

Notice of Meeting and Agenda



Planning Committee

Venue: Virtual Meeting,

Date: Tuesday, 13 October 2020

Time: 13:00

Executive Director : Place

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.

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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 of 1 September 2020 - For Approval 3 - 10

5 Public Reports

Pre-Application Consultations - Reports by Chief Officer Place.

- 5.1 Proposed Residential Development at Redheugh West, Gorebridge (20/00446/PAC). 11 - 16

- 5.2 Proposed Erection of a Health and Racquets Club, with Associated Car Parking, Access, Landscaping and Ancillary Facilities on Land at Shawfair Park, off Old Dalkeith Road, Danderhall, Dalkeith (20/00607/PAC). 17 - 22

Application for Planning Permission Considered for the First Time – Report by Chief Officer Place.

- 5.3 Application for Planning Permission for the Erection of Foodstore (Class 1); Formation of Access Roads and Car Parking; and Associated Works on Land at Thornybank North, Dalkeith (20/00220/DPP). 23 - 44

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 24 November 2020 at 1.00pm.

Plans and papers relating to the applications on this agenda can also be viewed at <https://planning-applications.midlothian.gov.uk/OnlinePlanning>

Minute of Meeting



Planning Committee

Date	Time	Venue
1 September 2020	11.00 am	Virtual Meeting, Microsoft Teams

Present:

Councillor Imrie	Chair
Councillor Alexander	
Councillor Cassidy	
Councillor Curran	
Councillor Hackett	
Councillor Johnstone	
Councillor Lay-Douglas	
Councillor McCall	
Councillor Milligan	
Councillor Parry	
Councillor Muirhead	
Councillor Russell	
Councillor Winchester	

1. Apologies for Absence and Appointment of Chair

Apologies for absence were intimated on behalf of Councillors Baird, Smaill, Hardie and Wallace.

2. Order of Business

The order of business was as outlined in the agenda.

3. Declarations of interest

Councillor Winchester declared an interest in Item 5.4 Application for Planning Permission for Change of Use from Public House to Mixed Use of Public House/Restaurant and Hot Food Takeaway and Associated External Alterations advising that she had met with members of Community Council but advised that she had not expressed a decision to them or been swayed in any way.

Councillor Muirhead declared an interest in Item 5.4 Application for Planning Permission for Change of Use from Public House to Mixed Use of Public House/Restaurant and Hot Food Takeaway and Associated External Alterations and that he would leave the meeting for this item as he was secretary/treasury of the Trust that leased the building to the Applicant.

Councillor McCall declared an interest in Item 5.1 Application for Planning Permission for the Erection of 12 Flatted Dwellings; Formation of Access Roads and Car Parking and Associated Works at Land at Windsor Square, Penicuik. Councillor McCall advised that she had been at Penicuik Community Council and also public meetings organised by the Community Council where this was discussed but at no stage made comments about her thoughts regarding the application.

Councillor Johnstone declared an interest in Item 5.4 Application for Planning Permission for Change of Use from Public House to Mixed Use of Public House/Restaurant and Hot Food Takeaway and Associated External Alterations at 119 Hunterfield Road, Gorebridge and advised that she would leave the meeting at that point and take no part in the discussion. At the request of Councillor Johnstone, Mr Turpie as Monitoring Officer provided the Committee with the reasons for this declaration of interest.

Councillor Cassidy declared an interest in item 5.4 Application for Planning Permission for Change of Use from Public House to Mixed Use of Public House/Restaurant and Hot Food Takeaway and Associated External Alterations and advised that the Applicant came to his place of work but Councillor Cassidy made no comments on the application he would withdraw from the meeting.

Councillor Cassidy asked for clarification on this matter from Mr Turpie. As Monitoring Officer, Mr Turpie advised that Councillors are there to listen to members of the public and it was acceptable for Applicants to speak to Councillors regarding planning issues as long as Councillors do not express an opinion either way.

4. Minutes of Previous Meetings

The Minute of Meeting of 9 June 2020 was approved as a correct record.

5. Reports

Agenda No	Report Title	Report by:
5.1	Application for Planning Permission for the Erection of 12 Flatted Dwellings; Formation of Access Roads and Car Parking and Associated Works at Land at Windsor Square, Penicuik (19/00510/DPP).	Chief Officer Place
Outline of Report and Summary of Discussion		
<p>There was submitted a report, dated 25 May 2020, by the Chief Officer Place outlining the application for planning permission for the erection of 12 Flatted Dwellings at the land at Windsor Square, Penicuik. This application was presented to the Committee on the 9 June 2020 and it was agreed after discussion to continue consideration of the application to allow a site inspection visit to take place. A site visit took place on 31 August 2020.</p> <p>The recommendation was to grant planning permission subject to conditions and the applicant entering into a planning obligation to secure contributions towards necessary infrastructure.</p> <p>Councillor McCall expressed her thanks for the site visit taking place and highlighted her concerns with regards to this application. There followed a lengthy discussion in which the Planning Manager responded to the concerns highlighted by the members of the Committee.</p> <p>It was recognised that although development was required on the site some members did raise concerns on the detrimental impact it would have on the residents. It was also noted that if the development did not proceed and the care home was not demolished this would also have an impact on this site.</p> <p>Councillor McCall moved a Motion against the recommendation to grant planning permission as it would have a detrimental impact on the area. This was seconded by Councillor Parry.</p> <p>Councillor Imrie moved an Amendment to grant planning permission as detailed in the report. This was seconded by Councillor Muirhead.</p> <p>Councillor McCall asked for the minute to include a Roll Call of the decision. Mr Turpie advised that to have a Roll Call vote a third of the committee must agree to this, this was confirmed with a show of hands.</p> <p>The outcome of the Roll Call vote was 4 for the Motion not to grant Planning Permission and 9 for the Amendment to grant Planning Permission that then became the decision of the Committee. Details of the Roll call vote are attached to the minute as Appendix 1.</p>		

Decision

The Planning Committee approved the recommendations to grant planning permission for the following reasons:

The proposed development would be in keeping with the scale and character of the surrounding area; would provide adequate open space and parking provision; and would not have a significant detrimental impact on the residential amenity of the area. The proposal therefore complies with policies STRAT2, DEV2, DEV5, DEV6, DEV7, TRAN5, IT1, ENV9, ENV10, IMP1 and IMP2 of the Midlothian Local Development Plan 2017

Subject to the conditions and the applicant entering into a planning obligation to secure contributions towards necessary infrastructure as detailed in the report.

Action

Planning Manager

Agenda No	Report Title	Report by:
5.2	Application for Planning Permission in Principle for Residential Development with Associated Engineering Works, Open Space and Landscaping at Land North of Oak Place, Mayfield. (19/00981/PPP)	Chief Officer Place

Outline of report and summary of discussion

There was submitted report, dated 18 August 2020, by the Chief Officer Place outlining the application for planning permission in principle for residential development on land to the north east of Mayfield. There had been eight representations and consultation responses from the Coal Authority, Scottish Water, the Scottish Environment Protection Agency (SEPA), the Council's Archaeological Advisor, the Council's Flooding Officer, the Council's Policy and Road Safety Manager, the Council's Head of Education, the Council's Environmental Health Manager, the Council's Housing Planning and Performance Manager and Mayfield and Easthouses Community Council.

The recommendation was to grant planning permission in principle subject to conditions and securing developer contributions towards necessary infrastructure and affordable housing provision.

The Planning Manager responded to comments from the Committee with regards to their concerns on the condition which set out the maximum number of units being 170. He advised that it is normal to put a cap on the number of units and that the site would not support 170 units but this figure was put in to safeguard the developer's contributions. Also raised was the Education capacity and the Education Resource Manager updated the committee on the capacity within the schools in this area.

Councillor Hackett moved that the application for planning permission be accepted, this was seconded by Councillor Muirhead and as there was no objections this then became the decision of the Committee.

Decision

The Planning Committee approved the recommendations to grant planning permission for the following reasons:

The majority of the site was allocated for housing and forms part of the Council's committed housing land supply within the Midlothian Local Development Plan 2017 where there was a presumption in favour of residential development. The remainder of the site was located within the built-up area of Mayfield where there was a presumption in favour of appropriate development, including contributing to the provision of housing. This presumption in favour of development was not outweighed by any other material considerations.

Subject to conditions and securing developer contributions towards necessary infrastructure and affordable housing provision as detailed in the Report.

Action

Planning Manager

Agenda No	Report Title	Report by:
5.3	Application for Planning Permission in Principle for a Mixed Use Development Comprising: Class 4 (Business Use); Class 5 (General Industry); Class 6 (Storage And Distribution); and Sui Generis Uses (Home Improvement Showrooms/Warehousing, Builders Merchant and Car Showroom) (Amendment of Acceptable Uses of the Site from Use Classes 4 and 5 Approved by the Grant of Planning Permission 02/00660/OUT) at Whitehills, Whitehill Road, Millerhill, Dalkeith (19/00748/PPP	Chief Officer Place
Outline of report and summary of discussion		
<p>There was submitted a report dated 18 August 2020, by the Chief Officer Place outlining the application for planning permission in principle for a mixed use development at Whitehills, Whitehill Road, Millerhill, There have been no representations and consultation responses.</p> <p>The recommendation is to grant planning permission subject to conditions and the applicant entering in to a Planning Obligation.</p> <p>In responding to a question raised the Planning Manager confirmed that there have been no objections from Edinburgh and that the Planning Committee work closely with neighbouring councils when considering these applications. The Chair commented positively on this application for generating new jobs in Midlothian.</p>		

Decision
<p>The Planning Committee approved the recommendations to grant planning permission for the following reasons:</p> <p style="text-align: center;"><i>The proposed mixed use development site was identified as being part of the Council's established economic land supply within the Midlothian Local Development Plan 2017 and as such there was a presumption in favour of the proposed development. This presumption in favour of development, along with a flexible approach to accommodating a range of employment generating uses during difficult economic conditions was not outweighed by any other material considerations.</i></p> <p>Subject to the conditions and the applicant entering into a planning obligation as detailed in the Report.</p>
Action
<p>Planning Manager</p>

With reference to item 3 above Councillor Muirhead, Councillor Cassidy and Councillor Johnston having declared an interest in the following item of business left the meeting at approximately 14.25 pm taking no part in the consideration of this item.

Agenda No	Report Title	Report by:
5.4	Application for Planning Permission for Change of Use from Public House to Mixed Use of Public House/Restaurant and Hot Food Takeaway and Associated External Alterations including Infilling of Window Openings and Formation of New Window and Door Openings (Retrospective) at 119 Hunterfield Road, Gorebridge (20/00209/DPP).	Chief Officer Place
Outline of report and summary of discussion		
<p>There was submitted a report dated 18 August 2020, by the Chief Officer Place outlining the application for planning permission for the change of use from public house to a mixed use of public house/restaurant and hot food takeaway at 119 Hunterfield road, Gorebridge. There have been 53 representations and consultation responses from the Council's Policy and Road Safety Manager and the Council's Environmental Health Manager.</p> <p>The recommendation is to grant planning permission subject to conditions, including a condition restricting the hot food takeaway component of the application.</p> <p>After discussion regarding supporting local businesses and the proximity to the schools with regards to the hot food takeaway it was acknowledged that the hours of opening for the hot food takeaway was Monday – Sunday 4 pm – 11 pm which was out with school times therefore it was agreed that condition 1 be removed from the planning permission and that planning permission was granted.</p>		

Decision

The Committee agreed to grant planning permission with condition 1 removed for the reasons below:

The development will not have an adverse impact on the character of the area or on the amenity of neighbouring land and buildings and therefore complies with policies DEV2 and ENV18 of the Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance for Food and Drink and Other Non-Retail Uses in Town Centres.

Subject to conditions 2 – 5 as detailed in the report.

Action

Planning Manager

6. Private Reports

No private business was discussed.

7. Date of Next Meeting

The next meeting will be held on Tuesday 13 October 2020.

The meeting terminated at 14.36 pm

PLANNING COMMITTEE

DATE: 1 September 2020

Agenda Item No: 5.1

SUBJECT: Application for Planning Permission for the Erection of 12 Flatted Dwellings; Formation of Access Roads and Car Parking and Associated Works at Land at Windsor Square, Penicuik (19/00510/DPP).

ROLL CALL VOTE

Name	Motion – Against Planning Permission	Amendment – Grant Planning Permission	Abstain
By	Debbie McCall	Russell Imrie	
2nd	Kelly Parry	Jim Muirhead	
Cllr Alexander		X	
Cllr Baird	-	-	-
Cllr Cassidy		X	
Cllr Curran	X		
Cllr Hackett		X	
Cllr Hardie	-	-	-
Cllr Imrie		X	
Cllr Johnstone		X	
Cllr Lay-Douglas		X	
Cllr McCall	X		
Cllr Milligan		X	
Cllr Muirhead		X	
Cllr Munro	-	-	-
Cllr Parry	X		
Cllr Russell		X	
Cllr Smaill	-	-	-
Cllr Wallace	-	-	-
Cllr Winchester	X		
TOTAL	4	9	

Decision: On a Roll Call Vote of those Members present having been taken, 4 voted for the Motion not to grant Planning Permission and 9 voted for the Amendment to Grant Planning Permission, which accordingly became the decision of the Committee.



**PRE - APPLICATION REPORT REGARDING PRE-APPLICATION
CONSULTATION FOR RESIDENTIAL DEVELOPMENT AT REDHEUGH
WEST, GOREBRIDGE (20/00446/PAC)**

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a pre application consultation submitted regarding proposed residential development with associated infrastructure at land at Redheugh West, Gorebridge. The site is allocated for housing (under Policy STRAT 3 – Housing Site Hs7) in the Midlothian Local Development Plan 2017 (MLDP). The allocation excludes an extremely narrow parcel of land comprising the existing track/road (Povert Road) which is also included within the site boundary.
- 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 The pre-application consultation for residential development at land at Redheugh West, Gorebridge was submitted on 10 July 2020.
- 2.3 As part of the pre-application consultation process a public event would have been arranged in 'normal' times, however this no longer an option as a consequence of the ongoing Covid-19 public health emergency. Legislative requirements for pre-application consultations have been amended for a temporary period under the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020. The changes remove the requirement for a public event, but as an alternative require prospective developers to advertise where relevant consultation material can be viewed online. The

legislation does not prescribe the method of consultation but the guidance does set out the Scottish Government's expectations – which includes giving interested parties the opportunity to make comment. On the conclusion of the online event the applicant could submit a planning application for the proposal.

- 2.4 To meet these statutory obligations, the prospective applicant held an on-line event on 27 August 2020. This event was attended by members of the project team and utilised webchat software to engage with visitors to the website and answer any questions attendees may have regarding the proposal.
- 2.5 Copies of the pre application notice has been sent by the prospective applicant to the local elected members, Gorebridge Community Council, Moorfoot Community Council, Newtongrange Community Council, the local Member of Parliament (MP) and the local Member of Scottish Parliament (MSP).
- 2.6 On the conclusion of the public event 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.

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 comprises a 22.69 hectare parcel of agricultural land located on the north-western edge of Gorebridge, to the south of the B704 and west of Povert Road. It forms the western portion (Phase 2) of the larger Redheugh new community redevelopment area.
- 3.4 The site is allocated in the MLDP for housing (Housing Site Hs7) for an indicative 400 dwellings. The site is seen as an extension to the neighbouring housing site (site h50) which has been granted planning permission in principle for residential development, a primary school and associated works. The applicant will be required to masterplan site Hs7 demonstrating connectivity and design compatibility to the neighbouring development.
- 3.5 There are various site specific policy requirements associated with the proposed development, including: mitigation measures to reduce the

adverse impacts on the nearby Arniston designated landscape; a 30m wide planting strip along the western and southern edges of the site; and contaminated land mitigation measures. Moreover, the existing hedge-lined Povert Road (linking north to south) should be retained as a recreational link. Landscape buffer strips along watercourses and the alignment of the River South Esk will also be required.

- 3.6 Any forthcoming application will be required to be accompanied by a Drainage Impact Assessment to assess potential capacity and impact on the existing network (with early discussions with Scottish Water recommended). A Flood Risk Assessment will also be required to mitigate potential flood risk within the site and the immediate area.
- 3.7 In addition to the principle of development, consideration will also have to be given to design matters such as layout, siting, design, appearance, materials and landscaping in order to accord with the policies in the Sustainable Place-making section of the MLDP (policies DEV2, DEV3, DEV5, DEV6, DEV7 and DEV9).
- 3.8 The Council will also need to be satisfied an appropriate access solution can be secured. It is likely the site would need to be accessed from the east, via the adjoining site, site H50.
- 3.9 A small part of the site is also identified as countryside within the MLDP (i.e. the eastern parts of the site that includes Povert Road). Any proposed development within this location would be required to take cognisance of the respective tests within Policy RD1 Development in the Countryside of the MLDP and the corresponding Supplementary Guidance – it is expected this part of the site is not used for housing, but instead access/pedestrian links and landscaping.
- 3.10 Consideration of landscape character along the western and southern edges will also be required to ensure that any future development is compatible and respects the nearby Special Landscape Area (South Esk Valley and Carrington Farmland).
- 3.11 The Council's Learning Estate Strategy sets out the long term plans to accommodate the expected education needs. This has been informed by the location and level of development outlined in the MLDP and the Housing Land Audits. With respect to the site, a suitable education solution will be required to accommodate associated need from the proposed development. This will be delivered through developer contributions.
- 3.12 If an application is submitted there is a presumption in favour of residential development on the site subject to confirming that the site specific policy requirements can be met, providing an appropriate access solution and securing developer contributions towards infrastructure including education provision, equipped children's play provision, new green network links, allotments/community growing, safeguarding land for a community use (e.g. health facility); water and drainage

infrastructure, Borders Rail and town centre improvements and adequate affordable housing provision (at least 25%).

4 PROCEDURES

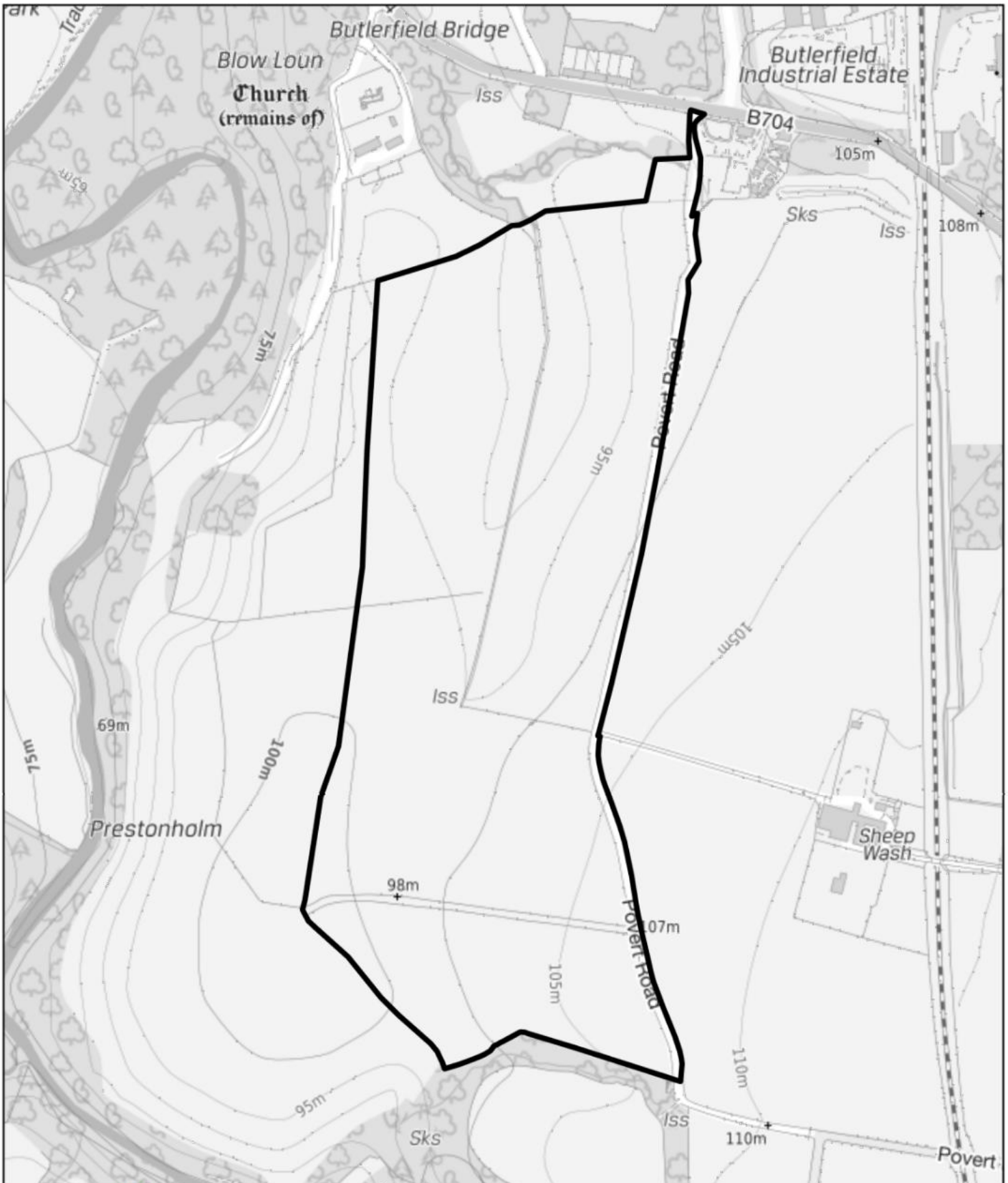
- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' 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.

Peter Arnsdorf
Planning Manager

Date:	6 October 2020
Application No.	20/00446/PAC
Applicant:	ORS and DBLT Redheugh Ltd
Validation Date:	10 July 2020
Contact Person:	Steve Iannarelli
Email:	Stephen.Iannarelli@midlothian.gov.uk



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

Proposal of application notice for residential development at Redheugh West, Gorebridge

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Scale: 1:5,000
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PRE - APPLICATION REPORT REGARDING ERECTION OF A HEALTH AND RACQUETS CLUB, WITH ASSOCIATED CAR PARKING, ACCESS, LANDSCAPING AND ANCILLARY FACILITIES ON LAND AT SHAWFAIR PARK, OFF OLD DALKEITH ROAD, DANDERHALL, DALKEITH (20/00607/PAC).

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a pre application consultation submitted regarding the erection of a David Lloyd Health and Racquets Club, with associated car parking, access, landscaping and ancillary facilities on land at Shawfair Park, off Old Dalkeith Road, Danderhall, Dalkeith. The land is identified as committed economic site e27 in the Midlothian Local Development Plan 2017 (MLDP).
- 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 the erection of a Health and Racquets Club, with associated car parking, access, landscaping and ancillary facilities at Shawfair Park, off Old Dalkeith Road, Danderhall, Dalkeith was submitted on 17 September 2020.
- 2.3 As part of the pre-application consultation process a public event would have been arranged in 'normal' times, however this no longer an option as a consequence of the ongoing Covid-19 public health emergency. Legislative requirements for pre-application consultations have been amended for a temporary period under the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland)

Regulations 2020. The changes remove the requirement for a public event, but as an alternative require prospective developers to advertise where relevant consultation material can be viewed online. The legislation does not prescribe the method of consultation but the guidance does set out the Scottish Government's expectations – which includes giving interested parties the opportunity to make comment. On the conclusion of the online event the applicant could submit a planning application for the proposal.

- 2.4 To meet these statutory obligations, the prospective applicant proposes an on-line event to take place on 29 October 2020. This event will be attended by members of the project team. They propose to utilise webchat software to engage with visitors to the website and answer any questions attendees may have regarding the proposal.
- 2.5 Copies of the pre application notices have been sent by the prospective applicant to the local elected members and Danderhall & District Community Council. A mailshot advertising the event will be distributed to the surrounding area approximately 2 weeks prior to the event. An advert will also be placed in the Midlothian Advertiser approximately 2 weeks, but no less than 7 days, prior to the event. The prospective applicant also proposes to advertise the event through social media channels. This proposed method of consultation is in accord with the 2020 Regulations.
- 2.6 On the conclusion of the public event 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.

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 within an established business park, known as Shawfair Park. The park occupies a strategic location to the east of the A7 and close to the Sheriffhall Roundabout which provides transport connections to the wider trunk road network. The Park is currently home to a number of offices, a hospital and a pub/ restaurant. The area is characterised as an emerging employment location. Much of the park remains undeveloped as the landowner seeks to attract occupiers. The site is currently one such undeveloped, vacant site. It is located to the east of the main road through the park and north of the Park and Ride facility.

The west boundary of the site is marked by thick, tall hedging and an avenue of trees. The other boundaries are less clearly defined. Access in to the site would be via a four-arm roundabout shared with the Spire Hospital which is located to the north. The Park is supported by drainage infrastructure which is centred on a sustainable urban drainage system (SUDS) basin located to the north east of the said Hospital.

- 3.4 The applicant proposes to erect a large two-storey building to accommodate indoor sports activities and associated uses. In addition, there would be two large domed tennis courts adjacent to the main building. The applicant would also include outdoor spa facilities to the exterior of the main building. The remainder of the site would be used as a car park, access roads and servicing arrangements. These areas would be framed by tree and hedge planting in accordance with the prevailing landscape design of Shawfair Park.
- 3.5 The MLDP provides for the protection of the supply of economic development land on this site through allocation e27, as part of the established economic land supply set out in Table 1B of Appendix 1: Committed Development. The site is allocated for Business/General Industry use (Class 4/5 uses). Promoting economic growth is a key objective of the MLDP. This is achieved, in part, through allocating land to meet the diverse needs of different business sectors. Policy STRAT1: Committed Development seeks the early implementation of sites listed in Appendix 1, such as sites in the established economic land supply. The introduction of non-business or industrial uses will not be permitted. Policy ECON1 safeguards the economic land supply against loss and supports economic development (excluding retail), subject to criteria A to D. Policy ECON3 recognises there is scope to permit limited ancillary uses in Shawfair Park to serve the needs of the workforce based there. Developments supported by this policy must be of a scale and nature suitable to serve the existing and expanding business community, rather than draw in visitors from a wider catchment.
- 3.6 An application for this development would also be required to consider the implementation detailed policies of the MLDP. These include, but are not limited to: promoting sustainable travel (TRAN1); contributing to mitigation of impacts on the transport network (TRAN2); providing electric vehicle charging stations (TRAN5); incorporate high speed broadband (IT1); avoid unacceptable effects on local landscape character (ENV7); avoid areas at flood risk and avoid increasing risk elsewhere (ENV9); provide for drainage treatment (ENV10); avoid adverse impacts on species and habitat (ENV15); remediate contaminated land, where required (ENV16); avoid increasing air pollution (ENV17) and noise to sensitive receptors (ENV18); and, adopt low and zero-carbon generating technology (NRG3). The MLDP also looks to protect the character and amenity of built-up areas (DEV2) as well as encouraging a high standard of design in all new developments, to contribute towards the quality of place Midlothian currently enjoys. These aims are secured by assessment against policies DEV5: Sustainability in New Development, Dev6: Layout and Design of New Development and Dev7: Landscaping in New Development.

- 3.7 A significant material consideration in any major development proposal is Scottish Planning Policy (SPP). SPP requires decision makers to consider the diverse needs of business, supporting economic growth that balances protection of the amenity and environmental quality of the proposed location. There is a presumption in favour of sustainable development, which is a concept defined by 13 principles set out in paragraph 29.
- 3.8 The proposed development would fall within Class 11: Assembly and Leisure, as defined by the Town and Country Planning (Use Classes) (Scotland) Order 1997. MLDP Appendix 1B supports developments in Shawfair Park that fall within the definition of Business/ General Industry, being Classes 4 and 5 of the said Order. ECON3 supports some limited alternative uses, at a small scale. Therefore, on this basis, an application submitted for the proposed development would conflict with Policies STRAT1 and ECON1. Given the scale and nature of the proposal, it would not find support within the terms of Policy ECON3. The prospective applicant is therefore invited to submit a full justification to accompany any application for the proposal, as a departure from the development plan. The application must also be accompanied by information suitable to address the implementation policies of MLDP as identified in paragraph 3.6.
- 3.9 In addition to the planning policy considerations the Council can give weight to other material considerations. In this case supporting economic growth and job creation are material considerations of significant weight and could enable the Council to consider economic based leisure uses favourably to facilitate and complement the allocated class 4 and 5 uses on the site. However, this more flexible pragmatic approach to job creation would need to be justified by the applicant, demonstrating the economic benefits of the development.
- 3.10 If an application is submitted and there is a presumption in favour of widening the range of uses as set out above, there may be a requirement for developer contributions towards infrastructure, including the Borders Railway and the A720 Sheriffhall Junction improvements.

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

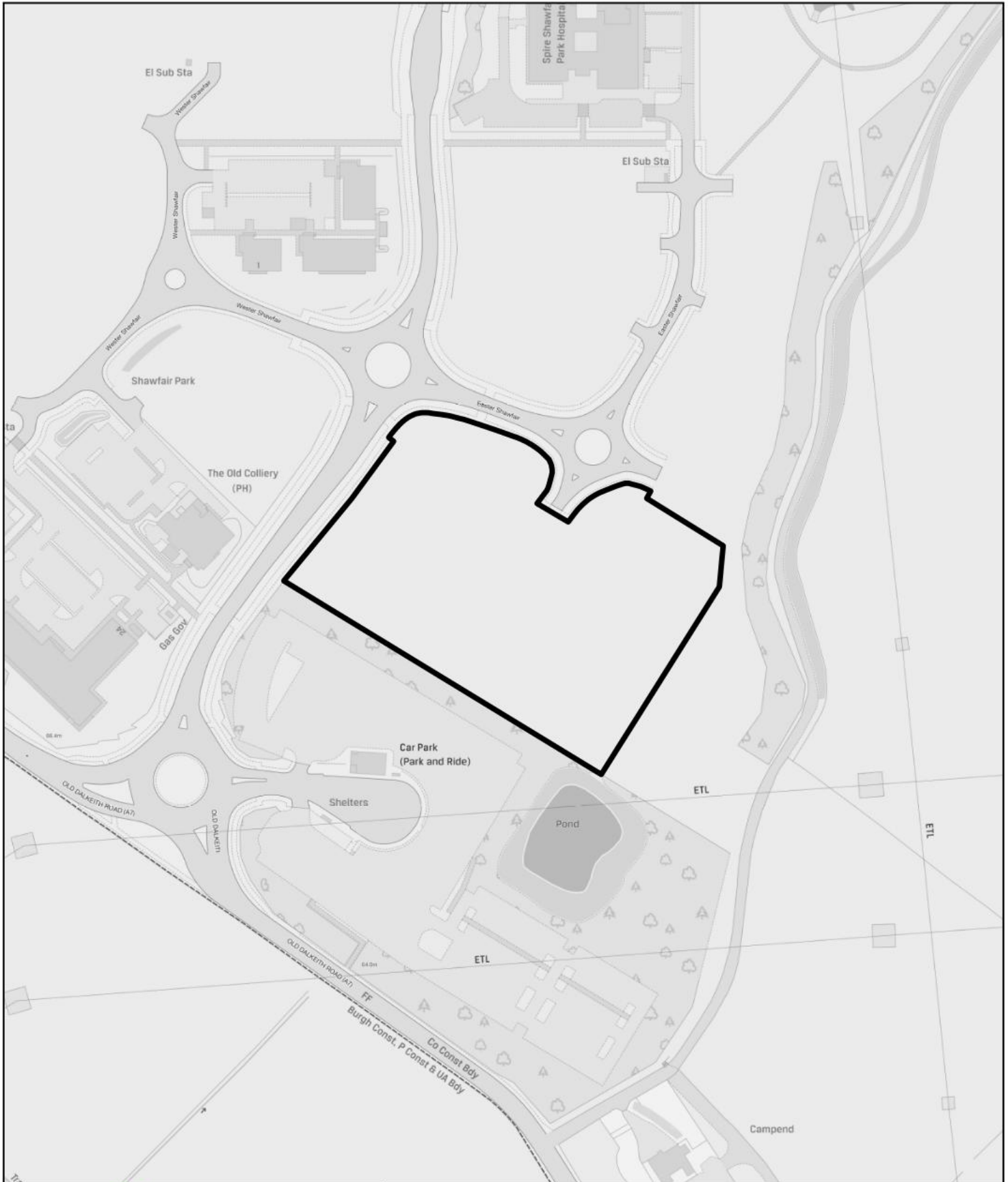
all material considerations and be prepared to change their views which they are minded towards if persuaded that they should.

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.

Peter Arnsdorf
Planning Manager

Date: 6 October 2020
Application No: 20/00607/PAC
Applicant: Lichfields, 21 Mincing Lane, London
Validation Date: 17 September 2020
Contact Person: Martin Patrick
Email: Martin.Patrick@midlothian.gov.uk



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

Proposal of Application Notice for the erection of a Health and Racquets Club with associated car parking, access, landscaping and ancillary facilities at Land North East of Sheriffhall Park and Ride, Easter Shawfair, Danderhall

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File No: 20/00607/PAC

Scale: 1:2,500
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APPLICATION FOR PLANNING PERMISSION (20/00220/DPP) FOR THE ERECTION OF FOODSTORE (CLASS 1); FORMATION OF ACCESS ROADS AND CAR PARKING; AND ASSOCIATED WORKS ON LAND AT THORNYBANK NORTH, DALKEITH

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for planning permission for the erection of a foodstore (class 1); formation of access roads and car parking; and associated works on land at Thornybank North, Dalkeith. There have been 46 representations, from 43 separate households, in support of the proposal and four objections to the planning application. Consultation responses have been received from Scottish Water, the Council's Policy and Roads Safety Manager and the Council's Environmental Health Manager.**
- 1.2 The relevant development plan policies are policy 3 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT1, STRAT3, DEV2, DEV5, DEV6, DEV7, TRAN5, IT1, TCR2, ENV2, ENV10, ENV17 and ENV18 of the Midlothian Local Development Plan 2017 (MLDP). The site is identified as being part of site Hs5, an allocated housing site in the MLDP. The adopted Supplementary Guidance on Food and Drink and Other Non-Retail Uses in Town Centres is also material to the consideration of the application as it elaborates on the requirements of policy TCR2.**
- 1.3 The recommendation is to refuse planning permission.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises a vacant former industrial plot of approximately 1ha to the north side of the Thornybank Industrial Estate at the north east side of Dalkeith (albeit the application site is 1.12ha in area as it includes an area of carriageway to the front of the site). The application site is the former Laidlaw and Fairgrieve site. The application site is located to the north of the access road serving the Charles Letts & Co. factory to the south. The classified B6414 road runs along the western boundary (the site frontage) of the site, with the residential properties at Thorny Crook Crescent beyond. The**

residential properties at Ryndale Court and Ryndale Drive (comprising a mix of flatted dwellings and dwellinghouses) are located to the east of the application site. An area of open space associated with the Wester Cowden residential expansion is located beyond a line of trees and dense undergrowth to the north. The application site is relatively flat

- 2.2 There is a row of mature trees along the site frontage which are protected by a Tree Preservation Order (TPO).
- 2.3 The B6414 road is the principle route, for pedestrians and vehicular traffic, from Dalkeith to the schools' campus. The application site is approximately 300m from the identified Wester Cowden hub site and approximately 175m from the Sainburys store at Thornybank.
- 2.4 The application site forms part (approximately half) of the allocated housing site Hs5, as identified in the adopted MLDP.

3 PROPOSAL

- 3.1 The proposal is for the erection of a foodstore (class 1); formation of access road and car parking; and associated works.
- 3.2 It is proposed to erect a single storey retail foodstore with a gross floor area of 1,846sqm (1,315sqm net sales area).
- 3.3 The proposed building measures approximately 40m wide by 60m long and 5.5m high and appears as a contemporary foodstore, reflecting Aldi's standard architectural approach, similar to the design approach at other sites across the country. The shorter elevation runs parallel with the main road, the B6414. The elevation which fronts the main road appears to be the principal elevation, being predominantly glazed and with a feature area of timber cladding. The north elevation contains the customer entrance and an area covered by a canopy. There are high level windows along this elevation and it is primarily finished in a white render. Again, there is a feature area finished with timber cladding adjacent to the entrance. The other elevations are more plainly detailed, being that they are the less publicly visible elevations.
- 3.4 The external areas will be surfaced with a mixture of tarmac and permeable paving.
- 3.5 Vehicular access for customers is proposed to be taken directly, via a new access, from the B6414 to the front of the site. Pedestrian access is also to be taken from the front of the site but there is also proposed to be an opportunity to link up to a footpath to the rear of the site (that footpath is not currently in place). Deliveries to the foodstore will be via the existing access road which runs between the application site and the Charles Letts & Co. building to the south. The service area is located on the south eastern part of the site.

- 3.6 The car park will be located to the north of the foodstore and will comprise 106 bays (89 standard; six accessible; nine parent and child; and, two for electric vehicles). A cycle parking area will be sited to the west side of the foodstore.
- 3.7 It is proposed to site a recycling hub to the north of the foodstore.
- 3.8 It is proposed to site bus stops and shelters and a zebra crossing on the B6414, immediately adjacent to the application site.
- 3.9 The landscape scheme proposes the retention of most of the existing trees and the planting of additional trees and shrubs.
- 3.10 The applicant has submitted the following documents, alongside the drawings, to support the planning application:
- Report of consultation;
 - Design and Access statement;
 - Noise statement;
 - Transport assessment;
 - Drainage Impact assessment;
 - Planning and retail assessment;
 - Tree Survey report; and,
 - Site Investigation (Phase II Geo Environmental assessment).
- 3.11 In addition, the application has submitted additional details when asked for clarification of several matters.

4 BACKGROUND

- 4.1 Planning application 04/00164/FUL for part change of use from Class 5 to Class 6 and Class 3 uses and to indoor karting centre and auctioneer space, including the installation of roller shutter and access doors to existing building and partial demolition was granted planning permission, but not implemented.

5 CONSULTATIONS

- 5.1 **Scottish Water** does not object to the application, but states they will not accept any surface water connections to the combined sewer. They also state that they cannot guarantee capacity in relation to water supply or foul water treatment. In addition, Scottish Water state that the development proposals will impact on their infrastructure.
- 5.2 The Council's **Policy and Road Safety Manager** does not object to the application, but advise that conditions should be used to resolve some issues regarding the detailed elements of the proposal (relating to road and car parking infrastructure and drainage infrastructure).
- 5.3 The Council's **Environmental Health Manager** does not object to the application, but has provided comments in relation to ground

conditions, noise, smell, construction hours and the nuisance caused by seagulls – these issues can be addressed by conditions on any grant of planning permission.

6 REPRESENTATIONS

6.1 There have been 46 representations made in support of the planning application, from 43 separate households. One household has submitted six representations in support of the planning application. There have been four representations objecting to the planning application. Two of those representations have been received from the same household. One of the letters of objection has been submitted on behalf of a food retailer that operates within Dalkeith town centre.

6.2 While almost half of those supporting the planning application did not give a reason for doing so it is clear from those who did make a comment that the following issues were most relevant to them:

- The proposed development would create local jobs;
- The opening of an Aldi store at the application site would be convenient;
- The opening of an Aldi store at the application site would address a perceived deficiency in facilities in the Wester Cowden/Thornybank/Woodburn area;
- The opening of an Aldi store at the application site would provide a budget alternative, with a better choice of produce, to that already provided in the area, specifically at the nearby Sainsbury store;
- Other existing stores are too expensive;
- The Aldi store would complement the existing retail provision;
- The opening of an Aldi store at the application site would reduce traffic having to travel to other Aldi stores in the vicinity;
- The store would support people with additional needs, such as those with mobility or mental health issues, by providing a calm and relaxed atmosphere, as opposed to the environment in larger stores;
- Midlothian does not have an Aldi store;
- It may result in an improved bus service;
- Given the proximity to the school campus families could shop here together;
- There are good nature walks in the area which would benefit those walking to the store;
- Aldi is a trusted brand with quality products; and,
- There would be less opportunity for fly-tipping at the site.

6.3 Those objecting to the planning application have raised the following points:

- The proposal is contrary to the Midlothian Local Development Plan, SESplan and Scottish Planning Policy;
- There are already enough supermarkets in the area;

- The development would attract significant trade from the town centre thereby impacting on the vitality and viability of the town centre;
- The development would be an eyesore;
- The construction of a supermarket would have an adverse impact on residential amenity;
- The operation of a supermarket would have an adverse impact on residential amenity (a range of issues have been highlighted, from noise and smells generated at the site to the impact on privacy as a result of building mounted CCTV);
- The operation of a supermarket would have an adverse impact on road and pedestrian safety, particularly as the application site is on a safe route to school;
- Loss of a view from residential property;
- Impact on residential property values;
- Public health concerns;
- Adverse impact on other businesses in the area;
- The proposals do not adequately address infrastructure requirements
- The site is not zoned for retail;
- Concerns regarding the impact on trees and landscaping;
- The Traffic Assessment is inadequate;
- Adverse impact on a safe route to school; and,
- Lack of information regarding the sustainability of the store.

6.4 The full contents of all representations can be viewed via the online planning application case file which can be accessed through the Council's planning portal.

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:

7.2 The **Scottish Planning Policy** (SPP) sets out the Scottish Government's expectations with regards to development in Scotland. With regards to retail developments the SPP states that the planning system should apply a town centre first policy. This position is further clarified in paragraph 68 of the SPP where it is stated that a sequential town centre first approach must be applied, requiring the following locations for high footfall generating uses to be considered in the following order of preference:

- Town centres (including city centres and 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.

- 7.3 The SPP goes on to state that out-of-centre locations should only be considered for uses which generate significant footfall where:
- All town centre, edge of town centre and other commercial centre options have been assessed and discounted as unsuitable or unviable;
 - The scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location;
 - The proposal will help to meet qualitative or quantitative deficiencies; and,
 - There will be no significant adverse effect on the vitality and viability of existing town centres.

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

- 7.4 The **Strategic Development Plan** for Edinburgh and South East Scotland (SESplan) sets out, in policy 3, the support for the SPP by requiring local development plans to:
- Identify town centres and commercial centres and clearly define their roles;
 - Support and promote the network of centres identified by SESplan and to identify measures necessary to protect these centres; and,
 - Promote a sequential approach to the selection of locations for retail proposals. Any exceptions identified through local development plans should be fully justified.

Midlothian Local Development Plan 2017 (MLDP)

- 7.5 Policy **STRAT1 Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP.
- 7.6 Policy **STRAT3 Strategic Housing Land Allocations** states that housing development to meet the SESplan strategic housing land requirement will be supported on sites specified as housing allocations in the Settlement Statements in the MLDP. The development strategy supports the provision of an indicative 30 housing units on the site (Hs5) to 2024.
- 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 **DEV5 Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.9 Policy **DEV6 Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.10 Policy **DEV7 Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.11 Policy **TRAN5 Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.12 Policy **IT1 Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals.
- 7.13 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 applications. This directs retail developments to the following areas in order:
- Town Centre - Bonnyrigg, Dalkeith, Gorebridge, Loanhead, Mayfield, Newtongrange, Penicuik, Shawfair
 - Commercial centre – Straiton Commercial Centre
 - Potential out of centre location - Main corridor from Gorebridge/Redheugh to Newtongrange
 - Local Centres - Danderhall, Bonnyrigg/Hopefield, Bonnyrigg/Poltonhall, Dalkeith/Thornybank, Dalkeith/Wester Cowden, Dalkeith/Woodburn, Eskbank Toll, Gorebridge/Hunterfield Road, Bilston, Penicuik/Edinburgh Road, Roslin and Pathhead
- 7.14 Policy TCR2 also states that new shopping facilities, up to a scale of 1,000sqm gross floor area, will be permitted within local centres, provided they do not undermine the vitality and viability of any of Midlothian's town centres. It also states that elsewhere within the built-up area such facilities will be supported where new housing developments are not adequately served by existing centres. Any such development should not have a negative effect on the amenity of the adjoining residential area, including traffic and parking considerations.
- 7.15 Policy **ENV2 Midlothian Green Network** supports development proposals brought forward in line with the provisions of the Plan that

help to deliver the green network opportunities identified in the Supplementary Guidance on the *Midlothian Green Network*.

- 7.16 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.
- 7.17 Policy **ENV17 Air Quality** states that development will not be permitted where it would cause an unacceptable impact on air quality.
- 7.18 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.
- 7.19 The adopted **Supplementary Guidance on Food & Drink and Other Non-Retail Uses in Town Centres** reflects and elaborates on policy TCR2 of the MLDP, stating that the creation of retail and commercial leisure facilities outwith town centres must comply with policy TCR2. As a town centre first sequential test applies, applications for such development outwith town centres must demonstrate this will not undermine the vitality and viability of town centres within the expected catchment of the proposed development. Retail Impact Assessments will be required for all proposals of more than 2,500 square metres gross floor area, and also smaller proposals where the Council is of the view these may pose a threat to existing centres.
- 7.20 Where new development gives rise to a need, the local development plan gives scope for the Planning Authority to secure measures which will mitigate specific adverse impacts in terms of local infrastructure. Opportunities to improve town centres are set out in the settlement statements within the MLDP, however other measures may be brought forward during the lifetime of the plan and this Supplementary Guidance.
- 7.21 While not planning policy, the **Wester Cowden Development Brief and Masterplan** are relevant considerations in relation to this planning application. They set out a requirement for shops to serve the Wester Cowden expansion of Dalkeith, with reference to a neighbourhood hub being provided.

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 application site is located within the identified built-up area of Dalkeith, and as such, there is a presumption in favour of some form of development provided it is compatible with surrounding uses.

Consideration of the site as part of Midlothian's strategic land supply for housing

- 8.3 The application site comprises approximately half of site Hs5, as identified by the MLDP, which has been allocated as part of Midlothian Council's strategic housing land supply. The MLDP allocates the whole of the Hs5 site for the development of 30 dwellings.
- 8.4 The applicant proposes a retail development, with associated parking, on half of the allocated housing site. While the applicant has demonstrated (by submitting an indicative layout) that it may still be possible to accommodate 30 dwellings (flats), along with the associated garden space, open space and car parking, in the remaining half of the Hs5 site it is clear that developing half of the Hs5 site with a supermarket would result in less housing being delivered on this allocated housing site than if the entire site were devoted to a residential development. Furthermore the provision of a retail store will impact on the form and amenity of the housing provided on the remainder of site Hs5.
- 8.5 The proposed development would be contrary to the allocation of the site for housing in the MLDP and would undermine the plan-led decision-making process, as allocated housing sites should be retained for much needed housing. In addition, the reduction in housing numbers, well below the site's full potential, would also result in a reduction in the amount of affordable housing which could be delivered. Midlothian Council's list of allocated housing sites is decreasing and it would be unfortunate to lose one which is in such a sustainable location as this.
- 8.6 While local schools are either at or near capacity the Council is working on providing additional space for students in these existing schools. In any event, the application site forms part of an allocated housing site which will have been taken into account in planning for school rolls.
- 8.7 Therefore, the proposal for a retail use on part of this allocated housing site is considered to undermine the local development plan and is contrary to development plan policy.

Consideration of the site for retail use

- 8.8 The MLDP, through policy TCR2, reflects and applies Policy 3 of the Strategic Development Plan which seeks to: identify town centres and define their roles; set out a network of centres including criteria to be

addressed in assessing proposals; and, promote a sequential approach to the selection of locations for retail development. Policy TCR2 sets out policy support for development in (depending on circumstances) town centres, at Straiton commercial hub, and for new convenience shopping in the Gorebridge/Newtongrange area. The application site does not fit any of these supported locations.

- 8.9 Policy TCR2 also supports the development of new local centres/neighbourhood centres up to a scale of 1,000 square metres gross floor area (either in identified local centres or elsewhere within the built-up area where new housing is not adequately served by existing shopping facilities).
- 8.10 It is necessary to determine conformity with the MLDP by considering the key questions of; whether the extent to which the Thornybank site is an adequate substitute for the envisaged Wester Cowden hub/local centre; whether the scale of the Aldi proposal is excessive in the context of policy TCR2 support for local centres; and, whether the proposal, if approved, will adversely impact on vitality and viability of local town centres.
- 8.11 The Wester Cowden hub area is identified as one of the neighbourhood centres and has yet to secure any development and continues to give this part of the Wester Cowden expansion an unfinished appearance. The selection of the neighbourhood hub site in Wester Cowden followed a development brief process and was chosen as a convenient site to serve the whole community. It has a status in the development plan conferred by its inclusion in the network of centres.
- 8.12 The applicant has indicated that the proposed development would be a replacement for the Wester Cowden hub. The application site does not have status as a local centre in the MLDP but is approximately 300m from the Wester Cowden hub site. The applicant states that there is no prospect of the Wester Cowden hub site being developed in the way originally envisaged. If the Council were to support the current proposal this would likely end the prospect of the original Wester Cowden hub being developed as originally envisaged. In comparison to the application site the Wester Cowden hub site is more conveniently and sustainably located to service the community it is intended to serve but is less visible to passing vehicular traffic on the main road. The developer has proposed no formal pedestrian links between the Wester Cowden community and the application site, other than those already in place.
- 8.13 In addition, the Wester Cowden hub was envisaged as having a number of smaller units which might accommodate other uses such as a crèche, hairdressers, etc., rather than one large supermarket.
- 8.14 With regards to whether the new housing is adequately served by existing shopping facilities the MLDP did not identify a need for a retail

facility of over 1,000sqm to serve the Wester Cowden expansion. While it is appreciated that some of the local community have expressed support for the convenience of a supermarket at the application site the level of support is not significant (43 households) and a convincing argument has not been made that there is not already a convenient range of different shopping opportunities in the area already, with Tesco, Morrisons, Lidl and Sainburys all having stores serving Aldi's proposed catchment area.

- 8.15 The proposal has a gross floor area of 1,846sqm and so is significantly larger than that supported by the MLDP. The applicant argues that other local centres in Midlothian have larger retail stores as an anchor, such as the Tesco at Edinburgh Road in Penicuik. However, generally, those larger retail units are historic and were in place prior to the adoption of the MLDP and current policy TCR2.
- 8.16 Ultimately, the scale of the Aldi proposal is larger than was envisaged as being acceptable to serve a local/neighbourhood centre role in the MLDP in terms of policy TCR2 and, as such, the proposed Aldi store does not fit into the hierarchy of locations acceptable for this type of development as identified in the MLDP. Despite this, it is still appropriate to assess whether the effects of the store on the vitality and viability of town centres are acceptable or not.

Impact on town centres

- 8.17 In considering the application an assessment of the developments potential impact on the town centre is fundamental, with a view of protecting town centres in line with national and local policies and priorities. The planning authority must be satisfied that the trade diversion figures for affected town centres, and the process by which they have been arrived at, are reasonable and then assess to what extent the scale of diversion is significant. The planning authority has strong policy grounds on which to refuse the application as set out above, the uncertainty regarding the impact of the proposal on Midlothian's town centres further supports a refusal recommendation.
- 8.18 The 2012 Midlothian Retail Study by RDPC Ltd can be considered out dated, but has been utilised by the applicant, the objector representing the town centre Lidl store and the planning authority when assessing the impact of the proposed Aldi store. The 2012 Midlothian Retail Study did indicate that the Tesco store at Hardengreen was overtrading and that the development corridor could accommodate additional convenience floorspace.
- 8.19 In respect of trade diversion, the applicant references the levels of leakage from Midlothian found in the 2012 study and considers there is potential to further reduce this. While it has been Midlothian's experience that new retail floorspace has reduced leakage, Midlothian is strongly linked to neighbouring local authorities through commuter

flows, and this lack of self-containment will be reflected in expenditure patterns with leakage appearing to reach a ceiling at the time of the 2012 study – since the 2012 study Dalkeith has seen the erection of a Morrisons and Sainsbury's local. It would therefore be reasonable to expect more conservative estimates of leakage in the sensitivity analysis.

- 8.20 Estimating trade draw is difficult and the planning authority accepts that there was overtrading at Tesco at Hardengreen in 2012 and that this was the dominant store in the area. However, Morrisons has since opened and there have been changes in the convenience sector since then with the rise of discount stores and the growth of online shopping. It would have been useful if the applicant had set out the reasoning for the trade diversion estimates for each of the existing locations in their Retail Impact Assessment (RIA), with reference to the factors identified in the Scottish Government's Town Centres and Retailing Methodologies report (2006). The description in the RIA seems to include a broad-brush estimate.
- 8.21 The originally submitted RIA estimated that the proposed foodstore would turnover £12.58m convenience trade in the target year (2023), with £10.1m coming from residents of the catchment (broadly Dalkeith and part of Mayfield) and the balance (approximately £2.5m) from out with. Of the trade sourced from the catchment residents £4m would be from reducing leakage out with the catchment, £2.5m from Tesco (which is in the catchment but has no particular protective status), leaving £2.7m to come from Dalkeith town centre, £0.4m from Mayfield town centre and £0.5m from local shops. This diversion from Dalkeith town centre was estimated at 8.8% of Dalkeith town centre's trade by the RIA.
- 8.22 The Sensitivity Analysis 2 (incorporated in the applicant's 15 July 2020 letter to the planning authority) increases the diversion flows by +25% on the two biggest convenience retailers in Dalkeith town centre. This increases the flow in cash terms from these stores by £0.7m to £3.4m. The RIA estimates convenience trade in Dalkeith town centre at £31.05m (using company average turnover assumptions). Therefore, the effect of the increased diversion flows is to take 11% of the convenience trade (compared to 8.8% on the baseline RIA) from Dalkeith town centre.
- 8.23 It is not the role of the planning authority to carry out its own sensitivity test, but it is necessary to give consideration to potential uncertainties in order to give an idea as to whether the cumulative uncertainty around different assumptions in the RIA is significant.
- i. *The extent to which the store carries out more trade than expected:* If a 10% sensitivity test (i.e. the store trades at 10% above RIA expectations) is applied this could add another £1.3m of turnover. Using the applicant's methodology in the RIA, this

would result in an additional trade diversion from Dalkeith town centre of approximately £0.2m.

- ii. *The extent to which the store does not draw its trade from reduced leakage:* If leakage reduction is 10% less this could result in another £0.4m drawn from stores in the catchment. However, not all of this is from the town centres, but it should be safe to assume a figure of £0.2m using market share evidence from the RIA.
- iii. *The extent to which the 'extra' catchment trade (which includes places like South Mayfield, Newtongrange and Gorebridge) is diverted from Dalkeith town centre:* It is reasonable to assume that most of the out of catchment trade comes from geographically close by locations i.e. the A7/A68 corridor. If it is assumed that a likely figure of 80% of the £2.5m of out of catchment trade comes from here this would result in £2m from elsewhere in the corridor. Back in 2012 (pre-Morrisons) the Dalkeith town centre share of this extra catchment trade was only 8.5%. Allowing for the estimated turnover of Morrisons it seems reasonable that this may now be nearing 25%. If a figure of 25% is used this would result in £0.5m of additional diverted expenditure.
- iv. *The extent to which more trade than predicted is drawn from Dalkeith town centre:* This point is adequately covered by the applicant's Sensitivity Test 2 which increases the trade draw by 25%. This higher assumption is appropriate given the uncertainty around trade diversion estimates.

8.24 Taking sensitivity test matters in points i to iii above into account an extra impact of £0.9m might result on top of the £0.7m estimated by the applicant's sensitivity test. This would take diversion from Dalkeith town centre to £4.3m (£2.7m from the original RIA, £0.9m from points i to iii above, and £0.7m from applicant's own sensitivity test addressed in point iv). This £4.3m diversion would represent 14% of Dalkeith's existing convenience trade if the applicant's figures based on operator averages are accurate.

8.25 The representation submitted on behalf of the Lidl store in Dalkeith town centre sets out an alternative position. In summary, Lidl suggest that the proposed Aldi store would have a minimum impact of 16.2% trade diversion. Given that the planning authority's assessment sets a figure somewhere between the applicant's and the objector's figures for trade diversion it suggests that it may be the more likely position, given the information currently available.

8.26 It is therefore key to consider what percentage of trade diversion would be significant. There is no set percentage at which a trade diversion becomes significant and it will depend on how marginal the stores are. The 2012 Midlothian Retail Study showed slight overtrading, but relatively little weight can be attached to this finding as it predates the opening of Morrison's and the data itself is now reasonably old. The

convenience food stores 'anchor' the town centre and their loss would significantly affect the viability and vitality of the town centre.

- 8.27 In assessing the performance of stores the Scottish Government's Town Centres and Retailing Methodologies report (2006) states the following:

Para 6.173 ...a number of features are identified by practitioners for indicating whether a store is, or is not overtrading, including:

- Constant restocking by staff (or failure to restock resulting in empty shelves);
- Long queues at checkouts – especially if all or most check-outs are open;
- Products on display in aisles/cramped aisles;
- Busy car parks; and,
- High turnover level identified from surveys.

- 8.28 In Midlothian's case there is no data on the performance of the Morrisons store as its opening post-dates the 2012 retail study. Despite this there is no overwhelming evidence to suggest that any of the stores in the town centre are overtrading at this time, particularly during the Covid-19 Coronavirus pandemic.

- 8.29 There is not a specific set level at which trade diversion becomes significant, and if town centre operators are under trading even a small abstraction could impact on viability. If one or more town centre stores were to become unviable and, in the worst case, cease trading this would have a significantly adverse impact on the vitality and viability of a protected town centre.

- 8.30 It is well documented that town centres and high streets across the country are facing challenging conditions, particularly in terms of changing shopping habits and having to deal with a Covid-19 and a post-Covid-19 environment. Town centres will require all the assistance they can get if they are to survive and act as sustainable community spaces. A diversion rate of around 14% from Dalkeith town centre is significant in this context. It is possible that serious harm could be caused to the vitality and viability of the town centre as a result of siting a foodstore with a large floorspace on a site that does not fit into the hierarchy of retail sites as identified by the adopted local development plan.

Employment generation

- 8.31 The applicant has stated that they intend to create up to 35 jobs at the foodstore. They have not specifically advised whether these jobs are full time equivalent.
- 8.32 While job creation is an important factor in the consideration of this planning application, and a Council priority, given the outcome of the

above assessment of the impact of the proposal on the town centre the creation of jobs at the application site could be potentially detrimental to existing employment within the town centre. If it were the case that jobs were to be lost in the town centre as a result of an out-of-centre foodstore this would not be a sustainable approach to job creation.

Design

- 8.33 The proposed foodstore is of a standard design found in the contemporary urban environment. While it can generally be argued that by using a standardised design the proposal does not respond to 'place', the surrounding environment in this case is one that has undergone significant change in the past decade or so, with the introduction of modern housing estates. As such, the design of the proposed foodstore, along with the proposed finishing materials, is appropriate as the building will not have an adverse impact on the character or appearance of the area.

Impact on amenity

- 8.34 There is residential accommodation at Thorny Crook Crescent to the west, Woodland View to the north and Ryndale Court to the east. In addition, in the future the remainder of the allocated housing site, of which the application site forms part, should be developed with at least 30 dwellings. These dwellings will be in close proximity to the proposed foodstore, and in particular the delivery area.
- 8.35 The applicant's Noise Statement makes reference to a 35 dB LAeq at 40m from the store façade; from car park; and service yard noise. It also suggests that night-time plant noise may possibly compromise amenity at a distance of 30m, with night-time deliveries likely to compromise amenity at 40m.
- 8.36 The Council's Environmental Health Manager has highlighted concerns regarding the use of reversing beepers and night-time deliveries and has suggested that the planning authority impose appropriate conditions in order to mitigate these concerns. These conditions are to include the submission of a Noise Management Plan; a limit on noise generation (as measured in nearby properties); a limit on delivery hours; a limit on amplified music; and, measures put in place to prevent odours being emitted from the building.
- 8.37 The Council's Environmental Health Manager has also highlighted a concern regarding an ongoing problem with a large number of seagulls nesting in the immediate area and has requested that bird proofing measures be undertaken on the building.
- 8.38 An objector has highlighted concerns regarding the likely adverse impact on residential amenity as a result of the construction of the development. The site is an allocated housing site within the built-up

area. It is the case that the development of the site would have taken place at some point in the future, whether as a housing development, a retail development, or some other form of development and any nuisance arising from that construction activity can be controlled by the Council's Environmental Health service.

- 8.39 The objector also highlights concerns regards to the likelihood of more anti-social behaviour in the area as a result of having a foodstore located on the site. This is not a planning matter and issues regarding anti-social behaviour can be addressed by the Police.

Transport and access

- 8.40 The applicant proposes to create a new vehicular access to the site to accommodate customers' cars. Deliveries to the site will be via an existing road. Subject to some minor amendments, which can be covered by planning conditions, the Council's Policy and Road Safety Manager has not raised any significant concerns regarding the proposals.
- 8.41 Further details of the two new bus stops, and shelters, and the raised Zebra Crossing to be formed on the B6416 would need to be submitted for approval. However, these proposals ensure that there will be good public transport links to the foodstore. Their delivery can be secured through a legal agreements between the applicant and the Council.

Landscaping

- 8.42 While there is a Tree Preservation Order in place protecting a number of mature trees along the site frontage the proposals to develop the application site should not have a significant adverse impact on existing landscaping. In addition, the submitted landscaping proposals, if fully implemented, will ensure that the site is appropriately landscaped.
- 8.43 The Council's proposals regarding establishing a Green Network across the Council area include a requirement which states that the existing vegetation should be retained and enhanced along the north-eastern and north-western boundaries and that a hedge-lined avenue with trees along the south-western boundary and north-western boundaries should be created.

Ground conditions

- 8.44 The Geo Environmental Statement submitted by the applicant makes reference to a Woollen Yarn Spinners on this site in the 1940s. The assessment is based upon a desktop survey, boreholes and trial pits. There is evidence of crushed demolition related material, imported material including tarmac surfacing and occasional amosite asbestos fibres. The Council's Environmental Health Manager has

recommended planning conditions in order to address contaminated land matters.

Sustainability

- 8.45 The Council has declared a climate change emergency and adopted a climate change strategy in response to the emergency. The applicant has set out their approach to sustainability through the reduction in energy needs and use of sustainable building materials and construction methods.

Matters raised by representation not already addressed above

- 8.46 The following matters raised by interested parties which are not material considerations in the assessment of the application are: the quality, range and price of Aldi products; the stopping, or not of fly tipping; impacts on the view from residential properties; the view that an Aldi foodstore is better placed to cater for those with additional needs; and that Midlothian does not currently have an Aldi store.

Conclusion

- 8.47 While there is some public support for the application the proposal is not in compliance with national or local planning policy. The proposed development does not fit into the retail hierarchy, as set out in the MLDP. In addition, while the above assessment of the impact on local town centres takes a cautious approach it is clear that there will be some element of trade diversion from those centres which could have a damaging effect and this should be balanced against the job creation from the proposed store.
- 8.48 Furthermore, while it is not the planning authority's role to protect existing business from fair competition (based on the consistent interpretation of planning policy), it is important to assess whether that impact on existing business is likely to have implications for the health of a town centre. The health of the town centre must be at the heart of the decision making process when considering applications for retail development.

9 RECOMMENDATION

- 9 It is recommended that planning permission be refused for the following reasons:

1. *The development would result in the loss of half of a site (Hs5) which has been allocated through the adopted Midlothian Local Development Plan to contribute towards Midlothian's strategic housing land supply. While housing could still be delivered on the remainder of the allocated housing site the proposed development will prevent any future housing development fulfilling*

its full potential and will limit the potential number of affordable units which could be delivered in the area, to the detriment of the Council's targets for securing affordable homes.

2. *The application site is not one of the acceptable types of locations for retail development, as specified in the sequential town centre first approach identified in the Scottish Planning Policy and policy TCR2 of the adopted Midlothian Local Development Plan. It has not been demonstrated, to the satisfaction of the planning authority, that the site is appropriate for the proposed use, particularly as the proposed floor area of the retail unit is significantly above the acceptable floor area for retail development in local centres and neighbourhoods, as defined by the local development plan.*
3. *It has not been demonstrated that the proposed development would not have a significant detrimental impact on the vitality and viability of Dalkeith town centre and other local town centres and so the proposal does not comply with policy TCR2 of the Midlothian Local Development Plan and the Scottish Planning Policy, both of which aim to prioritise and protect town centres through the town centre first principle.*

Peter Arnsdorf
Planning Manager

Date: 6 October 2020

Application No: 20/00220/DPP

Applicant: Aldi Stores Ltd, Pottishaw Road, Bathgate, EH48 2FB

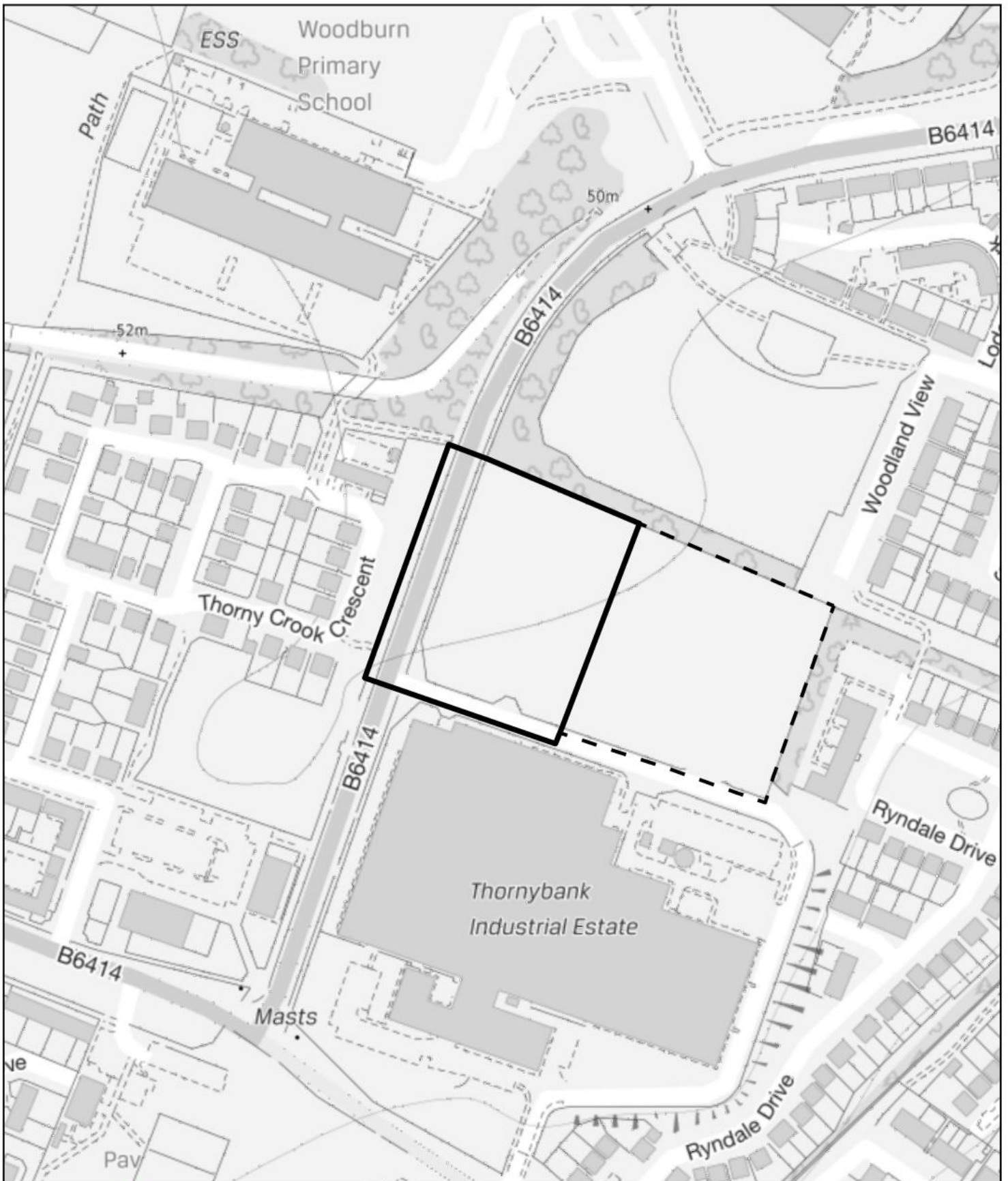
Agent: Avison Young (UK) Ltd, 40 Torphichen Street, Edinburgh, EH3 8JB

Validation Date: 24 March 2020

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Background Papers:



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

Erection of foodstore (class 1); for provision of access roads and car parking and associated works at Land At Thornybank North, Dalkeith

 Remainder of Housing Site HS5

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