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## **THE UNAUTHORISED DISPLAY OF AN ADVERTISEMENT THAT REQUIRES EXPRESS CONSENT ON LAND ADJOINING THE A68 SLIP ROAD/A720 CITY BYPASS**

Report by Chief Officer Place

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### **1 REPORT SUMMARY AND RECOMMENDATION**

- 1.1 This report relates to the display of an unauthorised hoarding advertisement on land adjoining the A68/A720 (on) slip road.**
- 1.2 This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to no longer refer the breach of planning control to the Crown Office and Procurator Fiscal Service (COPFS) following the removal of the unauthorised advertisement in response to the decision of the Committee at its meeting of 12 September 2023 to refer the breach of planning control to the COPFS.**

### **2 BACKGROUND**

- 2.1 The background to the breach of planning control, the legislative position and the planning position was set out in a report presented to Committee at its meeting of 12 September 2023 – a copy of this report is attached as Appendix Z.**
- 2.2 At its meeting of 12 September 2023 the Committee determined to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the COPFS for consideration of prosecutorial action pursuant to Section 186 of the Town and Country Planning (Scotland) Act 1997 as amended.**
- 2.3 In the days following the Committee meeting the unauthorised advertisement was removed and as a consequence the breach of planning control has been resolved. However, the Committee instruction remains and as such it is appropriate to seek the Committee's authority to no longer take prosecutorial action unless the advertisement returns to the site.**

- 2.4 Although the breach of planning control (the siting of an advertisement) has now been resolved an offence had taken place and as such the Council can technically still seek prosecutorial action against that offence. However, as the objective of the planning enforcement system is to resolve breaches of planning control rather than to act as a punitive system, it is considered no longer expedient to pursue prosecutorial action.

### **3 RECOMMENDATION**

- 3.1 It is recommended that the Committee determine to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to no longer refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action as originally instructed by Committee at its meeting of 12 September 2023.

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

**Date:** 20 October 2023

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**Appendix Z:** Report regarding unauthorised hoarding advertisement on land adjoining the A68/A720 (on) slip road presented to Committee at its meeting of September 2023.



# Midlothian

PLANNING COMMITTEE  
TUESDAY 12 SEPTEMBER 2023  
ITEM NO

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## **THE UNAUTHORISED DISPLAY OF AN ADVERTISEMENT THAT REQUIRES EXPRESS CONSENT ON LAND ADJOINING THE A68 SLIP ROAD/A720 CITY BYPASS**

Report by Chief Officer Place

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### **1 REPORT SUMMARY AND RECOMMENDATION**

- 1.1 This report relates to the display of an unauthorised hoarding advertisement on land within the designated greenbelt adjoining the A68/A720 (on) slip road. The displaying of an advertisement that requires express consent without such consent is an offence.**
- 1.2 This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action in relation to the parties who have displayed an advertisement without expressed consent, pursuant to Section 186 of the Town and Country Planning (Scotland) Act 1997 (by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019). The maximum penalty on successful prosecution is a fine of up to £5,000 per offence plus £500 per day for a continuing offence after conviction.**

### **2 BACKGROUND**

- 2.1 The site the subject of this report is within open countryside and is designated greenbelt. The advertisement in question (a large hoarding) adjoins the point where the A68 on slip road joins the A720 approaching the Sheriffhall junction.**
- 2.2 The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 sets out that various categories of advertisements that require express advertisement consent - the display of such an advertisement is subject to an application being made to, and assessed by, the local planning authority and approved subject to relevant conditions. Town and Country Planning (Scotland) Act 1997 provides that if a person displays an advert in contravention of the regulations, they shall be guilty of an offence.**

- 2.3 In assessing an application for express advertisement consent the local planning authority may only consider two issues: amenity and public safety. The 1984 regulations provide:

When exercising such powers, a planning authority—

- (a) shall, in the interests of amenity, determine the suitability of the use of a site for the display of advertisements in the light of the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest; and when assessing the general characteristics of the locality the authority may disregard any advertisements being displayed therein; and
- (b) shall, in the interests of public safety, have regard to the safety of persons who may use any road, railway, waterway (including any coastal waters), dock, harbour, or airfield affected or likely to be affected by any display of advertisements; and shall in particular consider whether any such display is likely to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal, or aid to navigation by water or air.

- 2.4 With regard the advertisement the subject of this report, no application has been made for express consent and the advertisement has been in place for a number of months without being removed. As other local authorities have experienced, such unauthorised advertisements can proliferate close to the strategic road network if action is not taken. Over recent months the planning enforcement function have addressed a number of such unauthorised advertisements alongside the A720 City Bypass and secured their removal. It is noted that earlier in 2023 at a different site in the open countryside adjoining a major road in Midlothian the Council took formal enforcement action against the same advertiser that is the subject of this report – the operator has been asked to remove the advert and has failed to do so.

- 2.5 In relation to the two matters to be assessed by the local planning authority with regard an advertisement:
- In relation to amenity, the site is in the countryside/greenbelt which affords the land a high level of protection in terms of national and local planning policy. The erected advertisement, with no locational requirement, is incongruous and distracts from its setting whilst also introducing a commercial sporadic unplanned form to the locality.
  - In terms of public safety, it is considered that the advertisement, situated at a junction of one of the busiest parts of the strategic road network in Scotland is highly likely to provide a situation detrimental to highway safety as a potential distraction to motorist and therefore unacceptable.

### **3 THE LEGISLATIVE POSITION**

- 3.1 Section 182 of the Town and Country Planning (Scotland) Act 1997 provides that; regulations (The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 which sets out which advertisements required express consent) shall make provision for restricting or regulating the display of advertisements so far as appears to the Secretary of State to be expedient in the interests of amenity or public safety. Section 186 of the Town and Country Planning (Scotland) Act 1997 provides that if any person displays an advertisement in contravention of the regulations they shall be guilty of an offence and liable on summary conviction to a fine of such an amount as may be prescribed, not exceeding level 5 (currently £5,000) on the standard scale and, in the case of a continuing offence, one-tenth of level 5 on the standard scale for each day during which the offence continues after conviction.
- 3.2 In Scotland the Crown Office and Procurator Fiscal Service (COPFS) are responsible for making decisions about prosecutorial actions. In the majority of instances, criminal offences are referred to COPFS by Police Scotland. However, other bodies who are the responsible regulatory organisation for particular legislative areas will also refer cases. This includes the Health and Safety Executive, the Scottish Environmental Protection Agency and local authorities in relation to planning and other matters.

### **4 OTHER CONSIDERATIONS**

- 4.1 The Scottish Government Policy on planning enforcement is contained in Circular 10/2009: Planning Enforcement. It includes the following guidance that is particularly relevant to the consideration of this case:

*“Planning authorities should bear in mind the statutory time limits for taking enforcement action and, in particular, the possibility that a referral to the Procurator Fiscal to determine whether to initiate a criminal prosecution may need to be made promptly in those cases where breaches have to be prosecuted within 6 months of the date on which the offence was committed. This is not the date of the alleged breach of planning control but the last date of failure to comply with the Notice requiring the breach to be remedied.”*

*“The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.”*

## **5. CONCLUSION**

- 5.1 The responsibility of the outstanding breach of planning/advertisement control lies with the landowners, those responsible for placing/erecting the advertisement and those benefiting from the advert.
- 5.2 It is for COPFS to make the final decision with regard prosecutorial action against the unauthorised advertisement. The advisement in question requires express consent but is being displayed without the necessary consent and is therefore unauthorised. In relation to the two matters that that are for the local planning authority to consider in relation to advertisement - public safety and amenity, in relation to both the advertisement in question is considered to give rise to unacceptable harm given its location in open countryside/greenbelt and at the junction of two trunk roads. Despite the Council requesting the removal of the advert, it remains in situ. As noted earlier the displaying of an advertisement that requires express consent without such consent is an offence. Therefore, having regard to the guidance provided by Scottish Minsters in Circular 10/2009, the serious nature of the breach of planning control and the Council's responsibility to uphold confidence and integrity in the planning system and the rule of law, it is considered to be in the public interest for the Council to refer this case to COPFS.

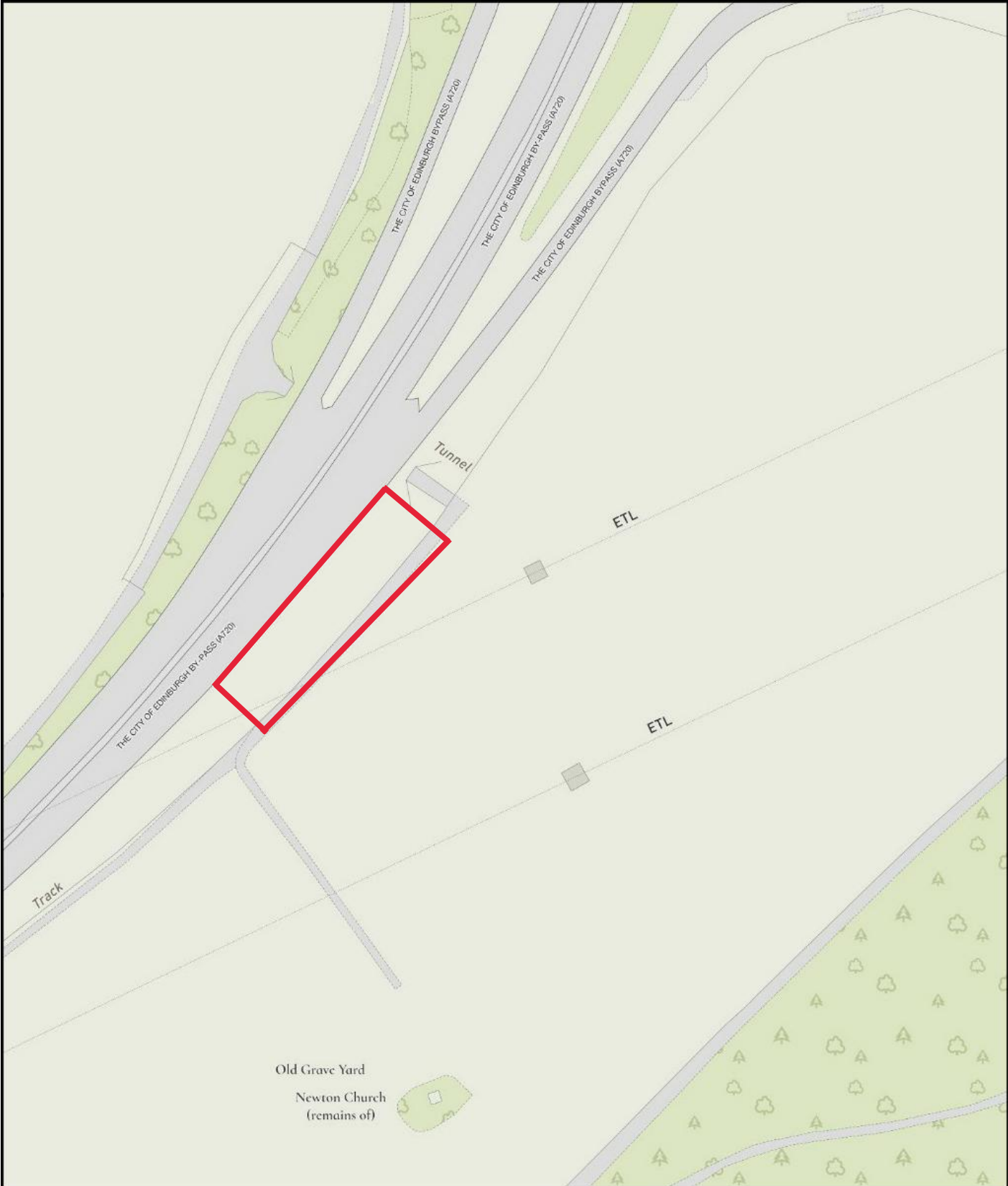
## **6 RECOMMENDATION**



- 6.1 It is recommended that the Committee determine to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action pursuant to Section 186 of the Town and Country Planning (Scotland) Act 1997 as amended.

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

**Date:** 1 September 2023  
**Contact Person:** Matthew Atkins, Lead Officer Planning Obligations  
[matthew.atkins@midlothian.gov.uk](mailto:matthew.atkins@midlothian.gov.uk)  
**Attached Plan:** Location plan  
**Appendix A:** An image of the unauthorised advert.

# Location Plan



 <p><b>Education, Economy &amp; Communities</b> Midlothian Council Fairfield House 8 Lothian Road Dalkeith EH22 3AA</p>	Land adjacent to Millerhill Junction (Slip Road Westbound) A720 Edinburgh City Bypass	
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# Appendix A



Image from Google Earth