

Notice of Meeting and Agenda



Planning Committee

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

Date: Tuesday, 09 October 2018

Time: 14:00

John Blair
Director, Resources

Contact:

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Further Information:

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

Audio Recording Notice: Please note that this meeting will be recorded. The recording will be publicly available following the meeting. The Council will comply with its statutory obligations under the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

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 Minutes of Previous Meeting

- 4.1** Minute of Meeting held on 28 August 2018 - For Approval 5 - 40

5 Public Reports

- 5.1** Supplementary Guidance: Special Landscape Areas – Report by Head of Communities and Economy. 41 - 44

- 5.2** Supplementary Guidance: Housing Development in the Countryside and Green Belt – Report by Head of Communities and Economy. 45 - 72

- 5.3** Major Applications: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage – Report by Head of Communities and Economy. 73 - 78

- 5.4** Appeal and Local Review Body Decisions - Report by Head of Communities and Economy. 79 - 80

Pre-Application Consultation Reports - Report by Head of Communities and Economy.

- 5.5** Proposed Erection of Community Facility incorporating Secondary and Primary School; Early Years Provision and Family Learning; Library, Leisure and Healthcare Facilities, Sports Pitches and Associated Works at Former Site of Monktonhall Colliery, Monktonhall Colliery Road, Newton, Danderhall (18/00558/PAC) 81 - 84

Applications for Planning Permission Considered for the First Time – Reports by Head of Communities and Economy.

- 5.6** Application for Planning Permission for the Storage of Soil (Top Soil and Sub Soil) for a Temporary Period of 5 years at Shawfair Site F, Monktonhall Colliery Road, Dalkeith (18/00155/DPP) 85 - 92

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|------------|--|-----------|
| 5.7 | Application for Planning Permission for the Erection of Residential Care Home and Associated Works at Land to Rear of 41 Newmills Road, Dalkeith (18/00430/DPP) | 93 - 110 |
| 5.8 | Application for Planning Permission for the Erection of two Drive Through Restaurants; Formation of Access and Car Parking; and Associated Works at Land South West of Tesco Superstore, Dalkeith (18/00181/DPP) | 111 - 132 |
| 5.9 | Application for Planning Permission for the Erection of 79 Residential Units; Formation of Access Roads, Car Parking and Associated Works at Land South West of Newbattle Community High School, Newtongrange (18/00308/DPP) (To Follow) | |

6 Private Reports

THE COMMITTEE IS INVITED (A) TO CONSIDER RESOLVING TO DEAL WITH THE UNDERNOTED BUSINESS IN PRIVATE IN TERMS OF PARAGRAPH 13 OF PART 1 OF SCHEDULE 7A TO THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973 - THE RELEVANT REPORTS ARE THEREFORE NOT FOR PUBLICATION; AND (B) TO NOTE THAT NOTWITHSTANDING ANY SUCH RESOLUTION, INFORMATION MAY STILL REQUIRE TO BE RELEASED UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 OR THE ENVIRONMENTAL INFORMATION REGULATIONS 2004.

6.1 Enforcement Report: Loanhead

- 13. Information which, if disclosed to the public, would reveal that the authority proposes—(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.

7 Date of Next Meeting

The next meeting will be held on Tuesday, 20 November 2018 at 2.00 pm.

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

Minute of Meeting



Planning Committee

Date	Time	Venue
28 August 2018	2.00 pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Imrie (Chair)	Councillor Baird
Councillor Cassidy	Councillor Curran
Councillor Hackett	Councillor Johnstone
Councillor Lay-Douglas	Councillor McCall
Councillor Milligan	Councillor Muirhead
Councillor Russell	Councillor Smail
Councillor Wallace	Councillor Winchester

1. Apologies

Apologies were received from Councillors Alexander, Hardie, Munro and Parry.

2. Order of Business

The order of business was confirmed as outlined in the agenda that had been circulated.

3. Declarations of interest

No declarations of interest were received.

4. Minutes of Previous Meetings

The Minutes of Meeting of 19 June 2018 were submitted and approved as a correct record.

5. Reports

Agenda No	Report Title	Presented by:
5.1	Supplementary Guidance: Green Networks	Peter Arnsdorf
Executive Summary of Report		
<p>With reference to paragraph 5.1 of the Minutes of 19 June 2018, there was submitted report, dated 16 August 2018, by the Head of Communities and Economy, providing the Committee with an update on the adoption of the Midlothian Green Network Supplementary Guidance.</p> <p>The report explained in particular that –</p> <ul style="list-style-type: none">the required public notification/advertisement advising that the Green Network Supplementary Guidance would not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment had been published in the Midlothian Advertiser newspaper on 12 July 2018; andScottish Ministers, in response to notification of the Council's intention to adopt the supplementary guidance had confirmed that the Council could proceed to adopt the guidance subject to the inclusion of an additional sentence in paragraph 1.2.8 of the guidance, stating that "<i>The Scottish Government's Control of Woodland Removal Policy will also be taken into account where relevant.</i>"		
Decision		
<p>The Committee, having heard from the Planning Manager, noted the update on adoption of the Midlothian Green Network Supplementary Guidance.</p>		
Action		
<p>Head of Communities and Economy/Planning Manager</p>		

Agenda No	Report Title	Presented by:
5.2	Supplementary Guidance: Resource Extraction	Peter Arnsdorf
Executive Summary of Report		
<p>There was submitted report, dated 16 August 2018, by the Head of Communities and Economy, seeking the Committee's agreement to undertake a formal consultation on its proposed 'Resource Extraction' supplementary guidance; a copy of which was appended to the report.</p> <p>The report explained that the Midlothian Local Development Plan 2017 (MLDP), which had been adopted by the Council at its meeting on 7 November 2017, had included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas (Section 7.2, pages 81 and 82 of the MLDP). Additional guidance was required to provide further detail and interpretation of the policies and strategy set out in its development plan. One of the topic areas which needed further clarification was with regard Midlothian's Resource Extraction.</p> <p>The draft Supplementary Guidance included:</p> <ul style="list-style-type: none"> • operating standards in respect of a number of the key environmental factors, such as noise, dust and vibration; • approaches to better ensure the restoration of resource extraction sites; • measures to increase community involvement and oversight of mineral operations, through the use of community liaison committees; and • no further guidance on unconventional gas extraction following the Scottish Government's decision not to support the development of such activities in Scotland. 		
Summary of Discussion		
<p>The Committee, having heard from the Planning Manager, welcomed the Supplementary Guidance and looked forward to seeing the comments received as a result of the public consultations.</p>		
Decision		
<p>After further discussion, the Committee:-</p> <ol style="list-style-type: none"> approved the draft Resource Extraction Supplementary Guidance for consultation; noted that a further report on the Resource Extraction Supplementary Guidance would be brought forward for consideration following conclusion of the consultation period; and agreed that a Strategic Environmental Assessment was not required. 		
Action		
Head of Communities and Economy/Planning Manager		

Agenda No	Report Title	Presented by:
5.3	Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage	Peter Arnsdorf
Executive Summary of Report		
<p>There was submitted report, dated 16 August 2018, by the Head of Communities and Economy, updating the Committee with regard to 'major' planning applications, formal pre-application consultations by prospective applicants, and the expected programme of applications due for reporting to the Committee.</p> <p>The current position with regard to 'major' planning applications and formal pre-application consultations by prospective applicants was outlined in the Appendices to the report.</p>		
Decision		
<p>The Committee noted:-</p> <p>(a) The current position in relation to major planning application proposals which were likely to be considered by the Committee in 2018; and</p> <p>(b) The updates for each of the applications.</p>		
Action		
Head of Communities and Economy		

Agenda No	Report Title	Presented by:
5.4	Appeal and Local Review Body Decisions	Peter Arnsdorf
Executive Summary of Report		
<p>There was submitted report, dated 16 August 2018, by the Head of Communities and Economy, detailing the notices of review determined by the Local Review Body (LRB) at its meeting in June 2018, and advising that there were no appeals determined by Scottish Ministers to report.</p>		
Decision		
<p>The Committee noted the decisions made by the Local Review Body at its meeting on 20 June 2018.</p>		
Action		
Head of Communities and Economy		

Agenda No	Report Title	Presented by:
5.5	Pre-Application Consultation: Proposed Erection of Community Facility incorporating Primary School; Early Years Provision; Library and Leisure Facilities at Land at Danderhall Primary School and Danderhall Recreation Ground, Edmonstone Road, Danderhall (18/00350/PAC).	Peter Arnsdorf
Executive Summary of Report		
<p>There was submitted report, dated 16 August 2018, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding the proposed erection of a community facility incorporating primary school; early years provision; library and leisure facilities at land at Danderhall Primary School and Danderhall Recreation Ground, Edmonstone Road, Danderhall. (17/00721/PAC).</p> <p>The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.</p>		
Summary of Discussion		
<p>The Committee, having heard from the Planning Manager, welcomed the positive initial feedback that had been received locally and acknowledged the steps being taken to mitigate the potential loss of open space.</p>		
Decision		
<p>(a) To note the provisional planning position set out in the report;</p> <p>(b) To note the comments made by Members; and</p> <p>(c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.</p>		
Action		
Head of Communities and Economy		

Agenda No	Report Title	Presented by:
5.6	Pre-Application Consultation: Proposed Residential Development comprising 72 Dwellings, Formation of Access Roads and Car Parking and Associated Works at Land East of Conifer Road, Mayfield. (18/00476/PAC)	Peter Arnsdorf

Executive Summary of Report
<p>There was submitted report, dated 16 August 2018, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed residential development comprising 72 dwellings, formation of access roads and car parking and associated works at land east of Conifer Road, Mayfield. (18/00476/PAC).</p> <p>The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.</p>
Summary of Discussion
<p>Having heard from the Planning Manager, the Committee in considering the proposed development, discussed the proposed number of units, it being acknowledged that at this stage numbers tended to be indicative in order to give an idea of the scale of the development. It was also felt that it was important that the layout/design took account of issues arising from the location of the site. In terms of access, vehicular access was likely to be taken off Conifer Road, however pedestrian access still had to be resolved.</p>
Decision
<p>(a) To note the provisional planning position set out in the report;</p> <p>(b) To note the comments made by Members; and</p> <p>(c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.</p>
Action
<p>Head of Communities and Economy</p>

Agenda No	Report Title	Presented by:
5.7	<p>Section 42 Application to Remove Condition 6, for the Prior Approval of Details Regarding the Crossing Over the Pittendreich Burn Imposed on a Grant of Planning Permission in Principle (16/00712/PPP) for Residential Development on Land North of Dalhousie Dairy, Bonnyrigg (18/00406/S42).</p>	Peter Arnsdorf

Executive Summary of Report

With reference to paragraph 5.5 of the Minute of 3 April 2018, there was submitted report, dated 7 November 2017, by the Head of Communities and Economy concerning the above application.

Summary of Discussion

The Committee heard from the Planning Manager, who explained that planning permission in principle (16/00712/PPP) had been granted on appeal for residential development on land north of Dalhousie Dairy, Bonnyrigg in February 2018 subject to a planning obligation securing developer contributions and conditions. The current application sought to remove condition 6, which required the prior approval of the details regarding a road and pedestrian crossing over the Pittendreich Burn connecting the southern part of the site with the northern part, which had been granted planning permission in April 2018 as a result of a separate planning application (17/00611/DPP). It was acknowledged that if granted the current application would not impact on the access arrangements nor other aspects which would still be covered by the remaining conditions,

In considering the application, the Committee also discussed the growing urbanisation of the A701 and the way in which developer contributions were being used, it being felt that both would benefit from being reviewing.

Decision

After further discussion, the Committee agreed that planning permission be granted for the following reasons:

The proposed development site is identified as being part of the Council's safeguarded/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 is not outweighed by any other material considerations.

subject to:

- i) the prior signing of a legal agreement to secure contributions towards primary education, secondary education, the Borders Railway, the A7 urbanisation, maintenance of open space and the provision of affordable housing. The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused; and
- ii) the following conditions (which are those previously imposed by the Reporter, with the exception of those conditions relating to the design of the crossing):
 - 1. 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 phase of the development, the provision of affordable housing, the provision of open space, structural landscaping, SUDS provision and transportation infrastructure including the new road and pedestrian

crossing over the Pittendreich Burn. 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.*

2. As soon as possible after each of the phases of the development approved under condition 1 above is completed (except for the last or final phase, in respect of which notice shall be given under section 27B(1) of the Town and Country Planning (Scotland) Act 1997), the person who has completed any phase shall give written notice of the completion of that phase to the planning authority.

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

3. Development shall not begin on an individual phase of development (identified in compliance with condition 1) 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, roads, footpaths and cycleways 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 on adjoining plots being 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, where this is included within the particular phase;
 - xi. proposed cycle parking facilities; and

- xii. proposed area of improved quality (minimum of 20% of the proposed dwellings), where this is included within the particular phase.

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. 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 Policy DEV7 of the Midlothian Local Development Plan (LDP) and national planning guidance and advice.*

4. Development shall not begin on an individual phase of development (identified in compliance with condition 1) until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential 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 samples will also include those proposed in the area of improved quality. 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 national planning guidance and advice.*

5. Development shall not begin on any individual phase of development (identified in compliance with condition 1) 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. existing and finished ground levels for all roads (including turning facilities), parking areas, footways and cycle ways including (unless otherwise agreed by the planning authority) a new link facilitating eastbound movement from the north-eastern corner of the site onto National Cycle Route 1, all in relation to a fixed datum;
 - ii the proposed upgrading of the existing vehicle access from the B6392, including details of associated localised road widening of the B6392 to form a dedicated right turn lane into the site entrance and the formation of a pedestrian crossing island on the accessroad;
 - iii. proposed visibility splays, traffic calming measures, lighting and signage;

- iv. the upgrading of the current public transport infrastructure at the existing bus stops adjacent to the site entrance on the B6392 including the introduction of a signal controlled pedestrian crossing point linking the two bus stops, the relocation of stops to accommodate the crossing and the provision of a new bus shelter at the eastbound bus stop;
- v. except for over the short bridge section on the approach to the A7, the increasing in width to a minimum of 2.5m of the existing section of 2m wide public footway leading eastwards from the site entrance to the A7;
- vi. measures to close-off the vehicle/ pedestrian access to the proposed burn crossing to be put in place until the burn crossing is completed and the development on the northern part of burn is ready to commence;
- vii. a programme for completion for the construction of access, roads, footpaths and cycle paths;
- viii. proposed haulage routes for construction vehicles; and
- ix. proposed car parking arrangements.

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 neighbouring residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

6. Construction vehicle access to/from the part of the site located to the north of the Pittendreich Burn shall only be via the new road crossing formed within the site over the Pittendreich Burn the subject of planning permission 17/00611/DPP or a different future planning permission, except for such access as is required in connection with initial pre-construction enabling works related to the burn crossing and the early provision of structural landscaping. This crossing shall also be made available for residential access to houses built to the north of the Pittendreich Burn, from the date of first occupation of any of those houses.

Reason: *In the interests of road safety and the residential amenity of existing neighbouring residences.*

7. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/ or previous mineral workings and include:
 - i. the nature, extent and types of contamination and/or previous mineral workings on the site;

- ii. measures to treat or remove any 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 any 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 purposes, any necessary measures to decontaminate the site, as described in the agreed scheme, 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.*

- 8. Development shall not begin until details, including a timetable of implementation, of 'Percent for Art' have 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 IMP1 of the Midlothian LDP and national planning guidance and advice.*

- 9. Development shall not begin until a programme of archaeological works (metal detector survey and evaluation) and scheme of investigation has been submitted to and approved in writing in by the planning authority. The approved programme of works shall be carried out by a professional archaeologist prior to any construction works, demolition or pre-commencement ground works taking place unless otherwise agreed in writing by the planning authority.

Reason: *To ensure this development does not result in the unnecessary loss of buried archaeological material in accordance with Policy ENV25 of the Midlothian LDP.*

- 10. Prior to works commencing on site a report on an assessment of the likely effects of road traffic noise on the amenity of the future occupants of the houses shall be undertaken by an acoustic specialist to identify 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.

The night time sleep disturbance criteria shall be that contained in the WHO Night Noise Guidelines for Europe, LAmax of 42 dB(A).

Any recommended noise mitigation measures shall be implemented prior to the occupation of the houses.

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

11. Prior to the commencement of the development a sustainability/biodiversity scheme for the site, incorporating a programme of ecological works, action programme and timetable, shall be submitted to and approved in writing by the planning authority. The actions set out in the programme shall be undertaken in accordance with the agreed timetable.

Reason: *In the interests of safeguarding biodiversity.*

12. Prior to the commencement of development, the scope of a report, and a subsequent substantive report, on the technical feasibility and financial viability of the operation of a community heating scheme and the installation of low and zero carbon generating technology for the development hereby approved (linked if practicable with other neighbouring developments/sites), in accordance with MLDP Policies NRG3, NRG4 and NRG6, shall be submitted for the prior written approval of the planning authority. Should the planning authority conclude, on the basis of this report, that a scheme is technically feasible and financially viable, no dwellinghouses on the site shall be occupied until a community heating scheme, and/ or low and zero carbon generating technology for the site, (linked if practicable with other neighbouring developments/ sites), is approved in writing by the planning authority. There shall be no variation therefrom unless with the prior written approval of 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.

Reason: *To ensure opportunities for the provision of a community heating system and low and zero carbon generating technologies for the site are fully explored to accord with the requirements of Midlothian LDP Policies NRG3, NRG4 and NRG6, and in order to promote sustainable development.*

In addition, the Committee agreed to ask officers to review the way in which developer contributions were being used and the growing urbanisation of the A701 and brief the respective local members accordingly.

Action

Head of Communities and Economy/Planning Manager

Agenda No	Report Title	Presented by:
5.8	Section 42 Application to Amend Conditions 2 and 3, to Extend the Time to Complete the Restoration of Quarry, Imposed on a Grant of Planning Permission (06/00689/FUL) for the Extraction and Processing of Sand at Upper Dalhousie Sand Quarry, Bonnyrigg (18/00082/S42).	Peter Arnsdorf
Executive Summary of Report		
With reference to paragraph 3 of the Appendix to the Minutes of 13 November 2007, there was submitted report, dated 16 August 2018, by the Head of Communities and Economy concerning the above application seeking an extension to the permitted time periods for completion of restoration of the two extraction areas.		
Decision		
<p>The Committee, having heard from the Planning Manager, who responded to Members question/comments, agreed that planning permission be granted for the following reason:</p> <p><i>The proposed development site is identified as a mineral extraction site within the Midlothian Local Development Plan 2017; as such there is a presumption in favour of the proposed development. This presumption in favour of development is not outweighed by any other material considerations. The proposed amendments to conditions 2 and 3 are considered not to undermine this policy position or have long term detrimental environmental impact.</i></p> <p>subject to:</p> <ul style="list-style-type: none"> i) the developer demonstrating, to the written satisfaction of the Council, that they have sufficient bond provision/insurance in place to ensure that, in the event that the operator is not able to restore the site, financial provision is made to enable the site is restored in accordance with an approved restoration plan; and ii) the following conditions: <p>Duration of the Permission</p> <ol style="list-style-type: none"> 1. Permission for the extraction of sand from area A and B as indicated on the approved drawings Figures 3.1 to 3.7 Proposed Extraction in the approved Environmental Statement showing the 7 proposed phases of extraction is granted for a period of 8 years from the date of this planning consent (until 31 December 2026) and shall be followed by the completion of the restoration of Areas A and B to a condition suitable for agriculture and forestry/woodland as per the details of the Environmental Statement chapter 3 (paragraphs 3.4.1 to 3.4.3) as represented in the ES Fig 3.8 Restoration Masterplan Ref no ED11895 1:3750 and in accordance with the requirements of the conditions on this permission. 		

2. The extraction of Area B and progressive restoration of Areas A and B shall take place in accordance with the timeline docketed to this planning permission (Titled Indicative Phasing Plan for Areas A, B, and C) or as otherwise approved in writing by the planning authority, and in accordance with the plans docketed to this planning permission and in accordance with planting details set out in condition 3.

Reason: *To enable the Planning Authority to retain effective control over the progress of operations and the restoration of the site.*

3. Within six months from the date of this permission detailed proposals for the restoration of the whole site (Areas A and B), in order to achieve the restoration identified in ES Fig 3.8 Restoration Masterplan Ref no ED11895 1:3750 hereby approved, shall be submitted for the approval of the Planning Authority. These proposals shall include:
 - (a) A detailed landscape restoration plan giving full details including a planting schedule showing species, planting densities, sizes, protection measures, and specification notes for all ground preparation, soil, planting, any hard landscape. The plan shall identify the areas of advanced planting. Local provenance stock shall be used where possible and any seed and woodland planting mixes shall be designed with ecological input to ensure they provide maximum foraging and habitat benefit for species as identified in the Ecological survey section of the Environmental Statement;
 - (b) A soil plan setting out the depths of soil in all planted parts of the site ensuring the soil depth is adequate for the restoration planting proposed;
 - (c) the detailed specification, together with the necessary drawings, for the re-instatement of the agricultural pastures within the site, including details profiles and gradients, and all planting to be undertaken alongside the boundaries with a detailed schedule of species to be planted;
 - (d) the detailed specification for the preparation and planting of all woodland areas, including the numbers, sizes, species and planting densities of all trees and hedgerows to be planted;
 - (e) the location and details of all new fences and walls to be erected or repaired, within or around the boundaries of the site;
 - (f) a series of cross sections from the core path bisecting the site and the ancient woodland and adjacent trees to illustrate the relation between the advance buffer strip planting and the proposed site restoration levels and existing planting;
 - (g) details of footpath construction; and,
 - (h) a restoration phase landscape and ecological management plan to cover a period of five years from the completion of the restoration landscape works.

Reason: *To ensure that the restoration of the site is carried out to a high standard in order to reinstate and, wherever possible, enhance biological habitats and diversity within the site.*

Protection of water resources

4. The surface water and groundwater monitoring strategy agreed with the Planning Authority in consultation with the Scottish Environment Protection Agency as part of the previous planning consent for the site, shall continue to be implemented at the site. Sampling of surface water and groundwater within and downstream from the site shall be carried out in accordance with the agreed strategy, and the results shall be supplied to SEPA and the Planning Authority. Thereafter, at periodic intervals throughout the duration of the operations, as agreed with the Planning Authority in consultation with SEPA, further sampling shall be carried out, and the results shall be submitted to SEPA, with copies to the Planning Authority.

Reason: *In order to monitor the impact of the operations on the quality and flow of surface water and groundwater, so that any remedial action can be taken if problems are identified.*

5. The method statement detailing the procedure for the identification, isolation and treatment of any iron-rich substrate, and a contingency plan for the treatment of any ferruginous discharges that may appear after restoration of the site, which has been approved for the existing site, shall in the event of the appearance of any ferruginous discharges following the restoration of the site, the applicants, or their successors, carry out all necessary measures, as identified in the approved contingency plan.

Reason: *To protect against any ferruginous contamination of water resources that may result from the rebound of groundwater within the site, following its restoration.*

6. Before any soil stripping is carried out on any new phase of the Area B, a perimeter drainage system shall be constructed around the whole of that phase, any existing drainage ditches shall be diverted, and the appropriate water treatment area shall be constructed and brought into use, all in accordance with the approved plans and the requirements of SEPA. The prohibition on the prior stripping of soils does not apply to those soils which are required to be removed in the formation of new ditches and water treatment areas.

Reason: *To ensure that facilities for the diversion of surface water entering the site, and for the reception and treatment of contaminated water are available from the earliest stages of the development.*

7. All contaminated water shall be treated in the appropriate water treatment areas prior to discharge into any watercourse. The water

treatment facilities shall be of an adequate capacity to cater for the likely maximum volume of contaminated water, and to control the discharge flow into any watercourse in accordance with the requirements of SEPA. They must be capable of being cleaned without interruption of the treatment process, and shall be maintained in good working order throughout the duration of the operations. The direct discharge of oil, chemicals or other pollutants into the water treatment facilities, or into any watercourse within or adjoining the site, shall not be permitted.

8. Except where stored in double skinned tanks any oil, fuel, lubricant, paint or solvent stored within the site shall be provided with a suitable bund or other means of containment for 110% of the storage capacity, and with no passive means of drainage.

Reason for conditions 7 & 8: To prevent the contamination of surface or ground water resources, or of soil resources.

Protection of Soil Resources

9. Apart from the work required in accordance with condition 6 above, no work shall be carried out on any undisturbed part of the site until all topsoil has been stripped to an average depth of 300mm from the initial excavation area, all associated working areas, the site service and sand processing area, haul roads, subsoil and overburden storage areas; following which, subsoil shall be stripped to an average depth of 600mm from the same areas, with the exception of the subsoil storage areas.
10. No work shall be commenced on any subsequent phases of Area B until the topsoil and subsoil have been removed from these areas; such soils shall be either used directly for the progressive restoration of earlier phases of the operation including earlier phases of the Upper Dalhousie Quarry (Areas A and C), or stored in accordance with the requirements of condition 13 below.
11. Throughout the period of the extraction and restoration operations, all parts of the site from which topsoil has not been stripped, or on which topsoil has been respread, shall be protected from all working areas and access routes. Work routines for stripping operations, shall be designed to minimise vehicle traffic on unstripped land, and at all times the mechanical handling and compaction of topsoil shall be minimised. No vehicle, other than those involved in soil stripping or spreading or agricultural operations, shall be permitted on any unstripped land.
12. The stripping of topsoil and subsoil shall only be carried out when ground conditions are such that no undue damage is done to topsoil and subsoil (normally in Spring and Summer months, although this may be extended into dry Autumn periods). Such operations shall be suspended during adverse weather conditions.

13. Topsoil and subsoil shall be carefully stored in separate mounds wholly within the site boundary, and shall be prevented from mixing. Topsoil mounds shall not exceed 5 metres in height, and subsoil mounds shall not exceed 6 metres in height.
14. All soil storage mounds shall be evenly graded, shaped and drained to prevent water ponding on or around them; thereafter, they shall be seeded with an appropriate grass seeds mixture, as specified in the Environmental Statement accompanying the planning application, as soon as practically possible to ensure a reasonable prospect of successful sowing.
15. No turf, topsoil or subsoil shall at any time be removed from the site.

Reason for conditions 9 -15: To protect the existing soil resources of the site, in order to ensure its successful restoration to agricultural or other appropriate uses, following the completion of sand extraction.

Overburden Storage

16. Any overburden not used immediately for the back-filling of previous cuts, shall be stored in a location to be agreed in writing with the Planning Authority, wholly within the application boundary, and the mound shall not exceed 15m in height; the sides and top of the overburden mound shall be evenly graded and shaped, and they shall be seeded with a suitable low-maintenance grass seeds mix.

Reason: To ensure that the storage of overburden is stable and not unduly obtrusive.

Protection of Agricultural Interests

17. Except where otherwise agreed in writing by the Planning Authority, the applicants shall make the site stock-proof and maintain as such until restoration of the site is complete. All the existing perimeter hedges, fences and walls, shall be maintained to protect the site from damage. Where the site boundary does not coincide with an existing hedge, fence or wall, then the applicants shall, unless otherwise agreed in writing by the Planning Authority, provide and maintain stock-proof fencing, with gates or cattle grids at every opening, until the restoration is completed. Undisturbed hedgerows not affording screening for the proposed development, within or bounding the site, shall be carefully maintained, in accordance with good agricultural practice, and be cut and trimmed at the proper season throughout the period of working and restoration of the site.
18. All invasive weeds on the site, including particularly those on the topsoil and subsoil storage mounds, shall be treated as often as necessary and as determined by the Planning Authority throughout the life of the

site, at an early stage of growth, in order to prevent spreading within the site or onto adjoining agricultural land.

19. All types of vermin shall be controlled in a manner approved by the Planning Authority to prevent them spreading to adjoining agricultural land.

Reason for conditions 17-19: To protect the continued efficient operation of adjoining farmland.

Adjacent Site Drainage

20. The works on site shall be designed and implemented to ensure that they do not negatively impact on the drainage of either the site as restored or the surrounding agricultural land. During the aftercare period the applicant shall ensure both the site and the surrounding agricultural land has field drainage that is functioning appropriately to allow productive agricultural activities to continue. This will include:
 - (a) ensuring field drainage for the finally restored land is functioning appropriately;
 - (b) protecting and maintaining any ditch, stream, watercourse or culvert passing through the site which provides drainage for adjoining land;
 - (c) make provision for the installation of the field drainage system on the site to commence after one full growing season has elapsed from the time of the final stage of topsoil restoration; and,
 - (d) make provision for the field drainage system to be completed within two years of topsoil restoration.

Should there be any complaints received by the Planning Authority regarding the drainage at the site, which the Planning Authority consider merit investigation, the applicant shall take all reasonable steps to address any drainage issues with the site or the surrounding land, which can reasonably be considered to have resulted from the works on the site.

Reason: To ensure the continued adequate drainage of the site, and adjoining land, in the interests of its continued productive agricultural use.

21. No refuse, soil or waste material from outside the site shall be deposited within the site for any purpose without the prior written permission of the Planning Authority.

Reason: To ensure that site restoration is achieved using existing on-site materials only.

22. Any public utilities crossing or adjacent to the site shall be protected or diverted, as necessary, in accordance with the requirements of the relevant authorities.

Reason: *To safeguard existing public utilities in the area.*

23. At all times that the site is in operation, a wheel washing facility for vehicles exiting the site shall be in use and shall be regularly cleaned and recharged with clean water, and the sections of public road between the site access and the A7 shall be kept clear of mud or dirt.

Reason: *To prevent mud and dirt from the site being spread onto the public road, where it may constitute a hazard or nuisance to road users.*

Archaeology

24. No development shall take place on the proposed site until the applicant has undertaken and reported upon a programme of archaeological (Monitored Soil Strip) work in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority.

Reason: *To ensure that any features of archaeological interest within the site are identified and recorded.*

Ecology

25. The measures identified in section 7 of the Environmental Statement, to mitigate the impact of the development on mammals, birds and amphibians shall be implemented throughout the duration of the operations on the site; and, in particular, any habitat removal shall take place outwith the bird breeding season (February to August).

Reason: *To minimise the adverse impact of the development on wildlife within and adjoining the site.*

Hours of Working

26. No operations shall take place outwith the hours of 07.00 to 19.00 on Mondays to Fridays inclusive and 07.00 to 13.00 on Saturdays. Operations shall include excavation, extraction and restoration, initial preparation of the site including the formation and removal of perimeter soil bunds, and the movement of lorries entering or leaving the site. No work shall be carried out on Sundays or on public holidays except for emergency or routine maintenance work.

Reason: *To minimise the effect the impact of the development on the amenity of residents living in the vicinity of the site and as a consequence of the Environmental assessment considering slightly shorter hours than the existing planning consent.*

Noise Control

27. Noise levels, as measured at 3.5 metres from any façade of any noise-sensitive dwelling, from all site operations other than soil stripping but including bund formation and restoration, shall not exceed a one hour LAeq of 45db.
28. Noise levels, as measured in accordance with condition 27, from soil stripping shall not exceed 60 dB(A) LAeq1h during the approved operating hours.
29. The surface of all haul roads and the track between the Hopefield Distributor Road and the sites shall be maintained in an evenly-graded condition, without bumps or pot-holes, at all times throughout the duration of operations at the site. The speed limit of 15mph shall be enforced along this section of road/track.
30. Before operations commence on the site, the applicants shall advise the Planning Authority of the types of vehicle reversing alarms that are to be installed on mobile plant used within the site; if these emit audible reversing signals, they shall be of the best available type to reduce noise disturbance to a minimum, and shall be upgraded, as necessary, as technology improves.
31. The routes of vehicles within the site shall be designed to minimise the need for lorries to reverse, thereby activating any reversing alarms with which they may be installed.
32. All vehicles exiting the site shall turn right and continue to the A7 via the B6392.
33. Throughout the duration of the operations at this site, the applicants, or their successors, shall implement in full the noise mitigation measures, identified in Section 9 of the Environmental Statement, including those relating to site operation and general environmental management. In particular, a programme of regular noise monitoring shall be undertaken, at locations to be agreed beforehand with the Planning Authority, and the results shall be made available to the Authority on request.

Reason for conditions 26-33: To ensure that noise generated by the operations on the site is minimised, in order to protect the amenity of those residents living in the vicinity of the site and as recommended in PAN 50 Annex A: The control of noise at surface mineral workings.

Dust Control

34. Whenever necessary, all roads and other un-vegetated surfaces within the site, including sand stockpiles, shall be damped down to prevent the

spread of windblown dust from the site; particular care shall be taken in the vicinity of residential properties, and moisture screens shall be installed within the site, if necessary.

35. Throughout the duration of operations, the surface of the site access roads shall be kept in good repair, and shall be regularly graded to remove loose material.
36. All mobile plant used within the site shall be fitted with upward facing exhausts.
37. All laden vehicles leaving the site shall be effectively sheeted or enclosed.
38. All vehicles moving within the site, and along the access road to the Hopefield Distributor Road shall be subject to a speed limit, not exceeding 15mph.
39. Throughout the duration of the operations at this site, the applicants, or their successors, shall implement in full the dust control measures, identified in Section 12 of the Environmental Statement attached to the previous planning permission, reference number 06/00689/FUL, including those relating to site operation and general environmental management. In particular, a programme of dust monitoring shall be undertaken, in accordance with details submitted to and approved by the Planning Authority prior to operations commencing on the site, and the results of the monitoring shall be submitted to the Authority at the agreed intervals. The dust monitoring programme shall include details of the air quality standards to be achieved at agreed locations on the perimeter of the site, and the remedial measures to be adopted in the event of those standards not being achieved, including, in extreme adverse conditions, the temporary cessation of all operations on the site.

Reason for conditions 34-39: To minimise the impact of the development on the environment of the surrounding area, through the generation of dust from the operations.

Landscaping Restoration and Aftercare

40. The site shall be completely restored, in compliance with conditions 3 and 40 to 47, within one year of the expiry of the time limit placed on the operation of the site.
41. The site shall be restored progressively in accordance with the details provided in chapter 3 of the Environmental Statement.
42. The site shall be restored to the contours approved in accordance with the details approved in terms of condition 3 and the details on drawing ES Fig 3.8 Restoration Masterplan Ref no ED11895 1:3750, or such

other revised contours as may be agreed in writing with the Planning Authority, and the surface levels shall be so graded as to ensure the final surface merges smoothly with the adjoining land.

43. Within six months of the completion of sand extraction operations, all buildings and fixed or moveable plant shall be removed from the site and all site access roads shall be removed or reverted back to farm access tracks, unless required for the restoration of the site, or otherwise agreed by the Planning Authority; and all such areas shall be subject to the full restoration treatment, as detailed below. Any access roads required for the restoration work shall be retained until the end of the restoration period and then removed or reverted back to farm access tracks.
44. All operations to remove topsoil and subsoil from the storage mounds and to re-spread them shall be carried out when the ground and storage mounds are in a suitable dry condition, as agreed with the Planning Authority. Earth-moving machinery shall travel to and from the soil mounds along clearly defined routes, and these routes shall be ripped before being covered with the next layer of subsoil or topsoil. When the vehicle is emptied after spreading subsoil or topsoil, it must immediately turn off on to overburden or subsoil areas respectively. On sloping land, the direction of travel of machines should, as far as is possible, be parallel to the contours, in order to minimise erosion. All operations following the replacement of topsoil shall be carried out by suitable agricultural machinery.
45. On all areas that are to be restored to agricultural use, after replacement of topsoil, chemical analyses of the soils shall be carried out by an approved agency to assess the fertiliser, lime and other major and minor nutrients required to promote the establishment and growth of appropriate plants for the agreed land use. The land shall then be cultivated using normal agricultural machinery to prepare a seed bed suitable for the sowing of grass seeds, during which process any stones larger than would pass through a wire screen mesh with a size of 100mm shall be removed, together with other obstructions to future cultivation. Lime, fertilisers and other plant nutrients shall be applied in accordance with the recommendations of the approved agency carrying out the soil chemical analyses so that the soil is sufficiently fertile to permit the chosen programme of restoration. The land shall then be sown with a short term grass seed mixture, based on perennial rye grass and white clove, or such other species as may be approved.
46. The site shall be restored only in accordance with the restoration plans and specifications approved under the terms of this permission, and restoration works shall not be considered to be completed until all watercourses, ditches, fences, walls, hedges, field accesses trees and other planting have been installed or carried out in accordance with those plans and specifications agreed with the Planning Authority.

Reason for conditions 40-46: To ensure that all parts of the site are properly restored to agriculture or other approved after-use.

47. Any trees or shrubs planted as part of the restoration proposals that die, are removed, become seriously diseased or are severely damaged within five years of planting shall be replaced during the next available planting season with others of similar size and species.

Reason: To ensure that all new planting has an adequate opportunity to become successfully established.

48. At least three months before the completion of the restoration of Area A and at least three months before the completion of the restoration of Area B, aftercare schemes for each Area, in accordance with Schedule 3 to the Town & Country Planning (Scotland) Act 1997 shall be submitted for the approval of the Planning Authority. The scheme shall be carried out, as approved or modified by the Authority, for a period of five years from the date when the restoration of the site has been completed in accordance with the terms of condition 49.

49. The aftercare measures to be taken shall be such as to bring the land to the required standard for use for agriculture, to enable the establishment of the woodland planting and for amenity purposed specifically new habitat creation with appropriate footpath access.

Reason for conditions 48 & 49: To ensure that all the restored land is properly managed for a sufficient period to ensure its effective establishment to the approved after-use.

Monitoring

50. Throughout the duration of this development, the applicants or their successors shall, if and when required to do so by the Planning Authority, submit such information as may be necessary, including any relevant plans, to enable the Authority to determine the progress of the operations.

Reason: To ensure effective monitoring of the development.

51. The proposed development of the site shall progress in accordance with the Phasing Plan – Extraction and Restoration, submitted as part of the planning consent.

Reason: To ensure the phasing of the extraction and restoration of Areas A, B, and C allow for the appropriate phases development of the site and to ensure the restoration proposals for the three areas are achieved.

52. Within three months of the date of this consent, the developer shall provide the Planning Authority with details of a bond or other financial

provision from a bank or other financial institution to be put in place to cover decommissioning, site restoration and aftercare costs for the site, Areas A and B. Works (including any soil stripping) shall cease on site within six months of the date of this consent unless the developer has provided documentary evidence that the proposed bond or other financial provision is in place and written confirmation has been given by the Planning Authority that the proposed bond or other financial provision is satisfactory. The developer shall ensure that the approved bond or other financial provision is maintained through the duration of the permission.

Reason: *To ensure that there are sufficient funds available throughout the life of the development to carry out the full restoration of the site.*

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.9	Application for Planning Permission for the Extraction and Processing of Sand on Land to the South/South West of the Upper Dalhousie Sand Quarry, Bonnyrigg (18/00081/DPP).	Peter Arnsdorf
Executive Summary of Report		
There was submitted report, dated 16 August 2018, by the Head of Communities and Economy concerning the above application.		
Decision		
<p>The Committee, having heard from the Planning Manager, agreed that planning permission be granted for the following reason:</p> <p><i>The proposed development site is identified as a mineral extraction site within the Midlothian Local Development Plan 2017; as such there is a presumption in favour of the proposed development. This presumption in favour of development is not outweighed by any other material considerations.</i></p> <p>subject to:</p> <ul style="list-style-type: none"> i) the developer demonstrating, to the written satisfaction of the Council, that they have sufficient bond provision/insurance in place to ensure that, in the event that the operator is not able to restore the site, financial provision is made to enable the site is restored in accordance with an approved restoration plan; and ii) the following conditions: <p>Duration of the Permission</p>		

1. Permission for the extraction of sand from area C as indicated on the approved drawings ES Fig 3.3 Area C Phase 1 Proposed Excavation, ES Fig 3.4 Area C Phase 2 Proposed Excavation and ES Fig 3.5 Area C Phase 3 Proposed Excavation is granted for a period of 10 years. The development shall commence a maximum of 9 years from the date of this consent, notwithstanding the terms of Section 20 the Planning etc. (Scotland) Act 2006. The date of commencement of operations on the site shall be notified to the Planning Authority by the applicants within one week of this commencement; and shall be followed by the completion of the restoration of Area C to a condition suitable for agriculture, forestry/woodland and creation of wetland habitat with public access improvements to form increased public amenity as per the details of the Environmental Statement chapter 3 (paragraphs 3.6.1 to 3.6.6) as represented in the ES Fig 3.7 Restoration Masterplan Ref no ED11578 1:3750 and in accordance with the requirements of the conditions on this permission.
2. The extraction and progressive restoration of Area C shall take place in accordance with the timeline docketed to this planning permission (Titled Indicative Phasing Plan for Areas A, B, and C) or as otherwise approved in writing by the planning authority, and in accordance with the plans docketed to this planning permission and in accordance with planting details set out in condition 3.

Reason for Conditions 1&2: To enable the Planning Authority to retain effective control over the progress of operations and the restoration of the site. In order to ensure the timescale of the development, which is out with the 3 year period referred to in Section 20 of the Planning etc. (Scotland) Act 2006, is recognised in relation to this site.

3. Within six months from the date of this permission detailed proposals for the restoration of the whole site, in order to achieve the restoration identified in ES Fig 3.7 Restoration Masterplan Ref no ED11578 1:3750 hereby approved, shall be submitted for the approval of the Planning Authority. These proposals shall include:
 - (a) A detailed landscape restoration plan giving full details including a planting schedule showing species, planting densities, sizes, protection measures, and specification notes for all ground preparation, soil, planting, any hard landscape. The plan shall identify the areas of advanced planting. Local provenance stock shall be used where possible and any seed and woodland planting mixes shall be designed with ecological input to ensure they provide maximum foraging and habitat benefit for species as identified in the Ecological survey section of the Environmental Statement;
 - (b) A soil plan setting out the depths of soil in all planted parts of the site ensuring the soil depth is adequate for the restoration planting proposed;

- (c) the detailed specification, together with the necessary drawings, for the re-instatement of the agricultural pastures within the site, including details profiles and gradients, and all planting to be undertaken alongside the boundaries with a detailed schedule of species to be planted. Details shall be submitted to include both a hedge to be planted along the western boundary of the extension site as well as additional planting of a minimum of 5m in depth along this boundary. For the avoidance of doubt, the boundary referred to is marked in blue hatching on the plan reference number ED11578/Figure 3.7 amended by case officer to show location of boundary;
- (d) the detailed specification for the preparation and planting of all woodland areas, including the numbers, sizes, species and planting densities of all trees and hedgerows to be planted;
- (e) the location and details of all new fences and walls to be erected or repaired, within or around the boundaries of the site;
- (f) a series of cross sections from the core path bisecting the site and the ancient woodland and adjacent trees to illustrate the relation between the advance buffer strip planting and the proposed site restoration levels and existing planting;
- (g) cross sections showing proposed levels for water feature;
- (h) details of footpath construction; and
- (i) a restoration phase landscape and ecological management plan to cover a period of five years from the completion of the restoration landscape works.

Reason: *To ensure that the restoration of the site is carried out to a high standard in order to reinstate and, wherever possible, enhance biological habitats and diversity within the site.*

Protection of water resources

4. Prior to any operations which are the subject of this permission commencing on the site, a surface water and groundwater monitoring strategy shall be submitted to and agreed with the Planning Authority in consultation with the Scottish Environment Protection Agency. Sampling of surface water and groundwater within and downstream from the site shall be carried out in accordance with the agreed strategy, and the results shall be supplied to SEPA and the Planning Authority. Thereafter, at periodic intervals throughout the duration of the operations, to be agreed with the Planning Authority in consultation with SEPA, further sampling shall be carried out, and the results shall be submitted to SEPA, with copies to the Planning Authority.

Reason: *In order to monitor the impact of the operations on the quality and flow of surface water and groundwater, so that any remedial action can be taken if problems are identified.*

5. Prior to the replacement of any overburden, a method statement detailing the procedure for the identification, isolation and treatment of

any iron-rich substrate, and a contingency plan for the treatment of any ferruginous discharges that may appear after restoration of the site, shall be submitted to and approved by the Planning Authority, in consultation with SEPA. In the event of the appearance of any ferruginous discharges following the restoration of the site, the applicants, or their successors, shall carry out all necessary measures, as identified in the approved contingency plan.

Reason: *To protect against any ferruginous contamination of water resources that may result from the rebound of groundwater within the site, following its restoration.*

6. Before any soil stripping is carried out on any phase of the site, a new perimeter drainage system shall be constructed around the whole of that phase, any existing drainage ditches shall be diverted, and the appropriate water treatment area shall be constructed and brought into use, all in accordance with the approved plans and the requirements of SEPA. The prohibition on the prior stripping of soils does not apply to those soils which are required to be removed in the formation of new ditches and water treatment areas.

Reason: *To ensure that facilities for the diversion of surface water entering the site, and for the reception and treatment of contaminated water are available from the earliest stages of the development.*

7. All contaminated water shall be treated in the appropriate water treatment areas prior to discharge into any watercourse. The water treatment facilities shall be of an adequate capacity to cater for the likely maximum volume of contaminated water, and to control the discharge flow into any watercourse in accordance with the requirements of SEPA. They must be capable of being cleaned without interruption of the treatment process, and shall be maintained in good working order throughout the duration of the operations. The direct discharge of oil, chemicals or other pollutants into the water treatment facilities, or into any watercourse within or adjoining the site, shall not be permitted.
8. Except where stored in double skinned tanks any oil, fuel, lubricant, paint or solvent stored within the site shall be provided with a suitable bund or other means of containment for 110% of the storage capacity, and with no passive means of drainage.

Reason for conditions 7 & 8: *To prevent the contamination of surface or ground water resources, or of soil resources.*

Protection of Soil Resources

9. Apart from the work required in accordance with condition 6 above, no work shall be carried out on any undisturbed part of the site until all

topsoil has been stripped to an average depth of 300mm from the initial excavation area.

10. After the initial excavations have taken place, no work shall be commenced on any subsequent phases until the topsoil and subsoil have been removed from these areas; such soils shall be either used directly for the progressive restoration of earlier phases of the operation including earlier phases of the Upper Dalhousie Quarry (Areas A and B), or stored in accordance with the requirements of condition 13 below.
11. Throughout the period of the extraction and restoration operations, all parts of the site from which topsoil has not been stripped, or on which topsoil has been respread, shall be protected from all working areas and access routes. Work routines for stripping operations, shall be designed to minimise vehicle traffic on unstripped land, and at all times the mechanical handling and compaction of topsoil shall be minimised. No vehicle, other than those involved in soil stripping or spreading or agricultural operations, shall be permitted on any unstripped land.
12. The stripping of topsoil and subsoil shall only be carried out when ground conditions are such that no undue damage is done to topsoil and subsoil (normally in Spring and Summer months, although this may be extended into dry Autumn periods). Such operations shall be suspended during adverse weather conditions.
13. Topsoil and subsoil shall be carefully stored in separate mounds wholly within the site boundary, and shall be prevented from mixing. Topsoil mounds shall not exceed 5 metres in height, and subsoil mounds shall not exceed 6 metres in height.
14. All soil storage mounds shall be evenly graded, shaped and drained to prevent water ponding on or around them; thereafter, they shall be seeded with an appropriate grass seeds mixture, as specified in the Environmental Statement accompanying the planning application, as soon as practically possible to ensure a reasonable prospect of successful sowing.
15. No turf, topsoil or subsoil shall at any time be removed from the site.

Reason for conditions 9 -15: To protect the existing soil resources of the site, in order to ensure its successful restoration to agricultural or other appropriate uses, following the completion of sand extraction.

Overburden Storage

16. Any overburden not used immediately for the back-filling of previous cuts, shall be stored in a location to be agreed in writing with the Planning Authority, wholly within the application boundary, and the mound shall not exceed 15m in height; the sides and top of the

overburden mound shall be evenly graded and shaped, and they shall be seeded with a suitable low-maintenance grass seeds mix.

Reason: *To ensure that the storage of overburden is stable and not unduly obtrusive.*

Protection of Agricultural Interests

17. Except where otherwise agreed in writing by the Planning Authority, the applicants shall make the site stock-proof and maintain as such until restoration of the site is complete. All the existing perimeter hedges, fences and walls, shall be maintained to protect the site from damage. Where the site boundary does not coincide with an existing hedge, fence or wall, then the applicants shall, unless otherwise agreed in writing by the Planning Authority, provide and maintain stock-proof fencing, with gates or cattle grids at every opening, until the restoration is completed. Undisturbed hedgerows not affording screening for the proposed development, within or bounding the site, shall be carefully maintained, in accordance with good agricultural practice, and be cut and trimmed at the proper season throughout the period of working and restoration of the site.
18. All invasive weeds on the site, including particularly those on the topsoil and subsoil storage mounds, shall be treated as often as necessary and as determined by the Planning Authority throughout the life of the site, at an early stage of growth, in order to prevent spreading within the site or onto adjoining agricultural land.
19. All types of vermin shall be controlled in a manner approved by the Planning Authority to prevent them spreading to adjoining agricultural land.

Reason for conditions 17-19: *To protect the continued efficient operation of adjoining farmland.*

Adjacent Site Drainage

20. The works on site shall be designed and implemented to ensure that they do not negatively impact on the drainage of either the site as restored or the surrounding agricultural land. During the aftercare period the applicant shall ensure both the site and the surrounding agricultural land has field drainage that is functioning appropriately to allow productive agricultural activities to continue. This will include:
 - (a) ensuring field drainage for the finally restored land is functioning appropriately;
 - (b) protecting and maintaining any ditch, stream, watercourse or culvert passing through the site which provides drainage for adjoining land;

- (c) make provision for the installation of the field drainage system on the site to commence after one full growing season has elapsed from the time of the final stage of topsoil restoration; and
- (d) make provision for the field drainage system to be completed within two years of topsoil restoration.

Should there be any complaints received by the Planning Authority regarding the drainage at the site, which the Planning Authority consider merit investigation, the applicant shall take all reasonable steps to address any drainage issues with the site or the surrounding land, which can reasonably be considered to have resulted from the works on the site.

Reason: *To ensure the continued adequate drainage of the site, and adjoining land, in the interests of its continued productive agricultural use.*

21. No refuse, soil or waste material from outside the site shall be deposited within the site for any purpose without the prior written permission of the Planning Authority.

Reason: *To ensure that site restoration is achieved using existing on-site materials only.*

22. Any public utilities crossing or adjacent to the site shall be protected or diverted, as necessary, in accordance with the requirements of the relevant authorities.

Reason: *To safeguard existing public utilities in the area.*

23. At all times that the site is in operation, a wheel washing facility for vehicles exiting the site shall be in use and shall be regularly cleaned and recharged with clean water, and the sections of public road between the site access and the A7 shall be kept clear of mud or dirt.

Reason: *To prevent mud and dirt from the site being spread onto the public road, where it may constitute a hazard or nuisance to road users.*

Archaeology

24. No development shall take place on the proposed site until the applicant has undertaken and reported upon a programme of archaeological (Monitored Soil Strip) work in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority.

Reason: *To ensure that any features of archaeological interest within the site are identified and recorded.*

Ecology

25. A maximum of one year prior to the commencement of works on site, additional species surveys shall be undertaken by a suitably qualified ecologist, which shall seek to confirm the status of species, and ensure appropriate mitigation, details of which should be incorporated into a revised version of section 8 of the Environmental Statement. This amended section of the Environmental Statement shall be submitted to and approved by the Planning Authority in writing, prior to the commencement of soil stripping on the site.
26. The measures identified in section 8 of the Environmental Statement, as revised by condition 25, to mitigate the impact of the development on mammals, birds and amphibians shall be implemented throughout the duration of the operations on the site; and, in particular, any habitat removal shall take place outwith the bird breeding season (February to August).

Reason for conditions 25 and 26: To minimise the adverse impact of the development on wildlife within and adjoining the site.

Hours of Working

27. No operations shall take place outwith the hours of 07.00 to 18.00 on Mondays to Fridays inclusive and 07.00 to 13.00 on Saturdays. Operations shall include excavation, extraction and restoration, initial preparation of the site including the formation and removal of perimeter soil bunds, and the movement of lorries entering or leaving the site. No work shall be carried out on Sundays or on public holidays except for emergency or routine maintenance work.

Reason: To minimise the effect the impact of the development on the amenity of residents living in the vicinity of the site and as a consequence of the Environmental assessment considering slightly shorter hours than the existing planning consent.

Noise Control

28. Noise levels, as measured at 3.5 metres from any façade of any noise-sensitive dwelling, from all site operations other than soil stripping but including bund formation and restoration, shall not exceed a one hour LAeq of 45db.
29. Noise levels, as measured in accordance with condition 29, from soil stripping shall not exceed 60 dB(A) LAeq1h during the approved operating hours.
30. The surface of all haul roads and the track between the Hopefield Distributor Road and the sites shall be maintained in an evenly-graded condition, without bumps or pot-holes, at all times throughout the

duration of operations at the site. The speed limit of 15mph shall be enforced along this section of road/track.

31. Before operations commence on the site, the applicants shall advise the Planning Authority of the types of vehicle reversing alarms that are to be installed on mobile plant used within the site; if these emit audible reversing signals, they shall be of the best available type to reduce noise disturbance to a minimum, and shall be upgraded, as necessary, as technology improves.
32. The routes of vehicles within the site shall be designed to minimise the need for lorries to reverse, thereby activating any reversing alarms with which they may be installed.
33. All vehicles exiting the site shall turn right and continue to the A7 via the B6392.
34. Throughout the duration of the operations at this site, the applicants, or their successors, shall implement in full the noise mitigation measures, identified in Section 12 of the Environmental Statement, including those relating to site operation and general environmental management. In particular, a programme of regular noise monitoring shall be undertaken, at locations to be agreed beforehand with the Planning Authority, and the results shall be made available to the Authority on request.

Reason for conditions 27-34: To ensure that noise generated by the operations on the site is minimised, in order to protect the amenity of those residents living in the vicinity of the site and as recommended in PAN 50 Annex A: The control of noise at surface mineral workings.

Dust Control

35. Whenever necessary, all roads and other un-vegetated surfaces within the site, including sand stockpiles, shall be damped down to prevent the spread of windblown dust from the site; particular care shall be taken in the vicinity of residential properties, and moisture screens shall be installed within the site, if necessary.
36. Throughout the duration of operations, the surface of the site access roads shall be kept in good repair, and shall be regularly graded to remove loose material.
37. All mobile plant used within the site shall be fitted with upward facing exhausts.
38. All laden vehicles leaving the site shall be effectively sheeted or enclosed.

39. All vehicles moving within the site, and along the access road to the Hopefield Distributor Road shall be subject to a speed limit, not exceeding 15mph.
40. Throughout the duration of the operations at this site, the applicants, or their successors, shall implement in full the dust control measures, identified in the Dust Management Plan dated January 2018, including those relating to site operation and general environmental management. In particular, a programme of dust monitoring shall be undertaken, in accordance with details to be submitted to and approved with the Planning Authority prior to operations commencing on the site, and the results of the monitoring shall be submitted to the Authority at agreed intervals. The dust monitoring programme shall include details of the air quality standards to be achieved at agreed locations on the perimeter of the site, and the remedial measures to be adopted in the event of those standards not being achieved, including, in extreme adverse conditions, the temporary cessation of all operations on the site.

Reason for conditions 35-40: To minimise the impact of the development on the environment of the surrounding area, through the generation of dust from the operations.

Landscaping Restoration and Aftercare

41. The site shall be completely restored, in compliance with conditions 3 and 41 to 48, within one year of the expiry of the time limit placed on the operation of the site.
42. The site shall be restored progressively in accordance with the details provided in chapter 3 of the Environmental Statement.
43. The site shall be restored to the contours approved in accordance with the details approved in terms of condition 3 and the details on drawing ES Fig 3.7 Restoration Masterplan Ref no ED11578 1:3750, or such other revised contours as may be agreed in writing with the Planning Authority, and the surface levels shall be so graded as to ensure the final surface merges smoothly with the adjoining land.
44. Within six months of the completion of sand extraction operations, all buildings and fixed or moveable plant shall be removed from the site and all site access roads shall be removed or reverted back to farm access tracks, unless required for the restoration of the site, or otherwise agreed by the Planning Authority; and all such areas shall be subject to the full restoration treatment, as detailed below. Any access roads required for the restoration work shall be retained until the end of the restoration period and then removed or reverted back to farm access tracks.

45. All operations to remove topsoil and subsoil from the storage mounds and to re-spread them shall be carried out when the ground and storage mounds are in a suitable dry condition, as agreed with the Planning Authority. Earth-moving machinery shall travel to and from the soil mounds along clearly defined routes, and these routes shall be ripped before being covered with the next layer of subsoil or topsoil. When the vehicle is emptied after spreading subsoil or topsoil, it must immediately turn off on to overburden or subsoil areas respectively. On sloping land, the direction of travel of machines should, as far as is possible, be parallel to the contours, in order to minimise erosion. All operations following the replacement of topsoil shall be carried out by suitable agricultural machinery.
46. On all areas that are to be restored to agricultural use, after replacement of topsoil, chemical analyses of the soils shall be carried out by an approved agency to assess the fertiliser, lime and other major and minor nutrients required to promote the establishment and growth of appropriate plants for the agreed land use. The land shall then be cultivated using normal agricultural machinery to prepare a seed bed suitable for the sowing of grass seeds, during which process any stones larger than would pass through a wire screen mesh with a size of 100mm shall be removed, together with other obstructions to future cultivation. Lime, fertilisers and other plant nutrients shall be applied in accordance with the recommendations of the approved agency carrying out the soil chemical analyses so that the soil is sufficiently fertile to permit the chosen programme of restoration. The land shall then be sown with a short term grass seed mixture, based on perennial rye grass and white clove, or such other species as may be approved.
47. The site shall be restored only in accordance with the restoration plans and specifications approved under the terms of this permission, and restoration works shall not be considered to be completed until all watercourses, ditches, fences, walls, hedges, field accesses trees and other planting have been installed or carried out in accordance with those plans and specifications agreed with the Planning Authority.

Reason for conditions 49-57: To ensure that all parts of the site are properly restored to agriculture or other approved after-use.

48. Any trees or shrubs planted as part of the restoration proposals that die, are removed, become seriously diseased or are severely damaged within five years of planting shall be replaced during the next available planting season with others of similar size and species.

Reason: To ensure that all new planting has an adequate opportunity to become successfully established.

49. At least three months before the completion of the restoration of Site C, an aftercare scheme, in accordance with Schedule 3 to the Town & Country Planning (Scotland) Act 1997 shall be submitted for the

approval of the Planning Authority. The scheme shall be carried out, as approved or modified by the Authority, for a period of five years from the date when the restoration of the site has been completed in accordance with the terms of condition 48.

50. The aftercare measures to be taken shall be such as to bring the land to the required standard for use for agriculture, to enable the establishment of the woodland planting and for amenity purposed specifically new habitat creation with appropriate footpath access.

Reason for conditions 49-51: To ensure that all the restored land is properly managed for a sufficient period to ensure its effective establishment to the approved after-use.

Monitoring

51. Throughout the duration of this development, the applicants or their successors shall, if and when required to do so by the Planning Authority, submit such information as may be necessary, including any relevant plans, to enable the Authority to determine the progress of the operations.

Reason: To ensure effective monitoring of the development.

52. The proposed development of the site shall progress in accordance with the Phasing Plan – Extraction and Restoration, submitted as part of the planning consent.

Reason: To ensure the phasing of the extraction and restoration of Areas A, B, and C allow for the appropriate phases development of the site and to ensure the restoration proposals for the three areas are achieved.

53. Prior to the start of the development (including any soil stripping), the developer shall provide the Planning Authority with details of a bond or other financial provision from a bank or other financial institution to be put in place to cover decommissioning, site restoration and aftercare costs for the site. No works (including any soil stripping) shall commence on site until the developer has provided documentary evidence that the proposed bond or other financial provision is in place and written confirmation has been given by the Planning Authority that the proposed bond or other financial provision is satisfactory. The developer shall ensure that the approved bond or other financial provision is maintained through the duration of the permission.

Reason: To ensure that there are sufficient funds available throughout the life of the development to carry out the full restoration of the site.

54. All of the mitigation measures identified in the Mitigation Schedule, approved as part of this consent shall be implemented in full at the site.

Reason: *To ensure the mitigation measures identified in the Environmental Statement are implemented, to minimise possible environmental impacts and to ensure the development is carried out in the manner described in the Statement.*

Action

Head of Communities and Economy

6. Private Reports

Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Planning Committee agreed that the public be excluded from the meeting during discussion of the undernoted item, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraph 13 of Part I of Schedule 7A to the Local Government (Scotland) Act 1973

Report No.	Report Title	Presented by:
6.1	Proposed Tree Preservation Order – Penicuik.	Peter Arnsdorf
Decision		
To approve the Proposed Tree Preservation Order.		

The meeting terminated at 2.42pm.



SUPPLEMENTARY GUIDANCE: SPECIAL LANDSCAPE AREAS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek agreement to the adoption of the Special Landscape Areas Supplementary Guidance.

2 BACKGROUND

- 2.1 At its meeting of 7 November 2017 the Council adopted the Midlothian Local Development Plan 2017 (MLDP). The MLDP included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas (Section 7.2, pages 81 and 82 of the MLDP). Additional guidance is required to provide further detail and interpretation of the policies and strategy set out in its development plan. One of the topic areas which needs further detail is with regard Special Landscape Areas. Specific support for and protection of the Special Landscape Areas is provided through MLDP policy ENV6: Special Landscape Areas.
- 2.2 At its meeting of 3 April 2018 the Committee approved the draft Special Landscape Areas Supplementary Guidance for consultation and agreed to consider a further report on the Guidance following the proposed consultation.
- 2.3 The consultation period ran for six weeks from 24 April to 7 June 2018 with discussions with interested parties continuing after the specified period.
- 2.4 The draft Special Landscape Areas Supplementary Guidance was published on the Council's website and available for inspection at Fairfield House and in all Midlothian Council libraries. All Midlothian Community Councils were consulted, as were a variety of other Midlothian community groups, those who had commented on the Special Landscape Areas section of the Proposed Midlothian Local Development Plan and other known parties considered to have an interest in the document. This included Midlothian residents, adjoining local authorities, Government agencies, third sector organisations, representatives of the development industry and developers with a known interest in sites identified in the Local Development Plan with

Special Landscape Areas implications from the draft supplementary guidance and the adopted Midlothian Local Development (2017).

3 REPRESENTATIONS

- 3.1 As part of the consultation process responses from 17 parties were received. Responses were received from a spread of consultees including, community councils, individual members of the public, community organisations, third sector groups and Government.
- 3.2 A summary of the consultation responses received with the proposed officer response and a track change copy of the draft Special Landscape Areas Supplementary Guidance document showing proposed deletions and additions to the document arising from the consultation is attached to this report. New text within the Guidance document is shown in red.
- 3.3 The responses received comprised:
- suggested changes to the descriptive text in the 'Statements of Importance';
 - strong support for the guidance and the protection it provides for Midlothian's landscapes;
 - concern about development pressures in the North Esk Valley around Lasswade/Polton Road;
 - concern about woodland planting on the scarp slope of the Moorfoot Hills south of Gladhouse Reservoir and potential from the document for investigation of additional car parking provision to help encourage additional visitors to Gladhouse Reservoir;
 - request for addition of references to historic battlefields;
 - request for the document to state support for the maintenance of traditional stone walls in Midlothian and partnership working to help address matters raised in the document; and
 - concern that the importance of views and vistas in Midlothian is not covered adequately in the document.

4 STRATEGIC ENVIRONMENTAL ASSESSMENT

- 4.1 All Scottish public bodies and a few private companies operating in a 'public character' (e.g. utility companies) within Scotland are required to assess, consult and monitor the likely impacts of their plans, programmes and strategies on the environment. This process is known as Strategic Environmental Assessment (SEA).
- 4.2 As required by the Environmental Assessment (Scotland) Act 2005, screening for likely significant environmental effects from the draft supplementary guidance has been undertaken with the Consultation Authorities - SEPA, Scottish Natural Heritage and Historic Environment Scotland. The Consultation Authorities agree with the Council's opinion that no such effects are likely.

- 4.3 The Council is now in a position to make a formal determination that no such effects are likely, thereby exempting the supplementary guidance from any requirement for Strategic Environmental Assessment ('SEA'). The supplementary guidance cannot be considered adopted until such a determination has taken place. The determination requires to be advertised in a local paper within 14 days and copied to the consultation authorities.
- 4.4 The guidance has also been screened for a Habitats Regulations Appraisal (HRA) and because of the protection of sites within the MLDP a HRA is considered not to be required.

5 SPECIAL LANDSCAPE AREAS SUPPLEMENTARY GUIDANCE

- 5.1 The Midlothian Local Development Plan (2017) has a commitment to prepare supplementary guidance on Special Landscape Areas. Not adopting this Supplementary Guidance would weaken the Council's position in safeguarding the landscape character of Midlothian. It would also result in less information being available for preparing and assessing development proposals.
- 5.2 The supplementary guidance sets out why areas are designated as Special Landscape Areas and what are their important characteristics and components. The guidance provides information on what should be taken into account in the preparation and assessment of development proposals. It also provides information to be considered regarding the long-term management of locations designated as Special Landscape Areas.
- 5.3 Section 22 of the Planning etc. (Scotland) Act 2006 requires the Council to send Scottish Ministers a copy of the Special Landscape Areas Supplementary Guidance intended for adoption, together with a statement setting out the publicity measures undertaken for the consultation, the comments received and how comments submitted were taken into account. Unless Scottish Ministers have directed otherwise, after at least 28 days have elapsed the Council may adopt the Supplementary Guidance,

6 RECOMMENDATION

- 6.1 The Committee is recommended to:
- a) adopt the Special Landscape Areas Supplementary Guidance (as amended following the consultation process);
 - b) agree that the Special Landscape Areas Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
 - c) instruct the Head of Communities and Economy to undertake the required notification/advertisement advising that the Special

- Landscape Areas Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
- d) instruct the Head of Communities and Economy to notify the Scottish Ministers of the Council's intention to adopt the Special Landscape Areas Supplementary Guidance; and
 - e) be advised of the outcome of the notification to the Scottish Ministers.

Ian Johnson
Head of Communities and Economy

Date: 2 October 2018

Contact Person: Grant Ballantine, Lead Officer Conservation and Environment
grant.ballantine@midlothian.gov.uk

Tel No: 0131 271 3429

Background Papers: MLDP 2017 adopted 7 November 2017.



SUPPLEMENTARY GUIDANCE: HOUSING DEVELOPMENT IN THE COUNTRYSIDE AND GREEN BELT

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's agreement to undertake a formal consultation on its proposed 'Development in the Countryside and Green Belt' supplementary guidance which sets out the Council's position with regard residential development in rural locations.

2 BACKGROUND

- 2.1 At its meeting of 7 November 2017 the Council adopted the Midlothian Local Development Plan 2017 (MLDP). The MLDP included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas (Section 7.2, pages 81 and 82 of the MLDP). Additional guidance is required to provide further detail and interpretation of the policies and strategy set out in its development plan. One of the topic areas which needs further clarification is with regard development in the countryside and green belt.
- 2.2 Draft **Supplementary Guidance** has to be published to enable interested parties to make comment and for any representations received to be considered prior to finalisation of the guidance. Supplementary Guidance is subject to screening for a Strategic Environmental Assessment (SEA) and Habitats Regulations Appraisal (HRA). Furthermore, the local planning authority must also notify Scottish Ministers of its intention to adopted Supplementary Guidance, who have the opportunity to intervene in its drafting and adoption. Once adopted Supplementary Guidance forms part of the development plan and is given statutory weight. Supplementary Guidance is expected on core topics which are integral to the Council spatial strategy. Supplementary Guidance will be a significant policy consideration in the assessment of planning applications.
- 2.3 Non-statutory **Planning Guidance** does not require prior publication, consultation or notification to Scottish Ministers. Planning Guidance will be a material consideration in the assessment of planning applications but does not form part of the development plan.

3 DEVELOPMENT IN THE COUNTRYSIDE AND GREEN BELT SUPPLEMENTARY GUIDANCE

- 3.1 The MLDP sets out those developments which are acceptable in the countryside and the green belt (policies RD1: Development in the Countryside and ENV1: Protection of the Green Belt). These policies state that housing will only be permitted where it is required for the furtherance of an established countryside activity. This is a longstanding national policy position that has been set out in detail in successive local plans with the aim of preventing unsustainable development in rural areas whilst supporting the rural economy.
- 3.2 Exceptions to the general policy position were introduced into the now superseded Midlothian Local Plan 2008, including the provision for additional residential units to be built in the vicinity of existing housing groups, redevelopment for residential purposes of redundant non-residential buildings and the conversion of steadings into residential accommodation. These changes were made in light of updated guidance from the Scottish Government which seeks to provide for growing communities and new employment opportunities in rural areas. Provision for these residential exceptions are retained in the MLDP, though the detailed policy interpretation is subject to Supplementary Guidance.
- 3.3 The draft Supplementary Guidance is appended to this report, which includes:
- details of what constitutes a housing group under policy RD1;
 - guidance on identifying the most appropriate location for new dwellings at existing housing groups;
 - guidance on when non-residential buildings can be redeveloped and the appropriate scale and design for replacement development; and
 - details on what constitutes an acceptable steading conversion.
- 3.4 The draft guidance will be made publically available on the Council's website for a period of at least four weeks. The Community Councils, the Scottish Environment Protection Agency (SEPA), Scottish Water, the Forestry Commission and Scottish Natural Heritage will be notified and invited to make comment. In addition, bodies with a specialist interest or persons/groups who made representations to the development in the countryside and green belt policies in the plan, will also be notified.

4 RECOMMENDATION

4.1 The Committee is recommended to:

- a) approve the draft Development in the Countryside and Green Belt Supplementary Guidance for consultation;
- b) instruct officers to screen the draft guidance for a Strategic Environmental Assessment (SEA) and Habitats Regulations Appraisal (HRA); and
- c) consider a further report on the Development in the Countryside and Green Belt Supplementary Guidance following the proposed consultation.

Ian Johnson
Head of Communities and Economy

Date: 2 October 2018
Contact Person: Fraser James, Planning Officer
Fraser.james@midlothian.gov.uk
Tel No: 0131 271 3514

Background Papers: MLDP 2017 adopted 7 November 2017 and
Appendix 1: draft Supplementary Guidance for Development in the
Countryside and Green Belt

Housing Development in the Countryside and Green Belt Supplementary Guidance

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Housing Development in the Countryside and Green Belt SG

1. Introduction

1.1 This Supplementary Guidance relates principally to policies RD1 Development in the Countryside of the Midlothian Local Development Plan 2017 but also ENV1 Protection of the Green Belt. It seeks to provide additional guidance and clarity regarding the circumstances in which exceptions may be made to the requirement to demonstrate that the proposed housing is for the furtherance of a countryside activity, including: the circumstances when/where new housing may be appropriate within the context of housing groups; when the conversion of redundant farm buildings or other non-residential buildings to houses would be acceptable; when/where redevelopment of farm buildings or other non-residential buildings would be acceptable; and enabling development. Policy RD1 includes reference to business development in the countryside but this issue is not subject of this guidance.

1.2 When considering proposals, prospective applicants should be aware that all policies in the Local Development Plan will apply to any proposal. While policies RD1 or ENV1 are likely to be the most significant factor in determining applications in the countryside, this alone does not guarantee compliance with the plan as a whole. Consideration of proposals for development covered by these policies should also refer to policies RD2 Low Density Rural Housing, MIN1 Areas of Search for Mineral Extraction, NRG1 Renewable and Low Carbon Energy Projects, and NRG2 Wind Energy, where these are applicable. In addition consideration and acknowledgement should be given to existing and emerging supplementary and planning guidance on relevant topics such as Green Networks, Low Density Rural Housing, Quality of Place etc.

2. Development in Rural Areas

2.1 Generally planning policy has historically sought to restrict unnecessary development in countryside locations, principally to prevent sporadic and unsustainable growth and to maximise use of infrastructure, resources and services more commonly available in established urban areas. While this principle is still relevant today, the countryside is a workplace for some, a playground for others and a vital ecosystem for all.

2.2 Government policy supports rural development that supports prosperous and sustainable communities and business whilst protecting and enhancing environmental quality. It also promotes responsible access and the right to roam. However as a place to live and work there are challenges to address and overcome in respect of the the climate change agenda and the Government's sustainability policies, particularly given the development pressures resulting from Midlothian's close proximity to Edinburgh.

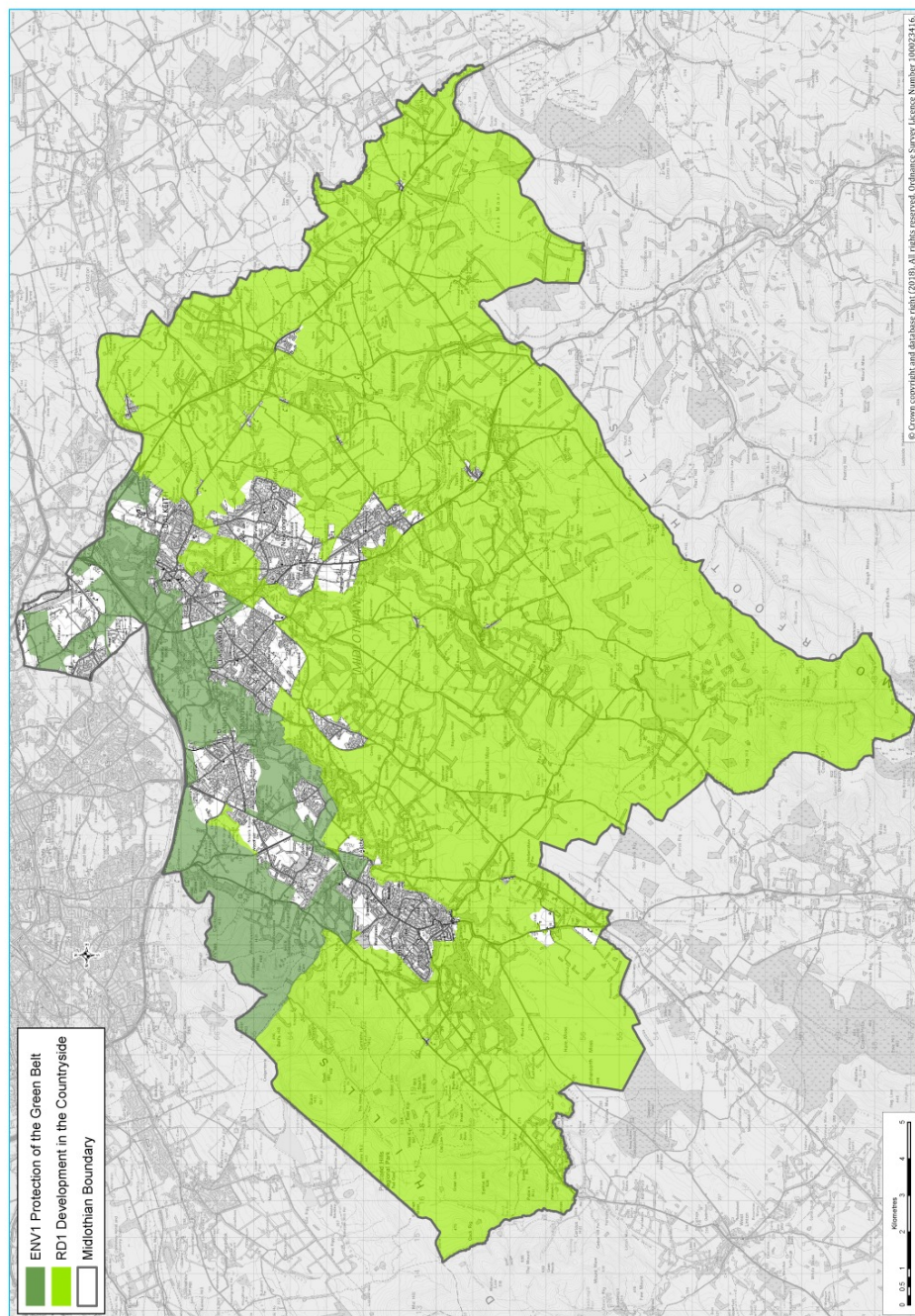
2.3 The Council's planning policies seek to provide a balance between development and protecting the essential characteristics of the countryside. It seeks to do this by minimising the adverse affects on the character of the countryside while maximising the benefits to its communities and the Midlothian economy.

Housing Development in the Countryside and Green Belt SG

3. Countryside and Green Belt in Midlothian

3.1 For the purposes of this guidance, the countryside is defined as land out with defined settlement boundaries, which can be seen in the image below. Approximately 9.5% of Midlothian is covered by the Green Belt and a further 80% is covered by the countryside policy.

Housing Development in the Countryside and Green Belt SG



Housing Development in the Countryside and Green Belt SG

3.2 Midlothian is located in close proximity to Edinburgh with the A720 City bypass forming the majority of the northern boundary. This creates development pressure for housing developments of all types, including in the countryside. As a consequence of this location, Midlothian's larger settlements are located close to the City Bypass and alongside the main north-south transport routes through Midlothian, particularly the A7 and A701. This has resulted in a concentration of urban development at the northern edge of the county with concerns frequently raised about the loss of countryside, the increase in coalescence between settlements and the consequential loss of identity for communities. As a result, the countryside in this area is covered by the Green Belt policy. Green Belt is a long established planning policy tool to protect the setting of urban areas, prevent urban sprawl and manage and protect agricultural, forestry and recreational uses and discourage inappropriate development.

3.3 The wider landscape of Midlothian consists of the Pentland Hills in the west, the Moorfoot Hills in the south with the Tranent-Mayfield ridge in the east. This bowl shape was the result of a concentration of ice which melted approximately 20,000 years ago with a torrent of melt water carving out the river valleys of the North and South Esk. The ground elevation of Midlothian is slightly higher than Edinburgh to the north due to a rebound in the earth's crust.

3.4 The character of the agricultural land in the north of the county is generally flat and lower lying, which contains the majority of Midlothian's Prime Agricultural Land. The land rises gently southwards away from the coast where a more undulating landscape is common, resulting in a large number of protected Special Landscape Areas. There are a wide variety of landscapes in this area with moorlands and natural uplands towards the Moorfoot Hills at the southern boundary and dramatic incised valleys around the North and South Esk.

3.5 Throughout Midlothian there are large areas of countryside owned by landed estates centred on historic castles and country houses which have played a crucial role in the shaping of Midlothian's human landscape and are an important link to our past. The gardens and parkland in the vicinity of these have often been carefully designed to provide an attractive setting, with many identified in the *Inventory of Historic Gardens and Designed Landscapes* for their aesthetic, historical, scenic and/or nature conservation value.

3.6 The wider human landscape has been shaped by past and present developments in agriculture. Throughout Midlothian there are many groups of historic sandstone agricultural buildings, with the most common layouts being steadings with associated housing such as stand alone farmhouses (often 2-storey) and terraced farm cottages (often single or one and a half storey).

3.7 There are large river valleys centred on the North and South Esk rivers in the west and centre of the county and the Tyne to the east. As the geography of these areas have been untouched by agriculture in many places, these form important wildlife corridors and well as distinctive features in the landscape.

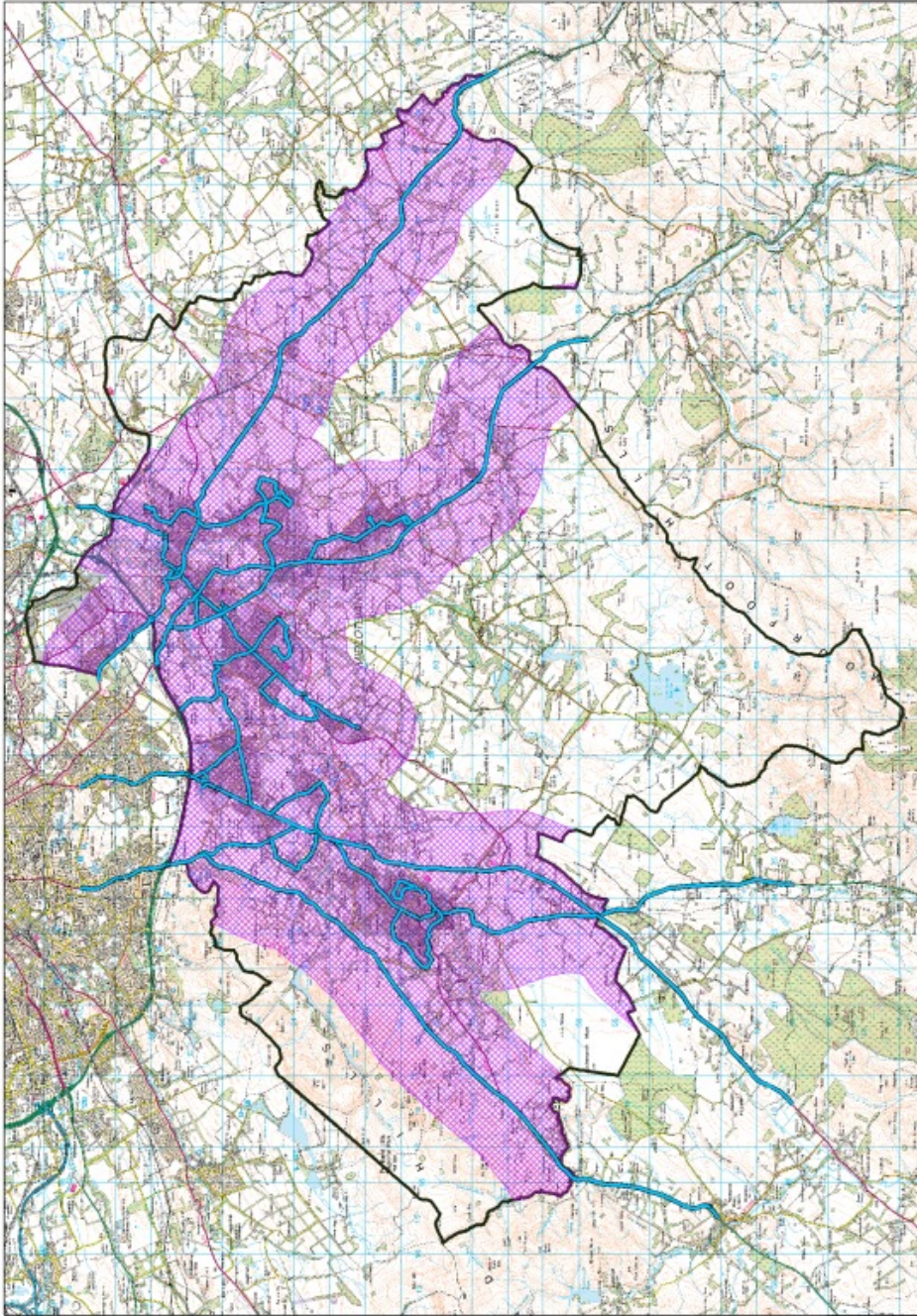
Housing Development in the Countryside and Green Belt SG

4. General Development Requirements

4.1 All development in the countryside is required to be of a scale and character that is appropriate to the rural landscape, be capable of being serviced with an adequate and appropriate access, be capable of being provided with drainage and public water supply and be accessible by public transport. These requirements are a necessary pre-requisite for any development to be considered acceptable, irrespective of whether the proposal would otherwise be supported by LDP policy.

4.2 With respect to the public transport requirement, all development has to be either within 1 mile (1600m) of services (such as shops or schools) or to a bus service of at least 1 per hour. The map below shows the bus routes in Midlothian at the time of writing and the areas that are within 1 mile of them.

Housing Development in the Countryside and Green Belt SG



Housing Development in the Countryside and Green Belt SG

4.3 It will be the responsibility of the applicant to demonstrate compliance with the policy and the necessary standards. Policies RD1 and ENV2 are reproduced in Appendix 1.

5. Housing - Development Required to Support an Established Countryside Activity

5.1 Both policies permit development which is required for the furtherance of an established countryside activity. The onus is on the applicant to demonstrate compliance with the relevant policies to the satisfaction of the Council.

5.2 In demonstrating the need for a permanent dwelling, the Council will expect an application to be accompanied by an independent report prepared by a suitably qualified professional to support the need for a house and on the viability of the associated business and its operational requirements. In outlining the needs of the business, it should be apparent to the Council whether the need can be met within an existing settlement and whether the occupier will be employed full-time in the associated countryside activity, and therefore whether it meets the other requirements of the policy. The most common reasons for such houses are typically the need for an onsite presence for security and animal husbandry.

6. Housing - Development in Housing Groups

6.1 Policy RD1 allows for the development of a house where there is a group of 5 existing dwellinghouses. This aspect of the countryside policy sets out a flexible approach to ensure that there are appropriate opportunities for small-scale infill within housing groups. The aim is to allow for development in the countryside of a scale and at locations which maintain the essential character of the countryside.

Groups that are applicable

6.2 The policy does not apply to housing groups of less than five housing units. Neither does it apply where an existing planning permission for one or more dwellings, if implemented, brings the number of dwellings up to five during the Local Development Plan period. Only houses that are complete by the Local Development Plan adoption date (7 November 2017) will be considered in determining the size of the group. Groups within the Green Belt are covered by policy ENV1 of the LDP, which does not make provision for development at housing groups, therefore proposals in such locations will not be considered in accordance with the plan. Dwellings located within the built-up area as defined by policy DEV2 of the LDP will not be considered as constituting part of a group.

Housing Development in the Countryside and Green Belt SG

6.3 The cohesiveness of the group will be considered in determining the appropriateness of any proposed development. The proximity of the buildings which constitute a group should, as a rule of thumb, be no more than twice the width of the curtilage of the existing units. Units should generally have intervisibility with one another for them to be considered as part of the same cohesive group, therefore local topographical features will be important.

6.4 The planning system seeks to direct development to areas where there is good access to public transport and/or local services. This is more difficult to achieve in the countryside as the public transport and services available are typically not of a frequency which would normally accommodate new development, leading to a concern relating to sustainability and reducing the need for car based travel. Policy RD1 states that any development will need to be accessible to public transport or local services within 1600m (1 mile).

Identifying appropriate plots for development

6.5 Upon receipt of a proposal, the council will assess the suitability for growth within the group in question in line the criteria outlined. Account will be taken of the form, character and cohesiveness of the group as well as the level of containment provided by existing features, such as natural and manmade boundaries.

6.6 Any new unit within a housing group must be of a location, scale and character that is in keeping with that of the existing group. More significant proposals beyond infill development, with wider implications for landscape impact or servicing should be promoted through the Local Development Plan.

6.7 With regards to the location of new development, the preference of the Council will generally be for new units to be located within any gaps in the group. Where there are no gaps, consideration will be given to locations adjoining the existing group, particularly where there is a site that adjoins the group on two sides or where there are existing physical or visually remote from the host group will not be acceptable.

Housing Development in the Countryside and Green Belt SG

Guidance on Acceptable Plots

1. Gap sites within the group will generally take precedence over other locations (typically these are sites with built development on either side);
2. Where no gap sites are present, sites adjoining the group are preferable. Normally, a site will be preferred if at least two sides adjoin the boundaries of existing properties though, in some cases, a site which adjoins the boundary of only one property may be preferable if it relates better visually to the group. All proposals which adjoin a group (as opposed to gap sites) should meet the following requirements:
 - there is an existing physical or visual feature which provides containment for the group and therefore reduces pressure for ribbon development or rural sprawl;
 - where such a feature does not exist, there should be potential for such a feature to be provided so long as it is in character with the scale and appearance of the group;
3. Proposals located in open fields adjoining a group, which have no physical features to provide containment will not be acceptable;
4. Proposals located on the opposite side of physical features which form strong boundaries for a group (e.g. main roads, burns, substantial tree belts, etc) will not be acceptable.

6.8 The design of any proposed dwelling will be an important consideration in determining the acceptability of a proposal. Development must be small-scale and respect the character, cohesiveness and amenity of the group being extended. For example, proposals should not be suburban in character when they relate to the expansion of a group whose character and design is of a rural vernacular nature. Proposals should be avoided where they represent ribbon or linear development along a public road. Furthermore, proposals will not be acceptable where it results in coalescence with another group or settlement. More detail on acceptable design can be found in the Quality of Place Supplementary Guidance.

Housing Development in the Countryside and Green Belt SG

Question 1

Does the draft guidance set appropriate parameters for identifying housing groups?

Question 2

Does the draft guidance set appropriate parameters for identifying acceptable plots within housing groups?

7. Conversions of redundant farm buildings or other non-residential buildings

7.1 Policies RD1 and ENV1 gives policy support for the conversion of redundant farm steadings and other non-residential buildings in the countryside. The aim is to ensure that buildings that contribute to the character of the countryside, such as those of traditional or historic design, are retained and where possible alternative uses found.

7.2 Before such developments can be considered, it must be justified and demonstrated that the buildings in question are fully redundant. The Planning Authority will not support the conversion of such buildings where these are still in use or where their loss may result in the requirement for a replacement building elsewhere.

7.3 Where buildings are capable of renovation and conversion and are examples of traditional, architectural or historic interest their demolition and redevelopment will be resisted. Resulting buildings must make a significant and positive contribution to the landscape and its retention beneficial to the surroundings.

Housing Development in the Countryside and Green Belt SG

Will converting a non-residential building be acceptable?

The conversion of the building may be acceptable, provided that both of the following are not applicable:

- The building still in use; and
- The loss of the building would result in a requirement for a building elsewhere, unless it is demonstrated that the existing building is no longer suitable for the use that is being displaced.

Both of the following must be applicable for a conversion to be deemed acceptable:

- The building capable of renovation and conversion without substantial alteration or extension to the original fabric; and
- The building represents an example of traditional, architectural or historic interest OR the building makes a significant positive contribution to the character and appearance of the landscape

7.4 The acceptability of a proposed steading conversion will largely depend upon the design elements used. The building which is proposed for conversion should be of a scale which will allow for the conversion without the need for significant extension to the building. Where the building has existing openings, these should be retained in designing the conversion in order to retain its character. Acceptable conversions should not alter the original fabric of the building to a significant degree. More detail on acceptable design can be found in the Quality of Place Supplementary Guidance.

Housing Development in the Countryside and Green Belt SG

Question 3

Does the draft guidance set appropriate parameters for identifying those non-residential buildings where conversion will be encouraged?

Question 4

Are the requirements set for proposed conversions appropriate?

8. Redevelopment of redundant farm buildings or other non-residential buildings

8.1 Where a redundant farm building or other non-residential building in the countryside is judged not to be an example of traditional, architectural or historic interest, their demolition and redevelopment may be appropriate. The aim is to allow for the removal of buildings, which may be an eyesore, and their replacement with development of a higher design quality, resulting in a net environmental benefit.

8.2 As mentioned above, before such developments can be considered, it must be justified and demonstrated that the buildings in question are fully redundant. The aim is to ensure that new development preserves and enhances the appearance and character of the countryside, therefore should such a building be demolished prior to receipt of a planning application and assessment by the Council, it is unlikely that new development will be supported except unless it is required for an established countryside use as outlined in policy RD1. Redevelopment of redundant buildings will not be consented in the Green Belt and such proposals are not supported by policy ENV1.

Housing Development in the Countryside and Green Belt SG

Will redeveloping a non-residential building be acceptable?

The redevelopment of the building may be acceptable, provided that the following are applicable:

- The building is no longer in use;
- The loss of the building would not result in a requirement for a building elsewhere, unless it is demonstrated that the existing building is no longer suitable for the use that is being displaced; and
- The building does not represent an example of traditional, architectural or historic interest or make a significant positive contribution to the character and appearance of the landscape

8.3 For a proposal for redevelopment to be deemed successful, it must result in a development which respects and enhances the character and appearance of the countryside. Furthermore, the scale of development should not extend significantly beyond the footprint of the original building, unless there are significant design reasons for doing so. More detail on acceptable design can be found in the Quality of Place Supplementary Guidance.

Housing Development in the Countryside and Green Belt SG

Question 5

Does the draft guidance set appropriate parameters for identifying those non-residential buildings where redevelopment would be permitted?

Question 6

Are the requirements for the development replacing the non-residential building appropriate?

9. Enabling Development

9.1 There are a number of large rural non-residential buildings of value to the local landscape and whose current use has or may become redundant. In the interest of retaining such buildings, the Council will consider enabling development as an option. Where a building is listed, reference should be made to policy ENV22 of the MLDP.

9.2 Where such enabling development is proposed, it is the responsibility of the applicant/developer to bring to the attention of the Council any issue that they consider relevant. The Council will need to be convinced of the following in determining such a proposal.

Housing Development in the Countryside and Green Belt SG

Will enabling development be acceptable?

The provision of new development to financially assist in the preservation of a redundant building may be acceptable, provided that the following are applicable:

- It is demonstrated that the quality of the building and/or its contribution to the character or appearance of the rural landscape is of considerable significance;
- The building is not located in the Green Belt;
- The proposed enabling development is located in the vicinity of the building whose restoration it is proposed to enable;
- It is demonstrated that such development is the only means of retaining the building and other options of funding have been exhausted.
- It is demonstrated that the scale of the proposed development represents the minimum necessary to enable the building's conservation and reuse;
- The resulting development is of a high quality design that respects the building and its setting.

9.3 In considering matters relating to the financial viability of alternative options and the minimum necessary scale of new development needed to retain a building, the Council reserves the right to base its decision on satisfactory evidence to that effect through an open book process.

Question 7

Does the draft guidance establish an acceptable approach to the retention of buildings of value?

Question 8

What alternative options would you suggest to secure the retention of buildings of value?

Housing Development in the Countryside and Green Belt SG

10. Appendix 1: LDP Policies

Housing Development in the Countryside and Green Belt SG

Policy RD 1

Development in the Countryside

Development in the countryside will only be permitted if:

- A. it is required for the furtherance of agriculture (including farm-related diversification), horticulture, forestry, countryside recreation or tourism; or
- B. it accords with policies RD2, MIN1, NRG1 or NRG2; or
- C. it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*.

All such development will need to be:

- a. of a scale and character appropriate to the rural area and well integrated into the rural landscape; and
- b. capable of being serviced with an adequate and appropriate access; and
- c. capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply. Development must protect and where appropriate improve the water environment, avoiding unacceptable and unnecessary surface and foul water discharges to watercourses; and
- d. accessible by public transport and services (where appropriate), either within 1,600 metres (1 mile) of a settlement or a bus route with a frequency of at least 1 bus per hour.

Housing

Normally, housing will only be permissible where it is required for the furtherance of an established countryside activity (see criterion A above). The applicant will be required to show the need for the new dwelling is permanent; cannot be met within an existing settlement; and that the occupier will be employed full-time in the associated countryside activity.

Proposals to replace an existing dwelling may be permissible where it can be demonstrated that it is incapable of renovation or improvement; that the proposal relates to a complete dwelling (i.e. not the plot of a previous, now demolished house); and provided that the replacement is of a similar scale.

Housing Development in the Countryside and Green Belt SG

The following circumstances are exceptions to the above requirement to demonstrate that the housing is for the furtherance of a countryside activity. The details of these exceptions will be set out in the relevant Supplementary Guidance:

- housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units);
- conversions of redundant farm buildings or other non-residential buildings;
- redevelopment of redundant farm buildings or other non-residential buildings; or
- enabling development where it can be clearly shown to be the only means of preventing the loss of a heritage asset and securing its long-term future.

In all circumstances, proposals for new dwellings in the countryside must demonstrate a 'Very Good' or better BREEAM (Buildings Research Establishment Environmental Assessment Methodology) rating or equivalent standard for any successor development.

Business in the countryside

Development opportunities that will enhance rural economic development opportunities will be permitted provided that they accord with criteria a - d above. Proposals will not be permissible if they are of a primarily retail nature or harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.

Housing Development in the Countryside and Green Belt SG

Policy 1

Protection of the Green Belt

Protection of the Green Belt

Development will not be permitted in the Green Belt except for proposals that:

- A. are necessary to agriculture, horticulture or forestry; or
- B. provide opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
- C. are related to other uses appropriate to the rural character of the area; or
- D. provide for essential infrastructure; or
- E. form development that meets a national requirement or established need if no other site is available.

Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt which are to:

- Direct development to the most appropriate locations and support regeneration;
- Protect and enhance the character, landscape setting and identity of the City and Midlothian towns by clearly identifying their physical boundaries and preventing coalescence; and
- Protect and provide access to open space.

Housing

Housing will normally only be permissible where it is required for the furtherance of an established Green Belt activity (see criterion A above). The applicant will be required to show the need for the new dwelling is permanent; cannot be met within an existing settlement; and that the occupier will be employed full-time in the associated countryside activity. A planning condition limiting the occupancy of the house is likely to be attached in the event of approval.

COMMUNICATING CLEARLY

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Körler için kabartma yazılar, kaset ve büyük nüshalar da dahil olmak üzere, istenilen bilgileri sağlamak ve tercüme etmekten memnuniyet duyuyoruz.

اگر آپ چاہیں تو ہم خوشی سے آپ کو ترجمہ فراہم کر سکتے ہیں اور معلومات اور دستاویزات دیگر شکلوں میں مثلاً بریل (تایپا افراد کے لیے) بھرے ہوئے حروف کی لکھائی میں، ٹیپ پر یا بڑے حروف کی لکھائی میں فراہم کر سکتے ہیں۔



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

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

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

2 BACKGROUND

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

3 DEVELOPMENT PLAN UPDATE

- 3.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan June 2013 (SDP1) and the Midlothian Local Development Plan 2017 (MLDP). The MLDP was adopted by the Council at its meeting of 7 November 2017. The proposed Strategic Development Plan (SDP2) has been subject to examination by Scottish Government Reporters and is with the Scottish Ministers for final consideration.

4 RECOMMENDATION

- 4.1 The Committee is recommended to note the major planning application proposals which are likely to be considered by the Committee in 2018 and 2019 and the updates for each of the applications.

Ian Johnson
Head of Communities and Economy

Date: 2 October 2018
Contact Person: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

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

APPENDIX A

MAJOR APPLICATIONS CURRENTLY BEING ASSESSED

Ref	Location	Proposal	Expected date of reporting to Committee	Comment
17/00408/DPP	Land at Old Craighall Road, Millerhill	Erection of 506 residential units; formation of access roads, SUDs features and associated works	November 2018	Pre-Application Consultation (14/00415/PAC) carried out by the applicants in June - September 2014.
17/00409/DPP	Land at Wellington Farm, Old Craighall Road, Millerhill	Erection of 116 residential units; formation of access roads, SUDs features and associated works	November 2018	Pre-Application Consultation (14/00415/PAC) carried out by the applicants in June - September 2014.
17/00435/DPP	Land at Newbyres, River Gore Road, Gorebridge	Erection of 125 residential units; formation of access roads, SUDs features and associated works	Being held in abeyance at the request of the applicant	Pre-Application Consultation (13/00609/PAC) carried out by the applicants in August - November 2013. The applicant is currently reviewing their layout following advice from officers that the layout and form of the development is unacceptable and contrary to the development plan.
17/00980/PPP	Land adjacent former Rosslynlee Hospital, Roslin (Site AHs1)	Residential development and associated works and ancillary commercial use	November 2018	Pre-Application Consultation (16/00266/PAC) carried out by the applicants in April - June 2016 The site is identified as an additional housing opportunity in the adopted MLDP with an indicative 120 – 300 units.
17/01001/DPP	Land at the former Rosslynlee Hospital, Roslin (Site AHs1)	Alterations and conversion of former hospital and buildings to form 71 dwellings, erection of 30 dwellinghouses and associated works	November 2018	Pre-Application Consultation (16/00267/PAC) carried out by the applicants in April - June 2016 The site is identified as an additional housing opportunity in the adopted MLDP with an indicative 120 – 300 units.
18/00099/DPP	Land at Gore Avenue and Newbyres Crescent, Gorebridge	Erection of 46 flatted dwellings; 17 dwellinghouses and 12 extra care units; formation of access roads and car parking; SUDs features and associated works	Being held in abeyance	Pre-Application Consultation (17/00913/PAC) carried out by the applicants in November 2017 – February 2018. This application is being held in abeyance subject to the applicant submitting additional information regarding mine gas mitigation measures.

18/00155/DPP	Shawfair Site F Monktonhall Colliery Road, Dalkeith	Use of land for the storage of soil (top soil and sub soil) for a temporary period of 5 years.	October 2018	Pre-Application Consultation (17/00859/PAC) carried out by the applicants in October 2017 – January 2018. This application is reported to this meeting of the Committee.
18/00308/DPP	Land south west of Newbattle Community High School, Newtongrange	Erection of 79 residential units and associated works	October 2018	Pre-Application Consultation (18/00102/PAC) carried out by the applicants in February 2018 – May 2018. This application is reported to this meeting of the Committee.
18/00403/DPP	Land between Rosewell Road and Carnethie Street, Rosewell	Erection of 100 dwellinghouses and associated works	November 2018	Pre-Application Consultation (15/00774/PAC) carried out by the applicants in September 2015 – December 2015.
18/00495/DPP	Land west of Burnbrae Terrace Bonnyrigg	Erection of resource facility including offices; practical skills training suites, stores, workshop, motor transport workshop, ambulance depot and enterprise units; formation of car parking, access roads and external storage areas; and associated facilitating groundworks	January 2019	Pre-Application Consultation (17/00721/PAC) carried out by the applicants in September 2017 – December 2017.
18/00528/S42	Land at Calderstone, Biggar Road, Lothianburn	Section 42 Application to amend conditions 3, 4, 5, 6 and 10 of planning permission 15/00113/PPP, for the erection of hotel (to amend the phasing of the development)	January 2019	Section 42 applications do not require to go through the Pre- Application Consultation process. The conditions relate to the phasing of development, landscaping, building design and layout and transportation matters.
18/00628/S42 <i>New addition to the table</i>	Land at Calderstone, Biggar Road, Lothianburn	Section 42 Application to amend conditions 4 and 5 of planning permission 15/00113/PPP, for the erection of hotel (to amend the phasing of the development)	January 2019	Section 42 applications do not require to go through the Pre- Application Consultation process. The conditions relate to the landscaping and building design and layout.

18/00535/PPP	Land north west of Moat View, Roslin	Residential development and associated works	January 2019	Pre-Application Consultation (18/00139/PAC) carried out by the applicants in February 2018 – May 2018.
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APPENDIX B

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

Ref	Location	Proposal	Date of PAC submission	Earliest date for receipt of planning application and current position
16/00830/PAC	Land east of junction with Greenhall Road Barleyknowe Road Gorebridge	Residential development This site is not allocated for housing	24 November 2016	10/02/17 - no application yet received. A pre-application report was reported to the January 2017 meeting of the Committee.
17/00296/PAC	Land to the east of Lawfield Road and to the north of Ash Grove, Mayfield	Residential development This site is not allocated for housing	19 April 2017	06/07/17 - no application yet received. A pre-application report was reported to the June 2017 meeting of the Committee.
17/00367/PAC	Site Hs12 Hopefield Farm 2 Bonnyrigg	Residential development The site is identified for an indicative 375 residential units in the MLDP.	9 May 2017	02/08/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00402/PAC	Site Hs11 Dalhousie South Bonnyrigg	Residential development The site is identified for an indicative 360 residential units in the MLDP.	19 May 2017	12/08/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00606/PAC	Land south east of Auchendinny, The Brae, Auchendinny (Site Hs20)	Residential development The site is identified for an indicative 350 residential units in the MLDP.	27 July 2017	20/10/17 - no application yet received. A pre-application report was reported to the November 2017 meeting of the Committee.
17/00663/PAC	Land bounded by A7, Stobhill Road and Pentland Avenue, Gorebridge	Mixed use development comprising residential and commercial land uses	16 August 2017	09/11/17 - no application yet received. A pre-application report was reported to the October 2017 meeting of the Committee.

17/00670/PAC	Land to the north of Hardengreen House, Dalkeith	Mixed use development including Class 1 (Shops); Class 2 (Financial, Professional and Other Services); Class 3 (Food and Drink); Class 4 (Business); Class 9 (Houses); and Class 10 (Non-Residential Institutions).	22 August 2017	15/11/17 - no application yet received. A pre-application report was reported to the October 2017 meeting of the Committee.
17/00693/PAC	Land 65M west of Rosslyn Bowling Club, Main Street, Roslin (Site Hs19)	Residential development The site forms part of (approximately 25%) a larger development site identified for an indicative 260 residential units in the MLDP.	30 August 2017	23/11/17 - no application yet received. A pre-application report was reported to the November 2017 meeting of the Committee.
18/00350/PAC	Land at Danderhall Primary School and Danderhall Recreation Ground Edmonstone Road. Danderhall	Erection of a community facility incorporating primary school; early years provision; library and leisure facilities.	18 May 2018	11/08/2018 - no application yet received. A pre-application report was reported to the August 2018 meeting of the Committee
18/00476/PAC	Land east of Conifer Road, Mayfield, Dalkeith	Residential development for 72 units The site is identified for an indicative 65 residential units in the MLDP.	2 July 2018	25/09/2018 - no application yet received. A pre-application report was reported to the August 2018 meeting of the Committee
18/00558/PAC	Land at the former Monktonhall Colliery Site, Monktonhall Colliery Road, Newton, Danderhall	Erection of a community facility incorporating secondary and primary school; early years provision; family learning provision; library, leisure and healthcare facilities, sports pitches and associated works.	1 August 2018	25/10/2018 A pre-application report is reported to this meeting of the Committee



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in September 2018. There are no Scottish Government appeal decisions to report to the Committee.

2 BACKGROUND

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

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 4 September 2018 the LRB made the following decisions:

	Application Reference	Site Address	Proposed Development	LRB Decision
1	18/00180/DPP	Land south east of The Old School House, School Green, Lasswade	Erection of dwellinghouse, fencing and retaining walls and formation of access	Permission granted at LRB meeting of 04.09.2018
2	18/00312/DPP	15 Pendreich Terrace, Bonnyrigg	Erection of two storey extension to dwellinghouse	Permission granted at LRB meeting of 04.09.2018

4 RECOMMENDATION

- 4.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting in September 2018.

Ian Johnson
Head of Communities and Economy

Date: 2 October 2018
Contact Person: Peter Arnsdorf, Planning Manager
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Tel No: 0131 271 3310

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



PRE-APPLICATION REPORT REGARDING ERECTION OF COMMUNITY FACILITY INCORPORATING SECONDARY AND PRIMARY SCHOOL; EARLY LEARNING PROVISION AND FAMILY LEARNING; LIBRARY; LEISURE AND HEALTHCARE FACILITIES; SPORTS PITCHES AND ASSOCIATED WORKS AT FORMER SITE OF MONKTONHALL COLLIERY, MONKTONHALL COLLIERY ROAD, NEWTON, DALKEITH (18/00558/PAC)

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a pre-application consultation submitted regarding the erection of a community facility incorporating secondary and primary school, early learning provision and family learning, library, leisure and healthcare facilities, sports pitches and associated works at former site of Monktonhall Colliery, Newton, Dalkeith. The site forms part of the Shawfair development area.
- 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 erection of a community facility incorporating secondary and primary school; early learning provision and family learning; library; leisure and healthcare facilities; sports pitches and associated works at former site of Monktonhall Colliery, Monktonhall Colliery Road, Newton, Dalkeith was submitted on 1 August 2018.

- 2.3 As part of the 12 week pre-application consultation, a public drop-in event is scheduled to take place at Danderhall Library on 9 October 2018, from 2pm to 7.30pm. On the conclusion of the consultation the applicant could submit a planning application for the proposal. It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance reported to the Committee at its meeting in June 2017) not offer views, as the forum for doing so will be at meetings of the Planning Committee.
- 2.4 Copies of the pre-application notices have been sent by the prospective applicant to the local elected members and Danderhall and District Community Council.

3 PLANNING CONSIDERATIONS

- 3.1 In assessing any subsequent planning application the main planning issue to be considered in determining the application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise.
- 3.2 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP).
- 3.3 The site comprises part of the main Shawfair new community in the MLDP and as such any subsequent application will be subject to assessment against MLDP policies STRAT1: Committed Development, DEV2: Protecting Amenity within the Built-Up Area, DEV5: Sustainability in New Development' DEV7: Landscaping in New Development' TRAN1: Sustainable Travel' TRAN5: Electric Vehicle Charging' TCR1: Town Centres' ENV10: Water Environment' NRG6: Community Heating and IMP1: New Development.
- 3.4 The MLDP Danderhall/Shawfair settlement strategy clarifies that development should proceed in line with the planning permission for the Shawfair community and the Shawfair Masterplan and Design Guide which set out the development framework for the Shawfair development.
- 3.5 The proposed development is an integral component of the Shawfair development and as such if an application is submitted there will be a presumption in favour of the proposed development subject to it complying with the planning permission for the Shawfair community and the Shawfair Masterplan and Design Guide.

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.

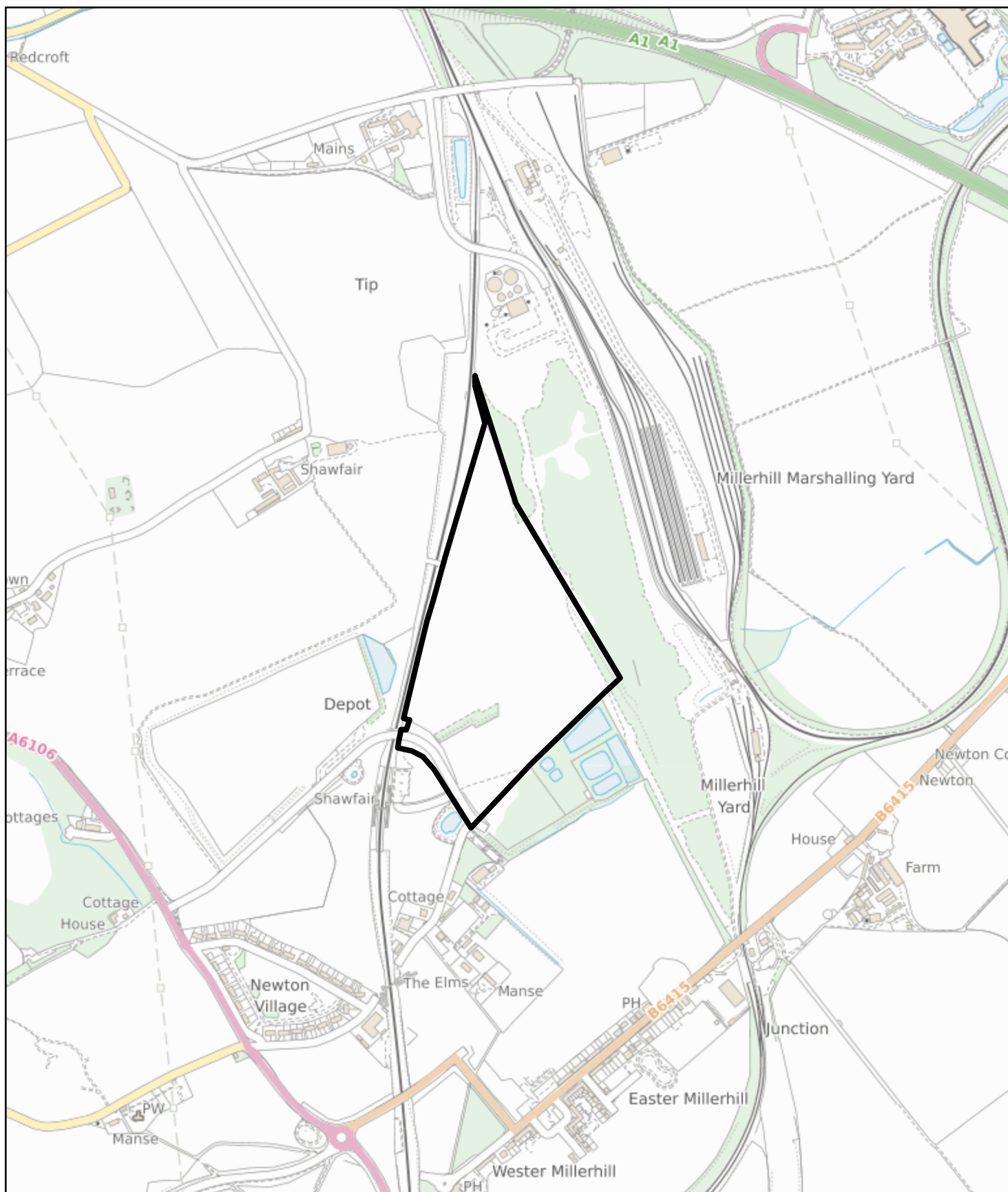
- 4.2 The Committee is invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.
- 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.

Ian Johnson
Head of Communities and Economy

Date: 2 October 2018
Contact Person: Brian Forsyth, Planning Officer
Tel No: 0131 271 3473



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

Proposal of application notice for the erection of community facility incorporating secondary and primary school; early learning; provision and family learning; library; leisure and healthcare facilities; sports pitches and associated works at Former Site of Monktonhall Colliery Monktonhall Colliery Road, Newton, Danderhall

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APPLICATION FOR PLANNING PERMISSION (18/00155/DPP) FOR THE STORAGE OF SOIL (TOP SOIL AND SUB SOIL) FOR A TEMPORARY PERIOD OF 5 YEARS AT SHAWFAIR SITE F, MONKTONHALL COLLIERY ROAD, DALKEITH

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the storage of waste soils (topsoil and subsoil) for a period of 5 years. The material is to be reused on the Shawfair development area. There have been no representations. Consultation responses have been received from the Coal Authority, the Scottish Environment Protection Agency (SEPA), the Council's Policy and Road Safety Manager and the Council's Environmental Health Manager. The relevant development plan policies are STRAT1, ENV7, ENV11, ENV17, ENV18 and IMP3 of the Midlothian Local Development Plan 2017. The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site is a 9.48 hectare area of land formerly used as a coal depot, located to the west of Danderhall and adjacent to Shawfair railway station. The site is currently disused. It comprises two separate sections of concrete hard standing, one located in the centre-west of the site and the second located in the eastern part of the site. The majority of the site is overlain by coal blaes, reflecting its previous use for the storage of coal. Access to the site is via a minor road leading to Shawfair railway station off the A6106. The site is located within the wider Shawfair development area and is planned to be a mixed use plot incorporating housing.

3 PROPOSAL

- 3.1** The proposal is to store three stockpiles of waste soils (topsoil and subsoil) for a period of 5 years for reuse across the wider Shawfair development. The proposed two top soil stockpiles; which are referred to as stockpile A and stockpile B on the submitted layout plan will not exceed 3m in height. The third stockpile is for subsoils and will not exceed 8m in height.

- 3.2 As part of the wider Shawfair development a materials management plan is being produced to ensure that all soils generated during the development works are handled and used in an appropriate way. Due to the complex development timelines and phasing requirement a longer-term site storage facility is required for a period of 5 years.
- 3.3 The soils to be stored in the facility will be placed directly on the current site surface with the bottom 250mm designated as sacrificial. The soil stockpiles will be proactively managed to ensure the materials will be clearly identifiable and available for reuse when the phasing of the development areas require.
- 3.4 The soils will be delivered over a 5 year period and this will most likely be concentrated around the start of new phases of the development as preparatory works commence. The movement of materials out of the facility may be more gradual as the development works progress and materials are required. Overall the phasing of the works and the material management plan will dictate the flows of soils into and out of the facility. The facility will only be operational when required and as such supervisory staff and plant will be in attendance during times when imports or exports of materials is occurring.
- 3.5 In support of the application the applicant has submitted an Amenity Risk Assessment report on simple risk assessments for the identified hazards for the soil storage facility. The four main groups of amenity hazards included in the assessment are: noise; dust emissions; surface water and accidents. It concludes that the risk management procedures to be put in place for these hazards result in the risk as being low.

4 BACKGROUND

- 4.1 Outline planning Application 02/00660/OUT for residential, industrial and commercial floor space, community facilities (including new primary schools), associated landscaping with the provision for sport and recreation and new transport facilities at land bounded by A720, Old Dalkeith Road and The Wisp, Millerhill was granted permission in August 2014. The application site, Site F, is a component part of the wider Shawfair development.
- 4.2 Pre Application Consultation 17/00859/PAC regarding the use of Shawfair Site F, Monktonhall Colliery Road, Dalkeith for the storage of soil was reported to the Committee at its meeting in February 2017.

5 CONSULTATIONS

- 5.1 The **Coal Authority** informs that the site is within a defined Development High Risk Area. Therefore within the site and the surrounding area there are legacy coal mining features and hazards

which should be considered as part of the development proposals. There are four recorded mine entries within the site which have been identified and potential mitigation measures considered. A condition securing the mine entries needs to be imposed on any grant of planning permission to ensure they are secure and fenced off prior to site operations commencing.

- 5.2 The **Scottish Environment Protection Agency (SEPA)** does not object to the application; however the applicants will need a Waste Management License (WML) from SEPA. The applicant's agent has been in discussion with SEPA about an application for a WML, and from the information provided, it is likely a license can be issued – this is the regulatory responsibility of SEPA.
- 5.3 The **Council's Policy and Road Safety Manager** does not object to the application, but recommends that the following controls be secured by conditions imposed on a grant of planning permission: (i) details of measures to be taken to minimise loose material being carried onto the public road should be submitted for approval (a wheel washing facility would be the best option); and, (ii) details of the measures to control the flow of surface water run-off from the site should be submitted for approval.
- 5.4 **The Council's Environmental Health Manager** does not object to the application subject to the following controls being secured by conditions imposed on a grant of planning permission: (i) the mounds of topsoil are maintained at a height of no more than 3 metres; and, (ii) the mounds of subsoil are maintained at a height of no more than 8 metres.

6 REPRESENTATIONS

- 6.1 No representations have been received.

7 PLANNING POLICY

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

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **STRAT 1: 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. The site is part of a larger site identified in the

MLDP as established strategic housing site h43 (Shawfair) with an indicative capacity of 3,500 dwellings.

- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

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 consultation responses received are material considerations.
- 8.2 The site forms part of the wider Shawfair development and is identified as committed housing site h43 in the MLDP. The proposed development is temporary and is required to facilitate the implementation of the committed development at Shawfair. This operational requirement for the facility on a temporary basis is acceptable in principle.

- 8.3 The proposed height of the subsoil stockpile is 8 metres and the proposed height of the two topsoil stockpiles is 3 metres. Public views of the proposed stockpiles would primarily be from long views and intermittent views. Existing trees along the eastern part of the northern boundary and along the eastern boundary of the site will provide some screening to the stockpiles helping to mitigate the visual impact of the material. The applicant has confirmed that no works would be undertaken which would disturb the mature trees around the boundaries of the site to undermine the landscape screening. Furthermore, the undulating land levels in the area further mitigate views into the site and thus limit the visual impact of the proposal. However, the scale of development is such that the stored material will be visible from some locations, although this will be temporary and seen in the wider context of a development site under construction.
- 8.4 The material to be stockpiled is inert soil and as such there is not a concern with regard pollution arising from the storage of the material, including from windblown dust/particles from the stockpiled material. The Council's Environmental Health Manager does not raise any concerns with the proposed development on grounds of environmental pollution.
- 8.5 Given, the distance of the site from existing dwellinghouses, the nature and scale of the proposed development, the use and operations on the site and the temporary nature of the use it is considered that it would not give rise to significant noise nuisance and disturbance to any residential properties.
- 8.6 The existing road network is of a standard to cope with the traffic generated by the proposed development. The proposed development is acceptable in road safety terms.

9 RECOMMENDATION

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

The proposed development site is an integral part of a committed development site as allocated in the Midlothian Local Development Plan 2017 and the proposed temporary use is an operational requirement to facilitate the wider development of Shawfair which has a grant of planning permission. The distance of the site from existing dwellinghouses, the nature and scale of the proposed development, the use and operations on the site and the temporary nature of the use means the development would not give rise to an unacceptable impact on amenity. The proposed development does not conflict with adopted policies STRAT1, ENV7, ENV11, ENV17, ENV18 and IMP3 of the Midlothian Local Development Plan 2017.

Subject to the following conditions:

1. Planning permission for the storage of topsoil and subsoil on the site is granted for a temporary period of 5 years from the date of the grant of this planning permission. The use shall cease and any stored material on the land shall be removed by 10th October 2023.

Reason: *The temporary use is only acceptable on the site as it will facilitate the implementation of committed development sites at Shawfair including established strategic housing site h43 (Shawfair) of which the site lies within.*

2. No stockpile of topsoil shall exceed 3 metres in height above existing ground levels.
3. No stockpile of subsoil shall exceed 8 metres in height above existing ground levels.

Reason for 2 & 3: *In the interests of safeguarding the landscape character and visual amenity of the area.*

4. Development shall not commence until the four recorded mine entries located on the site are located, secured and fenced off in accordance with details to be submitted to and approved in writing by the planning authority.

Reason: *In the interest of safety.*

5. The development shall not commence until details of a formal wheel washing facility and/or other measures to be taken to minimise loose material being carried onto the public road have been submitted to and approved in writing by the planning authority. The approved wheel washing facility/other measures shall be in place prior to the operation first coming into use and shall remain in place, remaining operational, for the duration of the use hereby approved.

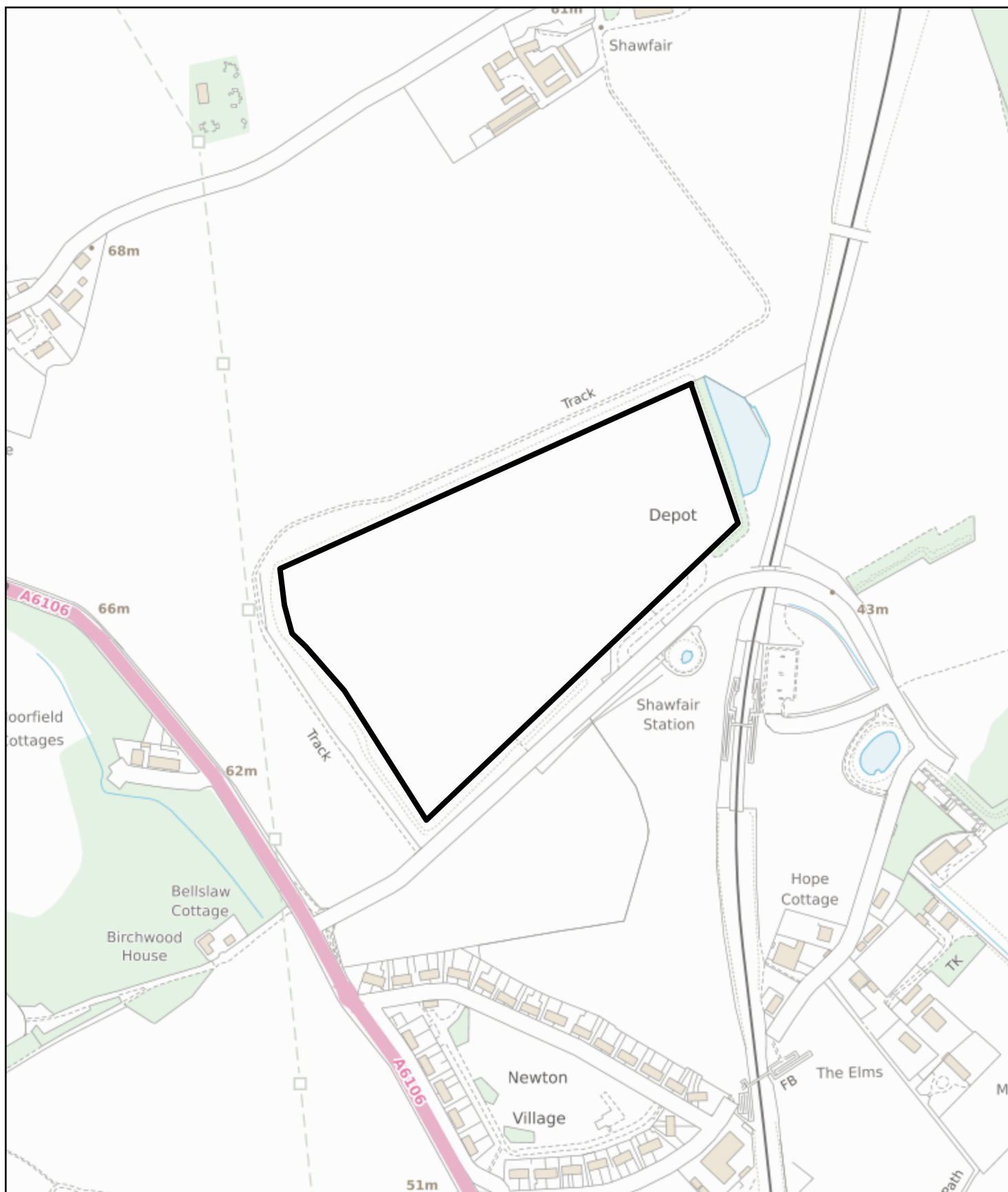
Reason: *In the interests of road safety.*

6. The development shall not commence until details of measures to control the flow of surface water run-off from the site have been submitted to and approved in writing by the planning authority. The approved mitigation measures shall be in place prior to the operation first coming into use and shall remain in place/remain operational for the duration of the use hereby approved.

Reason: *In the interests of road safety.*

Ian Johnson
Head of Communities and Economy

Date: 02 October 2018
Application No: 18/00155/DPP
Applicant: Shawfair LLP, Silvermills Court, 7 Henderson
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Validation Date: 5th April 2018
Contact Person: Adam Thomson
Tel No: 0131 271 3346
Background Papers: 02/00660/OUT and 17/00859/PAC



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

**Storage of soil (top soil and sub soil) for a temporary
period of 5 years at Shawfair Site F, Monktonhall
Colliery Road, Dalkeith**

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File No. 18/00155/DPP

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**APPLICATION FOR PLANNING PERMISSION (18/00430/DPP) FOR THE
ERECTION OF RESIDENTIAL CARE HOME AND ASSOCIATED WORKS
AT LAND TO REAR OF 41 NEWMILLS ROAD, DALKEITH**

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of an 83 bed residential care home (class 8) and associated access, car parking, landscaping and ancillary structures at land to the rear of 41 Newmills Road, Dalkeith. There have been four representations and consultation responses from the Coal Authority, the Scottish Environment Protection Agency (SEPA), Scottish Water, the Council's Archaeology Advisor, The Wildlife Information Centre, the Council's Environmental Health Manager, the Council's Flood Risk Manager and the Council's Policy and Road Safety Manager.**
- 1.2 The relevant development plan policies are DEV2, DEV7, TRAN1, TRAN5, IT1, ENV7, ENV8, ENV10, ENV11, ENV15, ENV24 and ENV25 of Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to grant planning permission subject to conditions.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site covers an area of 0.76 hectares and lies to the north of Newmills Road, with an access to the south of the site off Newmills Bridge. The site is a former mill/industrial site, bounded by the River South Esk to the north west, residential properties to the east and south east (James Lean Avenue) and public open space to the north/north east. The site is elongated and tapers towards the north.**
- 2.2 The central part of the site is predominantly level, rising up to the rear of the dwellings to the south east and dropping down to the river to the north west. The site previously comprised areas of hardstanding which have been excavated to enable site investigation works to be undertaken. The boundary of the site is defined by timber fencing and trees - with those trees along the river being protected by a Tree Preservation Order (TPO).**

- 2.3 The vehicle access to the site connects to Newmills Road and also serves a single dwellinghouse (41 Newmills Road) and a disused industrial building to the south west situated between the main part of the site and Newmills Road.

3 PROPOSAL

- 3.1 The planning application is for the erection of an 83 bed, residential home with 24-hour care for adults aged 65 and over. The applicant's supporting statement advises that the care provision will be for both NHS and private funded residents (in approximate equal proportion). The care home provision is in two buildings that are connected by a glazed link corridor at ground floor level, first floor level and second floor level (but not at lower ground floor level) with a five metre separation between the two buildings. The buildings are oriented north to south in alignment with the adjacent river. The primary elevations face in a general east/west direction. The buildings are three storeys high with a basement level (the lower ground floor). The buildings' design includes a pitched roof with an eaves height of 11 metres and a maximum ridge height of 15.3 metres when measured from ground level. The roof is hipped at its gable ends.
- 3.2 The lower ground floor/basement level provides a cinema room, hairdresser and gym for residents along with an ancillary service area which includes a large kitchen, laundry, staff room, office and storage area. The other three floors provide bedroom and dayroom accommodation.
- 3.3 The buildings have gable features along their length and windows with a predominant vertical emphasis and in a regular rhythm along the primary elevations. The elevations are punctuated by protruding gable features and are further articulated through the use of contrasting finishes in a combination of two types of facing brick and marley eternit cedar weatherboard. The windows are to be grey uPVC.
- 3.4 The design of the care home includes a raised terraced area at ground floor level and balcony at first floor level that projects from the rear west elevation towards the river.
- 3.5 A landscaped garden area is provided to the north-east of the building. Parking for 26 cars including two disabled spaces; the two disabled spaces are located near the entrance to the building along with cycle parking. A bin store is located within the south-west corner of the car park. Two allocated parking spaces have also been provided for the occupants of the existing dwellinghouse at the entrance to the site near the dwelling.
- 3.6 The applicant's have submitted the following documents in support of the application:

- Supporting Statement;
- Contaminated Land Assessment Report;
- Ground Gas Risk Assessment;
- Protected Species Survey;
- Flood Risk Assessment;
- Remediation Statement;
- Site Sensitivity Report;
- Sustainable Travel Statement;
- Tree Survey Report and Arboricultural Constraints;
- Arboricultural Implication Assessment and Woodland Management Plan;
- Geophysical Investigation Report;
- Drainage Strategy Plan Report; and
- Landscape Plan

4 BACKGROUND

- 4.1 Planning application, 08/00282/FUL, for the erection of residential care home with associated car parking and gardens was refused in March 2009 for the following reasons:

1. The proposed development is contrary to Midlothian Local Plan Policy RP5 Woodland, Trees and Hedges, by reason of its size, position and proximity to trees within a designated Tree Preservation Order it could lead directly or indirectly to the loss of or damage to trees covered by a Tree Preservation Order, which have particular amenity and landscape character importance.

2. The proposed development is contrary to Midlothian Local Plan Policy RP9 Protection of River Valleys as the proposed development is clearly within the river valley of the River North Esk and there is no demonstrated specific locational need for the development on this site, and if a locational need were to be established, the development would in any case have an adverse impact on the landscape value of the river valley by reason of the buildings prominent position, its size, materials and design.

3. The proposed development is contrary to Midlothian Local Plan Policy RP7 Landscape Character as the proposed development would adversely affect the quality of the local landscape by reason of the buildings prominent position in the river valley, its size, materials and design.

4. The proposed development is contrary to Midlothian Local Plan Policy RP20 Development within the Built-Up Area as it would detract materially from the existing character or amenity of the area, by reason of the buildings prominent position, size, materials and design which do not conform to the form of existing buildings in the area, nor does it respect the landscape character of the area.

5. The proposed development is contrary to Midlothian Local Plan Policy NRG3 Energy For Buildings as the applicant has failed to adequately demonstrate the required reduction in CO2 emissions or incorporation of any renewable energy devices for this residential development.

- 4.2 Planning application, 09/00363/FUL, for the erection of residential care home with associated car parking was granted permission by the Committee at its meeting of December 2009.
- 4.3 Planning application, 12/00470/DPP, for an amendment to condition 1 of planning permission 09/00363/FUL (erection of residential care home with associated car parking) to extend the time in which the said planning permission can be implemented was granted permission in August 2012.
- 4.4 Planning application, 15/00330/S42, to remove condition 6 of planning permission 09/00363/FUL (erection of residential care home with associated car parking) to remove the requirement to provide zero and low carbon technology as part of the development was granted permission in June 2015.
- 4.5 Planning application, 17/00533/DPP, for the erection of residential care home with associated car parking was withdrawn in April 2018 in response to concerns raised by SEPA regarding the proposed built development over an adit/culvert.
- 4.6 Application 17/00612/HH for the issuing of a High Hedge Notice at 41 Newmills Road, Dalkeith was granted on appeal resulting in a section of boundary hedging being reduced in height.
- 4.7 The application has been called to Committee for consideration by Councillor Russell to discuss the concerns raised by objectors.

5 CONSULTATIONS

- 5.1 The **Coal Authority** has no objection subject to a condition requiring site investigation works to be undertaken prior to the commencement of development and should any remedial works be required then they are undertaken prior to the commencement of development. Furthermore, the Coal Authority has requested further information with regards to the method of foundation construction – this can be addressed by a condition on a grant of permission.
- 5.2 The **Scottish Environment Protection Agency (SEPA)** does not object to the application, but makes a number of recommendations with regards to ground stabilisation works and underground water sources and the associated regulatory requirements which the applicant must

meet. The recommendations can be attached to any grant of planning permission as an advisory note for the attention of the applicant.

- 5.3 **Scottish Water** does not object to the application.
- 5.4 The **Council's Archaeology Advisor** notes that the location of the proposed development is within an area of a former historic industrial complex which is shown from at least 1817 (Robert Kirkwood map), and is recorded in Midlothian Council's Historic Environment Record (HER) (MEL8340 and MEL5861). The development area also lies within the grounds of an 18th century historic property, Woodburn House (now demolished). The application site has potential archaeological significance and therefore there is a requirements for a Programme of Archaeological Works (Desk-based Archive Assessment and Trial Trench Evaluation).
- 5.5 **The Wildlife Information Centre (TWIC)**, the Council's ecology advisor does not object to the application.
- 5.6 The **Council's Environmental Health Manager** does not object to the application subject to conditions being attached to any grant of planning permission designed to protect future occupiers of the development site and neighbouring land from the potential impact of contaminated land, noise and disturbance. It is noted that the applicants agent submitted site investigation information with the application, [Goodson Associates Report Ref 11354 – Geotechnical and Environmental Assessment Report, Proposed New Care Home, Newmills Road, Dalkeith dated October 2010]. This has been considered by the Council's external reviewers and approval for the scheme will be given when all aspects of recommended condition 3i-iv relating to the scheme concerning treating previous mineral workings have been satisfactorily addressed.
- 5.7 The **Council's Flood Risk Manager** does not object to the development proposal subject to receiving an updated site drainage layout plan, drainage strategy plan report and a supporting flood risk assessment statement.
- 5.8 The **Councils Road Safety Manager** does not object to the development proposal subject to a condition being attached to any grant of permission requiring improvements to the vehicle access to be undertaken to achieve the required visibility splays.

6 REPRESENTATIONS

- 6.1 There have been three objections received and one neutral representation, all of which can be viewed in full on the online planning application case file. A summary of the objections are as follows:

- There are inaccuracies detailed within the application submission which include: the existing topographical survey plans indicating trees that are no longer in situ to the rear of neighbouring properties at James Lean Avenue; a tree survey and arboriculture assessment dated February 2016; and the landscape plan and site plan indicating different locations for the bin store and parking arrangement - some of the documents within this application are outdated and contradictory;
- the impact the development will have on the amenity of existing neighbouring residents if the proposed bin store is located in close proximity to the rear garden of no. 17 James Lean Avenue and it's neighbouring dwellings;
- the scale and design of the building will be a dominant structure in the landscape and not in-keeping with the character of the neighbouring properties;
- a residential care facility of the scale proposed will result in noise and disturbance to the detriment of neighbouring properties;
- traffic management and road/pedestrian safety concerns;
- the provision of insufficient parking;
- no separate pedestrian access;
- the vehicle access is not capable of accommodating two-way traffic flow;
- the development proposal will directly overlook the rear gardens and elevations of neighbouring properties at James Lean Avenue;
- the use and siting of the large communal bins have the potential of causing foul smells, attracting vermin and overflowing with the consequence of litter being deposited into neighbouring properties;
- the proposal is an over-development of the site;
- loss of existing views from neighbouring dwellinghouses;
- detrimental impact upon wildlife;
- the development will devalue neighbouring properties; and
- the development is contrary to policies RD1 and ENV3 of the Midlothian Local Development Plan 2017.

6.2 The neutral representation noted that they did not object to the development proposal but sought confirmation that a bat survey had been undertaken and was being taken into consideration.

7 PLANNING POLICY

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

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **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.
- 7.3 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.
- 7.4 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.5 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.
- 7.6 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.7 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.
- 7.8 Policy **ENV8: Protection of River Valleys** requires development within the river valley protection areas of the Rivers North Esk, South Esk and Tyne to have a specific locational need for the development, and where this is established, development must demonstrate that it will not have an adverse impact either on the landscape and conservation value of the valleys or impede potential public access opportunities.
- 7.9 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.
- 7.10 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.

- 7.11 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.12 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.
- 7.13 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development

- 8.2 The application site is located within the built-up area of Dalkeith where there is a presumption in favour of appropriate development. The application site is situated within a predominantly residential area where the proposed residential care home, being a residential use, would be compatible to the neighbouring land uses and the character of the area. The consultations carried out have not highlighted any overriding reasons as to why the site could not be redeveloped for a residential care home.
- 8.3 In 2009 the Committee granted planning permission (09/00363/FUL) for a residential care home on the site of a scale and form comparable to the currently proposed development. This earlier permission was amended by subsequent applications (12/00470/DPP and 15/00330/S42) and addressed the concerns raised in an earlier refusal in 2008 relating to the development's impact on the landscape, the river valley and trees covered by a Tree Preservation Order. The previous grant of planning permission for a residential care home on this site has further established the acceptability of the principle of development.

Layout and Form of Development

- 8.4 The layout and form of the current proposed development is similar to the previously approved scheme in terms of its siting and orientation within the site, the scale of the building/s, the architectural style of the building/s and the component parts of the development.

- 8.5 The proposed residential care home comprises two buildings connected by a link corridor. The buildings are oriented north to south in alignment with the adjoining River South Esk with the primary elevations facing in a general east/west direction. The siting and orientation of the proposed buildings respects and complements the line of the river and presents an attractive outlook for residents.
- 8.6 The proposal also includes a landscaped garden area to the north-east of the buildings and parking for 26 cars, a turning area, bin store and cycle parking to the eastern side of the site. These associated components of the development are appropriately sited between the care home buildings and the existing residents in James Lean Avenue. This enables a good degree of separation between the proposed and existing built forms.
- 8.7 There are concerns regarding the siting of the northern part of the residential care home and the adjacent proposed sustainable urban drainage system (SUDS) underground tanks in terms of their potential impact on the root protection area of a number of trees on the river embankment (tree numbers 1113 to 1130). There will be a requirement for excavation works to be undertaken within the root protection area of the trees and therefore, to address this concern, there is a requirement for a condition being attached to any grant of permission requiring a construction method statement to be submitted to confirm that works can be undertaken without incursion into the root protection area, which would cause long term damage to the trees.
- 8.8 The river valley itself is a protected landscape and policy ENV8 does not permit development that will result in an adverse impact upon the landscape or conservation value of the valley or impede potential public access opportunities. The proposed layout of the development maximises the potential of the site without resulting in a detrimental impact upon the character of the area or the river valley.

Design

- 8.9 The local area comprises of predominantly two storey residential dwellings of traditional form and design. The proposed residential care home is three storeys high; this variation in height with the surrounding buildings will add interest to the local street scene and built environment. The additional height of the buildings will not be overly dominant because of the dropping levels of the site, sloping away from the entrance off Newmills Road and the properties in James Lean Avenue and because of the degree of separation from neighbouring residential properties. Furthermore the architectural style of the proposed building is of a traditional form in terms of its shape, pitched roof and use of materials.
- 8.10 Although there are some differences in the design of the current scheme when compared to the previously approved scheme the design

is in general very similar, both schemes being three storeys high with a basement level and both schemes having elongated building/s following the line of the river. The proposed buildings' design includes a pitched roof with a ridge height at 15.3 metres and an eaves height of 11 metres. The proposed buildings are large, spanning approximately 90 metres and will sit in a relatively elevated position above the river with open views into the site from Newmills Road. However, the existing trees on the river embankment provide screening which will reduce visibility of the buildings from Newmills Road and from the other-side of the river.

- 8.11 There is a requirement for the proposed buildings to be of a suitably high standard of design with the use of quality materials. By its nature, an 83 bedroom care facility requires a large building/s with level access and large level floor plates. The form of the building has predominantly been determined by its function, but this has not been to the detriment of the overall design which incorporates a number of features to add interest to the large building elevations. The two buildings are connected by a glazed link corridor and have gable features along their length. The windows are mainly vertical in emphasis and are in a regular rhythm along the primary elevations. The elevations are punctuated by protruding gable features and are further articulated through the use of contrasting finishes in a combination of two types of facing brick and marley eternit cedar weatherboard. These design features help to break up the mass of the building/s.
- 8.12 Overall, it is considered that the proposed design and material finishes are compatible to their surroundings and will not result in an adverse impact upon the character or appearance of the area.

Trees

- 8.13 An arboricultural implication assessment and woodland management plan, tree survey and arboricultural constraint report and landscape plan has been submitted with the application which shows the requirement for a number of trees to be removed to the northern side of the application site. The development proposal requires the removal of several trees to enable the siting of the building, some of which are protected by a TPO. The proposed landscaping plan includes replacement planting which includes a woodland mix of planting cell grown trees on the lower riverbank which are considered to be adequate in terms of replacement planting.
- 8.14 After cross referencing the revised landscape plan with the submitted protected species survey it is noted that the trees which are to be removed do not contain a habitat or roosts for protected species. Therefore the removal of the additional trees would not have an adverse impact on protected species.

- 8.15 The trees around the application site contribute significantly to the character of the area and help define the river valley. The trees on the river embankment are protected by a group Tree Preservation Order no.1 of 1998. The submitted landscape plan includes tree protection fencing to the eastern side of the trees on the river embankment. However, the proposed fencing does not follow the line of the root protection area. The tree protection fencing should follow the root protection area shown in the tree survey. Therefore, there is a requirement for a condition being attached to any grant of permission requiring a revised location of the root protection fencing to be submitted to the planning authority for prior written approval as part of a detailed landscape plan.

Impact on Amenity

- 8.16 James Lean Avenue is a residential street located to the east of the application site; neighbouring dwellinghouses sit above the application site with the rear gardens sloping down towards the site. The rear elevation of the closest neighbouring dwelling on James Lean Avenue is approximately 34 metres from the proposed residential care home buildings, exceeding the best practice separation distance of 25 metres. Furthermore, the overall height of the proposed care home will not exceed the height of the existing dwellings on James Lean Avenue, although they are two story buildings, due to the difference in ground levels. The scale of separation between the buildings combined with the topography of the site means that the development proposal will not result in a harmful loss of amenity to residents in James Lean Avenue.
- 8.17 The gable end of the neighbouring dwellinghouse at 41 Newmills Road is located approximately 13 metres south of the gable end of the proposed residential care home. This relationship is 'normal' in an urban environment. Furthermore it is worth noting that there are no windows within the northern gable end of the existing dwelling. There are windows located within the southern gable end of the care home which serve corridors and bedrooms. The proposed windows within the gable end will not result in significant overlooking due to the use of the rooms serviced by the windows. The proposed care home will not result in a harmful loss of amenity on 41 Newmills Road.
- 8.18 The relationship between the neighbouring properties in environmental terms, such as noise, refuse collection and litter and smells (from the use of communal bins), will be acceptable and commensurate for uses within the urban environment, close to a town centre and adjacent to a main road.

Access and Parking

- 8.19 The proposed development provides parking and a turning area to the north-east of the application site for staff and visitors. Vehicular access to the application site is afforded by improving the existing access

taken from Newmills Road. The access will be improved and widened to ensure the required visibility splays are provided prior to the occupation of the residential care home, this will ensure the development does not have a detrimental impact on road safety for pedestrians, cyclists or motorists. The application includes parking for 26 cars including two disabled spaces; the two disabled spaces are located near the entrance to the building along with cycle parking. This level of parking for the proposed use meets the Council required standards. Two additional allocated parking spaces will also be provided for the occupants of the existing dwellinghouse (41 Newmills Road) at the entrance to the site near the said dwelling – this is based on a understanding between the parties regarding access rights (this not a material planning consideration). This is acceptable.

Archaeology

- 8.20 The Council's Archaeological Advisor has recommended that the applicants undertake survey and investigation work prior to development to ensure that the site is surveyed and any archaeological finds are recorded. The controls identified by the Council's Archaeological Advisor can be secured by condition.

Other Matters

8. 21 Concerns relating to the inaccuracies of the submitted plans have been resolved and revised plans were submitted and as a consequence the application assessment is based on the amended plans. Additional and revised information was requested where required. Should the application be approved, it is noted that conditions can be attached to address any other outstanding matters.
- 8.22 With regards to the loss of existing views from neighbouring dwellinghouses or the concern over potential devaluation of neighbouring property values, these are not a material planning considerations.
- 8.23 One representation sought confirmation that a bat survey had been undertaken and taken into consideration. It is noted that a protected species survey was undertaken and contributed towards the assessment of the planning application.

9 RECOMMENDATION

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

The proposed development accords with the Midlothian Local Development Plan (2017). The application site is located within the built-up area of Dalkeith on previously developed land where there is a presumption in favour of development. The layout, design, form and scale will not result in a detrimental impact upon the character or

amenity of the area. The presumption for development is not outweighed by any other material consideration.

Subject to the following conditions:

1. The buildings which are the subject of this permission shall be used only as a residential home with care for adults over the age of 65 and no other use notwithstanding the provisions of Class 8 of the Town and Country Planning (Use Classes) (Scotland) Order and the General Permitted Development Order 1992 (or any order superseding, amending or revoking this order).

Reason: *For sake of clarity. The use of the development proposal has been assessed on the basis of the buildings being used as a residential home with 24-hour care. Developer contributions would be required for other uses within Class 8 of the Town and Country Planning (Use Classes) (Scotland) Order and the General Permitted Development Order 1992 (or any order superseding or revoking this order).*

2. Development shall not begin until a programme of archaeological works has been completed in accordance with a written scheme of investigation comprising a trial trench evaluation and a desk-based/archive assessment. The written scheme of investigation shall be approved in writing by the planning authority and carried out by a professional archaeologist prior to any construction works or pre commencement ground works taking place. There shall be no variation therefrom unless otherwise agreed in writing by the planning authority.

Reason: *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policies ENV24 and ENV25 of the adopted Midlothian Local Development Plan.*

3. The development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings (coal working) 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 purposes; 1) the measures to decontaminate the site shall be fully implemented as approved by the planning authority; and 2) a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme and the planning authority have confirmed the validation.

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

- 4. The design and installation of any plant, machinery or equipment being such that any associated noise complies with standard NR 25 when measured within any nearby living apartment.

Reason: *To minimise disturbance to nearby residential properties from the construction of the development.*

- 5. Construction and engineering operations (including deliveries) shall only take place during the specified times, and shall not take place outwith the specified times:

Monday to Friday from 8am to 7pm

Saturday from 8am to 1pm

Sunday and Public Bank Holidays - No working or deliveries

Reason: *To minimise disturbance to nearby residential properties from the construction of the development.*

- 6. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
- ii proposed vehicular, cycle and pedestrian access;
- iii proposed roads (including turning facilities), footpaths and cycle ways;
- iv proposed visibility splays, traffic calming measures, lighting and signage;
- v proposed construction traffic access and haulage routes;

- vi a green transport plan designed to minimise the use of private transport and to promote walking, cycling and the use of public transport;
- vii proposed car parking arrangements; and
- viii a programme for completion for the construction of access, roads, footpaths and cycle paths.

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.*

7. Development shall not begin until details of the provision and use of electric vehicle charging stations throughout the development have 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 Proposed Midlothian Local Development Plan 2017.*

8. Prior to the commencement on development, the following details shall be submitted to the planning authority for prior written approval:
 - i. Details of the proposed design/construction of the foundations; and
 - ii. A construction method statement demonstrating how the proposed foundations are to be constructed in relation to the existing adit and in a way that limits incursion into the root protection areas of adjoining trees.

The foundations shall be designed so as to address any potential ground movement derived from any future collapse of the adit.

Reason: *To ensure that the foundations are suitable for development given the previous coal workings in the area, so as to address any potential ground movement derived from any future collapse of the adit and to limit the impact of the development on existing trees.*

9. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted

to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *In the interest of protecting the character and appearance of the area so as to comply with DEV2 of the adopted Midlothian Local Development Plan 2017.*

10. Development shall not begin until a revised scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i existing and finished ground levels and floor levels for all buildings 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 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 shall be completed prior to the development being occupied; and
 - vii drainage details and sustainable urban drainage systems to manage water runoff and mitigate flood risk.

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. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird nesting season (March-August) and bat roosting period (April – September).

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies ENV7 and ENV8 of the adopted 2017 Midlothian Local Development Plan 2017 and national planning guidance and advice.*

11. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the trees canopy unless otherwise agreed in

writing with the local planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

Reason: *To ensure the development does not result in the loss or damage of a tree which merits retention in accordance with policy ENV11 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

Ian Johnson
Head of Communities and Economy

Date: 2 October 2018

Application No: 18/00430/DPP

Applicant: Mr Bharat Sodha, Baron Healthcare (Dalkeith) Ltd,
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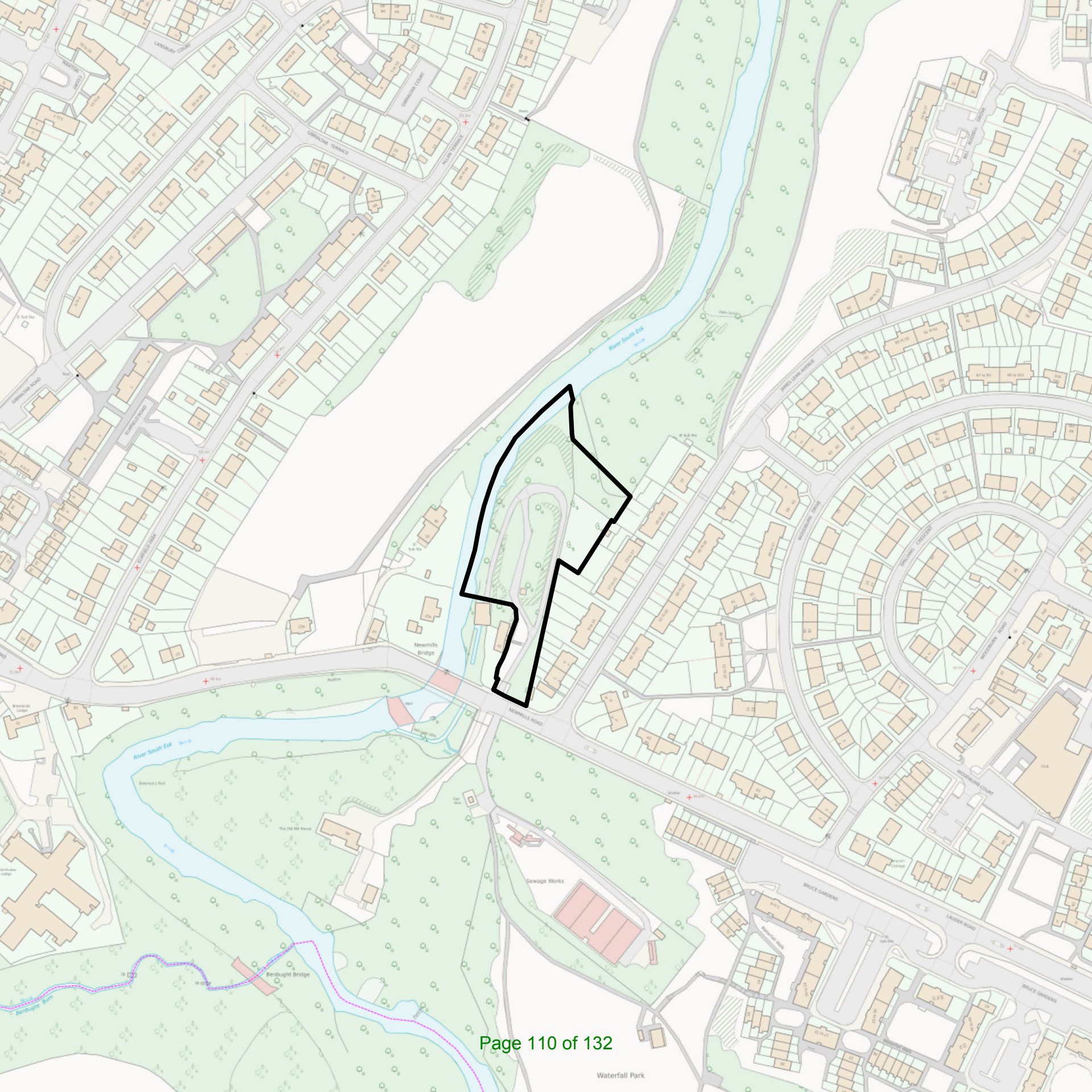
Agent: Gillian Shields, Young and Gault Architect Ltd,
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Validation Date: 20th June 2018

Contact Person: Whitney Lindsay

Tel No: 0131 271 3315

Background Papers: 08/00282/FUL, 09/00363/FUL, 12/00470/DPP,
13/00471/LA, 15/00330/S42, 17/00553/DPP and
17/00612/HH.





APPLICATION FOR PLANNING PERMISSION 18/00181/DPP, ERECTION OF TWO DRIVE THROUGH RESTAURANTS; FORMATION OF ACCESS AND CAR PARKING AND ASSOCIATED WORKS AT LAND SOUTH WEST OF TESCO SUPERSTORE, DALKEITH

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the erection of two drive through restaurants; formation of access and car parking; and associated works. The application site is an area of unoccupied scrubland to the south west of the existing car park at Tesco, Hardengreen, Dalkeith. There has been three representations and consultation responses from the Coal Authority, the Bonnyrigg and Lasswade Community Council, the Eskbank and Newbattle Community Council, the Midlothian Health and Social Care Partnership, the Council's Environmental Health Manager and the Council's Policy and Road Safety Manager. The relevant development plan policies are DEV2, DEV5, DEV6, DEV7, TRAN1, TRAN2 TRAN3, TCR1, TCR2 and IMP2 of the Midlothian Local Development Plan 2017. The recommendation is to grant planning permission subject to conditions and securing developer contributions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The site is situated at the western edge of Dalkeith and Eskbank, between the A7 and a distribution road that serves a large supermarket, a petrol filling station and a vehicle coachworks. The site measures 0.55 hectares and is currently unoccupied scrubland covered with a mix of trees and scrub grassland.
- 2.2** The western boundary of the site is demarcated by a long established hedgerow which has been significantly pruned during the past year; beyond the hedgerow is a grass embankment leading down to the A7. To the north of the site is a petrol filling station with areas of long established structure planting along its southern, western and northern edges. To the east of the site is the distributor road, beyond which lies the car park that serves the Tesco superstore and the yard associated with the vehicle coachworks. To the south of the site is an embankment on top of which is sited a cycle path between Eskbank and Bonnyrigg.

- 2.3 The site is situated within the Bonnyrigg and Lasswade Community Council area. The boundary with Eskbank and Newbattle Community Council is 7m from the site boundary.

3 PROPOSAL

- 3.1 The proposal relates to the erection of two single storey drive-through restaurants. The northern unit (hereinafter referred to as Unit 1) will be sited parallel to the A7; it will be 11m from the northern boundary and 10m from the western boundary. The building will be 12.2m wide, 29.8m long and have a maximum roof height of 5.1m. The walls will be clad with composite cladding panels; the windows and doors will have powder coated aluminium frames; and the roof will be clad with powder coated aluminium roof panels. Unit 1 is intended for occupation by a national drive-through restaurant chain; the provisional occupant is KFC (formerly known as Kentucky Fried Chicken).
- 3.2 The southern unit (hereinafter referred to as Unit 2) will be sited perpendicular to the A7; it will be 13.1m from the southern boundary and 12.6m from the western boundary. The building will be 11.3m wide and 17.7m long. The roof of the building will have a maximum height of 4.2m and there will be a vertical brick feature projecting through the roof that will have a maximum height of 7.2m. The walls will be clad with black coloured cladding panels with timber detail panels; the windows and doors will have powder coated aluminium frames; and the roof will be clad with a single ply roofing membrane. Unit 2 is intended for occupation by a national coffee chain; the provisional occupant is Starbucks.
- 3.3 The units will have a combined car parking capacity of 55 spaces. The access to the site will be at the eastern side of the site from the distributor road. The site will be landscaped; with particular emphasis on the western (A7) and southern (cycle path) boundaries.
- 3.4 The application is accompanied by the following supporting documents:
- Air Quality Impact Assessment;
 - Coal Mining Risk Assessment ;
 - Drainage Strategy Plan;
 - Flood Risk Assessment;
 - Landscape and Visual Appraisal;
 - Landscaping Strategy;
 - Planning Statement;
 - Transport Assessment; and
 - Tree Survey and Arboricultural Constraints.

4 BACKGROUND

- 4.1 Outline planning permission was previously granted at appeal in 2002 for a licensed restaurant, bar and indoor play area (application

reference 00/00516/OUT). This development was not implemented, and the planning permission has since expired.

- 4.2 A subsequent detailed planning application for the erection of a restaurant, bar and children's play area with associated access, car parking and landscaping (application reference 01/00169/FUL) was refused and then upheld at appeal in 2002, but again was not implemented and this permission has also expired.
- 4.3 A planning application for the erection of a residential care home, including formation of vehicle access and associated car parking, (application reference 04/00531/FUL) was approved in 2005 and was also not implemented and this permission has since expired.
- 4.4 In late 2015, a planning application for the erection of retail unit and associated garden centre, formation of access and car parking (application reference 15/00921/DPP) was refused as the Council considered that the site was not acceptable for retail development as it did not conform to the criteria specified in the sequential town centre first approach as detailed in Scottish Planning Policy or the then adopted local plan (Midlothian Local Plan 2008). No sequential test had been submitted, nor was it demonstrated to the satisfaction of the planning authority that the site would be appropriate for the proposed use and that there are no other more sustainable sites which could accommodate the development more appropriately. It had also not been adequately demonstrated that the unit would not undermine the vitality and viability of Midlothian town centres or that there is a qualitative or quantitative deficiency which would be addressed through the approval of the application. In addition, the site was not considered to be in a neighbourhood shopping centre, and was therefore contrary to the then adopted local plan. There was also a concern that the size, design, materials and position of the building, and the lack of opportunities for landscaping of the development, would have a significant detrimental impact on the visual amenity of the area.
- 4.5 In 2016 a revised application for the erection of retail unit, formation of access and car parking (application reference 16/00618/DPP) was refused by the Committee. The reasons for refusal were similar to the 2015 application. The applicant appealed the decision and the appeal was dismissed.
- 4.6 With regard the site to the north, north east of the application site, in 1995 outline planning permission was granted for a private housing development of 45 houses (Hardengreen Lane) and a superstore (Tesco) and associated parking spaces at Hardengreen (application reference 237/92). The planning permission was granted by the Secretary of State following an inquiry which considered four outline applications relating to superstores; three of the applications were for sites close to the A7 and the fourth was for a site in Dalkeith. In 1996

outline consent was granted for the erection of a petrol filling station and associated services (application reference 342/92).

- 4.7 Planning permission was granted in 1997 for the erection of a foodstore (Tesco) and petrol filling station with associated car park, service yard, ancillary plant and equipment (application reference 115/97). This permission was subsequently amended via application 0071/98 which increased the area of the foodstore by 1519 sqm to 5964 sqm.
- 4.8 Planning application 17/00944/DPP for the erection of a two storey drive through restaurant (McDonald's) and alterations to the existing car park and access roads was granted permission by the Committee at its meeting in April 2018.
- 4.9 The application has been called to Committee for consideration by Councillor Hackett to consider local community objections.

5 CONSULTATIONS

- 5.1 The **Coal Authority** initially objected to the application, on the grounds that insufficient information had been provided on the location of a mine entry that the Coal Mining Risk Assessment (CMRA), submitted in support of the application, had identified as being within the application site. Subsequently the applicant provided additional information and the Coal Authority withdrew its objection subject to a condition being used to secure a scheme of investigation and, if necessary, a scheme of remediation prior to development commencing.
- 5.2 **Bonnyrigg and Lasswade Community Council** object to the application. The Community Council question whether the gains in employment are worth the potential loss of facilities in nearby town centres; however it is also noted that many residents would like to see the drive through outlets come forward. The response also notes that traffic on the access roundabout from the A7 is already very heavy during the peak evening period and that additional vehicles generated by the development, and by the neighbouring McDonald's site, are not welcomed. The Community Council considers that the following issues should be addressed by condition:
- The site must be well screened by trees and hedges;
 - Advertising signage should be modest, with minimal large signage on the A7;
 - A programme of litter mitigation should be secured with funding to deal with litter dropped remotely from the application site;
 - Fencing on the cycle path should be improved;
 - A link should be established from the cycle path to the application site; and

- A zebra crossing should be established to provide safe access from the application site to the main Tesco car park.

5.3 **Eskbank and Newbattle Community Council** object to the proposal on the following grounds:

- Midlothian Council should carry out its own traffic impact analysis for the application and should not rely on the information submitted by the applicant;
- Midlothian Council should seek to adopt measures to secure retrospective contributions for road improvements in situations where traffic congestion is worse than originally forecasted;
- The impact of the development on air quality, with particular reference to the traffic generated by the development and by neighbouring sites, should be assessed; and
- The Community Council considers that the hedgerow along the western boundary was cut back with the deliberate intention of diminishing the visual quality of the area, thereby making development appear as an improvement on the existing situation.

5.4 The **Midlothian Health and Social Care Partnership (H&SCP)** objects to the application. The grounds for objection are as follows:

- In the last 5 years 1451 people within Midlothian were diagnosed with Type 2 Diabetes;
- Being overweight or obese is the main modifiable risk factor for Type 2 Diabetes;
- The H&SCP considers its location at a large supermarket will make the proposed development a convenient venue of choice for families after school; for younger people travelling home from High Schools and from Edinburgh College; and for shoppers;
- Midlothian Community Planning Partnership has begun to consider a local strategy to tackle obesity and Type 2 Diabetes;
- An initial draft strategy will be considered by the Community Planning Partnership in April 2018;
- The draft strategy's aims are:
 - a. Prevent obesity and Type 2 Diabetes in people of all ages;
 - b. Early detection of obesity, pre-diabetes and Type 2 Diabetes;
 - c. Reverse obesity and Type 2 Diabetes;
 - d. Care and support of people living with obesity and/or Type 2 Diabetes that is person centred, efficient and effective.
- The H&SCP believes that Planning is an important partner in this strategy;
- The Scottish Government is committed to building evidence and good practice on the relationship between the planning system and the food environment, with a view to informing the review of Scottish Planning Policy;

- There are examples of local authorities elsewhere taking positive action across departments, such as limiting the number of fast food outlets, using planning as the mechanism; and
 - Other areas such as licensing take into account the effect on health and wider society.
- 5.5 The Council's **Environmental Health Manager** has no objection to the proposal subject to any consent including conditions relating to the noise of plant, machinery and equipment; noise from the speaker system associated with the restaurant's drive through facilities; details of the ventilation system being supplied; a scheme of investigations and, if necessary, a scheme of remediation to deal with any possible ground contamination; the submission of an air quality assessment; and the submission of a litter management plan.
- 5.6 Having viewed the consultation response the applicant's agent submitted an Air Quality Assessment report. The Environmental Health Manager has confirmed that the assessment and conclusions within the report are acceptable.
- 5.7 The Council's **Policy and Road Safety Manager** has no objection to the proposal. The response notes that the application is supported by a Transport Assessment which models the impact of the development on the private four arm roundabout within the Tesco site and on the public five arm roundabout (A7 North and South, Eskbank Road, Bonnyrigg Road and the Tesco access). The Transport Assessment has been based on the assumption that 50% of the trips to the units would be new trips to the road network. This is a higher percentage than was used in the recent application for the neighbouring site, however the use of a higher figure indicates that the projected traffic impact is based on a robust model. The findings of the Transport Assessment is that the additional traffic generated by the units can be accommodated on the existing road network.
- 5.8 The response notes that the A7 is a main traffic route in Midlothian with current traffic flows in excess of 23,000 vehicles per day. Traffic volumes can vary noticeably on a day to day basis with variations of plus or minus 10% being not uncommon. The overall traffic generated by the proposal would result in a very small increase in the overall volume of traffic using Eskbank roundabout and does not raise any significant road capacity or safety issues.
- 5.9 If the application is recommended for approval details of the proposed surface water management scheme should be secured by condition. Furthermore, it is recommended that the applicant enter into a legal agreement to secure contributions towards the Council's A7 Urbanisation project. This scheme is designed to improve walking, cycling and public transport access along the A7.

6 REPRESENTATIONS

- 6.1 There have been three representations received, of which two are objections and one is in support. All representations can be viewed fully online. The reasons for objecting are as follows:
- The application, in conjunction with the recently consented drive-through at the neighbouring site, will cause congestion;
 - The businesses will result in litter being deposited locally;
 - The Transport Assessment uses data from 2015;
 - Queuing within Tesco car park will result in queuing traffic on Eskbank roundabout;
 - Deliveries will cause congestion;
 - The development has poor pedestrian links with the existing Tesco store and car park;
 - The jobs created will be of low quality with poor pay and conditions;
 - The drive through restaurants will encourage unhealthy eating;
 - The restaurants will create noise;
 - The restaurants will encourage anti-social behaviour; and
 - National chains weaken the local economy and undermine local businesses.
- 6.2 The representation in support of the proposal did not provide any reasons for supporting the application.

7 PLANNING POLICY

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

Midlothian Local Development Plan 2017 (MLDP)

- 7.2 Policy **DEV2: Development 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.
- 7.3 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.4 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.
- 7.5 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.

- 7.6 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.7 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A7 urbanisation.
- 7.8 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.
- 7.9 Policy **TCR1: Town Centres** supports proposals for retail, commercial leisure development or other uses which will attract significant numbers of people in Midlothian's town centres, provided their scale and function is consistent with the town centre's role. In support of this policy the Council will prepare supplementary guidance on food and drink and other non-retail uses in town centres; this guidance will also include guidance in respect of food and drink and hot food takeaways outwith town centres. The public consultation on the guidance commenced on 28 August 2018 and will run until 10 October 2018.
- 7.10 Policy **TCR2: Location of New Retail and Commercial Leisure Facilities** states that the Council will apply a sequential town centre first approach to the assessment of such applications. The policy does not refer to or apply to food and drink uses or hot food takeaways.
- 7.11 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. Amongst the projects identified as being essential requirements is the A7 Urbanisation.

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

- 7.12 At its meeting in June 2018 the Committee approved supplementary guidance for food and drink and other non-retail uses in town centres for public consultation. The public consultation period for the guidance commenced on 28 August 2018 and runs until 10 October 2018. The section on Drive-Through Restaurants within the draft guidance states that by their nature such developments are unlikely to be located within Midlothian's town centres which are not of a scale

that could accommodate drive-through restaurants; and that town centre locations are unlikely to fit with the business models of drive-through operators. Therefore, planning applications for drive-through restaurants are likely to fail to satisfy the town centre first approach. However, drive-through restaurants represent a valid and important part of the provision of food and drink facilities in the contemporary landscape of Scotland's towns and cities.

- 7.13 There is potential for drive-through restaurants to have an adverse impact on other restaurants within nearby town centres. Planning applications must be accompanied by information to demonstrate that proposed drive-through restaurants will not undermine the vitality and viability of nearby town centres. Where drive-through restaurants have been demonstrated to not undermine the vitality and viability of nearby town centres there will be scope to support their development in the built-up area adjacent to the strategic road network.
- 7.14 Proposed drive-through restaurants must comply with the terms of policy ENV17 (Air Quality) of the MLDP, which states that further assessment to identify air quality impacts would be required where the Council's Environmental Health service and the Scottish Environment Protection Agency considers it requisite. The Council's statutory duties in relation to monitoring air quality are undertaken by the Council's Environmental Health service who would be consulted as part of any planning application for drive-through restaurants.
- 7.15 Planning applications for drive-through restaurants must demonstrate that the matter of littering has been fully considered by the applicant. Planning permissions for these uses are likely to include a planning condition which will require details of the extent of the area around the site where litter is to be picked.
- 7.16 Drive-through restaurants must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where the development would present a threat to road safety.
- 7.17 The draft guidance contains guidance for all Food and Drink uses on ventilation, noise, litter/refuse and parking. In relation to public health the draft guidance states that hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a secondary school. The Planning Authority may also consider applying this provision in relation to primary schools and other premises predominantly used by children.

8 PLANNING ISSUES

- 8.1 In dealing with a planning application the Planning Authority shall have regard to the provisions of the development plan, so far as material to

the application, and to any other material considerations. Any representations and consultation responses received are material considerations.

Principle of development

- 8.2 The application site is situated within the built-up area of Dalkeith and Eskbank and adjacent to the site of an existing retail unit. Policy DEV2 provides support for development in such areas unless it detracts materially from the existing character or amenity of the area; subject to the assessment of the proposal's impact on the character and amenity the principle of the development is acceptable.
- 8.3 Consent has previously been granted for the erection of a restaurant, bar and children's play area (00/00516/OUT and 01/00169/FUL); and for the erection of a residential care home (04/00531/FUL). Neither of these schemes were implemented; however the planning history of the site clearly demonstrates that the principle of development on the site is acceptable. The planning history of a site is a material consideration in the assessment of a planning application.

Impact on Town Centres

- 8.4 The applications in 2015 and 2016 for retail development (15/00921/DPP and 16/00169/FUL) on the application site failed to establish a principle in favour of retail development at this location. The applications failed to satisfactorily demonstrate that a sequential town centre first approach had been followed and that they would not undermine the vitality and viability of Dalkeith or Bonnyrigg town centres.
- 8.5 The fundamental difference between those two applications and the current application is the nature of the development being proposed; the current application relates to drive through restaurants and MLDP policies TCR1 and TCR2 promote a sequential town centre first approach for retail uses rather than food and drink uses. While the impact on the established town centres could still be considered as a material consideration in the assessment of the application; it is important to acknowledge that what is being proposed are drive through restaurants which are not a type of development that would be expected to be accommodated within a town centre.
- 8.6 The draft Supplementary Guidance on food and drink and other non-retail uses in town centres states that applications for drive-through restaurants must be accompanied by information to demonstrate that the proposal will not undermine the vitality and viability of nearby town centres. The application was submitted prior to the publication of the draft guidance; accordingly no information was provided in relation to this provision. The draft guidance was published for consultation on 28 August and it would therefore be unreasonable to ask the applicant to

provide additional information to comply with guidance that was not publically available at the time of the application submission or elected member call-in.

- 8.7 The business model of the type of development proposed relies on proximity to the major road network and to existing traffic generating uses, such as the supermarket. The chosen site clearly meets those requirements; furthermore it is situated within the built-up area and is not situated on land allocated for a specific use such as economic land or housing.

Traffic and Parking

- 8.8 The application is supported by a transport assessment which has modelled the impact on Eskbank Roundabout of the additional traffic generated by the development. The figures for the additional traffic have been generated using data from TRICS which is a system that compiles the results of over 7150 directional transport surveys relating to more than 110 types of development. The system uses data from across the UK and Ireland and allows users to set various constraints in order to generate estimated figures based on surveys from similar sites. TRICS is a widely used by transport consultants and roads authorities.
- 8.9 The assessment uses the results of a traffic survey and queue count from November 2015. Forecasted growth rates have been used to create projected background traffic flows for 2019, when the applicant hopes to complete the development. The 2019 figures include the neighbouring drive-through site as a committed development.
- 8.10 The assessment forecasts that the proposed development will generate an additional 92 trips (as a worst case scenario), over and above the projected 2019 figure of 826 trips, on the Tesco Access arm of Eskbank Roundabout during the 08:15-09:15 am peak. A vehicle leaving the roundabout, visiting the development site and then re-joining the roundabout is counted as 1 trip on this arm of the roundabout. During the 15:45-16:45 pm peak the development is forecast to generate 76 additional trips, over and above the projected 2019 figure of 1338 trips. These predicted peak times differ from the peak times of the recently granted McDonald's application (17/00944/DPP) which had a Friday lunch time and Saturday evening peak. Furthermore the overall traffic increase resulting from this proposed development is predicted to be less than that of application 17/00944/DPP.
- 8.11 The A7 is a main traffic route through Midlothian with current traffic flows in the order of 23,000 vehicles per day. General traffic volumes can vary on a day to day basis; with plus or minus 10% not being unusual.

- 8.12 The performance of priority type junctions is measured using two standard outputs, these are Ratio of Flow to Capacity (RFC) and Mean Max Queue (MMQ). Priority junctions are considered to be operating successfully if the RFC figure is less than the practical capacity threshold of 85% or within operational capacity of 100%.
- 8.13 The figures generated for the four arm roundabout that provides access to the Tesco car park and the petrol filling station indicate that the proposed development will result in maximum RFC figure of 44% during the AM peak and 59% during the PM peak.
- 8.14 The figures generated for Eskbank Roundabout indicate that the proposed development will result in a maximum RFC figure of 48% during the AM peak and 87% during the PM peak. These results indicate that the junction will be operating over practical capacity but within operational capacity during the PM peak. The queuing will relate to traffic exiting the Tesco site and entering Eskbank Roundabout; the majority of this arm is a private road that is not adopted by the Council. The maximum RFC for the remaining 4 arms, which relate to public roads, is 67% for the A7 North (i.e. traffic coming from the north) arm. The Council's Policy and Road Safety Manager is satisfied that the figures indicate that the operation of the Eskbank Roundabout will not be impaired by the proposed development.
- 8.15 Midlothian Council's parking standards require restaurants to provide spaces at the rate of 12 per 100 sqm of public floor area. As the final operators have not been confirmed detailed floor plans are not available at this stage however the two proposed restaurants have a combined floor area of 396 sqm which would require 48 spaces to comply with standards. The proposed allocation of 55 spaces complies with standards.
- 8.16 Eskbank and Newbattle Community Council has stated that it considers that Midlothian Council should carry out a traffic survey at Eskbank roundabout and should carry out its own traffic impact analysis rather than relying on information supplied by the applicant. The Transport Assessment submitted in support of the application has been prepared by a reputable firm of transport consultants and the Council is satisfied that it has been prepared using accepted industry standards and practises. The information has been assessed by a suitably qualified member of Council staff with years of experience in the assessment of such submissions. Accordingly, there would be no added benefit for the Council to commission independent third party assessments of such submissions or commission its own assessments; such an approach would also have significant unnecessary financial implications for the Council.

Design

- 8.17 The buildings will have a contemporary design with gently sloping roofs, large areas of full height glazing and a modern palette of finish

materials. The designs reflect contemporary architectural trends in both shop and restaurant design. A mix of materials and architectural details is used to create variety on all four elevations of the buildings. While the buildings will be a corporate design that is utilised throughout the UK, they have the appearance and character of modern urban buildings; the designs share many characteristics with modern office and housing developments.

Landscaping

- 8.18 The reasons for refusal for both application 15/00921/DPP and application 16/00618/DPP referred to the loss of landscaping and the lack of effective screening. Application 16/00618/DPP was the subject of an appeal to the Scottish Government's Planning and Environmental Appeals Division; the Reporter considered that the trees along the A7 frontage had "significant amenity and landscape value due to the sensitive location at the edge of the built up area" and agreed with the Council that effective screening was necessary along this boundary of the site.
- 8.19 The current proposal relates to single storey buildings of a significantly smaller scale than the buildings proposed as part of the previous applications. The smaller scale means that there is some scope to relax the width of the land necessary to provide effective screening. The applicant undertook significant pruning of the boundary hedgerow planting in early 2018 and this has altered the appearance of the site; however the previous boundary planting was a result of years of neglect of the hedgerow which had resulted in it becoming very overgrown. The hedgerow has been pruned back and the applicant intends to maintain it so as to create a hedgerow in keeping with the appearance of a well maintained rural field boundary.
- 8.20 Negotiations have been ongoing between the case officer and the applicant's agent with regard to the proposed landscaping along the A7 boundary. After the production of a number of versions of the landscaping plan agreement has been reached on a scheme that will provide an acceptable number of trees and deliver an effective level of screening along the A7 boundary.

Signage

- 8.21 The consultation response from Bonnyrigg and Lasswade Community Council comments on the need for minimal signage on the A7 and notes that details of signage have not been included with the application. Advertising signage does not require planning permission; consent is granted via a separate process known as Express Advertisement Consent and is regulated by separate legislation. It is not possible to attach conditions relating to signage to a consent for planning permission. The Planning Authority has consistently sought to ensure that signage along the A7 is kept to an absolute minimum, and

will maintain this approach with future applications for express advertisement consent.

Litter

- 8.22 Following assessment of the proposal for a drive-through restaurant at the neighbouring site Midlothian Council considered it reasonable to condition that a litter management plan be submitted for that application. The draft Litter Management Plan for the neighbouring site sets out the standard approach adopted by McDonald's which is to carry out 3 litter picks per day. These litter picks aim to pick all litter within the site boundary of the McDonald's and all McDonald's litter within 100 metres of the site boundary. In recognition of the concerns raised by the Committee in determining planning application 17/00944/DPP the finalised Litter Management Plan extends the outer limit of the pick to 200 metres from the site boundary.
- 8.23 The applicants for the current application are aware of the litter management requirements for the neighbouring site and are also aware that the Committee are extremely concerned about the negative impacts on residential and visual amenity resulting from litter associated with drive-through restaurants. The Committee's previous decision and concerns on a similar type of application at a neighbouring site are a material consideration in the assessment of the current application. Given the very recent decision of the Committee it would be reasonable to attach a similar condition to the current application to secure a similar scale of litter management.

Anti-Social Behaviour

- 8.24 Drive through restaurants are common features of urban areas throughout Scotland and the UK. There are currently three such facilities operating in Midlothian, all in the Straiton area; and consent has been granted for a further facility at the neighbouring site. No evidence has been presented to the planning authority to demonstrate that such facilities create excessive levels of anti-social behaviour; it would not be reasonable for the planning authority to refuse the application on the basis of a perceived risk of anti-social behaviour.
- 8.25 The supporting statement submitted with the application states that both of the units will be open 24 hours a day. The existing supermarket and petrol filling station both currently operate 24 hours a day; and no condition restricting hours was attached to the consent for the drive through restaurant at the neighbouring site. Given the proximity of these uses to the proposed restaurants it would not be reasonable to seek to restrict the hours of operation by virtue of a planning condition. It is worth noting that catering premises that wish to operate between the hours of 23:00 and 05:00 require a Late Hours Catering Licence issued under the Civic Government (Scotland) Act 1982; as part of the process of assessing such applications the Council consults with the

Police. The guidance provided to planning authorities by the Scottish Government makes clear that planning conditions should not seek to duplicate powers and functions that are undertaken via existing alternative legislation.

Noise and ventilation

- 8.26 The Council's Environmental Health Manager has recommended that if consent is to be granted conditions should be attached to the permission to ensure that the amenity of nearby residential properties are safeguarded. A condition to ensure that any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an internationally recognised standard developed by the International Organization for Standardization (ISO) to determine acceptable noise levels for indoor environments) will safeguard the amenity of local residents. A further condition will ensure that sound from speakers associated with the drive through function will not be audible in any nearby living apartment. It is Midlothian Council's standard practise to attach a condition specifying details of ventilation equipment to applications for restaurants and hot food takeaways; the standard condition would be appropriate in this instance.

Air Quality

- 8.27 The Council's statutory duties in relation to monitoring air quality are undertaken by the Council's Environmental Health Service. The consultation response from the Environmental Health Manager recommended that an Air Quality Assessment be secured via condition. Having viewed the consultation response the applicant's agent has opted to submit the requested assessment as part of the application process.
- 8.28 The Assessment uses the figures from the Transport Assessment and software for modelling road traffic pollution to produce predicted pollutant concentration figures for Nitrogen Dioxide (NO₂) and particulate material. The overall effect on local air quality of the proposed development is assessed as not significant. The submitted report has been assessed by the Environmental Health Manager and its findings and conclusions are considered to be acceptable.

Healthy Eating

- 8.29 The MLDP does not contain any policies relating to healthy eating; there are no planning policy grounds on which to refuse the application on such a basis. Planning case law is mixed on the issue of whether or not healthy eating initiatives can be considered to be a material consideration in the assessment of planning applications.
- 8.30 The impact of drive-through restaurants on healthy eating initiatives was considered by the Committee during their consideration of the

application for the erection of a drive-through restaurant at the neighbouring site (17/00944/DPP). The impact was not considered significant enough to warrant refusal of that application. It must be acknowledged that there is the potential for there to be a cumulative impact from the current proposal and the recently consented scheme; however given the relatively short period of time (6 months) since the neighbouring application was considered by the Committee it would be unreasonable for the planning authority to take an alternative view, with regard to healthy eating, on the current application.

- 8.31 The draft guidance states that hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a secondary school. The guidance does not offer any guidance in relation to further education institutions. Edinburgh College is 400m from the edge of the application site.
- 8.32 It is important to acknowledge that the application must be assessed on its planning merits and not on any perceived failings of a prospective operator. While one of the prospective operators is KFC any consent could in theory be implemented by an alternative operator with a different range of products. If the Council considers that the impact on healthy initiatives is a significant enough material consideration to warrant refusal of the application then for such an approach to be effective it would need to be consistently adopted on other applications for drive-through facilities; restaurants with a takeaway element; and hot food takeaways.

Neighbour Notification

- 8.33 The site boundary identified on the location plan relates to the area of the car park that the application relates to. Neighbour notification has been sent to notifiable addresses within 20 metres of the boundary of the application site, as per Scottish Government regulations. While it is acknowledged that this means that residential properties at Muirpark and Hardengreen Lane did not receive neighbour notification the Planning Authority is satisfied that the statutory requirements have been complied with.

Developer contributions

- 8.34 Scottish Government advice on the use of Section 75 Planning Agreements 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)
- Be reasonable in all other respects

8.35 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).

8.36 This proposed development of which the principal element is the provision of two drive through restaurants has been assessed in relation to the above guidance and it is considered that a Planning Obligation is required in respect of the Council's A7 urbanisation proposals.

8.37 The MLDP identifies the urbanisation of the A7 as being key to encouraging safe pedestrian and cycle routes within this transport corridor. A proportionate contribution will be required from this development.

9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

The proposed development is situated within the built-up area of Dalkeith and Eskbank and will not detract materially from the existing character or amenity of the area. The proposal therefore complies with policies DEV2, TRAN2 and IMP2 of the Midlothian Local Development Plan. Any perceived issues associated with litter, anti-social behaviour and healthy eating are not significant enough material considerations to warrant refusal of the application.

Subject to:

- i) the prior signing of a legal agreement to secure the provision of developer contributions towards A7 Urbanisation. The legal agreement shall be concluded prior to the issuing of the planning permission and shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.
- ii) the following conditions:

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

Reason for conditions 1 and 2: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

3. Development shall not begin until a scheme of investigation and remediation to deal with previous mineral workings has been submitted to and approved in writing by the Planning Authority. The scheme shall include:
 - i. a scheme of intrusive site investigations;
 - ii. a report of findings arising from the intrusive site investigations; and
 - iii. a scheme of remedial works for approval by the Coal Authority.

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

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

4. Development shall not begin until a detailed scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained, removed or protected during development;
 - iii proposed new planting in planting areas, including trees, shrubs, hedging and grassed areas;
 - iv location and design of all proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi a programme for completion and subsequent maintenance of all soft and hard landscaping. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August);
 - vii drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff; and
 - viii proposed car park configuration and surfacing.

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

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

5. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the physical development is of an appropriate standard in terms of its impact on the character and*

appearance of the area. To ensure compliance with local and national planning guidance and advice.

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

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

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

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

8. Unless otherwise approved in writing by the Planning Authority the vehicular access and parking arrangements shown on the approved Proposed Site Plan (Drawing number G2713-AL(0)003 P2-2) shall be operational prior to the restaurant being opened to the public.

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

9. The kitchen of the restaurant shall be ventilated by an extraction ventilation system which shall:
 - a) Be designed to achieve 30 air changes per hour;
 - b) Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open;
 - c) Prevent the emission of cooking odours likely to cause nuisance to neighbouring commercial units and surrounding residential properties; and
 - d) Terminate at sufficient height to permit the free disposal of exhaust fumes.

10. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 (an

acceptable noise rating level based on an international standard) when measured within any nearby living apartment and no structure borne vibration is perceptible within any living apartment.

11. The sound emitted by any tannoy/loudspeaker system serving the restaurant's drive through facilities shall be controlled to ensure that no amplified speech is audible within any nearby living apartment.

Reason for conditions 8, 9 and 10: To safeguard nearby residential amenity.

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

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

12. Development shall not begin until a scheme of sustainability/biodiversity (including measures to encourage and enhance biodiversity) for the site has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

Ian Johnson
Head of Communities and Economy

Date:	2 October 2018
Application No:	18/00181/DPP
Applicant:	SC Dalkeith Limited, 349 Bath Street, Glasgow
Agent:	Iain Hynd, Barton Wilmore, 68-70 George Street, Edinburgh
Validation Date:	20 March 2018
Contact Person:	Graeme King
Tel No:	0131 271 3332
Background Papers:	None



**Education, Economy
& Communities**
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Erection of two drive through restaurants; formation of access and car parking and associated works at Land South West Of Tesco Superstore, Dalkeith

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