighbouring properties. A copy of the appeal decision accompanies this report. Separately, the Council is using its enforcement powers to secure the removal of the unauthorised building (garage) erected on the site.
- 2.2 An appeal against a refusal of planning permission for the erection of a single dwellinghouse and associated works at 3 Eskview Villas, Eskbank has been upheld (granted planning permission) subject to conditions. The Reporter appointed by the Scottish Ministers concluded that the proposed development is compatible with its setting and that it would not detract materially from the existing character and amenity of the Conservation Area. A copy of the appeal decision accompanies this report.
- 2.3 An appeal against a refusal of planning permission for the erection of two drive-through restaurants and associated works at land south west of Tesco Superstore, Hardengreen, Dalkeith has been upheld (granted planning permission) subject to the conclusion of a planning obligation securing developer contributions and conditions. The Reporter appointed by the Scottish Ministers concluded that the proposed development is acceptable in principle, is of good design and that it does not undermine nearby town centres or threaten the safe and

effective operation of the Eskbank roundabout. A copy of the appeal decision accompanies this report.

3 RECOMMENDATION

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

Dr Mary Smith
Director of Education, Communities and Economy

Date: 7 June 2019
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

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



Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2052
- Site address: Land to rear of 180 Main Street, Pathhead, EH37 5QB
- Appeal by Iain Macintosh against the decision by Midlothian Council.
- Application for planning permission 18/00567/DPP dated 5 August 2018 refused by notice dated 22 November 2018.
- The development proposed: Erection of a dwellinghouse and garage.
- Date of site visit by Reporter: 11 April 2019

Date of appeal decision: 13 May 2019

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Because the appeal site is located within Pathhead and Ford Conservation Area I must also have regard to the duty imposed by section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the 1997 Act). This requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
2. The development plan comprises the South East Scotland Strategic Development Plan (SESPlan) approved in June 2013, and the Midlothian Local Development Plan 2017, (the local development plan). Having regard to the development plan the key issues in this appeal are whether the design and scale of the proposed house is compatible with the character and appearance of Pathhead and Ford Conservation Area; whether the proposed house would have an adverse impact on the privacy and amenity of adjacent residents; and whether it would provide an acceptable standard of amenity for its future occupants. No relevant policies in the strategic development plan have been brought to my attention and my decision is based upon an assessment of the appeal proposal in the context of the local development plan.
3. The appellant seeks planning permission to erect a single-storey dwellinghouse and, in retrospect, a partly completed garage which is currently subject to enforcement proceedings. Located within the Pathhead settlement boundary and linked to Main Street by a shared access. the site comprises of around 300 square metres of former garden



ground. Measuring some 15.4 metres by 11.3 metres, with accommodation in the roof space, the ridge height of the house would rise to 7.5 metres and the building would incorporate a flat-roofed extension to the north. Its finish would include wet-dash render, stone walling and traditional roofing materials. Housing at Roman Camp adjoins the site to the north and it is separated by a track from the bungalow at 180A Main Street to the south. Open countryside lies to the south-west.

4. I must determine the appeal on the basis of the information I have before me and at my site inspection the appellant acknowledged that the submitted block plan was incorrect. The means of correcting this discrepancy in future is a matter between the appellant and the council. In practice the proposed house would extend south-eastwards, outwith the site boundary as submitted, on to the track. The southern-most gable of the house would be some 1.2 metres further south-east than shown on the submitted block plan, beyond the existing hedge which would require to be removed, and it would restrict the width of the track. It would be commensurately closer to the single-storey house at 180A Main Street, less than 5 metres away from the proposal. I have dismissed the appeal on design, privacy and amenity grounds and I conclude that a corrected block plan for the appeal proposal would not address the issues that I identify below.

The Development Plan

5. It is necessary for me to assess the proposal against the relevant policies in the local development plan. Policy ENV19 'Conservation Areas' requires there to be no adverse effect from new development on the character or appearance of the conservation area. Policy STRAT2: 'Windfall Housing Sites' allows housing on unallocated sites provided it meets specified criteria including its effect on the character of the area. Policy DEV2: 'Protecting Amenity within the Built-Up Area' requires that new development must be appropriate to the area where it is located. Policy DEV6 'Layout and Design of New Development' requires good design and a high quality of architecture and the layout and design of new developments must meet specific criteria. Policy ENV16 supports the redevelopment of vacant and derelict land.

The impact of the proposal on the character and appearance of Pathhead and Ford Conservation Area

6. Pathhead and Ford Conservation Area is largely centred on Main Street, Pathhead. Here, by far the greater number of houses, albeit of varying designs and heights, are of a traditional and well-proportioned scale, incorporating a simple rectangular shape and, overall, are vernacular style. To the appellant the proposed house is "hybrid" in style "reflecting" vernacular design; it would be a building of interest providing "a unique enhancement" to the conservation area with traditional design and finishes reflecting earlier architectural styles. Notably a lantern-style window, described as being "Mackintoshesque", would be a feature on the south-east corner of the proposed building.

7. I am satisfied that the proposal reflects the prevailing finishing materials of buildings within the conservation area. However because of the restricted dimensions of the site, and in order to accommodate two bedrooms, the proposed house would incorporate a disproportionately bulky and an unduly steep 48 degree pitched roof. I find that this roof detail would not complement the design and massing of other houses in the immediate

vicinity nor within the wider conservation area. The inconsistency of this design is repeated in the incongruent single-storey, flat-roofed part of the proposal, incorporating a 0.9 metre high glazed cupula, that would lie between the house and the closest property in Roman Camp to the north.

8. Policy ENV16 supports the redevelopment of vacant and derelict land and the undeveloped former garden does not enhance the conservation area. However the local development plan specifically excludes garden ground from being 'brownfield' land and, although currently unused, I do not consider that the condition, appearance and former use of the site is such that justifies the construction of the proposed house, nor does it benefit from the provisions of this policy.

9. Overall I conclude that the proposal is contrary to local development plan policies ENV19: 'Conservation Areas' and STRAT2: 'Windfall Housing Sites'. Specifically the scale, height and massing of the proposed house, and in particular its bulky and dominating roofscape, would be out of keeping with the traditional vernacular form of the mix of properties within Pathhead and Ford Conservation Area. Its design would appear top heavy and 'squeezed in', dominating the adjoining single-storey extension. It would be an incongruous feature not only in the conservation area but adjacent to the existing more conventional houses around the site. It would not preserve or enhance the character or appearance of the conservation area.

The impact of the proposal on the residential amenity of adjacent residents

10. In accordance with policy DEV 2 new development will be permitted within an existing residential area unless it is likely to detract materially from the existing character or amenity of the area. Policy DEV 6 requires good design and a high quality of architecture to meet 14 criteria. Neither the council nor the appellant have made specific reference to the council's supplementary guidance on 'Quality of Place' and no detailed calculations have been submitted by the appellant setting out the effect of the proposed house on the privacy and amenity of the occupiers of existing houses. However I find that from my site inspection that the location and size of the house as proposed would have a negative effect on the privacy and amenity of the occupiers of 3 adjoining houses.

11. Specifically, 180A Main Street sits at a slightly lower level than the proposed house and its existing ground-floor bedroom would be overlooked from the proposed ground floor window, the rooflights and the glazed feature on the south-east corner of the proposed house. From this room the 7.5 metre high southern gable wall, close to the principal doorway at 180A Main Street, would be seen as a dominant and intrusive feature, impacting on daylight and reducing the amenity of residents. A bedroom window on the south-facing gable wall of the house at 5 Roman Camp would be around 7 metres from the northern gable wall of the proposed house. From this window the proposed house would also have a very dominant presence, restricting natural light, to the detriment of residential amenity currently enjoyed by the occupiers on 5 Roman Camp. The west facing low-level rooflights of the two first floor bedrooms would have clear unrestricted eye-level views into the rear garden of 6 Roman Camp, around 10 metres distant to the west.

12. Overall I conclude that there would be inadequate spacing between the proposed house and three closes existing houses. Any correction of the discrepancies in the appeal

block plan would serve to exacerbate the effects of the proposal on the amenity of the occupiers of 180A Main Street. The proposal would have an adverse impact on the amenity of the built-up area of this part of Pathhead and specifically the privacy and residential amenity of the occupiers of the three houses at 5 Roman Camp, 6 Roman Camp and 180A Main Street. It would be contrary to local development plan policies DEV2: 'Protecting Amenity within the Built-Up Area' and DEV 6(I): 'Layout and Design of New Development'.

The standard of amenity of future occupants

13. Local development plan policy DEV 6(K): "Layout and Design of New Development" requires the provision of an appropriate scale of private open space. I find that the proposed house, if constructed on this constrained site, would have only very limited private amenity space. The 120 square-metre "designed garden" west of the proposed house, although more attractive than the undeveloped appearance of the land, would have only limited privacy and be visible from the farm access track and the surrounding properties. The 4.5 metre length of the parking area adjoining the currently unfinished garage building is insufficient to allow 2 cars to safely park there, and there are objections to the proposal from the council in terms of parking and road safety.

14. Overall, having regard to the local development plan I conclude that the design of the house, although aimed to reflect "traditional Lothians form", would be an incongruent feature out of keeping with both the conservation area and the conventional design of adjacent houses in this part of Pathhead. By seeking to incorporate the scale of accommodation as proposed, the house would be seen as being overdevelopment. Its proximity to three existing houses would lessen the residential amenity currently enjoyed by their occupiers. Because of its restricted dimensions and proximity to other houses, the amenity of its future occupants would be constrained.

Material Considerations

15. I have noted the site's lengthy planning history which includes protracted enforcement issues. The use of its enforcement powers to address the alleged unauthorised garage is a matter for the council. Scottish Planning Policy (SPP) provides that design is a material consideration and I have set out above, in accordance with SPP, why the appeal should be dismissed on design grounds. I have carefully assessed the representations that have been received against the proposal and I agree with those comments on the effects of the proposal on the conservation area and on existing amenity. However I do not consider that there would be grounds to dismiss the appeal on the basis of the proposal's impacts on nature conservation, air quality and noise.

16. Having regard to the statutory duty imposed by the 1997 Act, I conclude that the site to the rear of 180 Main Street, Pathhead does not have the capacity to absorb the scale and the visual impact of the proposal and consequently it would be to the detriment of the character and appearance of Pathhead and Ford Conservation Area.

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

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

Chris Norman
Reporter



Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2053
- Site address: 3 Eskview Villas, Eskbank, Dalkeith EH22 3BN
- Appeal by Mrs. Christina Walters against the decision by Midlothian Council
- Application for planning permission 18/00760/DPP dated 5 October 2018 refused by notice dated 30 January 2019.
- The development proposed: Erection of dwellinghouse, formation of access and car parking and associated works.
- Application drawings listed in schedule
- Date of site visit by Reporter: 6 May 2019

Date of appeal decision: 23 May 2019

Decision

I allow the appeal and grant planning permission subject to the 6 conditions listed at the end of the decision notice. Attention is drawn to the 4 advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The appeal site is within Eskbank and Ironmills Conservation Area I must also have regard to the duty imposed by section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the 1997 Act). This requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

2. The development plan comprises the South East Scotland Strategic Development Plan (SESPan) approved in 2013, and the Midlothian Local Development Plan 2017, (the local development plan). Having regard to the development plan the key issue in this appeal is whether the design and scale of the proposed house is compatible with the character and appearance of Eskbank and Ironmills Conservation Area. No relevant policies in the strategic development plan have been brought to my attention and my decision is based upon an assessment of the appeal proposal in the context of the local development plan.

3. The site comprises of an unused area of some 430 square metres of former garden ground previously associated with a house at 3 Eskview Villas built in the 1980's and which, since the late 1990's, has accommodated the Happy Days Children's Nursery. The appeal



seeks planning permission for a two-storey, four-bedroomed detached house some 12.6 metres wide, 8.6 metres deep and 5.1 metres high. A 4.5 metre-wide vehicular access, acceptable to the council in road safety terms, would be taken from Eskview Villas to where three paved parking spaces would be formed. To the rear of the proposed house an enclosed rear garden of some 130 square-metres would be provided. To the council the modern design of the house does not respect the historic context of the surrounding area; it is neither complimentary to the character of its surroundings, nor is it an “assertive contrast”, making no attempt to interact with the character of the streetscape in the immediate surroundings. In refusing the planning application the council has advised that it does not consider the proposal to constitute the over-development of the site, nor is it opposed to the proposed access and car parking arrangements.

4. Located south of the two-storey terraced houses at Eskview Villas the site is bordered by mature trees, a hedge and a fence. The proposed building would be of a modern design with an irregular fenestration pattern which includes full height glazing. It would be finished in a “contemporary palette” of finishing materials and would have a slate roof, ivory coloured render, untreated larch timber cladding and grey coloured aluminium-clad doors and windows.

The Development Plan

5. The council's sole reason for refusing the planning application was due to its conflict with local development plan policy ENV19 ‘Conservation Areas’ which requires there to be no adverse effect caused by new development on the character or appearance of a conservation area. In coming to my view on the proposal I have had regard to other relevant local development plan policies. Specifically, policy STRAT2: ‘Windfall Housing Sites’ allows housing on unallocated sites provided it meets specified criteria including its effect on the character of the area. Policy DEV2: ‘Protecting Amenity within the Built-Up Area’ requires that new development must be appropriate to the area where it is located. Policy DEV6 ‘Layout and Design of New Development’ requires good design and a high quality of architecture and the layout and design of new developments must meet specific criteria.

6. The supporting text to policy ENV19 provides that although conservation areas require a higher level of control, this does not mean that development is necessarily opposed; preserving and enhancing the character and appearance of the area is the primary concern. The local development plan also advises that innovative, well-designed contemporary buildings may be acceptable provided that the character, appearance and materials used complement the location. The council's conservation area character assessment of Eskbank and Ironmills Conservation Area describes the area as a spacious, leafy, low density, late 19th century suburb which possesses high architectural quality with a variety of building styles. The character assessment stresses the need to ensure that new infill development is sensitively designed and relates carefully to adjacent buildings.

7. On my site inspection I observed in detail the prevailing character and appearance of this part of Eskbank and Ironmills Conservation Area, particularly in the vicinity of the appeal site. I agree with the council that the houses on the northern side of Eskview Villas are characterised by a well-integrated relationship between the existing terraced houses and the overall street-scene. I note that the adjacent category ‘A’ listed Eskbank House is

identified as a 'key building' in the conservation area character assessment and I am satisfied that the proposal would not adversely impact upon its setting. I also note that the trees around Glenesk House, to the west of the appeal site and visible from Eskbank Villas, are identified as a main tree group within the conservation area but because of the intervening distance I am satisfied that the proposal would not give rise to any threat to their integrity.

8. From my observations it was apparent to me that the part of the conservation area around the appeal site has seen pressure for new development. Most notably, the modern steel roof and functional, blank rear elevation of 'Wall Cottage' acts as a dominant focal point of the street scene, unrelated to the character and appearance of the adjacent terraced villas. The 1980's architecture of the adjoining nursery school, adapted from a house to its current use, reflects the architectural style of its time. Very recently the council has approved a large double-garage building some 22 metres east of the appeal site opposite Eskbank House, at the junction of Eskbank Villas and Glenesk Crescent. South-west of the appeal site planning permission has been granted on several occasions for extensive new building at Glenesk House in the conservation area, some of which is adjacent to and visible from the appeal site. A little more distant, at the rear of 42 Eskbank Road, I observed a residential plot with planning permission being advertised for sale pursuant to the council's approval of a new house in the grounds of an existing villa. I conclude that development pressures within this part of the conservation area have been allowed with, to a greater or lesser extent, respect to the conservation area's character and appearance.

9. I have taken into account the design and finish of some of the more recent developments around the site. Located in a well-screened site at the west end of Eskbank Villas the proposed house, even after the formation of its new access, would be markedly less visible than the double garage currently under construction at the corner of Eskbank Villas and Glenesk Crescent. While I am in little doubt that the house would be of a contemporary design I do not consider it to be "awkward and contrived" as suggested by persons opposing the proposal. The use of slate for its roof will be complimentary to the character and appearance of the conservation area, as recognised by the council. I find that this choice of finish would be more appropriate than both the red brickwork of the former house now used by the nursery and the steel roof on the building which dominates the west end of Eskbank Villas. I find that the contemporary design of the proposed house makes more of a positive contribution than several of these other developments and, overall, I conclude that it would not have an adverse effect on the conservation area.

10. Having regard to the findings I set out above and the character assessment for the conservation area I conclude that the innovative, well-designed contemporary building complies with local development plan policies STRAT2, DEV2 and DEV6. In accordance with policy ENV 19 'Conservation Areas' I conclude that the scale, choice of materials and design of the proposed house preserves and enhances the character and appearance of Eskbank and Ironmills Conservation Area.

Material Considerations

11. I have carefully assessed the representations that have been received for and against the proposal, including that received from Eskbank and Newbattle Community Council and

which is supportive of residents. However, as I set out above, I disagree with those comments that are made on the potential adverse effects of the proposal on Eskbank and Ironmills Conservation Area and on existing amenity. I have noted the lengthy planning history of the both the site and the adjacent children's nursery.

12. I have observed that there is little, if any, provision of off-street parking available to residents of Eskbank Villas. However I am mindful of the absence of any objection from the council on road safety grounds and the proposal would provide 3 off-street car parking spaces within the appeal site. The council's planning officer advises that this provision complies with the council's parking standards. Overall, I conclude that the limited additional traffic that would be generated by a single house would not exacerbate, in any significant way, any current difficulties relating to on-street car parking, or road safety generally, in Eskbank Villas and its adjacent streets.

13. Given the intervening distance between the front elevation of the proposed house and the houses at Eskbank Villas, set out by the council's planning officer, there are no grounds to oppose the proposal on the basis of the suggested loss of privacy, daylight and sunlight to existing houses at Eskbank Villas. I am satisfied that proper statutory publicity has been given to the proposal and matters relating to perceived impacts on child safety are not material planning considerations.

14. Scottish Planning Policy (SPP) provides that design is a material consideration and I have set out above, in accordance with SPP, why I conclude that the appeal should be allowed on design grounds.

15. Having regard to the statutory duty imposed by the 1997 Act, I conclude that the appeal site at 3 Eskbank Villas, Dalkeith does have the capacity to absorb the scale and the visual impact of the proposal and consequently it would not be to the detriment of the character and appearance of Eskbank and Ironmills Conservation Area.

16. I therefore conclude, for the reasons set out above, that the proposed development does accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Chris Norman

Reporter

Conditions

1. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
- ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
- iv. the condition of the site on completion of the specified decontamination measures.

Reason: To ensure that any contamination and/or previous mineral workings on the site are 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.

2. On completion of the decontamination works referred to in Condition (1) above and prior to any dwellinghouse on the site being occupied, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied unless or until the planning authority have approved the required validation.

Reason: To ensure that any contamination and/or previous mineral workings on the site are 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.

3. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the trees canopy unless otherwise agreed in writing with the local planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

Reason: To ensure the development does not result in the loss or damage of trees which merit retention in accordance with local and national planning guidance and advice.

4. Prior to any external finish materials, hard surface materials; and fences/boundary walls being installed details and, if requested, samples of the materials shall be submitted to and approved in writing by the planning authority. Thereafter development shall comply with the approved details unless otherwise approved in writing by the planning authority

Reason: To safeguard the character of the conservation area.

5. The parking and access arrangements shown on the approved site plan (drawing no. HD ESKH 04A) shall be completed and operational prior to the house being occupied.

Reason: To ensure that the house is provided with safe and adequate access and parking; and to protect the amenity of local residents.

6. Prior to the house being occupied the brick boundary wall shown on the approved site plan (drawing no. HD ESKH 04A) shall be completed.

Reason: To protect the amenity of future occupants of the dwellinghouse and to protect the amenity of children attending the neighbouring nursery.

Schedule of Plans

Location Plan HD ESK 01A
 Block Plan HD ESK 02A
 Site Plan (Existing) HD ESK 03
 Site Plan (Proposed) HD ESK 04A
 Proposed Floor Plan HD ESK 05A
 Proposed Floor Plan HD ESK 06A
 Roof Plan HD ESK 07A
 Proposed Elevations West HD ESK 08A
 Proposed Elevations North HD ESK 09A
 Proposed Elevations South HD ESK 10A
 Proposed Elevations East HD ESK 11A
 Proposed Cross Section AA HD ESK 12A
 Proposed Cross Section BB HD ESK 13A
 Root Protection Details 1712.L.G(92)003
 Access Statement
 Coal Mining Risk Assessment
 Design Statement
 Landscape Architect Report

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to

confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Reason: To accord with section 27B(2) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006.]

4. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).



Notice of Intention by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2051
- Site address: land south west of Tesco Superstore, Hardengreen, Dalkeith, EH22 3ND
- Appeal by SC Dalkeith Limited against the decision by Midlothian Council.
- Application 18/00181/DPP for planning permission dated 15 March 2018 refused by notice dated 27 November 2018.
- The development proposed: Erection of two drive-through restaurants; formation of access and car parking and associated works.
- Application drawings listed in schedule
- Date of site visit by Reporter: 6 May 2019

Date of notice: 3 June 2019

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the conditions listed below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, covering the matters listed in paragraph 25 below.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the South East Scotland Strategic Development Plan (SESPlan) approved in June 2013, and the Midlothian Local Development Plan 2017, (the local development plan). Having regard to the development plan the key issues in this appeal are whether the proposal would have an adverse impact on Bonnyrigg and Dalkeith town centres, and whether additional traffic generated by the proposal would be detrimental to road safety at the adjacent Eskbank roundabout. Also relevant to my determination is the layout and design of the proposed development. No relevant policies in the strategic development plan have been brought to my attention and my decision is based upon an assessment of the appeal proposal in the context of the local development plan.

2. The appellant seeks planning permission to erect two drive-through restaurants on 0.55 hectares of vacant grassland east of the A7 and south-west of Eskbank and which would be accessed from the Eskbank roundabout. The north-westernmost single-storey, 229 square-metres unit is intended to be occupied by a national restaurant chain. The second single-storey unit, to the south-west, is a drive-through café and coffee shop of 167 square metres and is expected to be occupied by national coffee chain. Like the adjacent supermarket and filling station both units would operate on a 24 hour basis and around 55 staff would be

employed. Some 55 car-parking spaces would be provided, compliant with the council's parking standards. The site is part of a commercial area which includes a Tesco supermarket and its car park, a filling station, a McDonald's drive-through restaurant and, to the north-east, industrial buildings and their curtilage. It is some 400 metres from Edinburgh College and the closest houses are around 150 metres to the north.

3. The council's two reasons for refusing the planning application are, firstly, that the proposal would impact on the vitality and viability of Bonnyrigg and Dalkeith town centres. Secondly, for road safety reasons, the council considers that the increased use of that part of the Eskbank roundabout serving the Tesco supermarket would result in queueing traffic, threatening the safe and effective operation of the roundabout.

The development plan

4. In coming to my decision I have assessed the appeal proposal against relevant local development plan policies. The appeal site is within the Eskbank, Dalkeith settlement boundary as defined by the local development plan, and it is not subject to specific land use designations or allocations. Policy DEV 2: 'Protecting Amenity in the Built Up Area' requires that, within the built up area of Midlothian, new development must be appropriate to the area where it is located. Policy DEV 6 'Layout and Design of New Development' requires good design and a high quality of architecture and the layout and design must meet specific and relevant criteria. Policy DEV 7: 'Landscaping in New Development' sets out the requirements for landscaping. Policy TCR1: 'Town Centres' supports retail development in town centres. Policy IMP2: 'Essential Infrastructure Required to enable New Development to Take Place' requires developer contributions towards the council's 'A7 Urbanisation' scheme.

The impact on the vitality and viability of Dalkeith and Bonnyrigg town centres

5. The council considers that the impact of the proposal on Dalkeith and Bonnyrigg town centres is a material consideration that outweighs any presumption in favour of development contained in the development plan. It does not refer to specific development plan policies but points to the importance of Bonnyrigg and Dalkeith town centres and their mix of retail, commercial and professional services. Footfall in both settlements has been maintained and occupancy levels are above the national average. To the council retaining what it terms a "fragile balance" of this mix of uses is essential if both towns are able to respond to further changes in market trends. It is argued that the existing "cluster" of commercial uses adjoining the appeal site at Hardengreen already comprises a "significant counter attraction" to the two town centres. Increasing this mix of uses, if the development were to proceed, would be detrimental to, and undermine, the council's policies which seek to protect existing town centres. This view is shared by Bonnyrigg and Lasswade Community Council who are concerned about the impact on nearby town centres. The council has not provided evidence-based reasoning to support its determination, nor referred to any development plan policies that support its stance.

6. Integral to the business model of drive-through restaurants is a readily available and acceptable vehicular access with sufficient, dedicated car parking. Typically, favoured locations for this type of use would be adjacent to a high volume of passing traffic or where visits can be combined with other trips to adjacent uses with a high footfall. I find that the business model for the appeal proposal differs from that of a conventional class 3 'Food

and Drink' use as defined in the Town and Country Planning (Use Classes) (Scotland) Order 1997 (the 1997 Order). Similarly, I do not consider that appeal proposal corresponds to a class 1 'Shop' use, nor a class 11 'Assembly and Leisure' use, both as defined in the 1997 Order. I therefore agree with the council's planning officer that the development would be a sui generis use; it would not otherwise fall within a class of development specified in the 1997 Order.

7. I note from the results of a study carried out by the appellant in November 2018 that there is not a sequentially preferable, suitable and available site for the proposed development in either Bonnyrigg or Dalkeith town centres. Taking into account the business model I find that it is doubtful that a drive-through restaurant, with adequate car-parking, could readily be accommodated within the two town centres. Additionally, the proposal would not be supported in a town centre by policy TCR1: 'Town Centres', nor can it be ascribed as a new retail or commercial leisure facility which would be subject to policy TCR2: 'Location of new retail and commercial leisure facilities'. Contrary to the views of the council, I find that the proposal does not conflict with the aims of the 'Town Centre First' principle and that there is a clear rationale to the proposal's out-of-town location within a settlement boundary.

8. On my site inspection I observed the vibrancy and quality of Dalkeith and Bonnyrigg town centres. I have also studied in detail the appellant's qualitative assessment of the impact of the appeal proposal on the two town centres. I note that in Dalkeith around 3.4% of 174 commercial units are vacant; correspondingly in Bonnyrigg 4.2% of 72 units are unoccupied. In both towns this occupancy rate is better than the national average of 11.2% and the appellant's 'healthcheck' concludes that the towns are in "good" and "reasonable" health respectively. These findings have not been disputed by the council in its appeal submission. Overall, in qualitative terms, I conclude that both town centres appear healthy and are popular places for residents to shop and enjoy leisure facilities. Despite some vacant premises both town centres did not appear to me to be significantly struggling to attract trade or to fill vacant town centre units. They are functioning well, taking into account current trends in retailing.

9. In assessing the appellant's quantitative assessment of the effect of the appeal proposal, which has similarly not been disputed by the council, I am mindful that the proposal could have a predicted trade draw impact of 2.66% from Dalkeith town centre and 3.21% from Bonnyrigg. I am aware that the adjacent McDonald's facility has only been approved for around a year and the current state of the two town centres does not take into account the effects of this appeal proposal. However these rates of impact are unlikely to adversely impact on the town centres at Dalkeith and Bonnyrigg in any substantial way.

10. I have taken into account the distinctive differences between a drive-through restaurant and a conventional class 3: 'Food and Drink' use. I am also mindful of the need for the planning system to protect the wider local economy and not specifically individual businesses. On the basis of the evidence that I have before me, and from my observations, I find that the appeal proposal would not have, to any significant degree, an adverse qualitative or quantitative impact on the vibrancy, vitality or viability of Dalkeith and Bonnyrigg town centres. I therefore conclude that there are no grounds to dismiss the appeal on the basis of its potential impact on the two town centres.

The impact of the proposal on Eskbank roundabout

11. To the council traffic from the appeal proposal, when combined with that from existing uses, “will” cause queueing traffic and “threaten” the safe and effective operation of the roundabout. Both Bonnyrigg and Lasswade Community Council and Eskbank and Newbattle Community Council, and representees opposing the proposal, share this view.

12. The appellant’s transport assessment incorporates the results of a traffic survey and a queue count from November 2015, and includes forecast growth rates for 2019. From this transport assessment I note that it is predicted that, in the morning peak, an additional 92 trips, above the current 826 trips, would use the Tesco access arm of Eskbank roundabout. At the evening peak the appeal proposal would augment by 76 the current usage of 1338 trips. The transport assessment assumes that some 50% of the trips to the appeal proposal would be new trips on the road network, a higher percentage than was used in the assessment of the adjacent McDonalds’ facility. The council has not responded to these predictions in its appeal submission. In not opposing the proposal the council’s Policy and Road Safety Manager, to the contrary, notes the appellant’s transport assessment modelled the impacts of the appeal proposal on both the private four-arm roundabout within the Tesco site and the five-arm Eskbank roundabout on the A7.

13. The appellant has used a recognised technical assessment which is standard way of measuring the performance of priority junctions like Eskbank roundabout. Measured in terms of both ‘rate of flow to capacity’ and ‘mean maximum queue’ the performance of the Eskbank roundabout has been technically assessed as being able to satisfactorily function with the additional traffic that would be generated by the proposal. Conversely, the council has not evidenced how the appeal proposal “will” threaten the safe and effective function of the roundabout. Its view is contrary to that of its officials who have concluded that the additional traffic generated by the two units can be accommodated on the existing network.

14. I conclude, on the basis of the evidence before me, that the proposal would not threaten the safe and effective operation of the Eskbank roundabout and that there are no grounds for me to dismiss the appeal because of road safety.

The design, layout and landscaping of the proposal

15. I find that the contemporary appearance and finish of both of the proposed buildings, seen in particular from the approaches to the adjacent supermarket, would comprise a functional but well-designed modern development. Although opposed by a representee as being a standard corporate design, not unique in architectural terms, I find that it would not adversely impact on the character or amenity of the surrounding area where there are other adjacent examples of modern commercial buildings. I find that the proposal would accord with policy DEV 6 ‘Layout and Design of New Development’ which requires good design and layout and a high quality of architecture. Overall I conclude that the proposal does not detract materially from the existing character or amenity of the area and accordingly the proposal accords with policy DEV 2 ‘Protecting Amenity within the Built-Up Area’.

16. On my site inspection I closely observed the vacant and semi-derelict appeal site where surface vegetation has been removed, in some parts. It has been argued in a representation opposing the proposal that the site supports local biodiversity and is of value to local flora and fauna. However, the council’s biodiversity screening process did not

identify any biodiversity constraints that apply to the appeal site and draft condition 13 requires the submission of a scheme of sustainability and biodiversity, including measures to encourage and enhance biodiversity. I find there would be no grounds to dismiss the appeal on the grounds of local bio-diversity.

17. There are around 40 existing trees on the site which provide a soft edge to this part of the larger retail site at Hardengreen and which would be lost if the development were to proceed. I have assessed the appellant's extensive landscaping proposals which would assist in the screening of the proposed development from the adjacent A7, from where drivers would have limited and transient views of the appeal site and the other buildings beyond. Taking into account the appearance of the vacant site and the overall contribution of the trees I conclude that the proposed landscaping strategy, which includes a woodland buffer, would compensate for the loss of the trees, would enhance the setting of the two buildings and that it accords with policy DEV 7.

Material Considerations

18. Scottish Planning Policy (SPP) is an important material consideration and sets out national planning policies for the planning system and for the development and use of land. The appeal proposal has a gross floorspace of 396 square metres and SPP only requires a town centre impact assessment for any retail and leisure proposals that exceed 2,500 square metres in size and which are contrary to the development plan. SPP recognises the importance of town centres and the planning system should apply a 'town centre first' approach to encourage their vibrancy, vitality and viability. SPP defines the sequential 'town centre first approach' as being for uses which attract significant numbers of people, including retail and commercial leisure, offices, community and cultural facilities. I have set out above my view why the appeal proposal is not contrary to the aims of the "town centre first" approach, as set out in SPP.

19. I have taken into account the site's extensive planning history and note that various proposals including retail uses, a nursing home and a garden centre have been refused planning permission. A restaurant and bar were allowed on appeal but those consents lapsed. In 2018, on an adjacent site, the council granted planning permission for the existing McDonald's drive-through restaurant, determined under the same local development plan. In approving that proposal the council concluded that the McDonald's proposal was a type of development that would not be expected in a town centre. I conclude that my decision on the current appeal is consistent with the planning history of the appeal site, and adjacent land.

20. The council has recently advised Scottish Ministers of its intention to adopt its draft supplementary guidance (SPG) for food and drink and other non-retail uses in town centres. The draft guidance is currently not part of the development plan, but is a material consideration in the determination of the appeal. The draft SPG concludes that "where drive-through restaurants have been demonstrated to not undermine the vitality and viability of nearby town centres there will be scope to support their development in the built-up area adjacent to the strategic road network". The draft SPG also concludes that drive-through units are an important part of the provision of food and drink but "town centre locations are unlikely to fit with the business models of drive-through unit operators". Despite its reference to a necessary sequential assessment I conclude overall that the draft SPG supports my decision to allow the appeal.

21. I have studied the representation from Midlothian Health & Social Care Partnership (MHSCP) and which opposes the proposal on health grounds. Pointing to a local strategy to address inequalities in health it is argued that less healthy food exacerbates health inequalities and that the growth of fast-food outlets in poorer areas can reinforce the consequences of inequalities in diet. There are no policies in the local development plan that refer to the health consequences of proposed developments, and although being some 400 metres from Edinburgh College the council's draft SPG refers to the proximity of schools to hot food takeaways but not to the proximity of further education establishments. The matters referred to by MHSCP are not unique to my determination but would apply to a wide range of uses that are, nationally, subject to the need for planning permission. I must determine the appeal on its planning merits. In the absence of national guidance on the health consequences of proposed developments I am unable to attach significant weight to the matters raised. I therefore conclude that there would be no planning grounds to dismiss the appeal on health grounds.

22. The views expressed by the 3 other parties who have made representations on the proposal, expressed on a planning matter, are material considerations. My findings on the effect of the proposal on the adjacent town centres, the access, the design of the proposal, and healthy eating are set out above. Conditions would address matters such as litter and noise.

Overall conclusions

23. Because of its location within the settlement boundary of Eskbank, Dalkeith the principle of development on the site is acceptable. I have concluded that the design, layout and landscaping of the appeal proposal would be appropriate to the area where it is located. From the evidence before me the proposed drive-through restaurants would not undermine the vibrancy, viability and vitality of Dalkeith and Eskbank town centres and would not threaten the safe and effective operation of the Tesco arm of the Eskbank roundabout.

24. The council has proposed the imposition of 14 planning conditions as set out in its committee report and which are acceptable to the appellant, if I allow the appeal. I find that each of the proposed planning conditions are appropriate and satisfy the terms of Scottish Government Circular 4/1998 'The use of conditions in planning permissions'. The conditions would address several requirements of the local development plan as well as noise and litter control.

25. Policy IMP2: 'Essential Infrastructure Required to enable New Development to Take Place' provides that new development must make provision for, amongst other things, essential infrastructure related to the scale and impact of the proposal. TRAN 2: 'Transport Network Interventions' sets out transport interventions required in Midlothian, including the A7 urbanisation. During the determination of the planning application agreement was reached between the appellant and the council on development contribution rates required towards the council's 'A7 Urbanisation' programme.

26. I conclude that a planning obligation restricting or regulating the development or use of the land should be completed in order to assist in encouraging safe pedestrian and cycle routes within the A7 transport corridor. A proportionate contribution would therefore be

required from this development. I will accordingly defer determination of this appeal for a period of 6 months to enable the relevant planning obligation (either an agreement with the planning authority, or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 6-month period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

27. I have studied the agreed draft heads of terms of the proposed planning obligation. I have no observations to make on its contents except the terms of clause 5.0 that relate to the issuing of planning permission. The planning permission for the development would be issued by myself on the registering or recording of the relevant planning obligation. However I am not a party or signatory to the agreement and I cannot be bound by its contents; the terms of the planning obligation ought to be amended by deleting clause 5.

28. I therefore conclude, for the reasons set out above, that subject to the matters referred to in paragraph 25 being satisfactorily dealt with, the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Chris Norman
Reporter

List of conditions

1. Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:

- i) the nature, extent and types of contamination on the site;
- ii) measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
- iii) measures to deal with contamination encountered during construction work; and iv) the condition of the site on completion of the specified decontamination measures.

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

2. On completion of the decontamination/remediation works referred to in condition 1 above, and prior to any building on the site being brought into use, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No building on the site shall be brought into use unless or until the planning authority have approved the required validation.

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

3. Development shall not begin until a scheme of investigation and remediation to deal with previous mineral workings has been submitted to and approved in writing by the planning authority. The scheme shall include:

- i) a scheme of intrusive site investigations;
- ii) a report of findings arising from the intrusive site investigations; and
- iii) a scheme of remedial works for approval by the Coal Authority.

Before any work starts onsite on the proposed development the investigation schemes and remediation works shall be fully implemented as approved by the planning authority and the Coal Authority.

Reason: To ensure that any risks posed by the coal mining history of the area are identified and addressed prior to development commencing.

4. Development shall not begin until a detailed scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i) existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
- ii) existing trees, landscaping features and vegetation to be retained, removed or protected during development;
- iii) proposed new planting in planting areas, including trees, shrubs, hedging and grassed areas;

- iv) location and design of all proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v) schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi) a programme for completion and subsequent maintenance of all soft and hard landscaping. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
- vii) drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff; and
- viii) proposed car park configuration and surfacing.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs (existing or planted) that are subsequently lost through removal, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the next available planting season by trees or shrubs of a similar species to those originally required.

Reason: To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

5. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. 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 physical development is of an appropriate standard in terms of its impact on the character and appearance of the area. To ensure compliance with local and national planning guidance and advice.

6. Prior to either restaurant opening to the public details of a litter collection plan for the surrounding area, including an agreed length of the National Cycle Network Route 196, shall be submitted to and approved in writing by the planning authority. All the measures identified in the approved plan shall be in place and fully operational for the opening of either of the restaurants to members of the public and shall continue in operation for the duration of the approved use, unless otherwise approved in writing by the planning authority.

Reason: To protect the character and amenity of the surrounding area.

7. Prior to each restaurant opening to the public a travel plan, for the said restaurant, shall be submitted to and approved in writing by the planning authority. Each travel plan shall include details of the measures to be taken to encourage staff to use sustainable modes of transport when travelling to the site. All the measures identified in the approved plans shall be in place and fully operational for the opening of each restaurant to members of the public and shall continue in operation for the duration of the approved use, unless otherwise approved in writing by the planning authority.

Reason: To ensure that the number of vehicle trips generated by staff of the restaurant is minimised.

8. Unless otherwise approved in writing by the planning authority the vehicular access and parking arrangements shown on the approved proposed site plan (Drawing number G2713-AL(0)003 P2-2) shall be operational prior to the restaurant being opened to the public.

Reason: To ensure that queuing and disruption to Eskbank roundabout is minimised.

9. The kitchens of the restaurants shall be ventilated by extraction ventilation system which shall:

- i) Be designed to achieve 30 air changes each hour;
- ii) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
- iii) Prevent the emission of cooking odours likely to cause nuisance to neighbouring commercial units and surrounding residential properties; and
- iv) Terminate at sufficient height to permit the free disposal of exhaust fumes.

Reason: To safeguard amenity

10. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an acceptable noise rating level based on an international standard) when measured within any nearby living apartment and no structure borne vibration is perceptible within any living apartment.

Reason: To safeguard amenity.

11. The sound emitted by any tannoy or loudspeaker system serving the restaurant's drive-through facilities shall be controlled to ensure that no amplified speech is audible within any adjacent noise sensitive premises.

Reason: To safeguard amenity.

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

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

13. Development shall not begin until a scheme of sustainability and biodiversity (including measures to encourage and enhance biodiversity) for the site 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. Consent is hereby granted for the sale of food and drink for consumption on the premises and off the premises. The buildings hereby approved shall be used as sui generis drive-through restaurants/cafes.

Reason: To ensure that the use of the buildings reflects the terms of the application; and to safeguard the vibrancy, vitality and viability of local town centres by ensuring that the buildings cannot be used for any other use without planning permission.

Schedule of drawings

Floor plan, Roof Plan and Elevations Unit 1 A(0)004 P3-2 04 Jun 2018
 Drainage Layout 13037-500-A 04 Jun 2018
 Floor plan, Roof Plan and Elevations Unit 2 A(0)005 P1 1:100 20 Mar 2018
 Landscaping Plan 28001-L102-B 09 Aug 2018
 Location Plan AL(0)001 1:1250 20 Mar 2018
 Proposed Site Plan AL(0)003 P2-2 1:1250 04 Jun 2018
 Site Plan AL(0)002 P1 1:1250 20 Mar 2018
 Air Quality Impact Assessment 20 Jun 2018
 Coal Mining Risk Assessment 20 Mar 2018
 Coal Mining Risk Assessment Addendum 18 May 2018
 Drainage Strategy Plan 20 Mar 2018
 Flood Risk Assessment 20 Mar 2018
 Landscape and Visual Appraisal 20 Mar 2018
 Landscaping Strategy 03 Jul 2018
 Planning Statement 20 Mar 2018
 PSAD Letter detailing revisions 04 Jun 2018
 Response to Emerging Food & Drink SG 06 Nov 2018
 Sequential Assessment 19 Nov 2018
 Transport Assessment 20 Mar 2018
 Transport Assessment May 2018 Part 1 of 2 04 Jun 2018
 Transport Assessment May 2018 Part 2 of 2 04 Jun 2018
 Tree Survey and Arboricultural Constraints Report



PRE - APPLICATION REPORT REGARDING RESIDENTIAL DEVELOPMENT AND ASSOCIATED ACCESS, DRAINAGE INFRASTRUCTURE AND OPEN SPACE ON LAND AT THE FORMER WELLINGTON SCHOOL, PENICUIK (19/00252/PAC)

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a pre-application consultation submitted regarding residential development and associated access, drainage infrastructure and open space at land at the former Wellington School, Penicuik. The land comprises site Ahs5 in the Midlothian Local Development Plan 2017 (MLDP) which is an additional housing development opportunity site with an indicative capacity of 50-60 units.
- 1.2 The pre-application consultation is reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.

2 BACKGROUND

- 2.1 Guidance on the role of Councillors in the pre-application process, published by the Commissioner for Ethical Standards in Public Life in Scotland, was reported to the Committee at its meeting of 6 June 2017. The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 A pre-application consultation for residential development, associated access, drainage infrastructure and open space on land at the former Wellington School, Penicuik was submitted on 20 March 2019.
- 2.3 As part of the pre-application consultation, a public event took place at Howgate Village Hall on Tuesday 14 May. On the conclusion of the 12 week consultation process the applicant could submit a planning application for the proposal. It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance reported to the Committee at its meeting in June 2017) not

offer views, as the forum for doing so will be at meetings of the Planning Committee.

- 2.4 Copies of the pre application notices have been sent by the prospective applicant to the local elected members and Howgate Community Council.

3 PLANNING CONSIDERATIONS

- 3.1 In assessing any subsequent planning application the main planning issue to be considered in determining the application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise.
- 3.2 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP).
- 3.3 The site is located to the east of the A701 in the vicinity of Springfield, to the southeast of Penicuik. There is a mid-20th century building on the site that was used as a school until 2014 when it closed. The site has an elevated position in the local landscape with the former school building being prominent from views from the north. The site includes areas of mature planting along the southern, eastern and western boundaries, which are protected by a Tree Preservation Order.
- 3.4 The site is designated as an Additional Housing Development Opportunity (policy STRAT4) in the MLDP, with an indicative capacity of 50-60 units. An additional housing development opportunity site is identified as being acceptable for housing development in principle, but which is subject to development uncertainties such as land ownership, road access constraints and/or financial viability issues. Due to the uncertainty in developing such sites, their delivery is not relied upon to maintain the Council's effective housing land supply.
- 3.5 The Penicuik and Auchendinny Settlement Statement in the MLDP outlines a number of matters to be considered in determining proposals for development on this site (page 152). The plan states that while there is potential for redevelopment, the existing access is not suitable for a major increase in traffic. As an option for addressing this, the plan outlines the possibility of creating a new access by utilising the land to the north, which is identified as a Low Density Rural Housing site under policy RD2. The current redevelopment of Wellington School proposal does not include the land to the north and therefore it is unlikely that the amended access option referenced is being sought. The site boundary suggests that access will be sought to the east of the site onto the A701, in the vicinity of the existing access near the house called Ard Craig.
- 3.6 The plan also outlines a number of matters in relation to the landscape treatment of the site such as the need to retain existing landscape strips and the need to make provision for new landscape screening to

minimise the visual impact on the countryside. This is a consequence of the site's elevated position in the local landscape.

- 3.7 The Planning Committee will recall considering a number of reports (at its meeting of 28 August 2018 and 2 April 2019) with regard the designation of a Tree Preservation Order (TPO) at land to the south and east of Ard Craig. The TPO includes areas of mature planting along the southern, eastern and western boundaries of the site. The effect of this designation is to prevent the felling, topping, lopping, uprooting or wilful damage of these tree without the consent of the planning authority.
- 3.8 If an application is submitted, there is a presumption in favour of an appropriate residential development and associated works subject to securing developer contributions towards infrastructure including education provision. Additionally, any application would be subject to the need to provide affordable housing equal to, or exceeding 25% of the total number of dwellings consented, as required by policy DEV3.

4 PROCEDURES

- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.
- 4.3 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures advises that Councillors are expected to approach their decision-making with an open mind in that they must have regard to all material considerations and be prepared to change their views which they are minded towards if persuaded that they should.

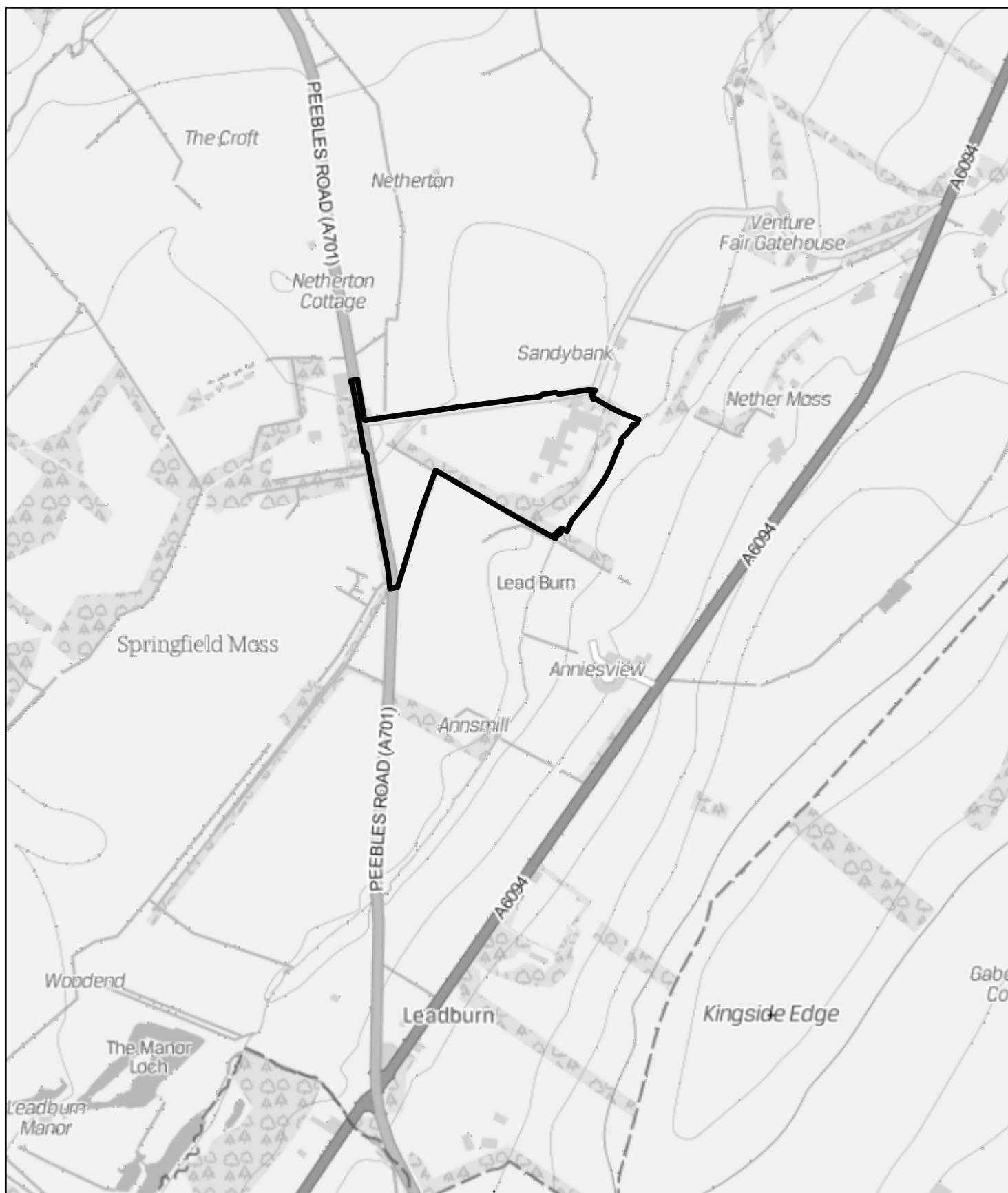
5 RECOMMENDATION

- 5.1 It is recommended that the Committee notes:
- a) the provisional planning position set out in this report;
 - b) that any comments made by Members will form part of the minute of the Committee meeting; and
 - c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 7 June 2019

Application No: 19/00252/PAC (Available online)
Applicant: Strutt and Parker, 5 St John Street, Perth
Validation Date: 20 March 2019
Contact Person: Fraser James
Tel No: 0131 271 3514
Background Papers:



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

Proposal of application notice for residential development
and associated access, drainage infrastructure and open
space at Land At Wellington School, Penicuik

Reproduced from the Ordnance Survey map with the permission of the
controller of Her Majesty's Stationary Office. Crown copyright reserved.
Unauthorised reproduction infringes Crown copyright and may lead to
prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No. 19/00252/PAC

Scale: 1:10,000
Page 59 of 118





SECTION 42 APPLICATION 19/00221/S42 TO REMOVE CONDITION 7, REQUIRING ENHANCED PUBLIC TRANSPORT FACILITIES, IMPOSED ON A GRANT OF PLANNING PERMISSION (17/00951/PPP) FOR A RETAIL UNIT AT SOUTRA MAINS FARM, BLACKSHIELDS, FALA, PATHHEAD

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** At its meeting in February 2018 the Committee granted planning permission 17/00951/PPP for the erection of a retail unit at Soutra Mains Farm, Pathhead subject to conditions. This section 42 application proposes to remove condition 7 which seeks improved public transport facilities adjacent to the A68 trunk road to ensure that there are safe public transport facilities to serve the approved retail unit. There have been no letters of representation and there have been consultation responses from Transport Scotland and the Council's Policy and Road Safety Manager.
- 1.2** The relevant development plan policies are policies 3 and 8 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and Policies TRC2, RD1, ENV6, ENV7 and IMP1 of the Midlothian Local Development Plan 2017 (MLDP).
- 1.3** The recommendation is to refuse planning permission.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site comprises a rectangular area of agricultural land at Soutra Mains Farm, measuring 0.44 hectares, which currently accommodates a large agricultural shed.
- 2.2** The collection of buildings at Soutra Mains Farm includes four holiday cottages, a single storey cafe building, two farm houses and agricultural buildings. The holiday cottages and cafe are relatively recent additions (2014) to the group.
- 2.3** Access and egress at the application site is taken via the existing new vehicle access road taken from the A68. This access was formed as part of the holiday cottage and café development.

3 PROPOSAL

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 (hereafter referred to as the Act), is to remove the requirement to enhance public transport facilities.
- 3.2 A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore if planning permission is granted for this application it will supersede planning consent 17/00951/PPP if implemented. It will therefore be a planning permission for a retail unit.
- 3.3 In this case, the applicant is requesting the removal of a planning condition which was attached to the previously approved planning application 17/00951/PPP, which sought improvements to public transport facilities adjacent to the A68. The planning condition was imposed in order to ensure that there would be safe public transport facilities to serve the retail facility which had been approved by Planning Committee.
- 3.4 Condition 7 of planning application 17/00951/PPP states:
- Prior to the commencement of development, an application for approval of matters specified in conditions for improved public transport facilities adjacent to A68 trunk road are to be submitted to and approved in writing by the Planning Authority. Unless otherwise agreed in writing with the Planning Authority prior to the commencement of development the application shall include siting, design and external appearance of a bus shelter at both northern and southern side of the A68 trunk road.; structures for the display of bus timetable information; and details of all hard surfacing and kerbing of vehicle laybys to be formed. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority prior to the occupation of the retail unit hereby approved.*
- Reason: To ensure that there are safe public transport facilities to serve the retail unit.*
- 3.5 The applicant has submitted a statement in support of their application to remove the condition.

4 BACKGROUND

- 4.1 Outline planning permission, 08/00159/OUT, for the erection of holiday cottages, coffee shop, parking area and new access road at Soutra

was approved in May 2010. Permission was granted subject to a number of conditions, including a limit on the number of holiday cottages to four. The coffee shop was allowed as being ancillary to the main use of the site as holiday accommodation.

- 4.2 A detailed planning application 10/00538/DPP for the erection of a coffee/gift shop and four holiday lodges was refused in December 2010 for the following reasons:

1. *It has not been demonstrated that the proposed retail use has a requirement for a countryside location and it is not of a scale appropriate to its position in the countryside and area of great landscape value; for these reasons the proposal does not comply with the terms of policy RP1 of the Midlothian Local Plan.*
2. *The proposal does not comply with the terms of policy ECON8 of the Midlothian Local Plan as it primarily comprises a retail development of an inappropriate scale in the countryside.*
3. *The scale, form and design of the proposed development will have an adverse impact on the character and appearance of the landscape, which forms part of the area of great landscape value, and which convey a level of development inappropriate to the confines of this site; and is therefore contrary to the terms of policies RP6 and RP7 of the Midlothian Local Plan.*
4. *The proposed tourist accommodation dwellings have not been designed to enhance the area of great landscape value and results in buildings that are out of character with the rural setting ;and as such do not comply with the terms of policies DP1 and ECON7 of the Midlothian Local Plan.5. The increased level of traffic generated by the retail use would lead to an increased level of traffic leaving and entering the trunk road which may be detrimental to the safety of other road users.*

- 4.3 Application 11/00199/MSD to discharge the conditions of the original 2008 application was approved. However, it was only possible to discharge some of the conditions as information had not been submitted in connection with some of the outstanding conditions.
- 4.4 Application 12/00067/MSD was submitted to address the remaining outstanding matters relating to the 2008 and 2011 applications. However, insufficient information was submitted and a further grant of permission was issued, but not all the conditions were discharged.
- 4.5 Application 13/00274/MSD was submitted in order to discharge the outstanding matters from the 2008, 2011 and 2012 applications. This application was submitted with the same information as had been submitted previously. The planning authority refused the planning

application due to not being able to assess the proposal given the lack of information submitted by the applicant.

4.6 Planning application 13/00370/DPP for the erection of four retail units (part retrospective) was refused in September 2013 for the following reasons:

1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the Edinburgh and the Lothians Structure Plan (ELSP) policy ENV3 and adopted Midlothian Local Plan (MLP) policies RP1 and ECON8.*
2. *As the application site is in the countryside it is not in one of the locations specified in the ELSP policy RET1 - Sequential approach to the location of retail and commercial leisure development, as being potentially suitable for retail developments. Accordingly, the proposed development is contrary to ELSP policy RET1 and the adopted MLP policy SHOP5.*
3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*
4. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*

4.7 The applicant appealed the refusal of planning application 13/00370/DPP to the Local Review Body (LRB). The LRB dismissed the review request and upheld the decision to refuse planning permission on the following grounds:

1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Plan (2008) policies RP1, SHOP5 and ECON8;*
2. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead; and*

3. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*
- 4.8 Planning application 14/00293/DPP for the erection of four retail units (part retrospective) was refused by Midlothian Council's Planning Committee in September 2014 for the following reasons:
1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Plan (2008) policies RP1, SHOP5 and ECON8.*
 2. *As the application site is in a remote countryside location it is not in one of the acceptable types of locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy. As no sequential test has been submitted for assessment it has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Strategic Development Plan and policy SHOP5 of the adopted Midlothian Local Plan.*
 3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*
 4. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*
- 4.9 This applicant appealed against the Planning Committee's decision to refuse planning application 14/00293/DPP. The application was also refused at appeal by the Reporter on the 15 December 2014.
- 4.10 Application 14/00542/MS to discharge the conditions of the original 2008 application was approved in September 2014.
- 4.11 Pre-application advice was provided in December 2016 with regards to a development proposal seeking to erect a new building to incorporate a visitor centre comprising open retail space/retail units and a tourism facility. Overall, it was advised that it was unlikely that the development proposal would be supported.

4.12 Planning application 17/00641/PPP for planning permission in principle for the erection of retail unit was refused by the Committee at its meeting of 14 November 2017 for the following reasons:

1. *The proposed retail development would comprise of a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Development Plan (2017) policies TRC2 and RD1.*
2. *As the application site is in a remote countryside location it is not in one of the acceptable locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy (SPP). As no sequential test has been submitted for assessment it has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Strategic Development Plan and policy TRC2 of the adopted Midlothian Local Development Plan (2017).*
3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*
4. *It has not been demonstrated to the satisfaction of the Planning Authority that the required visibility splays (215 metres in each direction) can be achieved.*
5. *The indicative information submitted shows a building which, on account of its scale, form, design and materials will not be compatible to its location or to existing nearby buildings.*

4.13 Planning application 17/00951/PPP for planning permission in principle for the erection of retail unit was approved by the Planning Committee at its meeting of 20 February 2018 for the following reason:

The benefits of the proposed development, include support for a local business, the provision of local jobs and the provision of a local facility, are significant material considerations which outweigh the policies in the Midlothian Local Development Plan 2017 and national planning policy which seek to restrict non countryside based developments in the countryside and to promote the principle of 'town centres first'.

- 4.14 Application 18/00693/MSC was submitted in order to discharge the outstanding matters from application 17/00951/PPP. This application is currently still pending consideration.
- 4.15 The application has been called to Planning Committee for consideration by Councillor Smaill in order to discuss public transport access potential.

5 CONSULTATIONS

- 5.1 **Transport Scotland** does not object to the application.
- 5.2 The Council's **Policy and Road Safety Manager** advised that following consideration of the information provided by the applicant, it is considered that the formalisation of bus stops at this location is clearly deliverable. No evidence has been submitted from the developer or from Transport Scotland to the contrary.

6 REPRESENTATIONS

- 6.1 No representations were received.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP), adopted in November 2017. The following policies are relevant to the proposal:

Edinburgh and South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 The Strategic Development Plan sets out some key aims, three of which are:
- Integrate land use and sustainable modes of transport, reduce the need to travel and cut carbon emissions by steering new development to the most sustainable locations;
 - Conserve and enhance the natural and built environment; and
 - Promote the development of urban brownfield land for appropriate uses.
- 7.3 **Policy 3** (Town Centres and Retail) aims to promote a sequential approach to the selection of locations for retail and commercial leisure proposals.
- 7.4 **Policy 8** (Transportation) seeks to ensure that new development minimises the generation of additional car traffic. Midlothian Local Development Plan (MLDP)

Midlothian Local Development Plan 2017

- 7.5 Policy **TRC2: Location of New Retail and Commercial Leisure Facilities** is relevant to the siting of new retail and commercial leisure facilities. The policy and the role of centres are defined in the network of centres which give support to development in town centres, to Straiton where alternatives are not available in a town centre, and to a new out of centre location that is supported in the southern A7 corridor (Redheugh). Policy TCR2 also supports retail development (up to 1000sqm gross floor area) at local centres (these are identified in the network of centres). The policy also allows for new local centres to come forward serving housing developments where these are not served adequately by existing centres. There is no support for retail development in the countryside.
- 7.6 Policy **RD1: Development in the Countryside** sets out where appropriate development would be acceptable in the countryside subject to defined criteria. The policy states that proposals will not be permissible if they are of a primarily retail nature.
- 7.7 Policy **ENV6: Special Landscape Areas** states that development proposals will only be permitted where they incorporate high standards of siting and design and where they will not have significant adverse effect on the special landscape qualities of the area.
- 7.8 Policy **ENV7: Landscape Character** which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required.
- 7.9 Policy **IMP1: New Development** requires that planning conditions will be applied, and developer contributions sought, in relation to new developments in order to ensure that appropriate provision is made for essential and necessary infrastructure. This policy also requires developers to provide for connections to all forms of public transport services (including financial support for services), bus stops and shelters, rail stations and associated car parks.

National policy

- 7.10 **The Scottish Planning Policy (SPP)** promotes a town centre first principle, which considers the health and vibrancy of town centres. The SPP promotes the use of the sequential town centre first approach, outlining the following order of preference for commercial development proposals:
- town centre (including local centres);
 - edge of town centre;
 - other commercial centres identified in the development plan; and

- out-of-centre locations that are, or can be made easily accessible by a choice of transport modes..

7.11 Scottish Government advice **Circular 4/1998 (The use of conditions in planning permissions)** sets out six tests which planning conditions must comply with:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

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 consultation responses received are material considerations.

The Principle of Development

8.2 Planning application 17/00951/PPP for the erection of a retail unit at Soutra Mains Farm was presented to the Committee at its meeting in February 2018 for determination. The Committee granted planning permission for the reason set out in paragraph 4.13 of this report subject to conditions and a legal agreement (or equivalent) requiring appropriate developer contributions for community benefit or a community project and/or improvements to the existing public transport facilities.

8.3 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 of retail development is established by this grant of planning permission and cannot be reassessed as part of the consideration of this application.

Current public transport situation

8.4 There is currently a ‘hail and ride’ bus service which operates near the application site adjacent to the A68. Bus services will often use hail and ride as a means of operating a remote bus stop or stops in rural locations. There is no fixed pole/flag or bus stop. Passengers are required to pick a safe place to wait and then hail the bus when it is in sight. The driver will then stop so that the passenger can board.

Planning Committee consideration of previous application

- 8.5 During consideration of the original planning application by the Committee the potential for improvements to the public transport facilities were discussed. It was suggested that in approving the scheme the site could be used to facilitate the no. 51/52 bus service with an off-road stop, with improvements to the drop off service. One elected member advised that the creation of a separate drop off area within the curtilage of the development would create a considerable advantage, as an inter-change for residents of the area. It was suggested that this would be made part of the permission should it be granted consent.

Post Committee agreement

- 8.6 Subsequent to the Committee's decision on application 17/00951/PPP agreement was reached between the planning authority and the applicant that improvements to public transport facilities should be secured. Condition 7 of the planning decision notice contains the final wording agreed between the planning authority and applicant which would secure the Planning Committee's aspirations for improved public transport facilities in the area.
- 8.7 Despite previously agreeing to the wording of condition 7 the applicant has now applied to have this condition removed so that development can be carried out without any contributions to, or improvement of, the public transport in the area.

The applicant's position

- 8.8 The applicant has questioned whether condition 7 complies with the tests set out by the Scottish Government with regards to a valid planning condition.
- 8.9 In addition, the applicant states that the requirements of condition 7 are more onerous than what was sought by the Committee when originally approving the retail unit.
- 8.10 The applicant states that the condition requires the applicant to carry out work on land that is outwith their control and will result in an adverse impact on road and pedestrian safety, particularly in terms of buses stopping on the A68, vehicles requiring to stop/pass stationary buses safely if there is no layby, obstruction of the visibility splays of the application site and pedestrians crossing the A68. The applicant states that pedestrians are already currently required to cross the A68 to utilise the existing 'hail and ride' service.
- 8.11 The applicant raises the following questions in their supporting statement:

1. *Is it preferable that people can use buses without crossing the A68?*
2. *Is the Roads Manager satisfied if people do have to cross the A68?*
3. *If so, then why is "hail and ride" not satisfactory here, when it has "worked smoothly for many years" everywhere else?*
4. *If bus stops are indeed required, do they have to be in lay-bys?*
5. *The stops (whether in a layby or not) will be in the visibility splays - that is surely unacceptable?*

Assessment of condition 7 against tests for conditions

- 8.12 Planning conditions must satisfy the tests set out within circular 4/1998. The circular states that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. The circular sets out six tests, namely that a condition shall only be imposed where it is:
- necessary;
 - relevant to planning;
 - relevant to the development permitted;
 - enforceable;
 - precise; and,
 - reasonable in all other respects.
- 8.13 Whilst each planning application must be considered on its own individual merits, the Council must reasonably consider the potential impact one decision has on future considerations. A core objective of the Council's protection of countryside policy is to protect the characteristics of the countryside. To ensure the benefits of the countryside are safeguarded and only sustainable development is supported it is important that strong controls are maintained. Whilst the retail unit was granted planning permission in principle, contrary to policy, this was subject to the requirement for improvements to the existing public transport facilities in the interest of sustainable development.
- 8.14 Planning application 17/00951/PPP was considered acceptable, by the Committee, on the basis that developer contributions (or equivalent) would be required for community benefit or improvements to the existing public transport facilities. It was clear that the applicant's proposal would result in an out-of-town retail facility, potentially giving rise to more unsustainable vehicle journeys, particularly by private car, than would have been the case had the development been proposed in a more sustainable location. For this reason, and in order to secure a more sustainable form of development, the planning authority considered that it would be appropriate to seek improvements to the local public transport facilities. These improvements would encourage more visitors to make use of more sustainable forms of transport to reach the proposed retail facility and would make the existing service safer.

- 8.15 It is clear that both national and local planning policies require new developments to be sustainable. In order to offset the potential for increased unsustainable car journeys, as a result of the proposed development, there is a clear need for improved and safer public transport in the area. The current arrangements will not encourage greater use of public transport and require to be augmented and formalised. Policy IMP1 of the MLDP states that where development gives rise to a need appropriate provision will be made for essential infrastructure improvements and connections to all forms of public transport services, bus stops and shelters.
- 8.16 It is therefore considered that condition 7 secures infrastructure necessary to support the development and, as a result, is necessary, relevant to planning, relevant to the development permitted and is reasonable in all other respects.
- 8.17 The remaining tests relate to whether the condition is enforceable and precise. The wording of the condition requires that, *'prior to the commencement of development, an application of matters specified in conditions for improved public transport facilities adjacent to the A68 trunk road are to be submitted to and approved in writing by the Planning Authority'*. Should the condition not be discharged prior to the commencement of development then the applicant would be in breach of the condition and enforcement action could be taken.
- 8.18 The condition then goes on to state that, *'unless otherwise agreed in writing with the planning authority prior to the commencement of development the application shall include siting, design and external appearance of a bus shelter at both northern and southern side of the A68 trunk road; structures for the display of bus timetable information; and details of all hard surfacing and kerbing of vehicle laybys to be formed.'* Not only is the wording of the condition precise and clear in terms of setting out what is required from the applicant, it is also flexible in terms of allowing the applicant to submit an alternative proposal to satisfy the condition.
- 8.19 Finally, in terms of the tests, the condition states that *'Development shall thereafter be carried out using the materials or such alternatives as may be agreed in writing with the Planning Authority prior to the occupation of the retail unit hereby approved'*. Should the development required by condition 7 not be completed as agreed prior to the occupation of the retail unit then the applicant would be in breach of the planning consent and enforcement action could be taken. The condition is therefore considered to be precise and enforceable.
- 8.20 Therefore, it is concluded that condition 7 meets all of the six tests set out within Circular 4/1998 (The use of conditions in planning permissions). The removal of condition 7 would result in the erection of a retail unit within the countryside without any improvements to public transport facilities as requested by the Committee.

Further assessment

- 8.21 Beyond the assessment of condition 7 against the tests for conditions it is necessary to consider the applicant's complaints regarding the condition, which has resulted in this application to have it removed. As well as the current S42 application the applicant has also submitted an application (18/00693/MS) to discharge the planning conditions attached to application 17/00951/PPP. To date the applicant has submitted insufficient information as part of the MS application to have condition 7 discharged.
- 8.22 The applicant has failed to produce sufficient evidence to demonstrate that appropriate efforts have been made in order to investigate the various options which could result in the discharge of condition 7. The planning authority would have expected the applicant to provide evidence that they have considered the following:
- The development gives rise to a requirement to improve public transport facilities/services;
 - The existing hail and ride facility is not appropriate to support the proposed development;
 - Formalised bus stops and bus shelters are required;
 - If formalised bus stops are to be provided Transport Scotland have indicated that laybys on the A68 will be required;
 - The applicant should therefore have investigated delivery of formalised bus laybys adjacent to the road or investigated another alternative scheme for improving public transport facilities;
 - As an alternative scheme bus stops could be provided within the application site;
 - Should the applicant propose to accommodate bus stops within the application site the planning authority would have expected the applicant to make approaches to the local bus companies to ensure that they would be willing to bring buses into the site. It should also be demonstrated, by way of an autotrack, that a bus could negotiate a route through the site.
- 8.23 The applicant does not appear to have done any of the above. In addition, the applicant has offered no other alternatives to demonstrate support of local public transport or schemes to improve the sustainability of their development.
- 8.24 No details have been submitted to the planning authority to demonstrate that the formation of a bus stop at either side of the A68 will result in significant road safety implications.
- 8.25 The applicant states that the condition requires bus stops on both sides of the A68, on land over which neither the applicant nor the Council have control, and that the requirement for a bus shelter on the north and south side of the trunk road requires significant input from a number of land owners. It is unclear from the submission if the

applicant has attempted to consider locations for bus stops and or laybys and whether the applicant has attempted to ascertain who owns the land or if any negotiations have been attempted with the land owner(s). It has not been demonstrated to the satisfaction of the planning authority that the applicant is unable to form bus shelters and laybys on either side of the A68 trunk road due to issues surrounding land ownership. Furthermore, it is noted that the condition is written in such a way that would allow for alternative solutions on land within the applicants ownership to be considered.

Summary

- 8.26 In summary, condition 7 has been imposed on the development at the request of the Committee, with the support of adopted planning policy, with the wording agreed between applicant and planning authority, in order to ensure that appropriate public transport improvements are secured in the interests of sustainable development and visitor safety. The condition complies with the necessary tests for conditions. While the applicant has indicated their dissatisfaction with condition 7 they have failed to propose a suitable alternative which would either support public transport or improve the development's sustainable credentials. As such, there is no overriding reason to agree to the removal of condition 7.
- 8.27 Should Committee agree to the removal of condition 7 it must be noted that the other conditions attached to planning permission 17/00951/PPP have yet to be discharged and should therefore be attached to any new grant of planning permission.

9 RECOMMENDATION

- 9.1 That planning permission be refused for the following reasons:
1. *Permission 17/00951/PPP was approved on the basis that developer contributions (or equivalent) would be required for community benefit and/or improvements to the existing public transport facilities. The removal of condition 7 would result in the erection of a retail unit within the countryside without any improvements to the existing public transport facilities, which would be contrary to policy IMP1 of the Midlothian Local Development Plan 2017.*
 2. *It has not been demonstrated to the satisfaction of the planning authority that condition 7 fails to meet all of the six tests set out within Circular4/1998 (The use of conditions in planning applications). Condition 7 meets all of the six tests set out within Circular 4/1998. Furthermore, the condition is flexible so as to allow for reasonable alternative proposals for improvements to the existing public transport facilities to be considered by the local planning authority.*

3. *It has not been demonstrated to the satisfaction of the local planning authority that the requirements of condition 7 will result in significant adverse road and pedestrian safety implications.*
4. *It has not been demonstrated to the satisfaction of the local planning authority that the applicant is unable to resolve condition 7 due to land ownership disputes.*

Mary Smith
Director, Education, Communities and Economy

Date: 2 May 2019

Application No: 19/00221/S42

Applicant: Mr George Russell

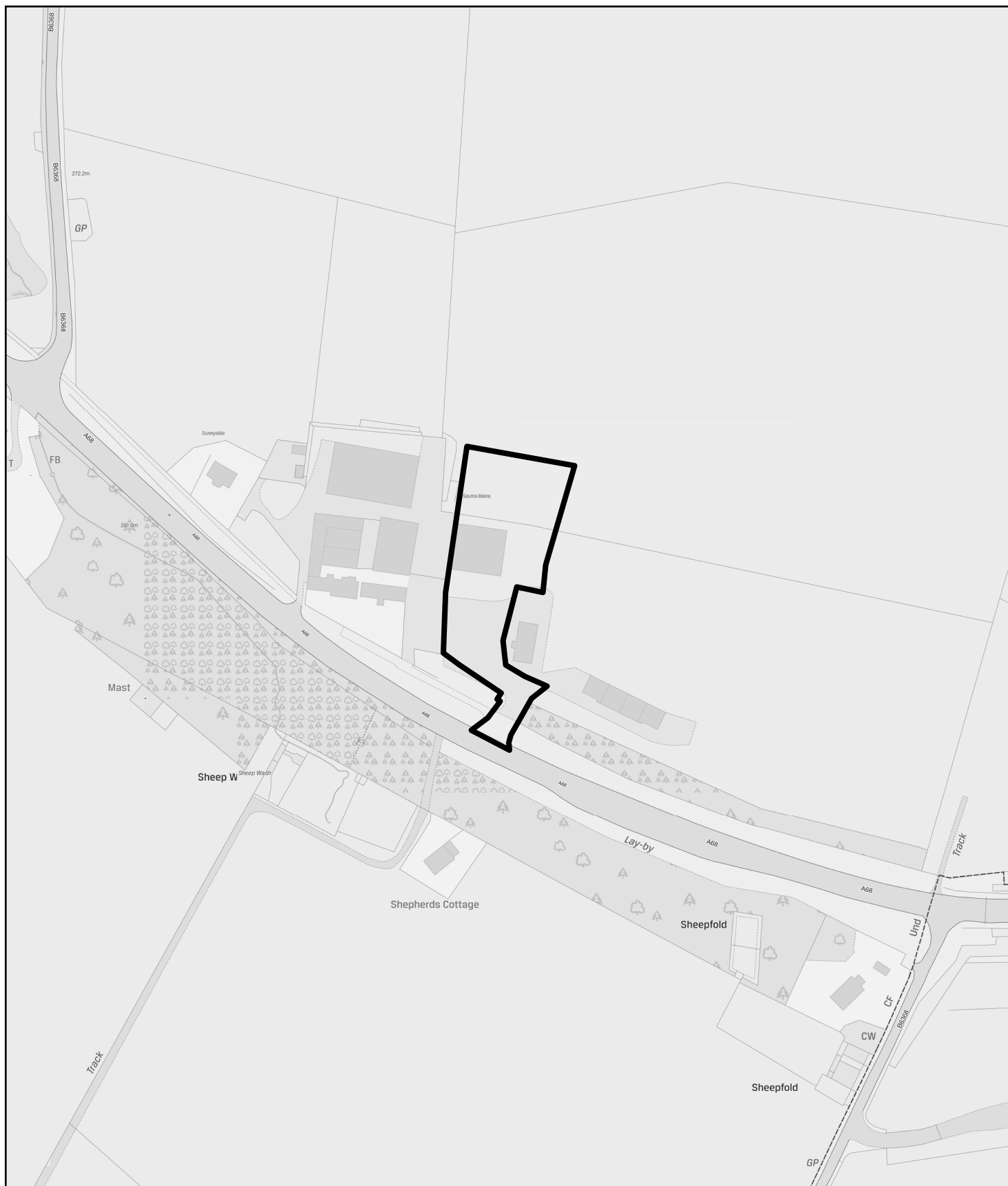
Agent: Suzanne McIntosh

Validation Date: 15 March 2019

Contact Person: Whitney Lindsay

Tel No: 0131 271 3315

Background Papers: 08/00159/OUT, 10/00538/DPP, 11/00199/MSC, 12/00067/MSC, 13/00274/MSC, 13/00370/DPP, 14/00293/DPP, 14/00542/MSC, 17/00641/PPP, 17/00951/PPP and 18/00693/MSC.



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

Section 42 application to remove condition 7 of planning permission 17/00951/PPP (to develop the site without providing improved public transport facilities) at Soutra Mains Farm, Blackshiels, Pathhead

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No: 19/00221/S42

Scale: 1:2,500
Page 76 of 118





**APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE
19/00099/PPP, FOR CLASS 4 (BUSINESS) USES WITH ANCILLARY
CLASS 1 (SHOPS), CLASS 2 (FINANCIAL, PROFESSIONAL AND OTHER
SERVICES) AND CLASS 3 (FOOD AND DRINK) USES; RESIDENTIAL
DEVELOPMENT; AND ASSOCIATED ACCESS, PARKING,
LANDSCAPING AND DRAINAGE INFRASTRUCTURE AT LAND TO THE
NORTH OF HARDENGREEN HOUSE, DALKEITH**

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for planning permission in principle for Class 4 (Business) uses with ancillary Class 1 (Shops), Class 2 (Financial, professional and other services) and Class 3 (Food and drink) uses; residential development; and associated access, parking, landscaping and drainage infrastructure at land to the north of Hardengreen House, Dalkeith. The majority of the site forms part of the Council's economic land supply, allocated site e11; the remainder of the site is green belt.**
- 1.2 There have been 10 representations and consultation responses from the Coal Authority, Network Rail, the Scottish Environment Protection Agency, Scottish Water, SP Energy Networks, the Council's Archaeology Advisor, the Council's Head of Education, the Council's Environmental Health Manager, the Council's Land Resource Manager, the Council's Policy and Road Safety Manager, and Eskbank and Newbattle Community Council.**
- 1.3 The relevant development plan policies are policies 2, 5, 7 and 12 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT1, DEV2, ECON1, TRAN5, IT1, TCR2, ENV1, ENV10, ENV11, ENV18, ENV22 and ENV25 of the Midlothian Local Development Plan 2017.**
- 1.4 The recommendation is to refuse planning permission in principle.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is situated at the southern edge of Eskbank. The site is bound to the west by the Borders rail line, to the northeast by the car park for**

the Eskbank Railway Station and the solar farm associated with Edinburgh College, to the southeast by land associated with the children's nursery at Hardengreen House and to the south by a grazing field.

- 2.2 The 2.4 hectare site is generally level with small localised level changes. The majority of the site is agricultural ground, although it is not currently in use. There is an area of woodland in the eastern corner of the site. A redundant former steading building is situated at the southern edge of the site and there is an area of disturbed ground associated with the steading building. Core Path 4-52/b passes through the southernmost part of the site.

3 PROPOSAL

- 3.1 The application is for planning permission in principle. An indicative site layout and a design and access statement have been submitted with the application and describe the proposal as follows:

- Circa 3000sqm of commercial floorspace. This would be primarily Class 4 (Business) uses, i.e. office, research and development or light industry. The application also seeks consent for ancillary Class 1 (Shops), Class 2 (Financial, professional and other services) and Class 3 (Food and drink) uses; no indicative floorspace has been proposed for the ancillary uses. The indicative site layout shows the commercial development being served by a car park of 140 spaces. The commercial use would occupy the majority of allocated site e11;
- Circa 20 residential units (17 new units and 3 refurbished units) are proposed partly on the allocated economic site and partly on the green belt;
- Vehicular access via the existing access road that serves Edinburgh College and Eskbank Railway Station; and
- A sustainable urban drainage system (SUDS) infrastructure including a SUDS attenuation basin at the southern end of the site adjacent to the Borders railway line.

- 3.2 The application is accompanied by:
- A pre-application consultation (PAC) report;
 - A design and access statement;
 - A flooding, drainage and surface water strategy;
 - A transport statement;
 - A coal mining risk assessment;
 - A coal mining design assessment report; and
 - A coal authority non-residential mining report.

4 BACKGROUND

- 4.1 An outline application (reference 433/88) for residential development at Hardengreen was refused in July 1989. The site was immediately

adjacent to the current application site and includes land now occupied by Hardengreen Industrial Estate and Business Park, the Edinburgh College site, the Edinburgh College solar farm and Eskbank Railway Station.

- 4.2 An outline application (reference 0656/98) for residential development at Hardengreen was refused in February 2000 following an appeal for non-determination. The site included the current application site plus the land to the south (both the grazing field and the land associated with Hardengreen House).
- 4.3 Planning permission 05/00035/FUL for the conversion of former stables to form two dwellinghouses at Hardengreen Steading was granted in July 2005. The consent was not implemented and has now expired.
- 4.4 Planning permission 06/00697/FUL for the erection of a college campus, now known as Edinburgh College, was granted in April 2007. The development is complete and occupied.
- 4.5 Planning permission 12/00014/DPP for the formation of a car park and footpaths was granted in March 2012. This is the car park that serves Eskbank Railway Station. An application for planning permission was not required for the formation of the station platforms as this was consented via primary legislation (the Waverley Railway (Scotland) Act 2006).
- 4.6 Planning permission 12/00220/DPP for the erection of the solar farm associated with Edinburgh College was granted in June 2012. The development is complete and in use.
- 4.7 Planning permission 14/00554/DPP for the change of use from dwellinghouse to children's nursery at Hardengreen House was granted in October 2014. The nursery has been operational since 2015.
- 4.8 Planning permission 16/00758/DPP for the erection of a detached building to provide additional accommodation for the children's nursery at Hardengreen House was initially refused (on the grounds that the building would have a significant detrimental impact on the character and setting of the listed building). The applicant submitted a Notice of Review and planning permission was granted by the Local Review Body in March 2017.
- 4.9 A pre application consultation (reference 17/00670/PAC) for a mixed use development including classes 1, 2, 3, 4, 9 and 10 with associated access, car parking, open space and landscaping was carried out in August – October 2017. This consultation relates to the current application site.

- 4.10 As part of the application process for the current application an EIA screening was carried out to comply with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The screening conclusion was that an environmental impact assessment was not required.
- 4.11 The site area is 2.4 hectares. As the site area exceeds the 2 hectare threshold set out in Class 9 of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 the application is considered to be a Major development.

5 CONSULTATIONS

- 5.1 The **Coal Authority** concurs with the recommendations of the Coal Mining Risk Assessment submitted with the application and has no objection to the proposed development subject to any grant of planning permission including conditions to secure a scheme of intrusive site investigations, a report of findings of the investigation and, if necessary, implementation of remedial works.
- 5.2 **Network Rail** does not object to the principle of the proposed development subject to any grant of planning permission including conditions to address the following matters:
- No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the planning authority. No SUDS infrastructure shall be sited within 10 metres of the railway boundary;
 - No development shall take place until such time as a scheme of landscaping has been submitted to and approved in writing by the planning authority. Where trees/shrubs are to be planted adjacent to the railway boundary these should be positioned at a minimum distance from the boundary which is greater than their predicted mature height; and
 - No development shall take place until a noise impact assessment has been submitted to and approved in writing by the planning authority. Where a potential for noise disturbance is identified proposals for the attenuation of that noise shall be submitted to and approved in writing by the planning authority, and shall be implemented prior to the development being brought into use.

The response also advises that details of all changes in ground levels, laying of foundations and operation of mechanical plant in proximity to the rail line must be approved by Network Rail's Asset Protection Engineer prior to work commencing on site.

- 5.3 The **Scottish Environment Protection Agency** does not object to the application.
- 5.4 **Scottish Water** does not object to the application, but state that this does not confirm that the site can be serviced and that they will not

accept any surface water connections into their combined sewer systems.

- 5.5 **SP Energy Networks** does not object to the application, but reserve the right to protect and/or deviate their apparatus/cables at the applicant's expense.
- 5.6 The Council's **Archaeology Advisor** does not object to the application but recommends a 'Programme of Archaeological Works' (Trial Trench Evaluation) is necessary. The trial trench evaluation required is to be no less than 5% of the total site area. The requirement for this work can be secured by condition.
- 5.7 The Council's **Biodiversity** screening process identifies the biodiversity protections that apply to the site; woodland at the eastern corner of the site which forms part of an area of Ancient Woodland. No other biodiversity constraints were identified.
- 5.8 The Council's **Head of Education** advises that a development of 20 dwellings would give rise to seven primary school pupils and five secondary school pupils and advises that the applicant will be required to make a developer contribution to meet the provisional requirements. The site lies within the catchment area of King's Park Primary School, St David's RC Primary School, Dalkeith High School and St David's RC High School.
- 5.9 The Council's **Environmental Health Manager** has no objection to residential use at this location subject to the design and layout ensuring that the residential properties meet recognised noise and vibration guidelines. The commercial use should be appropriately conditioned with regard to noise, hours and odours in order to ensure that it is compatible with the proposed residential use and the adjacent college. Conditions should be attached to secure site investigations and mitigation measures to address any contaminated land issues that may be identified.
- 5.10 The Council's **Land Resource Manager** has identified that core path 4-52/b passes through the site. The route should remain open and unobstructed. It is recommended that the development be made sufficiently permeable to allow for future links and/or connections to the wider path network.
- 5.11 The Council's **Policy and Road Safety Manager** does not object to the application. With regards to surface water drainage the location of the sustainable urban drainage system (SUDS) basin will need to be amended to meet the requirements of Network Rail. Technical details, including cross-sections of the SUDS basin will be required; and the pumping stations required to pump foul and surface water drainage to Dalhousie Road will require HGV access for maintenance. With regard to transportation matters a direct cycling/pedestrian link should be

provided from the train station to the development; an appropriate level of cycle parking provision should be provided; and some of the parking spaces should be provide with publically available electric vehicle charging points.

5.12 Eskbank and Newbattle Community Council objects to the application on the following grounds:

1. The Midlothian Local Development Plan has recently been adopted and contains more than adequate provision for housing development and identifies part of the site as being green belt. No credible reason for departure from the plan has been provided;
2. Food outlets will undermine the viability of existing businesses in the area and in particular in Dalkeith town centre;
3. All of the proposed residential development will take place on existing green belt. This proposal does not satisfy a single one of the requirements in policy ENV1;
4. The design and access statement is extremely poor and includes no details of design at all.
5. It seems likely that the former stable block is within the curtilage of Hardengreen House and is therefore listed; the application should be advertised as involving a listed building;
6. The previously approved conversion scheme for the stable block has long lapsed and a new application would be required if the building was to be converted. The assertion that the proposed housing would support any conversion is spurious;
7. The sewage provision for the site should be addressed before any further consideration is given to the proposals; particular consideration should be given to the capacity of Scottish Water's network that will carry foul water drainage to the Roseberry Treatment Works; and
8. There are existing problems with traffic volume, speed, noise and safety on Dalhousie Road. Any additional traffic generated by the proposal would add to the current problems.

6 REPRESENTATIONS

- 6.1** There has been ten representations objecting on the following grounds:
- Development in the green belt is contrary to policy;
 - The proposed access to the development would involve the use of Edinburgh College land that is currently used to accommodate a landscaping bund intended to screen the existing solar farm;
 - The existing access and connecting roads are very congested at peak times;
 - This application will put further pressure on dwindling countryside and open areas;
 - Retail development at this location will undermine town centres;
 - Development will exacerbate existing traffic problems on Dalhousie Road and at Eskbank Toll roundabout;
 - The development will add to litter and pollution in the area;

- More time should be granted to enable local residents to comment on the application;
- There is no need for additional commercial units in the area as there are vacant units at Hardengreen Buisness Park;
- Open space should be preserved and enhanced to provide access for cycling and walking;
- Insufficient neighbour notification has been carried out;
- Local schools and health facilities are already at capacity;
- The development will have a detrimental impact on local wildlife.
- The Design and Access Statement is extremely poor and includes no details of design; and
- It seems likely that the steading is listed by virtue of being within the curtilage of a listed building; this will impose constraints on what can be developed.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan)

- 7.2 **Policy 2** (Supply and Location of Employment Land) states that the Strategic Development Plan supports the development of a range of marketable sites of the size and quality to meet the requirements of business and industry within the SESplan area. Local Development Plans will support the delivery of the quantity of the established strategic employment land supply as identified. Local Development Plans should also ensure they provide a range and choice of marketable sites to meet anticipated requirements.
- 7.3 **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.
- 7.4 **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.

- 7.5 **Policy 12 (GREEN BELTS)** requires Local Development Plans to define and maintain Green Belts around Edinburgh whilst ensuring that the strategic growth requirements of the Strategic Development Plan can be accommodated. Local Development Plans should define the types of development appropriate within Green Belts.

Midlothian Local Development Plan 2017 (MLDP)

- 7.6 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, including sites in the established economic land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP.
- 7.7 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.8 Policy **ECON1: Existing Employment Locations** seeks to safeguard those sites allocated for economic land uses.
- 7.9 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.10 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.11 Policy **TCR2: Location of New Retail and Commercial Leisure Facilities** states that the Council will apply a sequential town centre first approach to the assessment of such applications. The policy does not refer to or apply to food and drink uses or hot food takeaways.
- 7.12 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.

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.

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.

- 7.13 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.
- 7.14 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.15 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.
- 7.16 Policy **ENV22: Listed Buildings** does not permit development which would adversely affect the character or appearance of a listed building, its setting or any feature of special architectural or historic interest.
- 7.17 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.

Scottish Planning Policy (SPP)

- 7.18 The **SPP (Scottish Planning Policy)** sets out Government guidance in relation to creating a successful sustainable place, supporting economic growth, regeneration and the creating of well-designed places. In relation to supporting business and employment the planning system should:
- Promote business and industrial development that increases economic activity while safeguarding and enhancing the natural and built environments as national assets;

- Allocate sites that meet the diverse needs of the different sectors and sizes of business which are important to the plan area in a way which is flexible enough to accommodate changing circumstances and allow the realisation of new opportunities; and
- Give due weight to net economic benefit of proposed development.

7.19 In relation to managing flood risk and drainage the SPP states that the planning system should promote avoidance of increase surface water flooding through requirements for Sustainable Urban Drainage Systems (SuDS) and that proposed arrangement for SuDS should be adequate for the development.

Historic Environment Policy for Scotland (HEPS)

- 7.20 Policy **HEP2** of the Historic Environment Policy for Scotland (HEPS) states that decisions affecting the historic environment should ensure that its understanding and enjoyment, as well as its benefits, are secured for present and future generations.
- 7.21 Policy **HEP3** of the Historic Environment Policy for Scotland (HEPS) states that plans, programmes, policies and strategies, and the allocation of resources, should be approached in a way that protects and promotes the historic environment. If detrimental impact on the historic environment is unavoidable, it should be minimised. Steps should be taken to demonstrate that alternatives have been explored, and mitigation measures should be put in place.
- 7.22 Policy **HEP4** of the Historic Environment Policy for Scotland (HEPS) states that changes to specific assets and their context should be managed in a way that protects the historic environment. If detrimental impact on the historic environment is unavoidable, it should be minimised.
- 7.23 Policy **HEP5** of the Historic Environment Policy for Scotland (HEPS) states that decisions affecting the historic environment should contribute to the sustainable development of communities and places.

Food and drink and other non-retail uses in Town Centres Supplementary Guidance

- 7.24 The Supplementary Guidance states that not all food and drink uses are provided within town centres; some uses aim to serve more local communities. Provision in local centres is in the interests of sustainability and convenience; it can also encourage small scale business. Food and drink uses will not be permitted outwith town centres and local centres unless it has been demonstrated that there will be no adverse impact on the vitality of nearby town centres.

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: Green Belt

- 8.2 The southern portion of the site (an area of 7735sqm) is on land identified in the MLDP as forming part of the green belt. This area represents approximately 32% of the application site. The indicative layout provided with the application shows the green belt land being used for residential development, public landscaping and a SUDS basin. Development within the green belt will only be supported where it meets one of the following criteria:
- It is necessary to agriculture, horticulture or forestry; or
 - It provides opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
 - It is related to other uses appropriate to the rural character of the area; or
 - It provides for essential infrastructure; or
 - It forms part of development that meets a national requirement or established need of no other site is available.
- 8.3 The proposed development within the green belt does not meet any of the above criteria; there is no policy support for the development within the green belt and the proposal is therefore contrary to policy ENV2 of the MLDP.
- 8.4 The green belt portion of the site is in poor condition (the ground has experienced significant disturbance due to the demolition of the majority of the steading buildings and due to works associated with the construction of the Borders railway); and its size and location make it unlikely that it would be viable for agricultural use. Whilst it is possible that a case could be made for amendment of the green belt boundary at this location, a planning application is not the appropriate method for considering this issue. If the applicant wishes to promote an amendment to the green belt boundary, and the allocation of the site, this should be carried out via the Development Plan process rather than on an ad hoc basis via a planning application.

Principle of Development: Economic Land Allocation

- 8.5 The remainder of the site is within the built-up area of Dalkeith and Eskbank. In addition it is an allocated site that forms part of the established economic land supply. The site is the remaining portion of

a larger site that was allocated in the Midlothian Local Plan 2008. The site was allocated to allow for expansion of the successful Hardengreen Industrial Estate; the majority of the site has been developed for the Edinburgh College, its related solar farm and Eskbank Railway Station car park. The Dalkeith/Eskbank settlement statement contained within the MLDP states that the application site is considered suitable for Class 4 (Business) and Class 5 (General Industry) uses.

- 8.6 The proposed Class 4 (Business) use is compatible with the allocated status of the site. An application relating only to the allocated site and including only Class 4 uses would be acceptable in principle; however the current application includes an indicative plan and a design and access statement that make clear that the applicant's aspirations for the site include some form of residential development on a portion of the allocated site. The indicative layout includes a residential area of 2630 sqm within the allocated site; this represents 19% of the allocated site included within the application.
- 8.7 SESplan policy 2 supports the development of a range of marketable sites of the size and quality to meet the requirements of business and industry within the SESplan area. Local development plans are required to deliver the quantity of strategic employment land as identified; policy STRAT1 of the MLDP seeks the early implementation of all committed development sites and related infrastructure, including sites in the established economic land supply. Residential development on the allocated site is contrary to policy 2 of SESplan and policy STRAT1 of the MLDP.
- 8.8 The design and access statement submitted in support of the application refers to the possibility of ancillary businesses and services being located in units closest to the station. These ancillary businesses and services would be a mix of Class 1 (Shops), Class 2 (Financial, Professional and Other Services) and Class 3 (Food and Drink). Class 2 uses are uses which provide services to visiting members of the public. Examples of Class 2 uses include offices of solicitors, accountants and estate agents; health centres; and surgeries for doctors, dentists and vets. Class 3 uses are uses for the sale and consumption of food and drink on the premises. Examples of Class 3 uses include restaurants, cafes and coffee shops; uses such as hot food takeaways and/or drive through restaurants are considered to be *sui generis* and do not fall within Class 3.
- 8.9 Modern industrial estate and business park developments do sometimes include uses outwith conventional Class 4 or Class 5 uses; small coffee shops or small Class 2 units can be successful additions to predominantly Class 4 or Class 5 developments and can enhance the appeal of such developments by offering employees access to useful services close at hand. Class 2 and Class 3 uses could also enhance the experience of rail travellers and could be a convenient

service for students attending Edinburgh College. To ensure that the services are clearly ancillary to the main Class 4 use it would be appropriate to condition the maximum size of each of the Class 1, 2 and 3 uses; a maximum gross external floor area of 125 sqm for each of Class 1, 2 and 3 would provide units that are clearly ancillary and of a scale that would not impact on the vitality and viability of local town centres.

- 8.10 The indicative site plan that has been submitted with the application shows a site layout that provides 140 car parking spaces. A Class 4 development with 3000 sqm of floorspace would be assessed against Scottish Government parking standards which would require a maximum of 100 spaces for a development of that scale. Whilst the site plan is indicative and would not be binding on any future layouts it would appear to have been prepared with the intention to provide parking provision similar to that required by national parking standards for non-food retail. If planning permission were granted it would be prudent to specify the parking standards that any development would be expected to comply with.

Drainage

- 8.11 The application is supported by a flooding, drainage and surface water strategy which is based on the indicative site layout. The strategy proposes that foul water would be pumped, from a pumping chamber at the western edge of the site, for a distance of approximately 380m to connect with the existing Scottish Water foul water network at Dalhousie Road. The consultation response from Eskbank and Newbattle Community Council has raised concerns about existing foul water drainage within the area. Whilst it is acknowledged that there are local concerns about this issue, it is a matter that is the regulatory responsibility of Scottish Water and as they have not objected to the application it would not be reasonable for the planning authority to refuse an application on this matter.
- 8.12 Assessment of surface water drainage capacity for new developments is a function that lies within the remit of the Council. The application is for planning permission in principle so finalised details of the scale and layout of the development are not provided; however the indicative information that has been provided raises fundamental issues in relation to the surface water drainage strategy. The proposed drainage strategy relies on an attenuation basin in the southern corner of the site, within the green belt, which would provide storage of surface water before discharging to the existing Scottish Water surface water sewer on Dalhousie Road via a pumping chamber.
- 8.13 The location of the attenuation basin is within 10m of Network Rail's boundary and is therefore contrary to one of the conditions that Network Rail have recommended. If the development cannot comply

with the conditions recommended by Network Rail then their response must be considered to be an objection to the proposal.

- 8.14 The consultation response from Scottish Water states that Scottish Water will not accept any surface water connections into their combined sewer systems. Whilst the site is largely within the built-up area and is adjacent to a developed area it is primarily a greenfield site; the response from Scottish Water confirms that such sites will not be considered for connection to the combined network and requests for connection will be refused. Given the consultation responses from both Network Rail and Scottish Water the Planning Authority considers that the drainage strategy provided does not satisfactorily demonstrate that the site can be drained of surface water in a manner that complies with current guidance.

Transportation

- 8.15 The majority of the site is an allocated economic site (with a site area of approximately 1.4 hectares); the settlement statement within the MLDP identifies the allocation as being suitable for either Class 4 (Business) or Class 5 (General Industry) uses. By way of comparison, the existing Hardengreen Industrial Estate/Business Park occupies an area of approximately 3.7 hectares and accommodates a mix of Class 4, Class 5, Class 6 (Storage or Distribution) and Class 11 (Assembly and Leisure) uses. The existing industrial estate/business park operates successfully without causing significant disruption to the local road network. Class 4 and Class 5 uses are higher trip generators than residential uses and accordingly the proposed scale of development does not raise significant issues in relation to its impact on the local road network.
- 8.16 The site is immediately adjacent to Eskbank Railway Station and has excellent public transport links to Edinburgh, other Midlothian towns and the Scottish Borders. The site has the potential to improve active travel links to the station and to provide connections with the existing core path network.

Impact on Hardengreen House (Listed Building)

- 8.17 Hardengreen House is a category C listed building whose curtilage abuts the south eastern boundary of the site; the building was listed on 5 August 1998. The oldest part of the building dates from 1796, there were extensions added in the 1830's and there has been further extensions and alterations since then. The building originally served as a farmhouse and the steading was situated in the green belt land that forms part of the application site; the building is now occupied by a children's nursery. The listing name refers only to Hardengreen House and the listing description, which does not have any statutory status, makes no reference to either the remaining part of the steading or the now demolished parts. Notwithstanding this fact, the remaining

steading building could still form part of the listing if it was considered to have been within the curtilage of the listed building at the time of listing.

- 8.18 The house was listed at the time that application 0656/98 was being assessed and Historic Scotland were consulted on the application. Their response (dated 20 August 1999) advised that the Historic Building Inspectorate had considered the proposal and concluded that they had no formal locus in the case and had no comments to make. As this response was provided approximately 1 year after the listing of the building it must be assumed that Historic Scotland was satisfied that the steading was not listed.
- 8.19 Whilst the steading is not listed there is still potential for the proposed development to have an impact on the setting of the listed building at Hardengreen House. The application is for planning permission in principle so were permission to be granted the finalised details of the site layout would be determined as part of subsequent Matters Specified in Conditions (MSC) application/s; the impact on the setting of the listed building would be a material consideration in the assessment of MSC applications. Hardengreen House sits within a generous plot with areas of woodland between the house and the application site; given the house's location within its curtilage and the available space within the application site the proposed development does not raise significant issues in relation to the setting of the listed building.
- 8.20 When considering the setting of the listed building it is also worth noting that there is an extant permission for the erection of a detached two storey nursery building with a contemporary design adjacent to Hardengreen House. The application was refused on the grounds of its impact on the character and setting of the listed building. However, the Local Review Body considered that the proposed building was compatible with the location and would not distract from the listed building; planning permission was granted by the Local Review Body.

Woodland

- 8.21 An area of woodland at the eastern corner (adjoining the bund for the solar farm to the northeast and woodland associated with Hardengreen House to the southeast) is identified by Scottish Natural Heritage as forming part of their Ancient Woodland Inventory. The area of woodland forms part of a larger area of woodland that extends from Hardengreen to Newbattle Road; the woodland is identified as being long-established (of plantation origin). The indicative site plan shows retention of the existing trees; if planning permission was granted the retention of the trees, once development commenced, could be secured via condition.
- 8.22 There is a Tree Preservation Order (TPO) that applies to the woodland at Hardengreen House. There is a small degree of overlap between the

TPO boundary and the application site boundary and one tree (a lime tree immediately adjacent to the steading building) protected by the TPO is within the application site boundary. The supporting information submitted with the application indicates that redevelopment of the steading building would be the subject of a separate planning application.

Core Path

- 8.23 Core Path 4-52/b passes through the site at the southernmost edge. The path links Dalhousie Road to the Dalkeith to Penicuik cycle route. The path is sited at the very edge of the site and it would be unlikely to be affected by development within the site; the indicative site plan identifies a potential route for a path to link the core path to the station.

Design and Access Statement

- 8.24 The application is supported by a document described as a design and access statement. Applications for planning permission in principle (PPP) do not assess details of design, these are considered in subsequent MSC applications, and there is no statutory requirement for an applicant to submit a design and access statement with a PPP application. The document submitted has relatively little detail in relation to design matters and focuses on broader planning policy issues. The information provided within the document is sufficient to assess the type of permission that is being applied for. If planning permission in principle was granted the detail of the layout, scale, design, finish materials and landscaping would be assessed in subsequent applications.

Neighbour Notification

- 8.25 Neighbour notification was sent to all notifiable addresses within 20 metres of the boundary of the application site. This neighbour notification complies with the statutory requirements set out in regulation 18 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

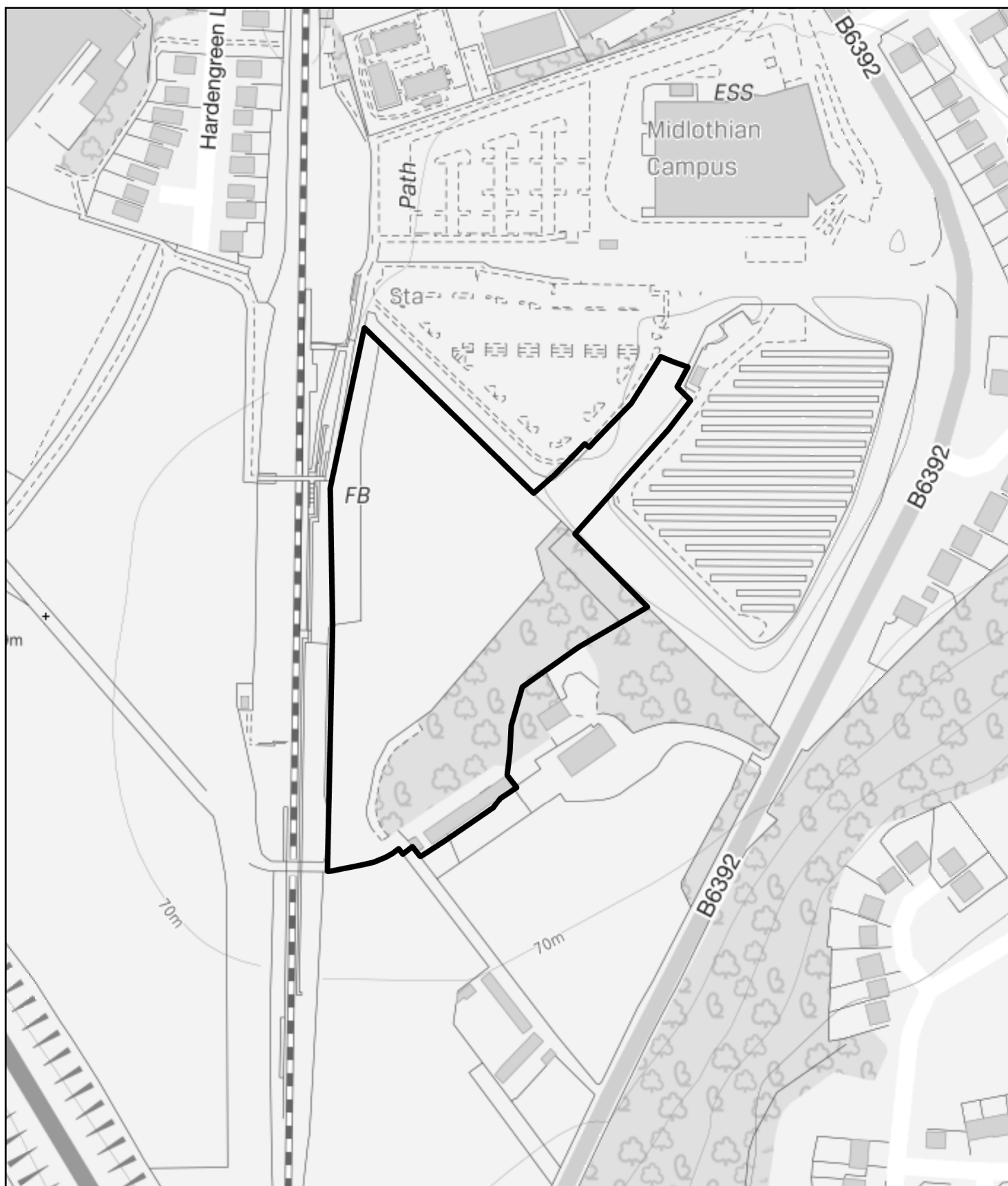
9 RECOMMENDATION

- 9.1 That planning permission be refused for the following reasons:
- 1. The proposed residential use is not in accordance with site e11's allocation in the development plan for Class 4 (Business) and Class 5 (General Industry) uses. The proposal is therefore contrary to policy 2 of the Edinburgh and South East Scotland Strategic Development Plan 2013; and to policies STRAT1 and ECON1 of the Midlothian Local Development Plan 2017.*

2. *The land not forming part of allocated site e11 is within the green belt. The proposed development does not comply with any of the justifications for development set out in policy ENV1 of the Midlothian Local Development Plan 2017. The proposal is therefore contrary to policy 12 of the Edinburgh and South East Scotland Strategic Development Plan 2013; and to policy ENV1 of the Midlothian Local Development Plan 2017.*
3. *It has not been demonstrated that the site can be drained of surface water in a manner that complies with Scottish Planning Policy, Scottish Water guidance and Network Rail requirements. The proposal is therefore contrary to policy ENV10 of the Midlothian Local Development Plan 2017.*

Dr Mary Smith
Director of Education, Communities and Economy

Date:	7 June 2019
Application No:	19/00099/PPP
Applicant:	Hardengreen Estates Limited, C/o Pritchett Planning Consultancy, PO Box 8052, Edinburgh, EH16 5ZF
Agent:	Phil Pritchett, Pritchett Planning Consultancy, PO Box 8052, Edinburgh, EH16 5ZF
Validation Date:	2 April 2019
Contact Person:	Graeme King
Tel No:	0131 271 3332
Background Papers:	17/00670/PAC



Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Application for planning permission in principle for Class 4 (Business) use with ancillary Class 1 (Shops), Class 2 (Financial, professional and other services) and Class 3 (Food and drink) uses; residential development; and associated access, parking, landscaping and drainage infrastructure Land to The North of Hardengreen House, Dalkeith

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No: 19/00099/PPP

Scale: 1:2,500
Page 94 of 118





SECTION 42 APPLICATION 19/00223/S42 TO AMEND CONDITION 9 OF PLANNING PERMISSION 14/00203/DPP (TO EXTEND THE TIME PERIOD FOR COMPLETION OF THE INFILLING OF LAND BY A FURTHER 36 MONTHS) AT LAND BETWEEN PENTLAND BURN AND THE A720 CITY BYPASS, PENTLAND ROAD, DAMHEAD

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** In August 2014 planning permission was granted for the infilling of land at land between Pentland Burn and the A720 City Bypass, Pentland Road subject to conditions. This Section 42 application seeks to amend condition 9, which specifies the duration of the operations, to allow an additional 36 months for completion of the operations. There have been no representations and there have been consultation responses from the Health and Safety Executive, Historic Environment Scotland, Scotia Gas Networks, Scottish Environment Protection Agency, Scottish Natural Heritage, Transport Scotland, the Council's Archaeology Advisor, the Council's Biodiversity Advisor and the Council's Policy and Road Safety Manager.
- 1.2** The relevant development plan policies are policy 12 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies ENV1, ENV4, ENV7, ENV15, ENV18 and ENV25 of the Midlothian Local Development Plan 2017.
- 1.3** The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The main part of application site is a 15 hectare field situated approximately 1.1 km west of Loanhead. The site is adjacent to the A720 Edinburgh City By-pass. Access to the field is via a 710m long unsurfaced track off Pentland Road. The track joins Pentland Road at a point 280m south east of the A702/A703/Pentland Road junction at Hillend.
- 2.2** The site sits within agricultural land within the green belt. The fields surrounding the site are used for grazing and growing of crops. The

Damhead area comprises dispersed dwellings and small agricultural holdings.

3 PROPOSAL

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 (hereafter referred to as the Act), is to extend the timeframe for completion of the infilling operations by a further 36 months.
- 3.2 A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore if planning permission is granted for this application it will supersede planning consent 14/00203/DPP.
- 3.3 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.
- 3.4 Planning permission was granted in 2014 for a scheme to improve the drainage of a 15 hectare field by importing inert soil and stone material in order to raise the level of the land by two metres. It was envisaged that the scheme would result in approximately 190,000 cubic metres (323,000 tonnes) of material being brought onto the site. Condition 9 of the planning permission granted consent for a period of 60 months from the date of permission. The consent is due to lapse in September 2019.
- 3.5 The infill operations have not proceeded as quickly as was originally envisaged and consent is now being sought for an additional 36 months of infilling operations. The infill area and depth will remain as per the original consent.

4 BACKGROUND

- 4.1 A pre application consultation (reference 13/00593/PAC) for the infilling of land on land between Pentland Burn and the A720 City Bypass was carried out in August – October 2013. This consultation relates to the original proposal that was later subject to application 14/00203/DPP. A new consultation process is not required for a Section 42 application.

- 4.2 An Environmental Impact Assessment (EIA) Screening Opinion request, 13/00162/SCR, for the infilling of land was submitted 7 March 2013. The applicant was advised that an EIA was required under schedule 2 of the regulations.
- 4.3 Planning permission 14/00203/DPP for the infilling of land at land between Pentland Burn and A720 City Bypass was granted in September 2014. The permission was implemented and operations are ongoing. The current application relates to this site and permission.
- 4.4 As part of the application process for the current planning application an EIA screening was carried out to comply with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The screening conclusion was that an environmental impact assessment was not required and therefore no EIA Report was requested.
- 4.5 The area of the field is 15 hectares. As the site area exceeds the two hectare threshold set out in Class 9 of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 the application is considered to be a major development.

5 CONSULTATIONS

- 5.1 The **Health and Safety Executive** does not object to the application.
- 5.2 **Historic Environment Scotland** does not object to the application.
- 5.3 **Scotia Gas Networks (SGN)** does not object to the application and are satisfied that the high pressure gas pipeline that passes through the site is not at risk with the works and that agreement has been made to consider appropriate protection measures as works approach that area. The extension to the timescale does not concern SGN, they will continue to monitor the site as works progress towards the pipeline.
- 5.4 **Scottish Environment Protection Agency** does not object to the application.
- 5.5 **Scottish Natural Heritage** does not object to the application.
- 5.6 **Transport Scotland** does not object to the application.
- 5.7 The Council's **Archaeology Advisor** has confirmed that they have no record of any intrusive archaeological work being undertaken within the site. Given the amount of infilling that has been carried out there is little value in attempting to investigate or record any archaeology.
- 5.8 The Council's **Biodiversity Advisor** does not object to the application.

- 5.9 The Council's **Policy and Road Safety Manager** does not object to the application.

6 REPRESENTATIONS

- 6.1 No representations have been received in connection with this application.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan)

- 7.2 **Policy 12 (GREEN BELTS)** requires Local Development Plans to define and maintain Green Belts around Edinburgh whilst ensuring that the strategic growth requirements of the Strategic Development Plan can be accommodated. Local Development Plans should define the types of development appropriate within Green Belts.

Midlothian Local Development Plan 2017

- 7.3 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.

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.

- 7.4 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.

- 7.5 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.
- 7.6 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.7 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.
- 7.8 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.

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.
- 8.2 Approximately 65% of the intended infill area has currently been infilled. Granting consent to amend condition 9 would allow an additional 3 years in which to complete the operations and allow time for sufficient material to be brought onto the site to achieve the previously consented finished landscape. None of the consultees raised significant issues about the operations that have been carried out so far and none of the consultees have objected to the application.
- 8.3 Two local community councils (Damhead and District; and Loanhead and District) were consulted; no comments were received from the community councils. The site has been the subject of periodic enforcement enquiries, primarily relating to mud and dust being deposited on local roads. The planning authority and the roads authority are satisfied that the applicant is complying with relevant conditions; and the site is the subject of continuing periodic enforcement monitoring. Neither the Council's Policy and Road Safety Manager nor Transport Scotland raised any concerns in their consultation responses.

- 8.4 The principle of this form of development at this location was established by the granting of planning permission 14/00203/DPP. Granting the Section 42 consent would allow the existing operations to continue for an appropriate time period to complete the works. There has been no material change in planning circumstances since the granting of the original permission which would warrant refusal of the Section 42 application.
- 8.5 As is noted above a Section 42 consent is a new permission in law and planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply. A number of conditions that were attached to the original permission were pre-commencement conditions that required the submission of additional information, where these conditions have been discharged it will not be necessary to include the conditions in the new permission.

9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The proposed re-engineering of the ground levels will improve the condition of the land for agricultural use, will introduce an area of improved wetland habitat, will have no long term adverse impacts upon landscape quality or ecological value of the site, and any adverse impacts upon traffic or residential amenity will be both of an acceptable level and of a temporary nature. The proposal therefore complies with the policies of the Midlothian Local Development Plan 2017.

Subject to the following conditions:

1. Operation of the site shall comply with the access road details; road cleaning method; and traffic management plan included in the approved 'Supporting Statement to Discharge Conditions'.

Reason: *In the interest of road safety, and to reduce the possibility of loose material being carried from the site onto the public road, and to ensure that the movement of heavy goods vehicles is safely managed and so as to mitigate any risk to pedestrians and other road users and to ensure that vehicles adhere to the most appropriate route to the site.*

2. Operation of the site shall comply with the 'Dust Management Plan' included in the approved 'Supporting Statement to Discharge Conditions'.

Reason: *To prevent dust particles from being blown onto the Trunk Road Network.*

3. The resultant ground levels after infilling and restoration shall at no

point exceed the original ground levels by any more than 2.0 metres.

Reason: *In order to protect the landscape character of the area, and to accord with the terms of the SEPA license exemption.*

4. Only inert soil and stone shall be used for infilling purposes and the material shall arrive at the site in a condition suitable for purpose and no crushing or breaking up of material shall be carried out on or adjacent to the site.

Reason: *To ensure that only appropriate materials are used for land raising and to ensure there is no pollution of the ground or nearby watercourses and prevent any contamination that may lower the quality of the soil for agriculture or wildlife.*

5. Within 6 months of the cessation of infilling operations the drainage strategy detailed in the approved 'Supporting Statement to Discharge Conditions' shall be implemented in full.

Reason: *In order to ensure that restoration is successfully carried out and adequate drainage provided.*

6. This planning permission for land raising operations is granted for a limited period until Midnight 10 September 2022 (36 months from the expiry of application 14/00203/DPP), with restoration following immediately after this period.

Reason: *Due to the temporary nature of the proposed development and to mitigate the visual impact on the locality.*

7. Within 12 months of the cessation of infilling operations the site restoration shall be implemented in full, as per the details shown on the approved 'Re-instatement Plan' (Drawing no. 8.1) and the approved Sections (Drawing no. 8.2).

Reason: *In order to ensure that restoration is successfully carried out and adequate drainage provided.*

8. No operations shall take place outwith the hours of 08.00 to 18.00 on Mondays to Fridays inclusive and 08.00 to 13.00 on Saturdays. Operations shall include offloading and spreading of fill material, final restoration, initial preparation of the site, wheel washing, vehicle servicing, plant delivery, and the movement of vehicles entering or leaving the site. No work shall be carried out on Sundays, public holidays or bank holidays.

Reason: *To minimise the effect the impact of the development on the amenity of residents living in the vicinity of the site or the route to the site.*

9. The free-field Equivalent Noise level (LA_{eq} , 1 hour) due to the operations shall not exceed 45dB as recorded at any existing noise sensitive property, as detailed in section 17.2 of the Environmental Statement.

Reason: *To minimise the effect the impact of the development on the amenity of residents living in the vicinity of the site or the route to the site.*

10. At all times that the site is operational; including site preparation, land raising operations and site restoration, all reasonable measures shall be taken to minimize the transmission of dust from the site. These measures include all the mitigation proposals detailed in Section 17.4 (Air Quality) of the Environmental Statement. Where justified dust complaints are received, mitigating action, to be agreed in writing with the planning authority, shall be carried out as soon as is practicable.

Reason: *To minimise the effect the impact of the development on the amenity of residents living in the vicinity of the site or the route to the site.*

11. Within 12 months of the granting of this planning permission the applicant or their successors shall submit details of the proposed wetland habitat area detailing all ground engineering works, final levels, details of all water bodies, and a full specification of all planting, to be agreed by the planning authority in consultation with relevant wildlife organisations.

Reason: *In order that the wildlife interests of the site are enhanced or at least preserved.*

12. The wetland area agreed under condition 11 above shall have been fully implemented to the agreed specification within 12 months of the completion of land raising operations. The wetland area shall thereafter be monitored for a period of no less than 5 years during which time any loss of planting or deterioration in the condition of the wetland shall be made good by the applicant or their successors.

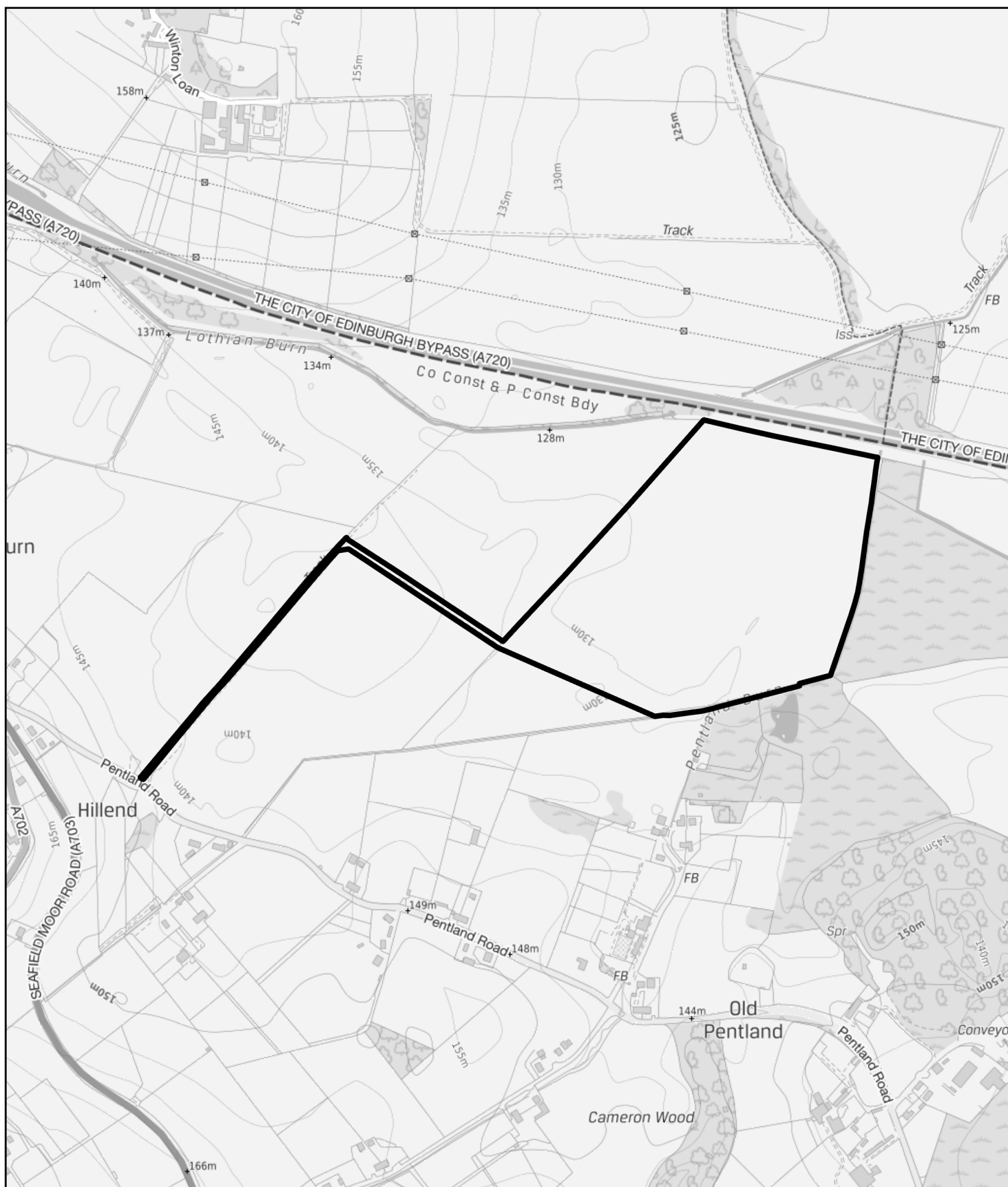
Reason: *In order to ensure that the wetland area becomes successfully established and provides the wildlife benefits that will ensure that the wildlife interests of the area are enhanced or at least preserved.*

13. No trees or hedges within or adjoining the site shall be removed or lopped without the prior written approval of the planning authority.

Reason: *In order to protect trees on site and in the interest of local landscape character.*

Dr Mary Smith
Director of Education, Communities and Economy

Date:	7 June 2019
Application No:	19/00223/S42
Applicant:	Mr David Hamilton, J Haig Hamilton and Sons, West Fortune Farm, Drem, North Berwick
Agent:	Alistair Smith, AMS Associates Limited, 2 Shorehead, Kingskettle, Cupar
Validation Date:	27 March 2019
Contact Person:	Graeme King
Tel No:	0131 271 3332
Background Papers:	14/00203/DPP



Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Section 42 application to amend condition 9 of planning permission 14/00203/DPP (to extend the time frame for completion by a further 36 months) at Land between Pentland Burn and A720 City Bypass, Pentland Road, Edinburgh

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No: 19/00223/S42

Scale: 1:7,500
Page 104 of 118





**APPLICATION FOR PLANNING PERMISSION 18/00741/DPP FOR
ERECTION OF DWELLINGHOUSE/CAFÉ AND AMENITY BUILDING; THE
SITING OF FIVE YURTS; THE FORMATION OF A POND; AND
ASSOCIATED WORKS ON LAND AT NETHERTON, EAST OF THE A701,
PENICUIK**

Report by Director of Education, Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of a dwellinghouse/café and amenity building; the siting of five yurts; the formation of a pond; and associated works on land at Netherton, east of the A701, Penicuik. There have been nine representations from six different households and consultation responses from Scottish Water, Howgate Community Council, the Council's Environmental Health Manager and the Council's Policy and Road Safety Manager.**
- 1.2 The relevant development plan policies are RD1, RD2, VIS2, ENV6, ENV9 and ENV10 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to grant planning permission subject to conditions.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site lies to the east of the A701 and consists of gently undulating rough grazing with some areas, especially in the westernmost part, having a high water table (areas of reed grasses). The field boundaries are mainly made up of post and wire fencing with a line of deciduous and coniferous trees (mainly Scots pine) growing on both sides of the access road to Netherton House. There is a watercourse running through the site from south to north. This watercourse feeds into the Black Burn which is a tributary of the River North Esk. There is a power line on wooden pylons crossing the site from Cockburn Cottage in the south to Netherton House in the north. An area of woodland planting, covering approximately 6.1 hectares, was planted in 2018; the woodland planting is enclosed by 1.245 kilometres of deer fencing.**
- 2.2 The existing house at Netherton is a detached two storey building, with upper accommodation served by dormers. The house sits within a curtilage of 0.45 hectares; the house and its curtilage does not form**

part of the application site. To the east of the house is a paddock of 0.6 hectares; there are two Nissen hut outbuildings within the paddock. The larger building measures 165 sqm and the smaller building measures 95 sqm. There is a 140m long shared unsurfaced access track that provides access to the application site and the existing house. A further 120m long unsurfaced access track provides access from the shared access to the Nissen huts.

3 PROPOSAL

3.1 There are 5 elements to the proposal:

- A café/dwellinghouse comprising a timber clad building housing a café and a one bed dwellinghouse. The proposed building is 19.5m wide, 9m deep and has a maximum height of 7.3m. It is a modern Finnish design timber kit house and will be situated south of the access track approximately halfway between the A701 and the existing house at Netherton;
- An amenity building comprising a single storey timber building measuring 13.8m wide, 6.6m deep and 4.8m high. The building will act as the hub building for a glamping business and will provide showers, a sauna, a kitchen area and a small reception/lounge space. This building will be situated 140m east of the existing house;
- The siting of five yurts, which are timber framed structures clad in canvas and sited on timber decking. Two of the yurts will be 5.5m in diameter; the remaining three will be 4.9m in diameter;
- The formation of a pond for wild swimming measuring 18m long, 8m wide and a maximum depth of 2m. A wooden jetty will provide access to the central swimming area; and
- Three parking areas will be formed. The café will be served by parking adjacent to the entrance to the site. The house will be served by parking adjacent to the shared access track. The glamping and pond will be served by parking adjacent to the access track for the existing Nissen huts located on the site.

4 BACKGROUND

- 4.1 Application 09/00325/OUT for outline planning permission for the erection of a dwellinghouse at land to the southwest of Netherton House was withdrawn in December 2009.
- 4.2 Application 09/00326/OUT for outline planning permission for the erection of a dwellinghouse at land to the north of Cockburn Cottage was withdrawn in December 2009.
- 4.3 A pre application consultation (reference 10/00417/PAC) for residential development at land to the south of Netherton Cottage was carried out in August – October 2010. This consultation relates to the application site that was later the subject of application 11/00579/DPP.

- 4.4 A pre application consultation (reference 11/00560/PAC) for residential development to the south of Netherton House was carried out in August – October 2011. This consultation relates to the application sites that were later the subject of applications 12/00030/PPP and 12/00032/PPP.
- 4.5 Application 11/00579/DPP for the erection of a dwellinghouse at land to the south of Netherton Cottage was granted planning permission in August 2012.
- 4.6 Application 12/00030/PPP for the erection of a dwellinghouse at land to the southwest of Netherton House was granted planning permission in May 2016. This permission relates to a plot that includes the site of the dwellinghouse/café that forms part of the current application. The consent was not implemented and has now expired.
- 4.7 Application 12/00032/PPP for the erection of a dwellinghouse was withdrawn in May 2016. The application related to a plot to the south of application 12/00030/PPP.
- 4.8 Application 15/00629/DPP for the erection of a dwellinghouse and formation of an access track at land at Netherton was granted planning permission in January 2016. This permission relates to the erection of a house on land to the east of the existing two Nissen huts. Work started on the access track in June 2017, however work has not yet started on the house.
- 4.9 A pre application consultation (reference 19/00252/PAC) for residential development and associated access, drainage infrastructure and open space at land at Wellington School was submitted in March 2019 and relates to a former residential school situated 160m south of the southern boundary of the current application site.
- 4.10 The application has been called to Committee for consideration by Councillor McCall to consider the concerns raised by local residents and the Howgate Community Council.

5 CONSULTATIONS

- 5.1 **Scottish Water** does not object to the application, but state that this does not confirm that the site can be serviced.
- 5.2 **Howgate Community Council** objects to the application on the following grounds:
- The application could result in three houses at the Netherton low density rural housing site contrary to policy RD2;
 - There is no scope for additional development or alternative development in terms of a retail outlet, café and associated car park;

- Yurts, a business hub (*sic*) and car park do not enhance the landscape and are out of character with the rural setting;
- The vehicular access to the site is not safe;
- The application should be accompanied by a Flood Risk Assessment; and
- Foul and surface water drainage should be considered in conjunction with a Flood Risk Assessment.

5.3 The Council's **Environmental Health Manager** does not object to the application and has confirmed that the siting of five yurts may require a licence under the Caravan Sites Control and Development Act 1960. As the food business and camping provision will be supplied by a private water supply it is recommended that a condition is attached to any grant of planning permission requiring the applicant to demonstrate that there is a sufficient supply of potable water.

5.4 The Council's **Policy and Road Safety Manager** does not object to the application. However requests/states:

- Details of the proposed car park at the proposed house/café should be submitted for approval;
- Any advertising signage required for the new business should not encroach into the drivers visibility splay at the site entrance; and
- The SEPA flood maps do not identify this area as being at flood risk and the formation of a below ground level pond/swimming area within the development does not raise any major flooding issues.

6 REPRESENTATIONS

6.1 There has been nine representations from six different households objecting on the following grounds:

- There are no links to the local community;
- There is concern about the scale of development taking place and proposed in the local area;
- There is significant flora and fauna in the area; the natural wildlife of the area should remain intact;
- There are ongoing issues with services (sewage, water, electricity) in the area and further developments will put further pressure on these services;
- The glamping proposal will have a detrimental impact on the amenity of local residents due to noise from visitors and cars; smoke from campfires; and lights from car headlights;
- The yurts could become long term residences;
- The use of the land for glamping will cause disruption to the wildlife in the area;
- The width and surface condition of the existing access track is insufficient to accommodate the proposed development;
- The existing track will not provide safe pedestrian access to the proposed developments;

- Increased pedestrian activity on the site will have a detrimental impact on the amenity of the neighbouring property;
- The site has poor access to public transport;
- The yurts will be a prominent feature in the landscape that will be out of character with the surrounding area;
- Insufficient detail has been provided on the proposed campsite.
- Clarification is sought on the location of the house approved by planning permission 15/00629/DPP;
- The MLDP supports two houses at the location; there is no support for the hub building;
- The application should be supported by a Flood Risk Assessment;
- Insufficient details have been provided of foul and surface water drainage;
- There are existing problems with water pressure in the area; the HOUS5 Supplementary Planning Guidance recommends that an appropriate water storage system be provided for commercial premises;
- Use of the land and buildings for tourism related uses is not compatible with the Low Density Rural Housing policy;
- The car park will have a detrimental impact on the visual character of the area;
- The weather in the area undermines the viability of a glamping business; and
- A photomontage of the five yurts should be submitted to allow assessment of their visual impact.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **RD1: Development in the Countryside** states that 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; or
 - it accords with policies RD2, MIN1, NRG1 or NRG2; or
 - it accords with the Council's Supplementary Guidance on *Housing Development in the Countryside and Green Belt (which was adopted by the Committee at its meeting in May 2019 subject to notify Scottish Ministers)*.
- 7.3 The section on Business in the Countryside states that development opportunities that will enhance rural economic development opportunities will be permitted if:

- They are of a scale and character appropriate to the rural area and well integrated into the rural landscape;
- They are capable of being serviced with an adequate and appropriate access;
- They are capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply; unacceptable and unnecessary discharges to watercourses should be avoided;
- They are accessible by public transport and services (where appropriate);
- They are not primarily of a retail nature; and
- They do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.

7.4 Policy **RD2: Low Density Rural Housing** provides support for new low density housing linked to landscape enhancements. The MLDP identifies 4 sites in Midlothian where this policy applies; the application site is one such location. The suitability of low density rural housing proposals in the identified areas will be assessed against the following criteria:

- Proposals should demonstrate that the landscape and biodiversity value of the site is enhanced by the development;
- The design and layout of the development should be appropriate to the rural setting; and
- Proposals should demonstrate that they can be served by safe access arrangements, and a public sewerage and water supply (or acceptable private arrangements if public provision is not available).

The establishment of small-scale rural business in association with the low density housing is supported in principle, subject to the proposals satisfying policy RD1 Development in the Countryside.

7.5 Policy **VIS2: Tourist Accommodation** states that proposals for the development of hotels or self-catering tourist accommodation will be supported, provided that the proposal:

- Is in scale and keeping with the character of the local area;
- Is sited and designed to respect its setting and is located in an unobtrusive manner within the rural landscape (where applicable);
- Is well located in terms of the strategic road network and maximises public transport access; and
- Is in accordance with one of the other sections of policy VIS2.

7.6 The section on Self-catering tourist accommodation states that such proposals will be permitted where:

- The proposal is not in the Green Belt unless linked to some related existing development;
- The proposal is of a character and scale in keeping with the rural setting and can be located in an unobtrusive manner; and

- The applicant can demonstrate that the proposal is for the furtherance of a viable long-term business.
- 7.7 Policy **ENV6: Special Landscape Areas** states that development proposals will only be permitted where they incorporate high standards of siting and design and where they will not have significant adverse effect on the special landscape qualities of the area.
- 7.8 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.9 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) which ameliorates the water to an acceptable quality prior to release to the wider water environment.

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.

Principle of Development

- 8.2 The majority of the site is identified in the MLDP as being a site where low density rural housing will be considered. Two houses have previously been approved, in relation to this policy, at the application site. A plot to the east of the existing house has detailed planning permission for a house and this permission (reference 15/00629/DPP) has been partially implemented; this plot is referred to by the applicant as Black Barn. A plot to the south of the access track had planning permission in principle (reference 12/00030/PPP); however the timeframe for submitting Matters Specified in Conditions applications expired on 12 May 2019 and as such the permission has lapsed.
- 8.3 The applicant owns both plots; his intention is to build the house at Black Barn as permanent accommodation for him and his family. While the applicant is not currently resident in Midlothian he has owned the site at Netherton since 2015 and has planted approximately 16,500 trees across 8.5 hectares site as the first phase of the biodiversity enhancements that are fundamental to the low density rural housing

concept. The main area of tree planting is within a 6.1 hectares area that will grow to become a woodland; this area is enclosed by 1.245 kilometres of deer fencing. The remaining planting takes the form of shelter belt planting at the edges of the site and scattered glades across the remainder of the site. The woodland planting that has been carried out has highlighted the fact that the biodiversity improvements will require ongoing maintenance to ensure that they develop to their full potential and this will require an ongoing income stream.

- 8.4 The applicant's original intention had been to sell the other house plot to help fund the biodiversity improvements; however he has now concluded that a small business would provide a better prospect of an ongoing income stream. Rather than building a conventional house on this southern plot the applicant is now seeking consent for the erection of a building that can accommodate both a café and living accommodation for the café manager. The chosen building is a Finnish timber kit house whose interior can be easily adapted to provide the necessary uses; should the café prove unsuccessful it would be a relatively straightforward process to convert the interior to an entirely residential use, subject to planning permission for a change of use. The chosen location for the house/café is the same as housing plot 12/00030//PPP, the house/café has been sited on this plot to ensure that it would not be possible to implement both the current application and the earlier permission (now lapsed); the proposal will not result in third house on the Netherton low density rural housing site.
- 8.5 The Council's adoption of the low density rural housing policy in the 2008 Midlothian Local Plan was a new initiative by the Council which sought to provide opportunities for people to live in the countryside and operate rural businesses whilst at the same time providing benefits to the wider community from improved landscape and biodiversity. Four sites were identified in the 2008 plan and these were carried over into the MLDP; whilst no houses have been built at Netherton it is the low density rural housing site which has seen the most progress in terms of development and planting.
- 8.6 Supplementary Planning Guidance (SPG) on Low Density Rural Housing was adopted by Midlothian Council on 6 October 2009; the MLDP commits the Council to adopting updated Supplementary Guidance (SG) on Low Density Rural Housing in due course. In the absence of a new SG the previous SPG is a material consideration, however as time progresses the weight given to the SPG diminishes. The SPG provided some guidance on potentially acceptable forms of rural diversification that could be associated with low density rural housing sites. Craft industries, equestrian businesses and tourist or day visitor orientated development were all considered to be acceptable. Whilst tourist accommodation (other than bed and breakfast accommodation within houses) was considered to be not likely to be acceptable, it must be acknowledged that the SPG was written in 2008/2009 and that glamping was still an emerging concept at the time.

- 8.7 The size of the proposed café/dwellinghouse building will ensure that the scale of café use will be in keeping with the rural character of the surrounding area. The scale of the café can be secured by a condition specifying the maximum floor area. The glamping use will consist of five yurts and a domestic sized building that will house washing facilities, a small lounge and a small sauna. The scale of the glamping use is in keeping with the scale of the rural diversification activities that were originally envisaged as being compatible with the low density rural housing concept and meets the requirements of policy VIS2.

Flood Risk

- 8.8 A number of the objections have made reference to the need for the application to be supported by a Flood Risk Assessment (FRA). The assessment of flood risk in relation to planning applications is primarily a matter that is assessed by the local authority. For sites that are identified on SEPA's flood risk map as being at high risk of flooding it is necessary to consult SEPA, for all other sites the assessment is carried out by the local authority. The SEPA flood risk map does not identify any flood risk associated with the watercourse that runs through the Netherton site. The Council's flood risk responsibilities fall within the portfolio of the Policy and Road Safety Manager who has confirmed that the SEPA flood maps do not identify any risk and has not recommended the submission of a FRA; as the section of the Council that would have responsibility for assessing any FRA does not require the submission of one it would be unreasonable to request that the applicant submit a FRA.

Drainage/water supply

- 8.9 The application form states that the development will be served by private foul water drainage with each building (and the previously consented Black Barn) being served by its own septic tank and soakaway. The locations of the soakaways will be determined following percolation tests. The provision of safe and appropriate foul water drainage is primarily a matter that is assessed as part of the building warrant process rather than the planning process; it is common development practice to finalise details on these matters after planning permission has been granted. Details of the foul water drainage can be secured via condition.
- 8.10 The application form also states that the development will be connected to the public water supply. Scottish Water will not enter into detailed discussions with applicants until planning permission has been granted.

Vehicle access

- 8.11 The existing access arrangements onto the A701 are acceptable for a development of this scale; the Council's Policy and Road Safety Manager has not recommended any improvements to the junction. The

maintenance and upkeep of the access track from the junction to the existing house and the proposed plots is a private legal matter between the various parties with rights of access across the track.

Building Design

- 8.12 The surrounding landscape is gently rolling with wide horizons and open views. Buildings in the surrounding area are obvious features within the landscape and the various housing groups at Springfield, Wellington and Netherton give the surrounding area a distinctive character of a scattered settlement rather than that of a traditional tight village street pattern. The addition of two additional buildings and five yurts is in keeping with the scattered pattern of development in the surrounding area.
- 8.13 The café/house building will be a modern design with mono-pitch roofs and large areas of glazing; the building will have a modern 'Scandinavian' character, this is an approach that has been used successfully at rural sites throughout Scotland. The building will be timber clad and its scale will be in keeping with other houses in the surrounding area. The glamping hub building will also be timber clad, it will have a conventional pitched roof and its scale will ensure that it will not be overbearing when viewed from the A701. The yurts will be colourful circular structures whose shape and appearance will clearly indicate their intended use; while they will be visible it will be obvious that they are not additional houses in the landscape but examples of rural diversification. The extensive tree planting that has taken place will over time mean that the buildings and yurts become less obvious features in the landscape as the woodland matures.

Amenity

- 8.14 The existing house at Netherton has an unusual location with the house plot being entirely surrounded by land in the ownership of another party (the applicant). The Netherton plot has been an allocated low density rural housing plot since 2008 and it has been clear since then that there will be some change in the immediate surroundings. Whilst the SPG did not identify glamping as a potential rural diversification option it did make clear that visitor/tourism activities were considered acceptable.
- 8.15 The scale of the café and the glamping business are both in keeping with the scale of the Netherton low density rural housing site and they have been sited to provide as much privacy as possible for the occupants of the existing house at Netherton. The café/house will be 60m from the existing house and the existing long established trees along the drive and around the house will provide screening. The glamping hub and its associated outdoor swimming pond will be 140m from the house at Netherton; the yurts will be further away. The closest new feature will be the parking area for the glamping which will be 50m

from the house; the location for the parking has been chosen to ensure that the existing new access to Black Barn can be utilised for both that house and the glamping.

- 8.16 Netherton is a rural location but it is situated on a busy A road and in an area with a variety of forms of development including housing, farms, peat extraction and a sports pitch company. Whilst the proposed development may result in some loss of amenity to the occupants of Netherton, the impact will not be significant enough to warrant refusal of the application.
- 8.17 It would be reasonable to attach conditions to any grant of planning permission to control the scale of the café and to ensure that the yurts are only used as temporary accommodation. The café use can be controlled by conditioning that the floorspace does not exceed the area shown on the proposed floorplans. The earliest possible date for Easter in the Western Christian calendar is March 22; restricting the use of the yurts from March 14 to September 30 will allow the applicant to operate a conventional Easter to Autumn season while safeguarding the amenity of local residents.

9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The character and appearance of the development are in keeping with the character of the surrounding area. Due to the scale and nature of the development it will not have a significant detrimental impact on the amenity of local residents. The proposal complies with the aims of policies RD2 and VIS2 of the Midlothian Local Development Plan 2017.

Subject to the following conditions:

1. The development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the Planning Authority. The scheme shall contain details of the proposals to deal with any contamination and include:
 - i. The nature, extent and types of contamination on the site;
 - ii. Measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii. Measures to deal with contamination encountered during construction work; and
 - iv. The condition of the site on completion of the specified decontamination measures.
2. On completion of any required decontamination/ remediation works, referred to in Condition 1, and prior to any building on the site being occupied, a validation report shall be submitted to the

Planning Authority confirming that the works have been carried out in accordance with the approved scheme. No building on the site shall be occupied unless or until the Planning Authority have approved the required validation.

Reason for conditions 1 and 2: *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.*

3. Prior to development commencing the following details shall be submitted to and approved in writing by the Planning Authority:
 - a. A scaled site plan showing existing and finished ground levels and floor levels for the dwellinghouse/café, amenity building, pond and decking, parking areas and access tracks;
 - b. Details of a scheme for the treatment and disposal of foul water drainage from the dwellinghouse/café and amenity building;
 - c. Details of a scheme for the treatment and disposal of surface water drainage from the dwellinghouse/café, amenity building and parking areas;
 - d. Details of the proposed water supply; and
 - e. Details of the car parking provision for the café, dwellinghouse and glamping.

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

Reason: *To safeguard the character and amenity of the surrounding area.*

4. Prior to the external finish materials being applied to the dwellinghouse/café and amenity building details of the finish materials, including samples where requested, shall be 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 by the Planning Authority.

Reason: *To ensure that the finish materials respect the character of the building designs and of the surrounding area.*

5. The yurts shall only be used between the dates of March 14 and September 30.
6. The yurts shall only be used as short term accommodation and shall at no time be used as a main place of residence. The

maximum stay of any person in the accommodation shall be four weeks in any accommodation season.

Reason: *To define the terms of the consent, to ensure the yurts are only used as temporary accommodation and to safeguard the amenity of local residents.*

7. The café use shall be restricted to a maximum internal floor area of 120 square metres and a maximum external decking area of 35 square metres.

Reason: *To ensure that the scale of the café is in keeping with the character of the surrounding area and to safeguard the amenity of local residents.*

Dr Mary Smith
Director of Education, Communities and Economy

Date: 7 June 2019

Application No: 18/00741/DPP

Applicant: Mr Tom Moon, ReforestNation, Meadow, 62
Findhorn Foundation, Forres, Moray

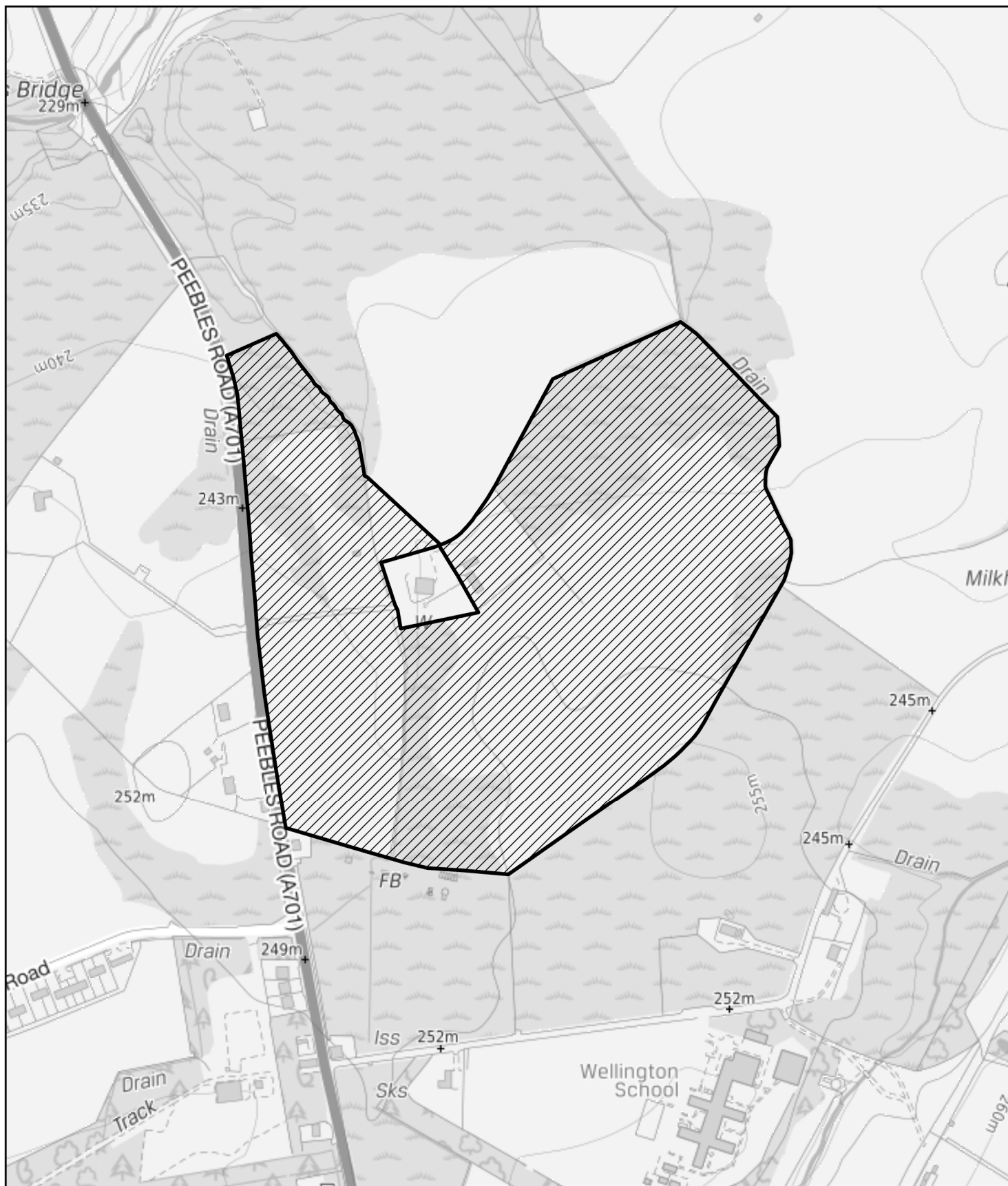
Agent: N/A

Validation Date: 15 November 2018

Contact Person: Graeme King

Tel No: 0131 271 3332

Background Papers: 12/00030/PPP and 15/00629/DPP



Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Erection of dwellinghouse/cafe and amenity building; siting of 5 yurts and formation of pond at Land At Netherton, Penicuik

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No: 18/00741/DPP

Scale: 1:5,000
Page 118 of 118

