



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in January 2017; and an appeal decision received from Scottish Ministers.

2 BACKGROUND

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes a decision on appeal which has been considered by Scottish Ministers.

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 24 January 2017 the LRB made the following decisions:

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
1	16/00508/DPP	66 Newbattle Abbey, Crescent, Dalkeith	Erection of timber building and fencing	Review upheld. Permission granted
2	15/00335/PPP <i>Update report - the required legal agreement has not been concluded</i>	Former Arniston Gas Works, Gorebridge	Residential development of 10 units	The Chair of the LRB to write to the applicant requesting an update

4 APPEAL DECISION

- 4.1 An appeal against a refusal of an application to discharge a legal agreement (16/00020/LA) for Borders Rail contributions at Hopefield Farm, Bonnyrigg has been dismissed and the requirements of the legal agreement upheld. The Scottish Government Reporter dismissed the appeal after considering it is appropriate to request developer contributions towards the Borders Rail despite the sites original allocation in 2003 as this plan has been superseded by the adoption of the Midlothian Local Plan 2008 and the Edinburgh and South East Scotland Strategic Development Plan (June 2013) (SESplan) which sets out a requirement for sites within the rail corridor to make a contribution. A copy of the appeal decision accompanies this report.

5 RECOMMENDATION

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting in January 2017 and the appeal decision by Scottish Ministers.

Ian Johnson
Head of Communities and Economy

Date: 14 February 2017
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

Background Papers: LRB procedures agreed on the 26 November 2013.



Determination by Karen Black, a Reporter appointed by the Scottish Ministers
Appeal under S75B of the Town and Country Planning (Scotland) Act 1997

- Planning obligation appeal reference: POA-290-2001
- Site address: Hopefield Farm, Bonnyrigg, Midlothian
- Appeal by Taylor Wimpey UK Ltd against the decision by Midlothian Council
- Application to discharge the planning obligation 16/00020/LA dated 8 January 2016 refused by notice dated 20 May 2016
- Modification sought: discharge of clause 8 planning obligation within a legal agreement (associated with planning permissions 14/00263/PPP and 14/00264/PPP) at sites I and H, land at Hopefield Farm, Bonnyrigg
- Planning obligation details: minute of agreement among Midlothian Council, London and Clydeside Estates Limited, Wilson Connolly Limited and Taylor Wimpey UK Limited. Land Register of Scotland Title Numbers MID151557 and MID122301
- Date of registration of the planning obligation: 3 June 2015
- Date of site visit by Reporter: 20 October 2016

Date of appeal decision: 21 December 2016

Determination

I dismiss the appeal and refuse to discharge the planning obligation comprising Clause 8 of the agreement referred to above.

Clause 8 reads as follows:

- The Landowners shall pay to the Council the Total Borders Rail Contribution in accordance with the terms of this Clause 8.
- Prior to the Completion of any Residential Unit in each Phase, the Landowners shall pay to the Council the Total Borders Rail Contribution relative to that particular Phase. For the avoidance of any doubt, no Residential Unit in a Phase shall be occupied unless and until the Total Borders Rail Contribution relative to that Phase is received by the Council.
- The Council shall place the Total Borders Rail Contribution into an interest-bearing deposit account and shall use (and shall only use) the Total Borders Rail Contribution (and any interest accrued thereon) towards any expenditure associated with the Borders Rail Project.

- For the avoidance of doubt, the parties agree that: (i) the transfer by the Council of the Total Borders Railway Contribution to the Council's Capital Fund for the Authorised Works shall constitute expenditure of the Total Borders Railway Contribution for the purpose of providing the Authorised Works (being the works authorised by section 1 of the Waverley Railway (Scotland) Act 2006) for the purposes of section 40 of the said Act, and (ii) the Total Borders Railway Contribution is not refundable in terms of this Agreement.

Background

1. Planning permission in principle for two separate applications for residential units (references 14/00263/PPP and 14/00264/PPP) was approved by the council on 4 June 2015. Both permissions are subject to a section 75 agreement in which clause 8 requires that financial contributions are made towards the provision of the Borders Railway Project. The contribution specified in the agreement is £1824.18 payable in respect of each residential unit.
2. The appellant is now seeking the removal of the above-mentioned clause from the agreement.
3. With reference to five tests in paragraphs 14-25 of Circular 3/2012: Planning Obligations and Good Neighbour Agreements, the appellant has stated that the planning obligations, as they apply to the sites, fail the tests of: relationship to the development; scale and kind; and reasonableness. The basis of the appellant's case is that Bonnyrigg lies outwith the A7/A68 Waverley Line Corridor as defined in the Edinburgh and Lothians Structure Plan 2015. On the basis that the appeal site is not in the A7/A68 Waverley Line Corridor, there is therefore no justification in the 2008 Local Plan under Policies IMP1 and IMP2 for seeking a financial contribution towards the Borders Rail Line.
4. The Council refused the application to discharge clause 8 because financial contributions towards the Border Rail line from windfall developments in the A7/A68 Corridor is a requirement of policies IMP1 and IMP2 in the Midlothian Local Plan 2008 and the 2012 Supplementary Planning Guidance on Developer Contributions.

Reasoning

5. I consider the determining issue in this appeal to be whether Clause 8 complies with the five tests in paragraphs 14-25 of Circular 3/2012: Planning Obligations and Good Neighbour Agreements: necessity, planning purpose, relationship to the development, scale and kind, and reasonableness. The policy requirement is that the obligation should meet all of the tests, so a failure on any one of these would be sufficient to render the obligation non-compliant with national policy. The tests are applied to the situation at the time of the appeal, not at the time when they were first imposed.
6. Although the appellant refers to the Edinburgh and Lothians Structure Plan 2015, I note that the plan was revoked following approval of the Strategic Development Plan for South East Scotland (SESplan) in 2013. The policies of the 2015 Structure Plan therefore no longer apply and I consider SESplan to be an important material consideration in my assessment of this appeal.

7. Policy 9 of SESplan, which addresses the provision of infrastructure, confirms that particular emphasis is to be placed on delivery through developer contributions of the strategic infrastructure requirements that are set out in Figure 2 and in the Action Programme.

8. Figure 2 identifies key strategic improvements to transport and other infrastructure which are required for existing and future development. The reopening of the Borders Railway line is identified as one of the projects in Midlothian and the Borders.

9. The SESplan spatial strategy also states that Local Development Plans will direct further strategic development to Strategic Development Areas. The A7/A68 Borders Rail Corridor (Midlothian) is included as a Strategic Development Area. Figure 6 of SESplan also includes a map of the A7/A68 Borders Rail Corridor (Midlothian) as Core Development Area 9. Bonnyrigg is clearly identified as being within the area.

10. Policy IMP1 of the adopted local plan sets out the context for, and the range and scope of the use of planning agreements where new development gives rise to a need for essential infrastructure. My reading of criterion A is that a contribution to the rail line could be justified in any case, regardless of the SESplan policy position and any specific identification of the rail corridor.

11. Policy IMP 2 refers to requirements for contributions to the A7/A68 Waverley Line Corridor. Although the policy lists a number of specific housing sites where contributions would apply, the policy does not rule out the requirement for contributions from other sites. I also note that the explanatory text in paragraph 3.12.13 of the adopted local plan confirms that for windfall sites, the Council will also seek developer contributions, as appropriate, where the development gives rise to a need.

12. The council's supplementary guidance on developer contributions also confirms that housing and economic allocations within the A7/A68 Corridor are predicated on the re-introduction of the former Waverley Railway Line now known as Borders Rail. The Waverley Railway (Scotland) Act 2006 allows Midlothian Council to secure contributions towards the implementation of the line. Paragraph 110 of the guidance also confirms that windfall sites within this corridor will be expected to contribute on the same basis.

13. The council and appellant provided a response to my request for further written responses in respect of the definition of the Borders Rail Corridor in SESplan. I note that both the appellant and the council acknowledge that SESplan includes Bonnyrigg within the A7/A68/Borders Rail Corridor. The appellant however contends the policies that relate to this corridor apply only in conjunction with a Local Development Plan prepared under SESplan and the SESplan policies are not sufficient to over-ride the policies in the 2008 Local Plan.

14. The council on the other hand state that SESplan forms part of the development plan and the contributions are therefore justified.

15. SESplan, following approval by Scottish Ministers in 2013 clearly provides the up to date planning policy position. Bonnyrigg is identified as being within the A7/A68 Borders Rail Corridor as detailed above. However policies IMP1 and IMP2 in the adopted local plan also confirm that contributions may apply in appropriate circumstances, regardless of any

specific identification of the rail corridor. In my view therefore, the policy requirements contained in SESplan, together with the adopted local plan and related supplementary guidance clearly establish a sound policy basis for securing financial contributions towards the Border Rail line in this case.

16. Based on my own observations at my site visit I also noted that the site is located within a ten minute drive of rail stations at Eskbank and Newtongrange. Given this geographical proximity, taken together with the policy requirements of the development plan, I am satisfied that clause 8 of the planning obligation is therefore necessary and reasonable; it relates to a planning purpose and to the development in question.

17. In terms of the scale of financial contribution, I note that this is not disputed by the appellant. The council confirm that a rate of £1824 is the standard level of contribution for residential units within the Borders Rail corridor. It appears to me that this is an appropriate scale of contribution in this case and therefore meets the circular test of scale.

Conclusion

18. For the above reasons, I consider that all the tests in Circular 3/2012 are met. I therefore decline to discharge the obligation.

Karen Black

Reporter