



SECTION 42 APPLICATION 20/00312/S42 TO AMEND CONDITION 1 (TO INCREASE THE NUMBER OF DWELLINGS IN PHASE ONE FROM 350 TO 430) IMPOSED ON A GRANT OF PLANNING PERMISSION 14/00910/PPP FOR RESIDENTIAL DEVELOPMENT, THE ERECTION OF PRIMARY SCHOOL AND MIXED USE DEVELOPMENT AT LAND AT CAULDCOATS, MILLERHILL, DALKEITH

The application is accompanied by an environmental impact assessment report prepared in terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** At its meeting of December 2017 the Committee were minded to grant planning permission in principle for residential development, the erection of a primary school and for mixed use development at land at Cauldcoats, Millerhill, Dalkeith subject to a planning obligation securing developer contributions and conditions. Following the conclusion of the planning obligation planning permission was issued in July 2019. This Section 42 application seeks to amend the wording of Condition 1 attached to planning permission 14/00910/PPP to increase the maximum number of dwellings built within phase 1 of the development from 350 to 430 dwellings. An increase of 80 dwellings.
- 1.2** Nine representations have been received (including multiple representations from the same household and one petition from multiple local residents) and consultation responses from; Scottish Environment Protection Agency (SEPA), The Coal Authority, Scottish Water, Nature Scot (formerly Scottish Natural Heritage), the Council's Policy and Road Safety Manager, the Council's Flooding Officer, the Council's Environmental Health Manager, the Council's Housing Planning and Performance Manager, the Council's Head of Education and Danderhall and District Community Council.
- 1.3** The relevant development plan policies are policies 5 and 7 of the Edinburgh and South East of Scotland Strategic Development

Plan 2013 (SESPlan1) and policies STRAT 3, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV17, ENV18 ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).

- 1.4 The application is accompanied by the previously approved Environmental Impact Assessment (EIA) and an updated suite of EIA information, which considers the likely environmental impacts of the proposal. The results demonstrate that there would be no change to the likely significant adverse environmental impacts associated with the proposed development, as amended, and that these could be mitigated by a series of mitigation measures within the approved EIA or updated EIA information identified via a new, and comprehensive, Schedule of Mitigation.**
- 1.5 The recommendation is to grant planning permission in principle subject to conditions and the applicant entering into a Planning Obligation to secure contributions towards necessary infrastructure and the provision of affordable housing.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is located on the northern boundary of Midlothian with the land to the north being within the City of Edinburgh Council area. The site is approximately 31.2 hectares and is predominantly in agricultural use.**
- 2.2 The former Niddry Bing is located to the northwest of the site and includes land both within and outwith the boundary of the site.**
- 2.3 The majority of the site is former agricultural or countryside land that falls from south to north. However, there are some significant level changes in the north western corner of the site reflecting the former use a bing. The site is bounded to the north by Fort Kinnaird Retail Park (in part) and a vacant parcel of land (with extant planning permission for housing development (now expired) and subject to a recent Proposal of Application Notice for residential development issued by the City of Edinburgh Council (20/00529/PAN).**
- 2.4 Land to the east of the site is identified in the Shawfair Masterplan for business and industrial development. Planning approval was recently issued on this site to vary the mix of acceptable uses approved within the site (19/00748/PPP). Immediately to the east of the site is Whitehill Road which serves Fort Kinnaird Retail Park and the zero waste site at Millerhill. This site contains an anaerobic digestion plant and a recycling and energy recovery centre. There is a C class road bounding the site to the south and partially to the east with agricultural land beyond, including Cauldcoats Farm and Steading buildings. The site is bounded to the west by the A6106 (The Wisp).**

- 2.5 A number of commercial and residential properties lie to the south west of the site, on the western side of the Wisp. Two commercial properties are also located within the south western corner on of the site, adjacent to two residential properties fronting the Wisp that are excluded from the site. To the west of the A6106 (The Wisp) lie residential developments located within Greendykes and Hunter's Hall Public Park beyond.
- 2.6 A small watercourse, the Magdalene Burn, runs along part of the northern boundary of the site flowing from west to east.
- 2.7 There is a public footpath link to the west of the site which links the site to the Edinburgh Royal Infirmary and Little France.

3 PROPOSAL

- 3.1 This application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 (hereafter referred to as the Act), is to amend one condition (Condition 1) on Planning Permission 14/00910/PPP to increase the maximum dwelling numbers within Phase 1 from 350 dwellings to 430 dwellings.
- 3.2 A Section 42 application, is in itself, a planning application - a particular kind of planning application for development without complying with or amending the condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore, if planning permission is granted for this application it will supersede planning permission 14/00910/PPP if implemented.
- 3.3 Although a Section 42 application is a new planning application in law the Act states "on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted". The principle, layout and form of development are not subject to assessment. Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply.
- 3.4 The bold text below is the proposed amendment (addition) to Condition 1 of planning permission 14/00910/PPP and the strikethrough text is the original text (deleted).

*1. This planning approval is for the first phase of development identified on drawing reference number **14008(SK)650_C titled 14008(PL)003A and titled 'Indicative Development Framework Phase1 'INDICATIVE LAYOUT S42 APPLICATION' and dated the 7 May 2020** ~~14008(PL)003A and titled 'Indicative Development Framework Phase1~~. The number of dwelling units approved for this site is limited to ~~350~~ **430**, unless otherwise agreed by way of a*

planning application. The ~~proposed~~ revised Indicative Development Framework submitted as part of this planning application is not approved as the Masterplan for the site. Development shall not commence until an application for approval of matters specified in condition regarding an overall Masterplan for the site has been submitted to and approved in writing by the planning authority.

- 3.5 This application is also accompanied by the following documentation:
- i. Original (approved) EIA & Technical Appendices;
 - ii. Updated EIA Information including: Updated Transport Assessment; Updated Air Quality Assessment Addendum; Updated Landscape and Visual Impact Re-Assessment; Updated Flood Risk Assessment – Addendum Review; Updated Ecological Assessment; and
 - iii. Other updated documentation including: Addendum Report - EIA Mitigation Report; Supporting Statement; and
 - iv. Indicative Masterplan - which shows:
 - Additional residential development blocks within the north-eastern part of the site (in lieu of a commercial area) and the centre of the site (previously identified as future phases of development).
 - relocated SUDS infrastructure positioned within the northern part of the site; and
 - additional residential flatted blocks along the western boundary, along the Wisp.
 - repositioning of the school to the centre of the site.

4 BACKGROUND

- 4.1 The following summarises the relevant planning history for the site.
- 14/00553/PAC - A Proposal of Application Notice (PAN) for housing and associated mixed use development with open space landscaping, access, suds and infrastructure was submitted in July 2014. This PAN outlined the proposed pre-application approach for a forthcoming planning application for the proposed development. Confirmation that the proposed pre-application consultation approach was acceptable was confirmed in August 2014.
 - 14/00245/SCR - An EIA Screening Opinion Request was submitted in April 2014 to confirm if an EIA was required to accompany any forthcoming application for the proposed Development. In April 2014 the Planning Authority confirmed that an EIA was not required. However, a voluntary EIA was submitted for the corresponding planning application (refer below).
 - 14/00910/PPP – An application for planning permission in principle for residential development, the erection of a primary school and for mixed use development was submitted in December 2014. This application was accompanied by an Environmental Impact Assessment for 650 dwellings, mixed use commercial development components and a primary school. This application was approved in July 2019.

5 CONSULTATIONS

- 5.1 The **Scottish Environment Protection Agency** does not object to the application but requires the detailed layout to be informed by the accompanying Flood Risk Assessment, taking cognisance of any nearby channel realignment/development, the Niddrie Burn Flood Study, SPP and SEPA Guidance. This section 42 application does not change SEPA's position concerning groundwater and the requirements set out in condition 18 of planning permission 14/00910/PPP. Finally, SEPA outline that surface water from any approved development must be treated by SUDS in line with SPP and the requirements of the Water Environment Controlled Activities Regulations (CAR).
- 5.2 **The Coal Authority** does not object to the application. They advise that as the application is accompanied by a Coal Mining Risk Assessment, which draws on the same conclusions to the original Preliminary Geo-Environmental Desk Study Report, the Coal Authority has no objection subject to inclusion of condition 6 of the original grant of planning permission, 14/00910/PPP, on any new grant of planning permission.
- 5.3 **Scottish Water** does not object to the application. There is potentially sufficient capacity at the corresponding water treatment works to accommodate future demand (albeit capacity cannot be reserved). They also advise that waste water capacity at the Edinburgh Waste Water Treatment Works cannot be confirmed and, as such, it is recommend that the applicant submit a Pre-Development Enquiry to appraise potential future connectivity. Potential conflicts on existing Scottish Water Infrastructure are also noted and further liaison will be required to resolve any potential impacts. It is also noted that Scottish Water would generally not accept any surface water connections into its combined sewer system and that strong evidence will be required to support the intended drainage plan prior to making any future connection request for such arrangements.
- 5.4 **Nature Scot** does not object to the application subject to post decision agreement on the protection of protected species.
- 5.5 The **Council's Policy & Road Safety Manager** does not object to the application subject to the conditions secured on the original grant of planning permission.
- 5.6 The **Council's Flooding Officer** does not object to the application subject to the conditions secured on the original grant of planning permission.
- 5.7 The **Council's Group Manager Environmental Health** does not object to the application. The updated EIA Information covering Air Quality demonstrates that there is a valid basis to conclude that the proposed amendment to increase units from 350 to 430 dwellings

would not result in significant adverse impacts upon air quality arising from the proposed development. The emissions associated with increased traffic flows would be negated by overestimations and drops in 'worst-case' emission scenarios elsewhere (i.e. reduced vehicle emissions since the original 2012 data was prepared). With respect to noise, the previous EIA Mitigation measures to secure amenity outcomes for existing and proposed residents during construction and operation would be acceptable subject to the conditions secured on the original grant of planning permission.

- 5.8 The **Council's Housing Planning and Performance Manager** does not object to the application.
- 5.9 The **Council's Head of Education** does not object to the application. A development of 430 dwellings could expect to generate the following number of pupils:
- Primary - 185 pupils (based on primary pupil product of 0.43 per unit); and
 - Secondary - 145 pupils (secondary pupil product of 0.338 per unit).

The site for this development lies within the following school catchment areas:

- Non-denominational primary Danderhall Primary School;
- Denominational primary St Davids RC Primary School;
- Non-denominational secondary Dalkeith High School; and
- Denominational secondary St David's RC High School

Primary

- 5.10 A significant amount of new housing has already been allocated to Danderhall and St David's RC Primary Schools and therefore additional primary school capacity will need to be provided to accommodate pupils arising from this development. The additional non-denominational primary school capacity will be provided by building new schools in the wider Shawfair area combined with a review of catchment areas. St David's Primary School will be extended to provide additional denominational capacity. A developer contribution will be required in respect of the total number of houses completed, including the additional units proposed in the application, towards the cost of providing the required primary school capacity.

Secondary

- 5.11 A significant amount of new housing has already been allocated to Dalkeith High School and therefore additional secondary school capacity will need to be provided to accommodate pupils arising from this development. This capacity will be provided at the new high school to be built at Shawfair, combined with a review of catchment areas. A developer contribution will be required in respect of the total number of houses completed, including the additional units proposed in

the application, towards the cost of providing the required secondary school capacity.

5.12 Danderhall and District Community Council objects to the proposed development on prematurity grounds outlining concerns relating to:

- Increased housing numbers;
- Substantial changes to the immediate context between Old Dalkeith Road and Niddrie Mains Road, with approximately 1,000 dwellings being recently approved/constructed;
- The potential for the provision of a further 700 additional units, accessible off the Wisp on land in the City of Edinburgh Council's (CEC) administrative area (being determined by appeal at that time);
- The outdated nature of the Transport Assessment (2014);
- A requirement for an updated transport assessment to consider transportation impacts which are reflective of the updated context and increased dwelling numbers - to validate the appropriateness, accuracy and reliability of the 2014 transport assessment assumptions/projections;
- The need for a new EIA rather than just updated the existing EIA Information;
- The rejection of SESPlan2 by Scottish Ministers because of inadequate strategic transport infrastructure; and
- The proposed amendment should only be approved once any updated transport assessment is received.

6 REPRESENTATIONS

6.1 Nine representations have been received in connection with this application (including multiple representations from the same household) and one petition representing multiple local residents. These can be viewed in full on the online planning application case file.

6.2 A summary of the objections are as follows:

- Traffic congestion and road safety concerns associated with traffic movements along the wisp and entering/egressing the site;
- Unacceptable pedestrian safety due to narrow existing footpaths;
- Increased noise generation to the detriment of residential amenity;
- Increased adverse air quality impacts associated with increased trip generation and idling queuing traffic;
- The unsustainability of the current road layout, without significant alterations;
- Failure to provide significant road realignment proposals on the Wisp/Millerhill Junction to deliver long term transport improvements in the MLDP;
- Minor road alterations fail to introduce the realignment requirements associated with an historic re-routing option (source unknown) to direct traffic away from the existing, dangerous, road alignment;
- A traffic controlled junction would fail to provide an acceptable transportation solution and result in unacceptable traffic congestion/queuing that could block existing residential driveways;

- Potential prevention of wider transportation improvements in the future (including major road realignments) by incorporating a traffic controlled junction;
- Concerns regarding the updated Transport Assessment methodology applying updates to the original data rather than using current (2020/21) traffic survey data, particularly relating to HGV numbers;
- Concerns regarding the initial updated Transport Assessment that it did not include various approved/committed developments in the nearby area (subsequently included within a subsequent update of the Transport Assessment);
- Unacceptable landscape and visual impacts, partially with respect to flatted blocks fronting the Wisp;
- Unacceptable privacy, daylight and sunlight outcomes for existing residents;
- The inappropriateness of the indicative layout with respect to the positioning of flatted blocks off the Wisp as opposed to other parts of the site;
- Potential unacceptable overland flows to existing drainage infrastructure, particularly on the existing road network;
- Loss of 'open space';
- Concerns that developer contributions should be used to upgrade existing infrastructure, particularly roads;
- Concerns with the internal road alignment and providing connectivity through the site to facilitate a 'rat-run' to Fort Kinnaird;
- Concerns relating to road congestion as outlined by Midlothian Council in a response to a greenbelt application proposal on CEC land but failing to reiterate such concerns for this site;
- Failure to approve the masterplan, as proposed for 350 units to test suitability against respective requirements; and
- The proposed amendment is contrary to the site-specific MLDP requirement for the site and immediate area.

7 PLANNING POLICY

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

Edinburgh South East Scotland Strategic Development Plan 2013 (SESPlan1)

- 7.2 Whilst SESPlan1 is considered out of date (as it is over 5 years old) it remains part of the Development Plan as it has not been replaced. Consequently, the policy objectives set out by the following policies are still relevant to the determination of this application.
- 7.3 **Policy 5 (HOUSING LAND)** requires local development plans to allocate sufficient land for housing which is capable of becoming

effective in delivering the scale of the housing requirements for each period.

- 7.4 **Policy 7 (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY)** states that sites for greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) The development will be in keeping with the character of the settlement and local area; (b) The development will not undermine Green Belt objectives; and (c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

Midlothian Local Development Plan (MLDP)

- 7.5 Policy **STRAT3: Strategic Housing Land Allocations** states that strategic land allocations identified in the plan will be supported provided they accord with all other policies. The development strategy supports the provision of an indicative 350 housing units on the site (Hs0) to 2024, with a further 200 units safeguarded for the longer term up (beyond 2024).
- 7.6 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.
- 7.7 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 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** requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet set criteria.
- 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 **DEV9: Open Space Standards** requires that the Council assess applications for new development against set open space standards and seeks an appropriate solution where there is an identified deficiency in quality, quantity and/or accessibility. Where substantive development is yet to commence, support for ancillary uses will only be considered if it is likely to act as an enabler to attract further investment to that business location. In each case, planning obligations will be used to regulate the scale, nature, extent and timing of such facilities, including any advanced provision.
- 7.12 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.13 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A701 realignment.
- 7.14 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.15 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.16 Policy **ENV2: Midlothian Green Networks** 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.
- 7.17 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.18 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

- 7.19 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.
- 7.20 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.21 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.22 Policy **ENV17: Air Quality** states that the Council may require further assessments to identify air quality impacts where considered requisite. It will refuse planning permission, or seek effective mitigation, where development proposals cause unacceptable air quality or dust impacts.
- 7.23 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.24 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.25 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.
- 7.26 Policy **IMP1: New Development** ensures that appropriate provision is made for a need, which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.

- 7.27 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.28 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

National Policy

- 7.29 **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality.
- 7.30 SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of SPP are developed within local development plan policies.
- 7.31 SPP states that: *“design is a material consideration in determining planning applications and that planning permission may be refused and the refusal defended at appeal or local review solely on design grounds”*.
- 7.32 SPP introduces a ‘... presumption in favour of development that contributes to sustainable development’.
- 7.33 It outlines that the planning system ‘*support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term.... to achieve the right development in the right place; it is not to allow development at any cost*’.
- 7.34 *In this regard, consideration on whether an application contributes to sustainable development should be guided by the following principles within paragraph 29 of SPP:*
- *‘giving due weight to net economic benefit;*
 - *responding to economic issues, challenges and opportunities, as outlined in local economic strategies;*
 - *supporting good design and the six qualities of successful places;*

- *making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;*
- *supporting delivery of accessible housing, business, retailing and leisure development;*
- *supporting delivery of infrastructure, for example transport, education, energy, digital and water; • supporting climate change mitigation and adaptation including taking account of flood risk;*
- *improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;*
- *having regard to the principles for sustainable land use set out in the Land Use Strategy;*
- *protecting, enhancing and promoting access to cultural heritage, including the historic environment;*
- *protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;*
- *reducing waste, facilitating its management and promoting resource recovery; and*
- *avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality’.*

7.35 SPP supports the Scottish Government’s aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.

7.36 The Scottish Government policy statement **Creating Places** emphasises the importance of quality design in delivering quality places. These are communities which are safe, socially stable and resilient.

8 PLANNING ISSUES

8.1 The main issue to be determined is whether the proposal accords with the development plan, unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development

8.2 The principle of residential development, erection of a school and mixed use development (including ancillary Class 1 (Shops), Class 2 (Financial, professional and other services), Class 3 (Food and drink) and Class 4 (Business) is established by the grant of Planning Permission in Principle 14/00490/PPP. The proposed amendment to Condition 1 to increase the unit numbers from 350 dwellings to 430

dwellings within the allocated part of the site does not diminish this position. Furthermore, the site's allocation for housing under MLDP policy STRAT3 supports the principle of housing and appropriate other ancillary development and the early delivery of such sites to address the Council's five year effective housing land supply. No maximum dwelling density nor unit threshold is prescribed by the site specific allocation and therefore the proposed increase is acceptable in principle subject to achieving suitable design and amenity requirements. Moreover, the proposed development, including an increase in dwelling numbers, also accords with SPP and the presumption in favour of development that contributes to sustainable development.

Indicative Layout, Form and Density

- 8.3 As this application is to amend an application for planning permission in principle, irrespective of the proposal to increase the dwelling numbers, the detailed layout, form and density of the proposed development alongside other key design matters would require subsequent approval via matters specified in conditions (MSC) applications to consider their acceptability. Moreover, condition 1 of planning permission 14/00910/PPP expressly stipulates that the proposed masterplan is not approved. As such, it is proposed to retain condition 1 and the other corresponding conditions on any amended planning permission to require resubmission and re-assessment of an updated masterplan and any updated detailed designs/technical responses by way of a separate application for each issue.
- 8.4 Whilst not required, nor approved, the applicant has submitted an updated indicative masterplan to identify additional areas associated with phase 1 that could potentially accommodate the proposed increase in dwelling numbers. This indicative masterplan has also been prepared to identify general design parameters to inform the updated EIA information to ascertain if there are any changes to the likely significant environmental effects of the proposed development, including amendments. Initially, it appears that the additional development areas on the indicative masterplan could potentially accommodate the requisite amendments, cognisant of the above requirements and noting that consideration of any final masterplan and detailed design will be undertaken via the MSC application/s.

Environmental Impact Assessment EIA

- 8.5 The original planning application was accompanied by an EIA and various technical documents/appendices. This EIA assessed the likely significant environmental effects associated with a development proposal for 650 dwellings, a neighbourhood centre of up to 5,000sqm of class 1 (Shops), class 2 (Financial, professional and other services), class 3 (Food and drink) class 4 (Business) uses and a primary school.

- 8.6 This application is accompanied by the previously approved EIA and updated EIA information that considers the likely significant environmental effects of the proposed development (as amended to increase the proposed dwellings associated with Phase 1 from 350 to 430 dwellings). This is set against the context of the original EIA where the environmental consequences of 650 dwellings and the above commercial/educational uses was undertaken. In this regard, the EIA has been assessed against the updated Town and Country Planning Environment Impact Assessment (Regulations) 2017 as these came into force since the original grant of planning permission.
- 8.7 The Committee considered various EIA matters in determining application 14/00910/PPP. The updated EIA Information provides an up to date position on some of these topics - in particular transportation, landscape and visual impact, ecology, noise and air quality. This additional information was sought by the planning authority to clarify the updated context, to consider recent committed/approved developments since the original approval and to reflect updated guidance and/or policy requirements.
- 8.8 The updated EIA information has assisted the planning authority in assess the potential environmental effects against updates to the background context since the original approval. It also assists in the future assessment of detailed design proposals to discharge planning conditions attached to the grant of planning permission (by way of MSC applications). This position is not changed by the proposed amendments to Condition 1 to increase the unit numbers from 350 to 430 dwellings and the suitability of these EIA topics against any detailed design will be considered in detail at that time.
- 8.9 In this regard, and following consideration of this updated documentation, it is accepted that the reasoned conclusions of the approved EIA are still up to date. Accordingly, the likely significant environmental effects of the proposed development do not change and the corresponding EIA conclusions are not impacted by the proposed amended to increase unit numbers. As such, the proposed development should generally present an opportunity for potential longer term environmental benefits subject to the implementation of the approved and some additional mitigation measures (to reflect the updated policy and regulatory context) which, if undertaken, in a sensitive manner could enhance the environment for the benefit of wildlife, the local landscape, drainage, pollution prevention and future recreational and agricultural uses.

Transportation & Access

- 8.10 The application 14/00910/PPP was accompanied by both an EIA and a transport assessment. The approved EIA accompanies this S42 application alongside an updated transport assessment addendum which considers the potential impact of the proposed increase in

dwelling numbers to 430 units and traffic generation from committed/approved developments since the original assessment was undertaken. This includes development proposals at Greendykes, Edmonstone, land off the Wisp and Shawfair.

- 8.11 It outlines that the predicted trip generation associated with the additional 80 dwellings was already considered by the agreed trip rates within the original transport assessment - which assessed a total of 650 dwellings within the site. The impact of 350 dwellings was assessed as the first of a multi-phase development within the site and the original transport assessment considering a 'worst-case' situation should all 650 dwellings (and the other non-residential uses) be constructed. As such, the impact of increased unit numbers in phase 1 has been fully considered by the previous assessment. The updated transport assessment also breaks down the assessment to consider the potential impact associated with the proposed increase in more detail. It is concluded that an additional 32 two-way vehicle trips in the morning peak and 26 two-way vehicle trips in the evening peak. The updated transport assessment then concludes that cumulatively, there would be a minor increase on nearby road junctions (up to 1.8%) with a combined increase of less than 5% - which would have a minimal impact on the surrounding road network when committed/approved developments (agreed in 2021) are included in the assessment.
- 8.12 The Council's Policy and Road Safety Manager has raised no objection to the proposed amendment to condition 1 subject to the replication of the previous conditions attached to the original approval. Consequently, the proposed access arrangements are deemed to be acceptable in principle subject to receipt of the detailed designs required by these conditions.
- 8.13 In this regard, the previously proposed mitigation measures and road improvements would be retained including: junction improvements to the A7/Wisp (via developer contributions); improvements to the Whitehall Road link road; and a realigned road alignment to facilitate a signal controlled junction at the Wisp/Millerhill Road.
- 8.14 Assertions from objectors that fundamental road alignments of the Wisp would be required to implement an historic rerouting/realignment of the Wisp through the site to Fort Kinnaird is not correct. The Council has no plan to fundamentally realign the wisp through the site and the references to the realignment within the MLDP relate to alterations to the existing Wisp alignment to accommodate the anticipated improvements (i.e. traffic controlled junction) required by condition on the previous approval. This position has been confirmed by the Council's Policy and Road Safety Manager. Moreover, the CEC have confirmed that the proposed development, including the proposed amendment, would not constrain future delivery of any transport infrastructure delivery on the adjacent site to the north (and currently

safeguarded for transportation interventions within the CEC local development plan.

- 8.15 Additionally, the applicant outlines that the residual effects relating to transportation and access within the EIA remain the same for the proposed development, including the proposed dwelling increase. Previously agreed mitigation measures to reduce potential adverse impacts during construction would be maintained resulting in negligible and not significant effects. This would include agreement and implementation of a construction traffic management plan and other on-site measures. Similarly, during operation, review of potential impacts on the surrounding road network outlines that the proposed development, would either result in negligible or minor adverse but not significant impacts. Pedestrian delay and amenity were also considered to be negligible or minor adverse. The Council's Policy and Road Safety Manager agrees with these findings, particularly as the EIA considered a 'worst case' scenario that included 650 dwellings.
- 8.16 With respect to contributions to secure improvements, the applicant suggests that the public transport and transport infrastructure contributions required by the current planning obligation would remain and that the proposed amount and timetabled receipt/delivery would not change. It is accepted that the specific transport infrastructure requirements would still remain applicable but the amount of contributions would be required to be increased to reflect 430 dwellings in lieu of 350 dwellings.

Noise

- 8.17 The proposed increase in unit numbers, and small increase in traffic generation, is not considered to result in additional cumulative noise impacts to the surrounding area - which would remain negligible in line with the approved EIA. Potential noise generation associated with construction of the additional units, during construction, has already been assessed given that the EIA considered impacts associated with 650 units on the site. Accordingly, subject to implementation of the previously approved mitigation measures (including best practice site management and implementation of a construction environment management plan (CEMP)), the likely environmental effects with respect to noise during construction would remain not significant.
- 8.18 In terms of noise generation for existing and future residents, traffic noise from the Wisp dominates the current context and to a lesser extent the existing commercial uses. The proposed increase in units could potentially be located within proximity to these noise sources. However, the proposed increase in units does not alter the background noise context nor the previous requirement to implement various EIA mitigation measures for such properties in such instances. Therefore, subject to inclusion of these measures - including suitable double-glazing/attenuation on sensitive windows facing these noise sources - it

is predicted that the noise levels inside any new buildings would comply with the World Health Organisation's peak noise criteria for bedrooms and the Council's internal noise requirements. Further investigation to ensure compliance with the Council's external garden noise will be required, and can be undertaken as in association with approval of any future masterplan and/or the detailed design for such areas. The proposed increase does not change the impact associated with ambient noise levels, which are not considered to increase significantly for properties neighbouring the development in line with the conclusions of the previously approved EIA – which concludes that such impacts would be negligible. Re-including Condition 16 from the previous permission on any grant of planning permission would ensure that any potential significant adverse noise impacts could be avoided. The Council's Environmental Health Manager agrees with this position and does not object to the proposed development, as amended, on noise grounds.

Air Quality

- 8.19 An addendum to the Air Quality Impact Assessment (AQIA) that accompanied the original application (EIA Technical Appendix 10.1) was submitted in January 2021. This report provided an updated assessment of potential air quality impacts associated using an updated baseline position from 2020. This included increased trip generation from committed/approved developments and updated data on current road capacity from 2020 onwards within the local road network.
- 8.20 Based on the above, the increased annual average daily traffic flows were noted and subject to an Emission Factor Toolkit which allowed comparison of the original 2012 AQIA emissions data against a '2020 update' to review the potential change. The outcome outlines that emissions from road traffic would be reduced by levels of between -29% to -76% at agreed key receptors. The applicant outlines that such outlines would be expected given that such highly conservative (overestimated) emissions factors were applied to the original assessment and the significant improvements in emission reduction technologies within more modern cars. Therefore, the applicant contends that even with higher trip generation associated with the committed/approve developments and the 2020 local network scenario, the potential pollutant concentrations would be the same or lower than the original assessment at the key receptors. The addendum to the AQIA has been received by the Council's Environmental Health Manager who agreed with these findings and concludes that there would be no unacceptable adverse impacts on air quality arising from the proposed increase in units' numbers from 350 to 430. Accordingly, the original approved EIA mitigation measures (including best practice construction and site management techniques, waste management, tree planning, increased public transport incentives and car sharing opportunities) are still applicable and will be required to be

implemented to ensure that the environmental effects associated with air quality remain negligible.

Landscape and Visual Impact Assessment (LVIA)

- 8.21 A re-assessment of the original EIA Chapter 7 LVIA - has been undertaken to consider the likely landscape and visual impacts associated with the proposed increase in unit numbers. To this extent, the LVIA re-assessment reviews the updated indicative masterplan from a series of LVIA viewpoints, which could be directly affected by the proposed changes, to ascertain if there would be any additional adverse impacts within the most recent landscape and built form context. The key to this assessment is not to consider the proposed amendments specifically as the indicative masterplan was not approved by the original application but to compare how the proposed increase in unit numbers could be accommodated within the site more generally and whether these amendments have the potential to result in any additional significant adverse landscape and visual impacts.
- 8.22 In this regard, the LVIA re-assessment outlines that the proposed amendments to the indicative masterplan would be localised, of a small scale and not significant. The applicant contends that the similar layout maintains the same effects from key viewpoints. To the north, the LVIA re-assessment states that the construction of a new industrial building at Fort Kinnaird combined with the replacement of commercial buildings with dwellings would also reduce likely adverse effects from some viewpoints 4. Finally, views from the west result in increased massing associated with increased built form along the Wisp (opposite the nearby commercial premises). However, it is suggested that this would not alter the perception of change to receptors on the Wisp previously accepted and that opportunities for additional landscaping along this boundary would maintain the same likely adverse impacts – i.e. moderate to major adverse before mitigation is implemented. With landscape mitigation, this could be reduced to minor - moderate adverse in line with the original EIA Statement of Significance for visual effects.
- 8.23 Overall, the rapid level of change being experienced and/or anticipated within this area is acknowledged - which sets the context through which the proposed amendment would be viewed. In considering this context, the findings of the LVIA re-assessment are broadly accepted and the scope of the proposed amendment is not considered to result in any additional significant adverse landscape and visual effects, when compared to the original LVIA findings. However, despite any acceptance of potential amendments, a coherent landscape framework will still be required to ensure that the proposed development creates a positive landscape contribution and achieve sustainable place-making objectives. Accordingly, any approved amendment would require the indicative masterplan and any detailed layouts to implement the previously approved LVIA mitigation measures to achieve such

outcomes - including maintaining/enhancing vegetation to create landscape buffer/structure planting along site boundaries and creating landscape areas within the site and along arterial routes. These could be delivered by replicating the previous landscaping conditions on any amended planning permission.

Ecology

- 8.24 The original EIA included an assessment of likely effects on the environment with respect to ecology and nature conservation. This included an ecological survey and protected species surveys including bats (roosting potential surveys and activity surveys) and a badger survey. An updated ecology report has been prepared to assess potential changes to the existing habitat - which comes to the conclusion that the site has low ecological value but that opportunities to retain existing hedgerows and trees should be considered as part of any detailed design. With respect to invasive species, it outlines a requirement for a detailed invasive non-native species survey to consider the extent of this feature within the site. Surveys took place for badgers, however no setts nor activity were found within the site or the study area. A requirement to undertake a pre-construction badger survey is maintained from the previous EIA.
- 8.25 In addition, a bat roost potential survey was undertaken to consider the potential suitability for bat roosts within the site, with only one structure (an existing derelict building) showing as having moderate potential. No additional bat activity surveys were undertaken (as it was outwith the corresponding survey season). However, it was acknowledged that such surveys were undertaken to inform the previous EIA - which outlined that the proposed development would not adversely affect bat populations. The planning authority accepted this approach previously when approving the original planning permission. Nevertheless, there will still be a requirement to undertake bat activity surveys (and a badger survey) to inform any future scheme of sustainability/biodiversity. Specifically, condition 10 of the original permission requires receipt of updated surveys for invasive non-native species and all protected species to inform the scheme – this requirement can be secured by a condition on any grant of planning permission.
- 8.26 Nature Scot does not object to the proposed development, noting the potential for the ‘post-decision’ submission of protected species surveys for bats, however, outlines that this approach risks that any planning permission may not be implementable if post-decision surveys for a protected species license are not approved. This point is noted by the applicant, who has advised that they will undertake the relevant surveys as soon as practical, in season, to ensure that any licensing measures can be approved. The planning authority accept this arrangement, in this instance, given the presence of the previous

protected species surveys supporting the original permission and the negligible risk to bat populations accepted in the approved EIA.

Flood Risk

- 8.27 An addendum review of the original flood risk assessment (FRA) has also been submitted by the applicant to outline whether the proposed amendment could result in any additional significant impacts from a flooding perspective. Initially, this included a review of the updated policy and SEPA Guidance since the original application. This now includes a requirement for the proposed primary school to be located outwith the 1 in 1000 storm event, which will be required via subsequent review of FRAs for any detailed design of the proposed school. Additional assessments also considered reviewed recent flooding and catchment data (including a climate change factor) in line with SEPA's updated guidance. The results maintain a requirement to consider risks associated with a potential blockage of a long culvert (as per the original FRA conclusions) outlining specific mitigation measures that could be introduced - including nominating specific finish floor levels for buildings to prevent any risk to flooding to buildings within this area. Such measures will be required to be considered in detail at the detailed design stage as the indicative layout is not yet approved and the precise location/finished floor level for any proposed buildings has not yet been confirmed.
- 8.28 Overall, the updated FRA addendum outlines that any development blocks within the site would not be subject to the 1 in 200 year storm event (including climate change) reflective of the original FRA conclusions and that overland flows could be managed by suitable SUDS attenuation measures. It also outlines that conditions on the original planning permission could satisfy the respective requirements for updated FRAs to ensure that any detailed layout is not at risk of flooding and would not lead to unacceptable flooding elsewhere. The Council's Flooding Officer agrees with this position and does not object to the proposed amendment subject to reinsertion of the previous condition requiring submission and approval of detailed flooding/drainage information via any future MSC application/s. Moreover, SEPA do not object to the proposed development subject to replication of condition 17 requiring receipt of a detailed FRA addressing issues associated with the nearby channel realignment and potential culvert blockage as per their previous comments.

Developer Contributions

- 8.29 If the Council is minded to grant planning permission to increase the number of units from 350 dwellings to 430 dwellings in phase 1, it will be necessary for the applicants to enter into a new planning obligation to secure the provision of, or a contribution towards, the following matters:

- A contribution towards primary and secondary denominational and non-denominational education and the reservation of land for a potential primary school on the site;
- The provision of affordable housing (25% of the total number of units);
- A contribution towards Borders Rail;
- A contribution towards the A720 Sheriffhall roundabout improvement and other local road improvements;
- A contribution towards public transport/public transport infrastructure;
- A contribution to cover the costs of drafting and promoting Traffic Regulation Orders; and
- A contribution towards the maintenance of open space, play provision and SUDS.

8.30 Scottish Government advice on the use of planning obligations is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The circular advises that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the proposed development acceptable in planning terms (paragraph 15);
- serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
- fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23); and
- be reasonable in all other respects.

8.31 The requirements as set out above meet the stated tests.

Other Matters

8.32 Concerns were raised by objectors regarding the existing capacity of general practice medical facilities within the immediate area and the potential impacts of new housing on the capacity of health and care services. This matter is required to be addressed by the Midlothian Health and Social Care Partnership through the provision of sufficient health service capacity. That can involve liaison with the Council as planning authority (and initial discussions on this have been undertaken at a strategic level) but it is not, on its own, a sufficient basis in itself on which to resist or delay the application.

8.33 Regarding matters raised by represents and consultees and not already addressed in this report:

- Implications to potential access to/from existing driveways to properties along the Wisp. The proposed increase in unit numbers

would not specifically reduce access to existing driveways as any proposed change would be focused on designing an appropriate layout for the additional units within the site. Nevertheless, it is acknowledged that additional trips would be experienced - from a baseline of 350 units - however this is well within the 650 dwelling total that was assessed as part of the original EIA. To this extent, condition 5 of the original permission requires the approval of various access and road upgrades/junction improvements (including a signalised junction at the Wisp/Millerhill Road). Any approved amendment would include this condition, which then required the Council's Policy and Road Safety Manager to approve any detailed road layouts - which includes consideration of potential impacts to existing driveways etc.

- The preservation of the amenity of existing nearby residents. The indicative masterplan is to be approved by a separate MSC application. However, the indicative masterplan outlines that sufficient provision could be made to facilitate compliance with the Council's design and amenity design standards. Moreover, planting could be proposed along the western site boundary, opposite existing residential properties, to soften the built form and create visual screening which should prevent unacceptable offsite amenity impact to existing residents, subject to approval of a detailed layout within the corresponding phases of development.
- Concerns relating to the use of outdated traffic flow figures. However, the scope of the updated transport assessment and the use of these figures was confirmed by the Council's Policy and Road Safety Manager (including the inclusion of updated committed/approved developments) as any traffic surveys undertaken during the current Covid-19 public health emergency in 2020/21 would likely underestimated potential 'worst-case' traffic surveys that the corresponding transport and air quality assessments would be based on.
- Concerns that up to 700 additional units on CEC land (currently being determined by appeal) would lead to increased transportation impacts. The impacts associated with other approved/committed developments were included within the updated transport assessment and assessed in this report.
- A query asking whether updated EIA Information would be required, was resolved shortly after receipt of this representation, when updated EIA Information was submitted to cover various EIA topics.
- The rejection of SESPlan 2 should impact decision making and that any approval should not be forthcoming until an updated transport assessment reflects the transport priorities within SESPlan2. The rejection of SESPlan 2 does not require planning application decisions to be delayed. Rather, it means that SESPlan1 was not replaced by an updated strategic development plan as SESPlan2's strategic transport ambitions were found to be defective. Decision-makers are still required to make planning decisions in accordance with the development plan unless material consideration indicate otherwise. Determination of this application has been undertaken in

line with this requirement including the adopted MLDP, SESPlan1 and other material considerations including SPP and its presumption in favour of sustainable development.

- Unacceptable privacy, daylight and sunlight outcomes for existing residents were noted. However, the indicative masterplan (not approved) includes sufficient setbacks that could preserve visual and amenity requirement for existing residents and these will be required to be tested against the Council's amenity standards via any future MSC applications to approve the detailed design.
- A potential loss of open space was identified, however, such matters would be considered at the detailed design stage to consider any proposed layout against quantitative and qualitative requirements.
- Concerns with the internal road alignment and creating a layout that could facilitate a 'rat-run' to Fort Kinnaird is a matter to be considered at the detailed design stage to ensure the creation of an appropriate transportation and access arrangement.
- Midlothian raised traffic concerns during an appeal in the ECE administrative area – this is inconsistent with the assessment of this application. In response, the Council's position in considering potential traffic generation associated with an unallocated green belt site within CEC differs from the current application as any traffic generation would not have been included within strategic transport appraisal that accompanied Midlothian's or the CEC local development plan. This site is allocated for housing in the MLDP.

8.34 The following matters have been raised in representations which are not material considerations in the determination of the application:

- Procedural matters which are specified by the Scottish Government in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – in particular relating to the alleged failure of the planning authority to consult existing residents on the previous application in 2014. However, the planning authority's records show that neighbour notification was correctly undertaken and letters were issued to properties within 20m of the previous application boundary.

9 RECOMMENDATION

9.1 It is recommended that planning permission be granted for the following reason:

The site is identified as being part of the Council's committed housing land supply within the Midlothian Local Development Plan 2017 and as such there is a presumption in favour of the proposed development. This presumption in favour of development, including the proposed amendment, is not outweighed by any other material considerations. The Environmental Impact Assessment submitted in relation to the planning application, and the updated Environmental Impact Assessment Information, has been considered as part of the

assessment and it is concluded that the environmental effect of the development, including the proposed amendment, is acceptable given the various mitigation measures detailed in the Environmental Impact Assessment. Considering the benefits of the proposed development, there are no significant and demonstrably adverse effects that would outweigh a decision in favour of approval. Subject to approval of detailed design matters, via matters specified in conditions applications.

Subject to:

- i) the prior signing of a legal agreement to secure the provision of affordable housing and land for primary school and contributions towards: education provision; road and public transport infrastructure; children's play provision; open space and sustainable urban drainage systems maintenance; Borders Rail; and the payment of the necessary costs to process the required roads orders.

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

- ii) the following conditions:
 1. This planning approval is for the first phase of development identified on drawing reference number 14008(SK)650_C titled 'INDICATIVE LAYOUT S42 APPLICATION' and dated the 7 May 2020. The number of dwelling units approved for this site is limited to 430, unless otherwise agreed by way of a planning application. The revised Indicative Development Framework submitted as part of this planning application is not approved as the Masterplan for the site. Development shall not commence until an application for approval of matters specified in condition regarding an overall Masterplan for the site has been submitted to and approved in writing by the planning authority.

Reason: *The application has been assessed on the basis of a maximum of 430 dwellings being built on the site. Any additional dwellings would have a further impact on local infrastructure, in particular education provision, and additional mitigation measures may be required. Any such measures would need further assessment by way of a planning application.*

2. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each residential and economic/commercial phase of the development, the provision of affordable housing, the

provision of open space, structural landscaping, SUDS provision, transportation infrastructure and percent for art. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

Reason: *To ensure the development is implemented in a manner which mitigates the impact of the development process on existing land users and the future occupants of the development.*

3. Development shall not begin on an individual phase of development (identified in compliance with condition 2) until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i. existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
 - ii. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging and grassed areas;
 - iv. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses/industrial buildings on adjoining plots are occupied;
 - vii. drainage details and sustainable urban drainage systems to manage water runoff;
 - viii. proposed car park configuration and surfacing;
 - ix. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
 - x. proposed play areas and equipment (in the residential areas);
 - xi. proposed cycle parking facilities; and,
 - xii. proposed area of improved quality (minimum of 20% of the proposed dwellings across the whole site).

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

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

4. Development shall not begin on an individual phase of development (identified in compliance with condition 2) until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential/industrial units and other structures has been submitted to and approved in writing by the planning authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. These materials will also include those proposed in the area of improved quality (20% of the total number of proposed dwellings across the whole site). Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

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

5. Development shall not begin on an individual phase of development (identified in compliance with condition 2) until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i. a programme for completion for the construction of access, roads, footpaths and cycle paths;
 - ii. existing and finished ground levels for all roads, footways and cycle ways in relation to a fixed datum;
 - iii. the proposed roads (including turning facilities), footpaths and cycle ways including suitable walking and cycling routes linking the new housing with the local primary school and the rest of Shawfair;
 - iv. proposed visibility splays, traffic calming measures, lighting and signage;
 - v. proposed construction traffic access and haulage routes;,,
 - vi. proposed car parking arrangements;
 - vi. the proposed mitigation measures listed in section 7.8.2 of the Transport Assessment;
 - vii. the widening of the substandard sections of the Cauldcoats Farm Road (U46) to a minimum of 6 metres and the provision of a remote footway;

- viii. widening and lighting of footway (to a 2.5 nominal width) of the existing unlit pedestrian footway alongside Millerhill Road leading from the development to Newton Village; and,
- ix. a traffic controlled junction for The Wisp/Millerhill Road junction providing suitable traffic management and pedestrian crossing facilities.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

- 6. Development shall not begin until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
 - i. the nature, extent and types of contamination and/or previous mineral workings on the site;
 - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
 - iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and,
 - iv. the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential/commercial purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

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

- 7. Development shall not begin until an application for approval of matters specified in conditions, including a timetable of implementation, of 'Percent for Art' has been submitted to and

approved in writing by the planning authority. The 'Percent for Art' shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies DEV6 and IMP1 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

8. Development shall not begin until an application for approval of matters specified in conditions for a programme of archaeological works (field evaluation by trial trenching) has been carried out at the site by a professional archaeologist in accordance with details submitted to and approved in writing by the planning authority. The area to be investigated should be no less than 7% of the total site area with an additional 2% contingency should significant archaeological remains be encountered.

Reason: *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policy ENV25 of the Midlothian Local Development Plan 2017.*

9. Development shall not begin until an application for approval of matters specified in conditions setting out details, including a timetable of implementation, of high speed fibre broadband has been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse/commercial building. The delivery of high speed fibre broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

10. Development shall not begin until an application for approval of matters specified in conditions for a scheme of sustainability/biodiversity for the site, including the provision of house bricks and boxes for bats and swifts throughout the development, a programme of ecological surveys (repeat survey work for bats and badgers no more than 12 months in advance of the commencement of development on the site) and management proposals for Invasive Non Native Species has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan 2017.*

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

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

12. Development shall not begin until an application for approval of matters specified in conditions for a scheme setting out the scope and feasibility of a community heating scheme for the development hereby approved and; if practicable, other neighbouring developments/sites, in accordance with policy NRG6 of the Midlothian Local Development Plan, shall be submitted for the prior written approval of the planning authority.
13. No dwellinghouse/commercial building on the site shall be occupied until a community heating scheme for the site and; if practicable, other neighbouring developments/sites, is approved in writing by the planning authority. The approved scheme shall be implemented in accordance with a phasing scheme also to be agreed in writing in advance by the Planning Authority. There shall be no variation therefrom unless with the prior written approval of the planning authority.

Reason for conditions 12 and 13: *To ensure the provision of a community heating system for the site to accord with the requirements of policy NRG6 of Midlothian Local Development Plan 2017 and in order to promote sustainable development.*

14. No building shall have an under-building that exceeds 0.5 metres in height above ground level unless otherwise agreed in writing by the planning authority.

Reason: *Under-building exceeding this height is likely to have a materially adverse effect on the appearance of a building.*

15. Development shall not begin until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:

- i. signage for the construction traffic, pedestrians and other users of the site;
- ii. controls on the arrival and departure times for the construction vehicles and for site workers;
- iii. details of piling methods (if employed);
- iv. details of earthworks;
- v. control of emissions strategy;
- vi. a dust management plan strategy;
- vii. waste management and disposal of material strategy;
- viii. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
- ix. prevention of mud/debris being deposited on the public highway; and
- x. material and hazardous material storage and removal.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place in compliance with the Environmental Statement submitted with this planning application.*

16. Development shall not begin until an application for approval of matters specified in conditions assessing the likely effects of road traffic noise (including the traffic to the Anaerobic Digestion Plant and the Recycling and Energy Recovery Centre at Millerhill) and of noise from the nearby commercial premises (to the south west of the site, to the north of the site, and to the opposite side of The Wisp) on the amenity of the future occupants of the houses has been submitted to and approved in writing by the planning authority. Any noise mitigation measures necessary to ensure compliance with the following criteria:
 - i. 50 dB LAeq(16hr) for daytime external garden amenity;
 - ii. 35 dB LAeq(16hr) for daytime internal living apartment; and,
 - iii. 30 dB LAeq(8 hour) for night time internal living apartment (excluding fixed plant controlled by NR25 or NR20 if tonal).

The night time sleep disturbance criteria shall be that contained in the WHO Night Noise Guidelines for Europe, L_{Amax} of 42 dB(A). Any recommended noise mitigation measures shall be implemented prior to the occupation of the dwellinghouses.

Reason: *In the interests of safeguarding the residential amenity of the future occupants of the houses.*

17. Development shall not begin until an application for approval of matters specified in conditions assessing flood risk and its mitigation has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority

Reason: *To address the outstanding concerns highlighted by SEPA in relation to Flood Risk and to ensure flood risk to the development can be mitigated and the development will not increase the risk of flooding elsewhere.*

18. Prior to the commencement of development on the site a risk assessment for the proposed stabilisation of mine workings with Pulverised Fuel Ash (PFA) grout is to be submitted to and approved in writing by the planning authority, in consultation with SEPA. Thereafter any mitigation required to prevent the pollution of ground water associated with proposals to grout with PFA, shall be implemented at the site.

Reason: *To ensure any grouting does not cause unacceptable environmental impact by means of pollution of ground water.*

19. The mixed use development shall have a floor space of no more than 200 square meters and will comprise a mix of classes 1, 2 or 3, as defined in The Town and Country Planning (Use Classes) (Scotland) Order 1997 and any subsequent replacement order. Planning permission is not granted for non-residential/educational uses outwith the stated use classes.

Reason: *To define the terms of the consent and to ensure the proposal is acceptable in terms of the Midlothian Local Development Plan 2017.*

20. Construction, engineering, site delivery and any other operations shall only take place between 0800 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays. Any amendment of these hours shall be agreed in writing with the planning authority prior to work taking place outwith the hours stated.

21. Construction, engineering, site delivery and any other operations shall comply with following noise level: 70 dB LAeq(12hr) (façade), with the best practicable means (BPM) at all times in accordance with BS5228 guidance. All fixed plant/machinery noise shall comply with the following:
Night time (22:00 - 07:00 hrs) NR25 (internal, open window),
Day time (07:00 - 22:00 hrs) - NR30 (internal, open window)

22. Commercial/industrial/leisure noise affecting residential use (existing or proposed) when rated in accordance with BS 4142:

2014, shall be less than +5dB above an agreed representative LA90.

Reason: for conditions 20-22: To ensure noise assessment criteria are appropriate to protect residential amenity.

Peter Arnsdorf
Planning Manager

Date: 25 March 2021

Application No: 20/00312/S42

Applicant: Paladin Ventures (Cauldcoats Farm)

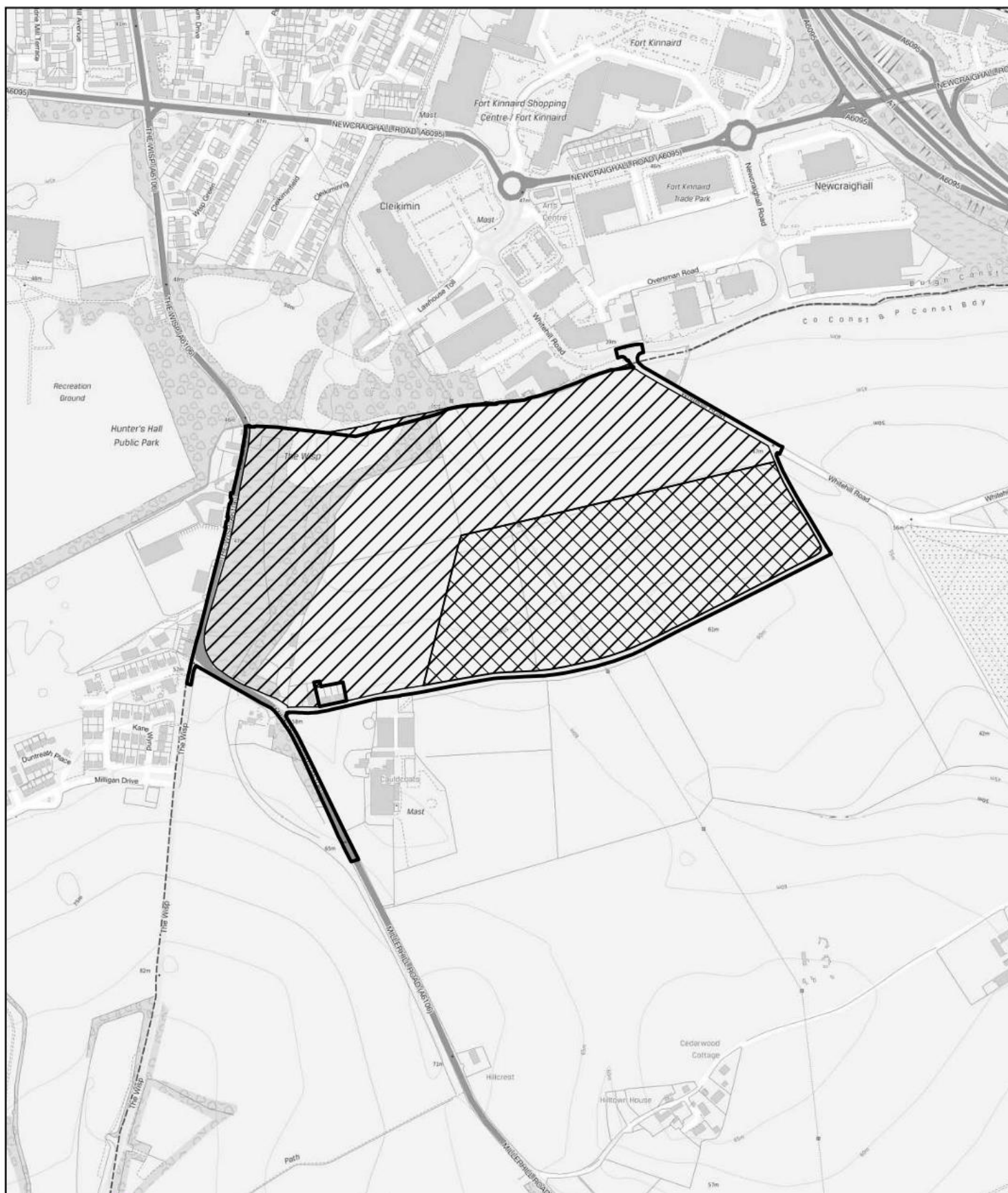
Agent: Rick Finc Associates Ltd

Validation Date: 12 May 2020

Contact Person: Steve Iannarelli



Background Papers: 14/00910/PPP, 14/00553/PAC, 14/00245/SCR

Attached Plans: Location and Indicative Site Plan



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

Section 42 application to amend condition 1 of planning permission 14/00910/PPP (to increase the number of dwellings in phase one from 350 to 430) at Land at Cauldcoats, Dalkeith

-  - STRAT 3 - Strategic Housing Land Allocation (Site Hs0))
-  - STRAT 3 - Longer Term Housing Safeguarding

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Scale: 1:7,500

File No: 20/00312/S42

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