

Notice of meeting and agenda



Planning Committee

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

Date: Tuesday, 03 October 2017

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 Declarations 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** Minutes of Meeting held on 22 August 2017 – For Approval **5 - 12**

5 Public Reports

- 5.1** Major Applications: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage – Report by Head of Communities and Economy **13 - 18**

- 5.2** Appeals and Local Review Body Decisions - Report by Head of Communities and Economy **19 - 20**

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

- 5.3** Proposed Mixed Use Development at Land Bounded by the A7, Stobhill Road and Pentland Avenue, Gorebridge (17/00663/PAC) **21 - 24**

- 5.4** Proposed Mixed Use Development including Classes 1, 2, 3, 4, 9 and 10 with Associated Access, Car Parking, Open Space and Landscaping at Land to the North of Hardengreen House, Dalkeith (17/00670/PAC) **25 - 28**

Application for Planning Permission Considered at a Previous Meeting – Report by Head of Communities and Economy.

- 5.5** Application for Planning Permission for the partial change of use of land and buildings for wedding events (part retrospective) at 32A Damhead, Lothianburn (17.00219.DPP) **29 - 62**

Application for Planning Permission Considered for the First Time –
Report by Head of Communities and Economy.

- 5.6** Application for Planning Permission for the Erection of 20 Flatted Dwellings, Formation of Car Parking and Associated Works at Land at the Former Mayfield Inn, Bogwood Road, Mayfield (17/00170/DPP) **63 - 80**

6 Private Reports

No private reports to be discussed at this meeting.

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
22 August 2017	2.00 pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

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

1. Apologies

Apologies received from Councillors Hardie and Montgomery.

2. Order of Business

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

3. Declarations of interest

Councillor Winchester declared a non pecuniary interest in agenda item 5.8 - Application for Planning Permission (17/00219/DPP) for the Partial Change of Use of Land and Buildings for Wedding Events (Part Retrospective) at 32A Damhead, Lothianburn – on the grounds that she had been approached by the Community Council and also an objector, albeit she had not offered either party an opinion on the application. She indicated that she felt that the nature of her interest was such that she did not feel the need to withdraw and would remain in attendance during the debate, and contribute to the consideration of this particular item.

4. Minutes of Previous Meetings

The Minutes of Meeting of 6 June 2017 were submitted and approved as a correct record.

5. Reports

Agenda No	Report Title	Presented by:
5.1	Proposed Revision of the Councils' Scheme of Delegation for the Determination of Planning Applications	Peter Arnsdorf
Executive Summary of Report		
<p>There was submitted report, dated 8 August 2017, by the Head of Communities and Economy, seeking approval for an amended scheme of delegation for planning matters, under which specific types of planning applications were delegated to the appointed officer to determine.</p> <p>The report explained that following a Planning Service Review the Development Management and Planning Policy and Environment teams had been conjoined into a single Planning team with a new structure being implemented from March 2016. As part of the new structure, roles and responsibilities and associated job titles had changed. As a consequence the approved scheme of delegation required to be updated to identify the correct appointed officers who were delegated to determine applications. The proposed updating of the scheme of delegation did not however change which applications Elected Members delegate to officers to determine. Prior to the adoption of the amended scheme, the scheme required to be approved by the Scottish Ministers.</p>		

Decision

Having heard from the Planning Manager, the Committee agreed:-

- (a) to approve the amended 'Revised Scheme of Delegation for the Determination of Planning Applications for Planning Permission' as set out at Appendix A of this report; and
- (b) that this amended 'Revised Scheme' be formally submitted to Scottish Ministers for approval.

On a procedural matter, the Committee also agreed that in future applications for 20 units or more, should be referred to the local ward members for their interest.

Action

Head of Communities and Economy/Planning Manager

Agenda No	Report Title	Presented by:
5.2	Major Developments: Applications Currently Being Assessed and Other Developments at Pre-Application Consultation Stage	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 8 August 2017, by the Head of Communities and Economy, updating the Committee on 'major' planning applications, formal pre-application consultations by prospective applicants and the expected programme of applications due for reporting.

Summary of Discussion

The Committee, heard from the Planning Manager who, in responding to Members' questions, gave updates on the progress of the applications for proposed developments at land north of Oak Place, Mayfield and land at Cauldcoats, Dalkeith. He also confirmed that the landownership certification issue at Cauldcoats had now been resolved.

Decision

- (a) To note the current position in relation to major planning application proposals which were likely to be considered by the Committee in 2017; and
- (b) To note the updates for each of the applications.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.3	Appeal and Local Review Body Decisions	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 8 August 2017, by the Head of Communities and Economy, detailing the notices of review determined by the Local Review Body (LRB) at its meeting in June 2017, and advising of the outcome of three appeals determined by Scottish Ministers.

Appended to the report were copies of the following appeal decision notices from the Scottish Government, Planning and Environmental Appeals Division:-

- dated 13 July 2017, dismissing an appeal by Mr B Wilson (SC Dalkeith Limited) against refusal of planning permission for the Erection of retail unit, formation of access and car parking at Land south-west of Tesco superstore, Dalkeith (16/00618/DPP) and refusing planning permission;
- dated 8 June 2017, upholding an appeal by Mr G Hateley against refusal of listed building consent for the removal of condition 6 attached to listed building consent 09/00498/LBC to allow the retention of conservatory at West House, Crichton House, Laird's Entry, Crichton, Pathhead (16/00857/LBC) and varying listed building consent 16/00857/LBC by deleting condition 6; and
- dated 12 July 2017, upholding an appeal by The Society of the Sacred Heart against refusal of listed building consent for the extension to building and alteration to wall at Rosehill, 27 Park Road, Dalkeith (17/00092/LBC) and granting listed building consent subject to conditions.

Summary of Discussion

The Committee, having heard from the Planning Manager, welcomed the Ministers' decision safeguarding the Land south-west of the Tesco superstore at Hardengreen.

Decision

- (a) To note the decisions made by the Local Review Body at its meeting on 13 June 2017; and
- (b) To note the outcome of the appeals determined by Scottish Ministers

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.4	Pre-Application Consultation: Proposed Installation of sustainable urban drainage system (SUDS) and foul water drainage system at Easter Bush Campus, Bush Farm Road, Roslin (17/00339/PAC).	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 8 August 2017, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding the proposed installation of a sustainable urban drainage system (SUDS)

and foul water drainage system at Easter Bush Campus, Bush Farm Road, Roslin (17/00339/PAC).

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.

Summary of Discussion

The Committee, having heard from the Planning Manager, acknowledged that whilst precise details of the SUDS feature would become clear once the application for detail consent was submitted, there was an opportunity to provide an attractive feature which with appropriate planting would enhance the locality.

Decision

- (a) To note the provisional planning position set out in the report;
- (b) To note the comments made by Members; and
- (c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.5	Pre-Application Consultation: Proposed Residential Development, Community Facilities, Primary School, Open Space and Associated Infrastructure at Site Hs12 Hopefield Farm 2, Bonnyrigg (17/00367/PAC).	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 8 August 2017, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed Residential Development, Community Facilities, Primary School, Open Space and Associated Infrastructure at Site Hs12 Hopefield Farm 2, Bonnyrigg (17/00367/PAC).

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.

Summary of Discussion

Having heard from the Planning Manager, the Committee in discussing the proposals questioned the ability of local infrastructure to support ongoing and emerging development in the area, in particular the ability of the local road network to adequately support the additional traffic movements likely to be generated; access to the site; pressure on health facilities and education provision; and also measures to encourage greater use of public transport. The Committee felt that in this regard a Master Plan for this and the adjoining site would be beneficial.

Decision

- (a) To note the provisional planning position set out in the report;
- (b) To note the comments made by Members; and
- (c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.6	Pre-Application Consultation: Proposed Residential Development at Land at Site Hs11, Dalhousie South, Bonnyrigg (17/00402/PAC).	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 8 August 2017, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed Residential Development at Land at Site Hs11, Dalhousie South, Bonnyrigg (17/00402/PAC).

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.

Summary of Discussion

Having heard from the Planning Manager, the Committee in discussing the

proposals again questioned the ability of local infrastructure to support residential development at this location, in particular the ability of the local road network to adequately support the additional traffic movements likely to be generated; the possibility of a roundabout/controlled access to the site; pressure on health facilities and education provision; and also measures to encourage greater use of public transport, in particular the possible provision of a pedestrian access to the railway station at Eskbank.

Decision

- (a) To note the provisional planning position set out in the report;
- (b) To note the comments made by Members; and
- (c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.7	Pre-Application Consultation: Proposed Extension to the Existing Sand Quarry at Upper Dalhousie, Rosewell (17/00565/PAC).	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 8 August 2017, by the Head of Communities and Economy advising that a pre application consultation had been submitted regarding a proposed Extension to the Existing Sand Quarry at Upper Dalhousie, Rosewell (17/00565/PAC).

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.

Summary of Discussion

The Committee, having heard from the Planning Manager, discussed the impact that the proposals would have on the local road network given the ongoing and emerging developments in the area; the provision of adequate wheel wash facilities; and the general environmental impacts that it might have.

Decision

- (a) To note the provisional planning position set out in the report;

- (b) To note the comments made by Members; and
- (c) To note that the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.8	Application for Planning Permission (17/00219/DPP) for the Partial Change of Use of Land and Buildings for Wedding Events (Part Retrospective) at 32A Damhead, Lothianburn.	Peter Arnsdorf

Executive Summary of Report

With reference to paragraph 5.14 of the Minutes of 6 June 2017 and following an unaccompanied site inspection visit on 17 August 2107, there was re-submitted report, dated 23 May 2017, by the Head of Communities and Economy concerning the above application.

Summary of Discussion

Having heard from the Planning Manager, who provided Members with an update on events since the June meeting, the Committee acknowledged that the application continued to generate considerable comments both in support of, and opposition to, the proposals. The Committee then gave consideration to the issues of noise and disturbance arising from the wedding events, which appeared to be a key concern and discussed if there was scope to address these issues by way of appropriate conditions. The retrospective nature of the application was also commented upon. Whilst opinion was divide over whether the case for a departure from the policy position had been clearly established, there was a general feeling amongst the Committee that there would be merit in exploring further if appropriate conditions could be identified that might allow the development to proceed in the event that the Committee was minded to approve it.

Decision

The Committee agreed to continue consideration of the application to allow further discussion to take place regarding potential conditions should the Committee be minded to approve the application.

Action

Head of Communities and Economy/Democratic Services

The meeting terminated at 3.16pm.



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 PREMATURE APPLICATIONS

- 3.1 A consequence of the Midlothian Local Development Plan: Proposed Plan being at an advanced stage is premature planning applications being submitted by a number of applicants on a number of sites. These are identified in Appendix A by the statement "Subject to progress on Midlothian Local Development Plan" and relate to sites which are not currently allocated for development in the adopted 2008 Midlothian Local Plan but are proposed in the Midlothian Local

Development Plan (MLDP). These sites are subject to representations from local communities and interested parties and are subject to examination by Scottish Government Reporters. The Reporter's findings were published on 10 July 2017 and reported to Council at its meeting of 26 September 2017.

- 3.2 In the interests of fairness and transparency it is proposed not normally to report these applications to Committee until the proposed MLDP has progressed through the examination process and the Council has adopted the plan, unless the Committee wish to consider an application in advance of the adoption of the MLDP or there are extenuating circumstances. At its meeting in January 2016 the Committee expressed a preference to determine those applications where there is a risk that applicants may appeal against non determination, an option open to applicants if an application is not determined within the set timeframe (four months from the date of validation for a major application) or an agreed extended time period.
- 3.3 If an appeal against non determination is submitted it would be determined by Scottish Ministers after consideration of relevant planning policies and other material considerations. Paramount in the consideration would be the potential for an application to undermine the development plan process if considered in advance of the adoption of the MLDP and whether Midlothian has a sufficient housing land supply as defined in Scottish Government Planning Policy.

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 2017 and 2018 and the updates for each of the applications.

Ian Johnson
Head of Communities and Economy

Date: 26 September 2017
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
14/00910/PPP	Land at Cauldcoats, Dalkeith	Application for Planning Permission in Principle for residential development, erection of a primary school and mixed use developments. The site is identified for an indicative 350 residential units as a phase 1 with longer term safeguarding for a phase 2.	Subject to progress on Midlothian Local Development Plan See comment	Pre-Application Consultation (14/00553/PAC) carried out by the applicants in October/November 2014. This application was held in abeyance until August 2017 because of a landownership certification issue (not correctly notifying owners of land with the application site) which meant it could not be determined. The applicant has now resolved the issue and the application is being assessed and will be reported to Committee in due course.
16/00134/DPP	Land north of Oak Place, Mayfield	Erection of 169 dwellinghouses, 30 flatted dwellings and associated works	See comment	Pre-Application Consultation (13/00522/PAC) carried out by the applicants in August/September 2013. This application has been significantly amended during its assessment and as such a new planning application is required.
16/00861/DPP	Land west of Corby Craig Crescent Seafield Moor Road, Bilston	Erection of 176 dwellinghouses, 36 flatted dwellings and associated works	Subject to progress on Midlothian Local Development Plan November 2017	Pre-Application Consultation (15/00936/PAC) carried out by the applicants in November and December 2015 and January 2016.
16/00893/PPP	Land At Salter's Park, Dalkeith	Application for Planning Permission in Principle for residential development, employment uses and associated works	Subject to progress on Midlothian Local Development Plan November 2017	Pre-Application Consultation (14/00833/PAC) carried out by the applicants in November and December 2014 and January 2015.
17/00068/DPP	Land Between Deanburn and Mauricewood Road Penicuik	Erection of 552 residential units; formation of access roads, SUDs features and associated works	November 2017	Pre-Application Consultation (15/00987/PAC) carried out by the applicants in February/March 2016. This application will supersede applications 05/00784/FUL, 06/00474/OUT and 06/00475/FUL which are for residential development across the site. The applicant will withdraw

				these applications as and when permission has been granted for this application.
17/00273/S42	Land between Loanhead Road and Edgefield Industrial Estate Loanhead	Section 42 application to amend condition 1 of planning permission in principle 09/00354/OUT – this would secure the delivery of 92 dwellinghouses	November 2017	Condition 1 of planning permission 09/00354/OUT relates to the time period to implement the permission and to submit subsequent Matters Specified in Conditions (MSC) applications to seek approval for the details of the scheme. This application replaces application 16/00800/S42
17/00298/PPP	Land north of Dalhousie Dairy Bonnyrigg	Application for Planning Permission in Principle for residential development. The site is identified for an indicative 300 residential units.	November 2017	Pre-Application Consultation (16/00157/PAC and 16/00161/PAC) carried out by the applicants in March/April 2016. This application is a repeat application of 16/00712/PPP submitted to continue negotiations with the Planning Authority whilst the appeal against 16/00712/PPP is being considered. Application 16/00712/PPP was reported to Committee at its meeting in June 2017.
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	Subject to progress on Midlothian Local Development Plan January 2018	Pre-Application Consultation (14/00415/PAC) carried out by the applicants in June - September 2014.
17/00408/DPP	Land at Old Craighall Road, Millerhill	Erection of 125 residential units; formation of access roads, SUDs features and associated works	Subject to progress on Midlothian Local Development Plan January 2018	Pre-Application Consultation (14/00415/PAC) carried out by the applicants in June - September 2014.
17/00435/DPP	Land at Newbyres Site B, River Gore Road, Gorebridge	Erection of 125 residential units; formation of access roads, SUDs features and associated works	January 2018	Pre-Application Consultation (13/00609/PAC) carried out by the applicants in August - November 2013.

APPENDIX B

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

Ref	Location	Proposal	Date of receipt of PAC	Earliest date for receipt of planning application and current position
15/00774/PAC	Site Hs14, Rosewell North, Rosewell	Residential development The site is identified for an indicative 60 residential units.	22 September 2015	15/12/15 - no application yet received. A pre-application report was reported to the November 2015 meeting of the Committee.
16/00266/PAC	Land At Rosslynlee Hospital, Roslin (Site AHs1)	Residential development The site is identified as an additional housing opportunity with an indicative 120 - 300 residential units.	08 April 2016	04/07/16 - no application yet received. A pre-application report was reported to the May 2016 meeting of the Committee.
16/00267/PAC	Land At Rosslynlee Hospital, Roslin (Site AHs1)	Residential development - change of use, alterations, extensions and partial demolition of the former hospital, including new build development. The site is identified as an additional housing opportunity with an indicative 120 - 300 residential units.	08 April 2016	04/07/16 - no application yet received. A pre-application report was reported to the May 2016 meeting of the Committee.
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.
17/00339/PAC	Easter Bush Campus, Bush Farm Road, Roslin	Installation of sustainable urban drainage system (SUDS) and foul water drainage system	1 May 2017	26/07/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee..
17/00367/PAC	Site Hs12 Hopefield Farm 2	Residential development	9 May 2017	02/08/17 - no application yet received. A pre-application report was reported to the August

	Bonnyrigg	The site is identified for an indicative 375 residential units.		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.	19 May 2017	12/08/17 - no application yet received. A pre-application report was reported to the August 2017 meeting of the Committee.
17/00565/PAC	Land south west of Upper Dalhousie Sand Quarry, Rosewell	Extension to existing sand quarry	13 July 2017	06/10/17 - 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.	27 July 2017	20/10/17 -
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 - This pre application is reported to this 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 - This pre application is reported to this 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.	30 August 2017	23/11/17 -
17/00721/PAC	Land west of Burnbrae Terrace Bonnyrigg	Mixed use development including offices, stores, garage and workshops, enterprise business units, parking and ancillary facilities	12 September 2017	06/12/17 -



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 August 2017. 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 29 August 2017 the LRB made the following decisions:

	Application Reference	Site Address	Proposed Development	LRB Decision
1	17/00267/DPP	Land 100m south of Glenarch Lodge, Melville Road, Dalkeith	Erection of 3 dwellinghouses	Permission granted subject to the prior signing of a legal agreement at LRB meeting of 29.08.2017
2	17/00275/DPP	35 Temple, Gorebridge	Installation of replacement windows	Permission granted at LRB meeting of 29.08.2017
3	17/00371/DPP	The Abbey Granary, 12 Newbattle Road, Newtongrange	Change of use of public house to a mixed use of public house, restaurant and take away	Permission granted at LRB meeting of 29.08.2017

	Application Reference	Site Address	Proposed Development	LRB Decision
4	17/00390/DPP	Unit 33/1, Mayfield Industrial Estate, Mayfield, Dalkeith	Change of use from general industry (class 5) to bodybuilding gym (class 11)	Permission granted at LRB meeting of 29.08.2017

4 RECOMMENDATION

- 4.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting in August 2017.

Ian Johnson
Head of Communities and Economy

Date: 26 September 2017
Contact Person: Peter Arnsdorf, Planning Manager
 peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310

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



PROPOSAL OF APPLICATION FOR A MIXED USE DEVELOPMENT AT LAND BOUNDED BY A7, STOBHILL ROAD AND PENTLAND AVENUE, GOREBRIDGE (17/00663/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 a proposed mixed use development comprising residential and commercial uses at land bounded by the A7, Stobhill Road and Pentland Avenue, Gorebridge (17/00663/PAC).
- 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 a mixed use development, including residential and commercial land uses; access; landscaping; SUDS; parking and demolition of existing Stobhill depot facility at land bounded by A7, Stobhill Road and Pentland Avenue, Gorebridge was submitted on 16 August 2017.
- 2.3 As part of the pre-application consultation process, the applicants held a public event at the National Mining Museum on Thursday 14 September 2017 from 2-8pm. On the conclusion of the public event and the 12 week pre application consultation engagement period the applicant could submit a planning application for the proposal. It is anticipated that a planning application for either planning permission in principle or detailed planning permission will be submitted. 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) not offer views, as the forum for doing so will be at this meeting of the Planning Committee.

- 2.4 Copies of the pre application notices have been sent by the prospective applicant to the local elected members, Gorebridge Community Council, Newtongrange Community Council, and Mayfield and Easthouses 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 9.71ha site is located immediately to the south of Newtongrange, bounded to the west by the A7, by Stobhill Road to the north, by Pentland Avenue to the east; and by a restaurant, recycling centre and agricultural land to the south. Beyond to the north, south and east are residential properties and agricultural land. Across the A7 to the west are a construction materials depot and industrial units.
- 3.3 Approximately a quarter of the site, being in its north-west corner, is occupied by this Council's Stobhill Depot which is served by an 'in and out' vehicle access onto Stobhill Road. Aside from a further access from Stobhill Road through the site to the abovementioned recycling centre, the site is otherwise open grassland. No further details of the proposal have been submitted with the pre application consultation.
- 3.4 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Plan (MLP), adopted in December 2008. The adopted 2008 Midlothian Local Plan (MLP) identifies the area of the Council depot as being subject to Policy RP20 Development within the built-up area, where appropriate development will be support if it does not detract materially from the existing character or amenity of the area. The rest of the site is subject to policies which seek use of the site for general industry/business, including to meet strategic requirements (Policies ECON1 and COMD1). It is anticipated that, in large part, the proposals would not accord with the development plan.
- 3.5 At its meeting of 16 December 2014 the Council approved the Proposed MLDP as its settled spatial strategy. The MLDP continues the commitment to the land uses set out above in paragraph 3.4. The plan was subject to Local Plan Examination and subject to consideration by a Reporter appointed by the Scottish Ministers. The Reporters findings were published on 10 July 2017 and the examination findings were reported to Council in September 2017. With regard to this site the Reporter recommendations do not change the commitment to the industrial/business uses. This is a material

consideration of significant weight in the assessment of any application, if submitted prior to the adoption of the MLDP.

- 3.6 The principal material consideration to consider is the economic benefits in terms of inward investment and job creation. The weight to be given to any such benefits, and the extent to which housing is justifiable in enabling such benefits would be assessed as part of any planning application assessment.

4 PROCEDURES

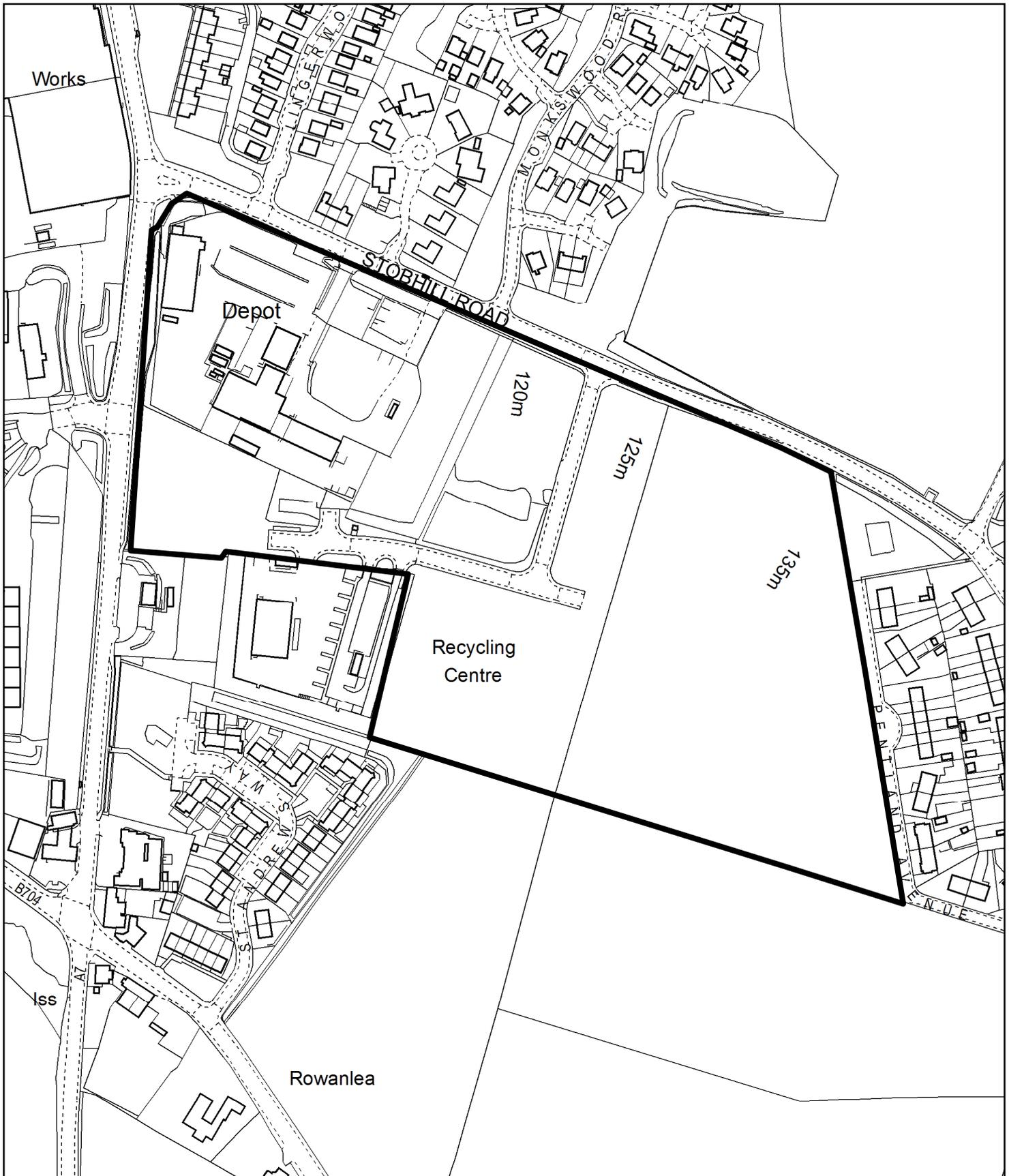
- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' 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; and
 - 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: 22 September 2017
Contact Person: Brian Forsyth, Planning Officer
Tel No: 0131 271 3473



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

Land Bounded By A7, Stobhill Road and Pentland Avenue,
Gorebridge

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PRE - APPLICATION REPORT REGARDING MIXED USE DEVELOPMENT INCLUDING CLASSES 1, 2, 3, 4, 9 AND 10 WITH ASSOCIATED ACCESS, CAR PARKING, OPEN SPACE AND LANDSCAPING AT LAND TO THE NORTH OF HARDENGREEN HOUSE, DALKEITH (17/00670/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 a mixed use development including classes 1, 2, 3, 4, 9 and 10 with associated access, car parking, open space and landscaping at land to the north of Hardengreen House, Dalkeith (17/00670/PAC).
- 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 a mixed use development including classes 1, 2, 3, 4, 9 and 10 with associated access, car parking, open space and landscaping at land to the north of Hardengreen House, Dalkeith was submitted 22nd August 2017.
- 2.3 As part of the pre application consultation process the applicants held a public event/drop in session in September 2017. On the conclusion of the public event and the 12 week pre application consultation engagement period the applicant could submit a planning application for the proposal. It is anticipated that a planning application for either planning permission in principle or detailed planning permission will be submitted. 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) not offer views, as the forum for doing so will be at this meeting of the Planning Committee.

- 2.4 Copies of the pre application notices have been sent by the applicant to the Eskbank and Newbattle Community Council; and the Bonnyrigg and Lasswade 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 proposal complies with development plan policies unless material planning considerations indicate otherwise.
- 3.2 The proposed development is situated to the south of Eskbank Station. The site is 2.5 hectares in area and currently comprises disused agricultural land. The site is bounded to the west by the Borders Railway; to the north east by Eskbank Station and the Edinburgh College solar farm; and to the south east by land associated with the children's nursery at Hardengreen House. The proposed access would be via the existing access road serving Eskbank Station and Edinburgh College.
- 3.3 The proposal relates to a broad range of development categories 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).
- 3.4 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Plan (MLP), adopted in December 2008. The MLP identifies the majority of the site as being in the built-up area, with the southern portion of the site (measuring 0.77 hectares in area) being in the green belt. The area within the built-up area is identified as forming part of a larger area of allocated economic land. Any subsequent application will be subject to assessment against policies RP1: Protection of the Countryside; RP2: Protection of the Green Belt; RP4: Prime Agricultural Land; RP20: Development within the Built-Up Area; and ECON1: Strategic Economic Land Allocations (Proposal). A provisional assessment against these policies supports Class 4 development on the allocated economic land. The MLP does not provide support for the other classes of development or development of the green belt.
- 3.5 At its meeting of 16 December 2014 the Council approved the proposed Midlothian Local Development Plan (MLDP) as its settled spatial strategy. The plan was subject to Local Plan Examination and subject to consideration by a Reporter appointed by the Scottish Ministers. The Reporters findings were published on 10 July 2017 and the examination findings were reported to Council in September 2017.

This is a material consideration of significant weight in the assessment of any application, if submitted prior to the adoption of the MLDP.

- 3.6 The MLDP identifies the majority of the site as being in the built-up area, with the southern portion of the site (measuring 0.77 hectares in area) being in the green belt. The area within the built-up area is identified as forming part of a larger area of allocated economic land. Any subsequent application will be subject to assessment against policies STRAT1: Committed Development; DEV2: Protecting Amenity within the Built-Up Area; ENV1: Protection of the Green Belt; and ENV4: Prime Agricultural Land. A provisional assessment against these policies supports Class 4 development on the allocated economic land. The MLDP does not provide support for the other classes of development or development of the green belt.

4 PROCEDURES

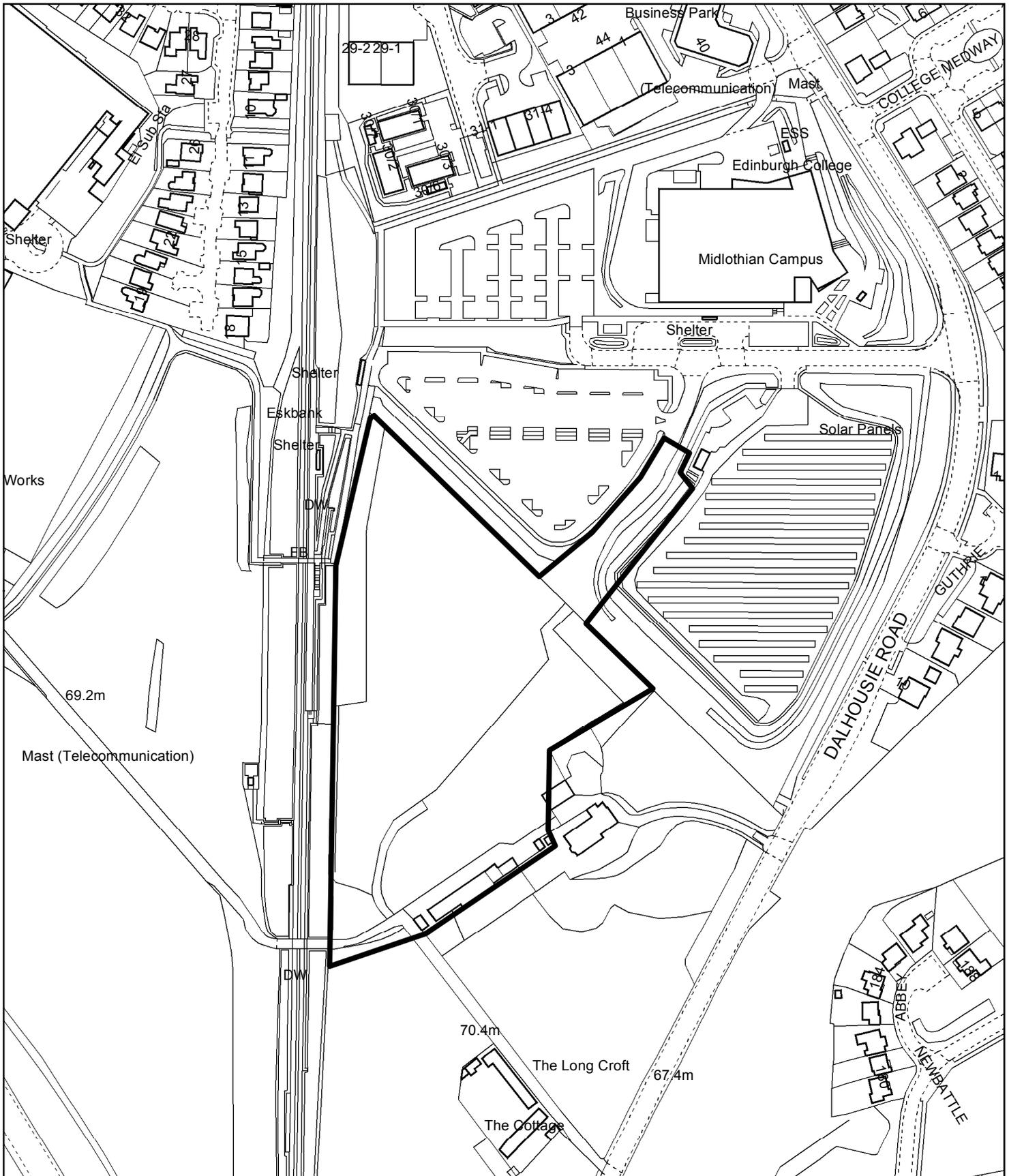
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- 4.3 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures advises that Councillors are expected to approach their decision-making with an open mind in that they must have regard to all material considerations 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; and
 - 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: 26 September 2017
Contact Person: Graeme King, Planning Officer
Graeme.King@midlothian.gov.uk
Tel No: 0131 271 3332



**Education, Economy
& Communities**
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Land to the North of Hardengreen House, Dalkeith

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APPLICATION FOR PLANNING PERMISSION (17/00219/DPP) FOR THE PARTIAL CHANGE OF USE OF LAND AND BUILDINGS FOR WEDDING EVENTS (PART RETROSPECTIVE) AT 32A DAMHEAD, LOTHIANBURN

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for the partial change of use of an existing horticultural business at the Secret Herb Garden, 32A Damhead for wedding ceremonies and associated receptions. There have been sixteen letters of representation and consultation responses from the Council's Policy and Road Safety Manager, the Council's Environmental Health Manager, the Scottish Environment Protection Agency (SEPA) and the Damhead and District Community Council. The relevant development plan policies are RP1, RP2, RP4, RP7, RP8, ECON8 and DP3 of the Midlothian Local Plan 2008 (MLP). Policies ENV1, ENV4, ENV7, ENV10 and ENV18 of the Proposed Midlothian Local Development Plan 2014 (MLDP) are material considerations. The recommendation is to refuse planning permission.

2 BACKGROUND

- 2.1** At its meeting of 6 June 2017 the Planning Committee deferred consideration of the application to enable a Committee site visit to take place. The site visit took place on 17 August 2017.
- 2.2** At its meeting of 22 August 2017, the Planning Committee deferred consideration of the application to enable officers to investigate if there was any consensus among the interested parties with regard potential planning conditions that could be attached to a planning permission if the Committee were to grant permission.
- 2.3** At its meeting of 16 December 2014 the Council approved the Proposed MLDP as its settled spatial strategy. The plan was subject to Local Plan Examination and subject to consideration by a Reporter appointed by the Scottish Ministers. The Reporters findings were published on 10 July 2017 and reported to Council at its meeting of 26 September 2017.

3 PLANNING ISSUES UPDATE

- 3.1 Since the Planning Committee deferred determining the application in August 2017, a further three weddings have taken place at the site. The Council has received further complaints about noise and disturbance from the wedding events.
- 3.2 The Council also received a further letter of support on behalf of five representors (who have already made comments in support of the application) raising concerns over the submission of a letter to elected members shortly before the August 2017 Planning Committee meeting from objectors and dispute the contents of this letter. They maintain their support for the proposal and state that their properties are in close proximity to the site and they have not experienced the noise and disturbance in the area as stated by others. They state that the applicants have taken steps to address noise and traffic movements during weddings and have no objection to the proposed use continuing.
- 3.3 Following the August Committee all interested parties (namely all representors, the applicant, the agent and Damhead and District Community Council) were contacted advising of the Planning Committee's consideration of the application to date. A copy of draft, without prejudice, planning conditions were sent to all interested parties inviting them to submit comments for consideration. It was also requested that the parties advise if they wish their original representation to remain a consideration. The draft conditions with post consultation amendments are set out in paragraph 3.12.
- 3.4 Eleven interested parties responded, including the agent on the applicant's behalf and the Damhead and District Community Council. The comments are summarised below.
- 3.5 The applicant has agreed with the majority of the draft conditions, however suggests amending the wording of condition 1 to read 'no other unauthorised events use'. They also state the fence required by condition 8 is unnecessary as there is already a rope and notice restricting access in place and that any gate needs to be two gated as the area to the north is a field with livestock. They also agree conditions 9, 10 and 14 subject to clarification about what is required by these conditions. Condition 13 should be reworded for the noise monitor to be implemented one month before the first wedding takes place in 2018. They also request that condition 18 be amended so that details of the proposed biological treatment plant be submitted and approved in writing by the Planning Authority within 3 months of the date of the decision and be operational within six month of this approval. They also request condition 20 be expanded to include use by persons requiring to use the disabled facilities.
- 3.6 The Damhead and District Community Council is broadly in agreement with the draft conditions, but states that consideration should be given

to road safety measures. They query if it would be better for the noise levels to be monitored outwith the barn, rather than within. They suggest permission be granted for a temporary 2 year period to allow a review of the situation once this been operational with the proposed restrictions and that any permission is limited to the applicant only. They also seek a commitment that any conditions be enforced.

- 3.7 A further representation was received from a nearby neighbour neither objecting nor supporting the application but raising concerns that the Damhead Community Council has objected without conducting full consultation with the residents it represents.
- 3.8 Of the nine interested parties who initially submitted comments supporting the proposal, four responded to the draft conditions making the following points:
- the restriction limiting the events to weddings only, not other dining events or parties, would result in the loss of jobs at the Secret Herb Garden;
 - why weddings may be acceptable but not other events;
 - the draft conditions appear overly restrictive, particularly limiting to weddings to after 4pm, between April to September and limiting the maximum number of events to 20;
 - they also disagree with the reason for draft conditions 1-17 as some nearby neighbours have not experienced noise or disturbance as a result of the wedding use; and
 - not all weddings will have amplified music.
- 3.9 The representations made in support of the application request their original comments remain a consideration and that they continue to support the proposed wedding events application.
- 3.10 Of the seven interested parties who initially submitted comments objecting to the proposal, five responded to the draft conditions making the following points:
- frustration over the current application being submitted to consider wedding events only when there are a number of other uses taking place at the site which do not benefit from planning permission and/or were subject to previous applications which were subsequently withdrawn and not determined;
 - question if any draft conditions would be adhered to given the current breaches taking place;
 - there are a number of other events taking place at the site and one application should cover all these events, rather than on an ad hoc basis;
 - the use is contrary to countryside and green belt policies;
 - the proposal is an inappropriate use for the site, not conducive to the landscape and environment setting;
 - the noise, traffic and light disturbance is unacceptable to residents and livestock in the green belt;

- the proposal does not comply with the neighbourhood plan;
- the proposal does not enhance the area;
- granting permission would set a precedent for other inappropriate development in the area;
- the use is detrimental to the health and wellbeing of the local community;
- condition 3 should be reduced as the applicant told a Community Council meeting there would only be 10 weddings per year;
- other businesses in the area are limited to operate from 8am to 6pm weekdays, 1pm Saturdays with no work on Sundays or bank holidays. This is to minimise the effect of the impact of the development on the amenity of residents in the area and the same restrictions should apply for this business;
- where would guests/coaches park;
- guests at the Secret Herb Garden have previously broken a fence to the west of the site;
- condition 13 (assume 12) states noise should not be heard outwith the barn, therefore not audible within any noise sensitive living apartment is not adequate;
- there should also be a restriction on days the wedding uses can take place;
- do not agree with any of the draft conditions and consider that no conditions should be offered;
- the application site is prime agricultural land within the green belt and the proposal should not be supported;
- the applicant appears to wish to sell the site as a wedding and events business rather than for horticulture;
- should permission be granted, it should be limited to the applicant only and not transferred with any sale of the business;
- a recent licence application has been refused;
- condition 1 – ‘no other events use’ should be clearly defined as wedding events, the horticulture use and the cafe and shop uses approved in 13/00398/DPP;
- condition 2 – the use should operate from May, not April. It was on this basis the application was submitted and comments made by representors and consultees. This would also offer better noise attenuation as there would be more vegetation on surrounding trees. However this timeframe would mean that the wedding events would have a detrimental impact on the amenity of nearby residents during summer months;
- condition 3 is more than the applicant stated at a Community Council meeting and would affect residents almost every weekend. Given the other events taking place at the site, there should be no more than 10 weddings between May to September in one calendar year;
- condition 4 should be reworded to ensure that all weddings are finished and all guests vacate the site by midnight;
- condition 5 should be reworded to ensure all staff vacate the site by 1am at the latest

- condition 6 would result in a lot of guests and staff, therefore a lot of noise. This should be limited to 55 guests as per the capacity of the barn;
- condition 7 does not specify the areas for guest parking;
- agree with condition 8 but gates should be locked every evening, not just during wedding events. They also state that another gate should be installed at an existing opening to the west of the site to limit guest access to the land to the north of the site; conditions 9 and 10 are vague and should be more specific and require that no events take place until noise mitigation measures have been submitted, agreed and are in place. These should state what the noise measures and mitigations are as there is no indication that these can be satisfactorily met;
- condition 11 should restrict amplified music between 4pm and 11pm as the draft condition would allow late night noise which is inappropriate in this rural location;
- condition 12 should be amended so that 'any neighbouring noise sensitive living apartment' be replaced with 'the boundary of any noise sensitive premises'. If this cannot be met and attenuated the application should be refused;
- conditions 14 and 15 are vague, with the door system in 14 unclear and 15 stating the door be closed after every door opening;
- condition 16 should restrict music till 11pm;
- additional conditions are required to protect the amenity and character of the area, including: a restriction to outdoor areas to only be by the greenhouse, cafe/shop and barn; for outdoor drinking to cease at 10pm; the submission of an operating plan detailing how visitors will leave the site to be approved and implemented for wedding events; restrictions for when bin collections/noisy clearing activities to be done the following morning rather than immediately after the event; any permission to be temporary to allow a full assessment of the effectiveness of any conditions; personal permission to the applicant only; and a monthly report to the Planning Authority to include details of the number and dates of events, the number of guests, the nature of the activity and operating hours to help address concerns of enforceability;
- all conditions should be enforceable by the Planning Authority and if not then permission should not be granted;
- the site should be used as a smallholding only and in terms with the permission granted for the cafe and shop (reference 13/00398/DPP).

3.11 The representations made objecting to the application request their original comments remain a consideration and that they continue to object to the proposed wedding events application and request the application is refused.

3.12 Considering the comments received, the Planning Authority has amended the without prejudice conditions as shown below. However not all the comments made by interested parties have been included into the conditions because they are either not necessary, relevant to planning, relevant to the application, enforceable, precise or reasonable. The conditions are as follows:

1. The permission hereby approved ~~allows~~ **is** for the use of the site **for the holding of as a wedding events use** and not **for any** other events~~use~~.
2. The wedding use hereby approved shall not operate outwith 1st ~~April~~ **May** to 30th September with all staff at any wedding on 30th September vacating the site by 1am on 1st October.
3. The number of weddings permitted to take place at the site in a calendar year shall be limited to 20.
4. The wedding use hereby approved shall only operate between the hours of 4pm to midnight. ~~and~~ All guests shall vacate the site by midnight.
5. All staff members shall vacate the site by 1am on the morning following the related weddings.
6. The maximum number of guests attending ~~the~~ **any** weddings shall be restricted to 100.
7. Staff parking shall be restricted to the area outlined in yellow on approved drawing 8946_102 A and no other area within the site. **All guest and coach parking shall be restricted to the area outlined in green on approved drawing 8946_102 A and no other area within the site.**
8. ~~A-Lockable gates~~ shall be installed at the pathways to the north of the site in the areas identified in orange on approved drawing number 8946_102 A and these shall be locked between the hours of 4pm to 1am on the days weddings take place. Details of the design, materials, dimensions and finish of this gate shall be approved in writing by the Planning Authority and this gate shall be installed within one month of the date of this permission.
9. Within one month of the date of this decision, a schedule of noise mitigation and reduction measures covering all areas within the site to be used as part of the wedding venue shall be submitted to and approved in writing by the Planning Authority. **This shall include details of how the site will operate during a typical wedding event, how staff will clear/tidy the site including restrictions on noisy works such as glass clearing and collection, any traffic mitigation measures to limit the disturbance to nearby**

[properties](#). These approved details shall be implemented in a timescale to be agreed in writing in advance of any wedding taking place at the site and will be complied with during any wedding events.

10. Within one month of the date of this decision, details of the proposed upgrading of the sound insulation properties of the barn shall be submitted to and approved in writing by the Planning Authority. These approved details shall be implemented in a timescale to be agreed in writing and it shall be demonstrated to the satisfaction of the Planning Authority that these are acceptable before any wedding related use can take place within the barn.
11. Amplified music is only permitted within the barn indexed as 2 on approved drawing number 8946_104 A and at no other location within the site.
12. A sound limiter shall be installed within the barn during all wedding events with all amplified music channelled through this to ensure that the output is kept below a specific level to be agreed in writing by the Planning Authority within one month of the date of this permission. Thereafter this sound limiter shall be operated in strict accordance with these agreed levels to ensure that no amplified music or vocals are audible within any neighbouring noise sensitive living apartment.
13. A noise monitor shall be installed within the barn within one month of the date of this permission which shall be set up to record from 4pm until midnight on the days where the barn is used in association with weddings. The measurements shall be collected and made available to the Planning Authority for the first three weddings held after this decision notice has been issued and at any other time upon request of the Planning Authority.
14. The door system providing access to the barn shall be operated so that the external door and the internal lobby door are not open at the same time [and this door system shall not be removed without the prior written approval of the Planning Authority](#).
15. The external door to the barn shall be fitted with a self-closing device which ensures a controlled closing of the door and it shall not be propped open.
16. All music on site shall cease at 11.30pm and no music shall be played between 11.30pm and 8.00am.

17. The wedding use is hereby permitted within the buildings shown on the approved drawing number 8964_102 A: no new or additional buildings or marquees are approved for use in association with the wedding use hereby approved.

Reason for conditions 1-17: *These details are required to ensure that the wedding use is restricted to a level to protect the amenity of the surrounding residential properties; to ensure these mitigation measures are in place before any future wedding event at the site and that these remain in place whilst this use takes place.*

18. Within one month of the date of this decision, details of the proposed biological treatment plant on drawing number 8946_108 shall be submitted to and approved in writing by the Planning Authority. This shall then be installed and operational within six months of the date of this decision, unless otherwise agreed in writing by the Planning Authority.

19. In the period prior to the biological treatment plant being installed and becoming operational, the portaloos shown on approved drawing number 8946_108 shall be installed and operational in the location detailed on this drawing number in advance of any wedding use at the site and shall be made available for use by guests.

20. The portaloos required by condition 19 shall be for use by wedding guests: the toilets shown within the cafe will be used by members of staff only and not wedding guests; **other than those guests requiring use of the disabled facilities.**

Reason for conditions 18 - 20: *To ensure that there are adequate means for the treatment of waste water at the site; to ensure these measures are installed in a timeous manner.*

3.13 As detailed above, a schedule of draft conditions was circulated amongst the interested parties to ascertain if there can be some consensus among the parties with regard potential planning conditions if the Committee were to grant planning permission. Although some interested parties generally agree with these conditions, a number do not, either considering these too restrictive or inadequate to address concerns over the proposal. It is clear that no consensus can be found between all the interested parties.

3.14 Notwithstanding the above drafted without prejudice conditions, the recommendation is to refuse the application as set out in the June Committee report.

3.15 The 6 June 2017 Committee report (copy attached) referenced the relevant development plan policies in section 7. One additional MLDP

policy of relevance is **RD1: Development in the Countryside**, which sets the parameters of what would be acceptable development in countryside. The proposed development is assessed against the principles behind this policy in section 8 of the June report.

4 RECOMMENDATION

4.1 That planning permission be refused for the following reasons:

- 1. The proposed development is located within the countryside and green belt and, as such, is contrary to policies RP1 and RP2 of the adopted Midlothian Local Plan 2008 and policies RD1 and ENV1 of the Proposed Midlothian Local Development Plan.*
- 2. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed change of use would not have a significant adverse impact on the amenity of the neighbouring dwellinghouses due to the use bringing unacceptable levels of noise, traffic and light into an inherently quiet area and is therefore contrary to policy ECON8 of the adopted Midlothian Local Plan 2008 which seeks to support rural development where it does not introduce unacceptable levels of noise nor cause a nuisance to residents in the vicinity of the site and policy ENV18 of the Proposed Midlothian Local Development Plan.*

4.2 That an enforcement notice be issued requiring the cessation of unauthorised uses of the land and the holding of unauthorised events if the wedding events business or other unauthorised events continue without the required planning permissions.

Ian Johnson
Head of Communities and Economy

Date: 26 September 2017

Application No: 17/00219/DPP (Available online)

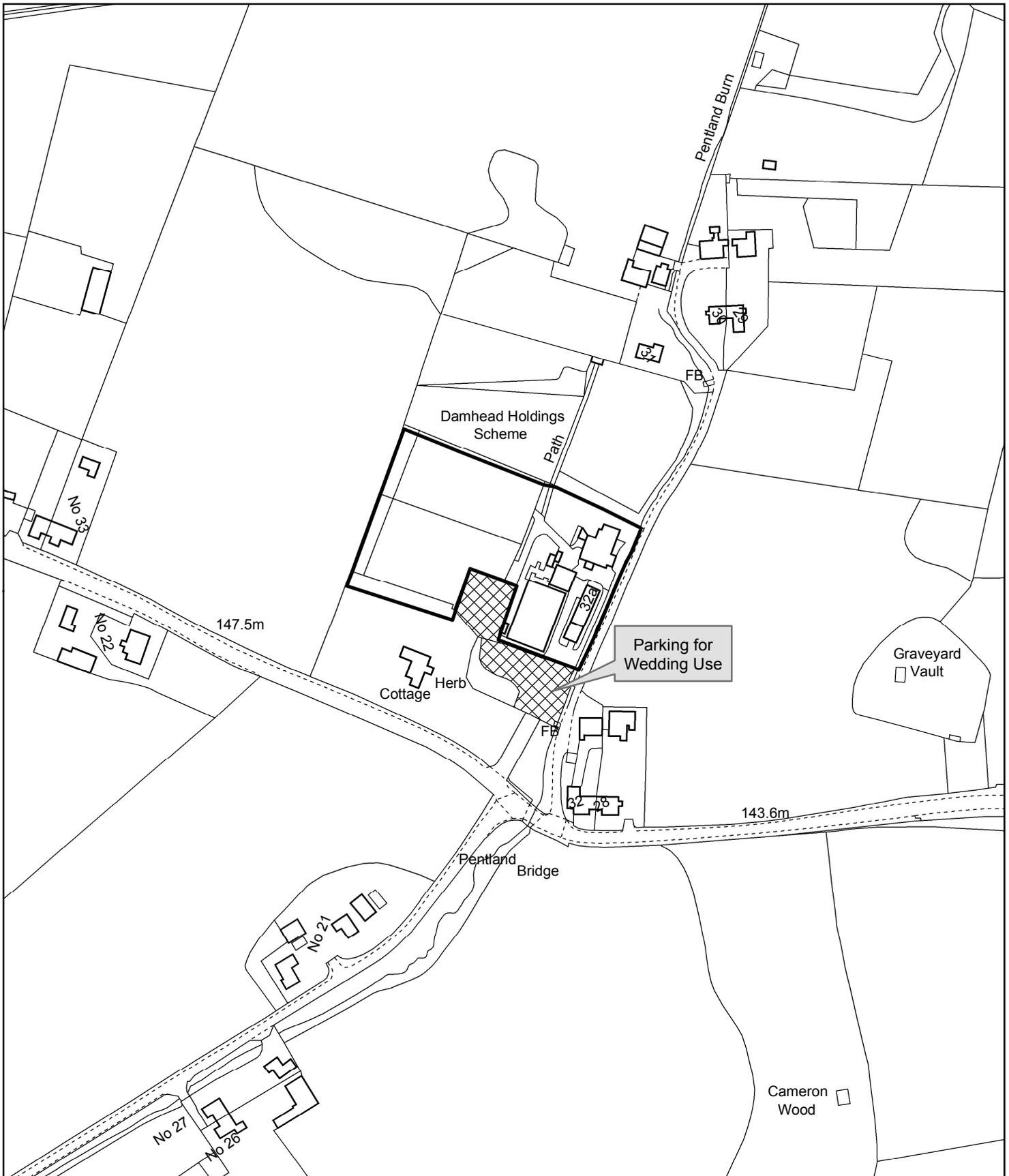
Applicant: Mr Hamish Martin, Secret Herb Garden, 32A
Damhead, Lothianburn

Agent: Albert Muckley, Ironside Farrar Ltd, 111 McDonald
Road, Edinburgh

Validation Date: 29 March 2017

Contact Person: Mhairi-Anne Cowie, Case Officer

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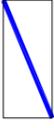
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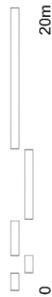
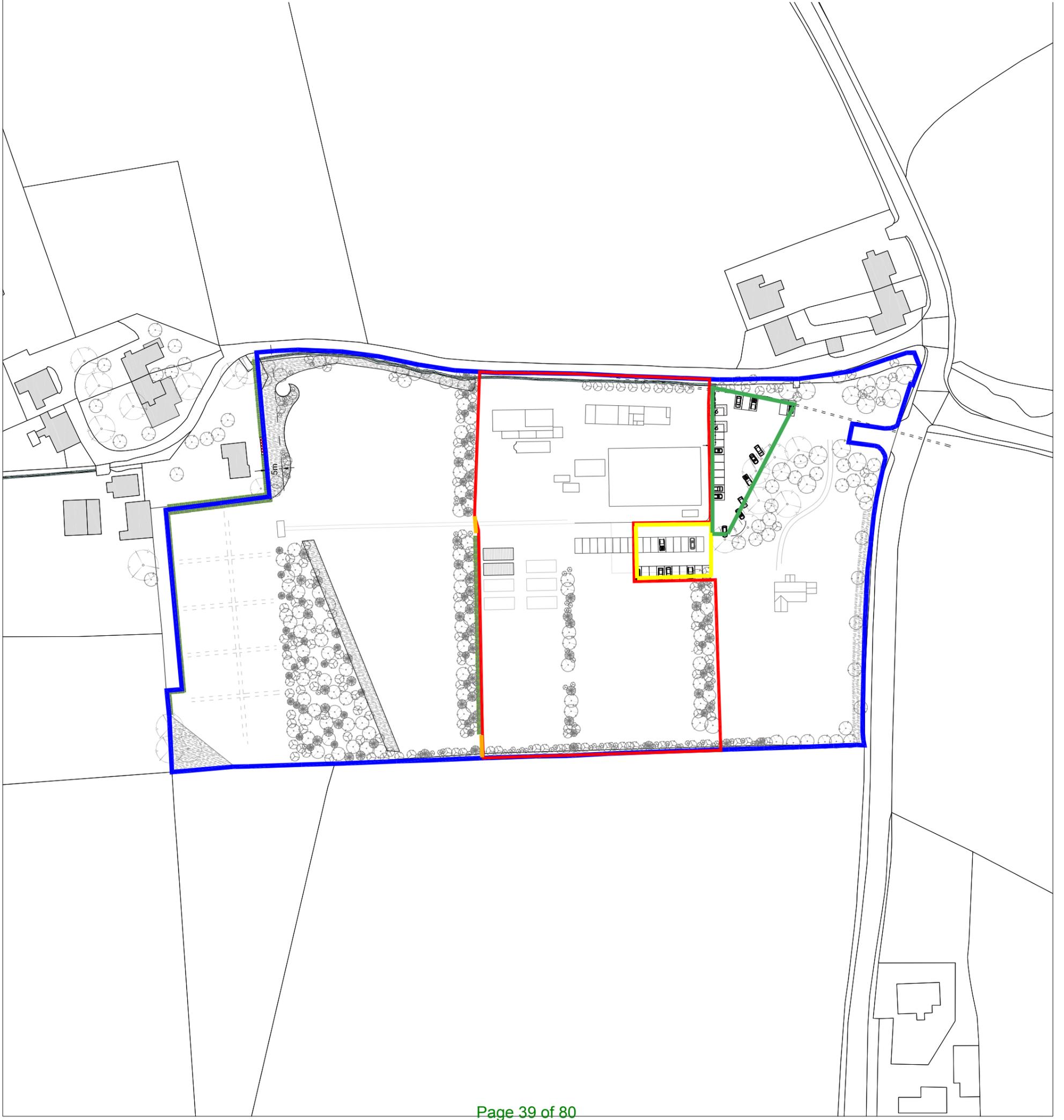
Key:



Ownership Boundary



Application Boundary
Area = 7137m²



Date
28.03.17

Revision
Boundary revised.

No.
A

Initials
KMcN

North Point



Drawn
KMcN

Checked by
NMC

Date
09.03.17

Scale
1:1250

Original Size
A3

Project
Secret Herb Garden
Residential Caravan

Client
Hamish Martin

Title
Weddings
Location Plan

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APPLICATION FOR PLANNING PERMISSION (17/00219/DPP) FOR THE PARTIAL CHANGE OF USE OF LAND AND BUILDINGS FOR WEDDING EVENTS (PART RETROSPECTIVE) AT 32A DAMHEAD, LOTHIANBURN

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the partial change of use of an existing horticultural business at the Secret Herb Garden, 32A Damhead for wedding ceremonies and associated receptions. There have been sixteen letters of representation and consultation responses from the Council's Policy and Road Safety Manager, the Council's Environmental Health Manager, the Scottish Environment Protection Agency (SEPA) and the Damhead and District Community Council. The relevant development plan policies are RP1, RP2, RP4, RP7, RP8, ECON8 and DP3 of the Midlothian Local Plan 2008 (MLP). Policies ENV1, ENV4, ENV7, ENV10 and ENV18 of the Proposed Midlothian Local Development Plan 2014 (MLDP) are material considerations. The recommendation is to refuse planning permission.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is within the grounds of the Secret Herb Garden (SHG), an established horticulture business including a plant nursery and ancillary cafe and retail outlet. The site area measures 0.91 hectares and is relatively flat, with the land to the west gradually sloping up towards the site's boundary.**
- 2.2 There are a number of buildings within the application site including a glasshouse, shed, barn, residential caravan and office. The site also includes an area of open space which is used to grow plants.**
- 2.3 Areas to the north and south of the site are under the control of the SHG and form part of the planning unit of the wider site. The area to the north comprises grassed open space, a yurt (portable round tent structure) and converted railway carriage, used as a bee observatory. The area to the south comprises the site's car park and a dwellinghouse related to the SHG business.**

- 2.4 The site is located within the countryside and green belt, with a number of dwellinghouses to the north-east and south-east. The site is accessed via Pentland Road.

3 PROPOSAL

- 3.1 It is proposed to partially change the use of the site to host wedding ceremonies and associated receptions, alongside the existing horticulture use. The events will take place between May and September. Seventeen weddings have been booked for 2017, with 15 events being on Saturdays, one on a Friday and one on a Thursday. This overall figure may change with the potential for additional bookings if planning permission is granted. Wedding events have been taking place on site since 2014. There were 11 weddings in 2016.
- 3.2 The hours of operation are 4pm until midnight. The ceremonies take place within the glasshouse or on the two areas of open space to the west. The venue can accommodate up to 100 guests. The reception area and temporary bar are located within the glasshouse. An alcohol consumption area is restricted (by licence) to an area around the glasshouse.
- 3.3 Live bands/amplified music will be housed in a barn situated within the eastern part of the site, the barn can hold up to 55 people. An acoustic report has been submitted which includes mitigation measures to limit the noise. The live/amplified music will cease by 11pm, with background music playing until 11.45pm.
- 3.4 A new septic tank is proposed as a medium to long term solution to the increased demand. In the short term, a temporary interim arrangement including the provision and use of portable toilets and a restriction on access to the existing toilets is proposed.
- 3.5 On site staff will; supervise vehicles entering and leaving the site, encourage customers to consume alcohol only within the allocated locations and monitor the use and volume of live/amplified music.
- 3.6 The application form states that the wedding event use has not begun. However the associated planning statement states the weddings began in June 2014, which correlates with correspondence between the Planning Authority, the applicant and local residents. The application submission includes financial information relating to the SHG business.

4 BACKGROUND

- 4.1 The site is a smallholding which has an established horticultural use.
- 4.2 Planning application 580/89 for the change of use of existing building to provide a retail shop and the erection of a temporary building to provide

coffee shop and offices was approved in 1989. This was a temporary permission until the end of 1992.

- 4.3 Planning application 02/00110/FUL for the demolition of the existing shop, the change of use and extension and alteration of packing shed to retail unit (part retrospective) was approved in 2003. Conditions were attached restricting the sales area and the goods to be sold and requiring the demolition of the temporary existing shop (approved under application 580/89) and container before the new shop was brought into use.
- 4.4 Planning application 07/00072/FUL for the relocation of retail unit and change of use of the retail unit approved in planning permission 02/00110/FUL to farm office and storage was approved retrospectively in 2007. Conditions were attached restricting the area to be used for retail sales, the goods to be on sale and the use of the building to administrative or storage purposes related to the farm/smallholding.
- 4.5 Planning application 05/00340/FUL for the change of use of the site to a children's play area with miniature railway, was refused in 2005 for the following reasons: potential to intensify the use of a substandard access onto a road with a 60mph speed limit, to the detriment of road safety within the area; the area is not served by public transport and there is a lack of walking and cycling links to the site, therefore it is considered unwise to support a proposal which could encourage the movement of children to and from this site, with its inherently unsatisfactory access onto a narrow, winding rural road.
- 4.6 Planning application 06/00139/OUT for the erection of a dwellinghouse was refused in 2007 as: it was not demonstrated that it was essential for the furtherance of the established horticultural business; the size of the proposed house plot far exceeds what would be considered an appropriate size for ancillary residential accommodation for overseeing the business operation; it would result in the loss of prime agricultural land, be highly visible and result in the coalescence of the farm development with the group of houses to the rear; and the applicant has failed to supply sufficient evidence of the quality of the outflow of water from the private waste treatment plant into the adjacent watercourse.
- 4.7 Planning application 07/00074/FUL for the temporary siting of static caravan for residential accommodation was approved in 2007. Conditions attached stated the caravan was only to be located in the position shown on the approved plans, be permitted for a temporary period of two years, be removed within one month of the expiry of the permission with the site made good. The caravan was to be occupied only by staff essential to the agricultural operation of the organic farm.
- 4.8 Planning application 12/00771/DPP (part retrospective) for the temporary siting of two static caravans to be used as a single

residential unit was approved in 2013 subject to conditions. The caravans were to be on site for a temporary period of three years, be removed within two months of the expiry of the temporary period and be linked and used as a single residential unit by the operator (and their dependents) of the horticultural business on the associated land at 32A Damhead.

- 4.9 Planning application 12/00780/PPP for the erection of a dwellinghouse was withdrawn in 2013.
- 4.10 Planning application 13/00398/DPP for the change of use from shop to cafe and shop, erection of extension to building and formation of new door opening was approved in 2013. This granted approval for the current layout of the site. Conditions were attached, including restricting the goods to be sold from the shop and the installation of a waste water treatment plant. The treatment plant has not been installed.
- 4.11 Planning application 13/00597/DPP for the erection of dwellinghouse and garage was approved in 2013. It was demonstrated the dwellinghouse was required for the furtherance of the established business. An occupancy condition restricts the house to be occupied only by the immediate family of a person employed in the fulltime operation and running of the SHG and at no time to be used as the main place of residence for any other person or persons.
- 4.12 An advert consent application 14/00724/ADV (retrospective) for signage at the site was approved in 2015.
- 4.13 Planning application 16/00045/DPP (retrospective) for additional car parking was approved at the site in 2016.
- 4.14 Two retrospective applications were submitted in 2016 to regularise unauthorised development at the SHG. The first of these applications 16/00636/DPP (retrospective) was for the retention of residential static caravan for a further temporary period (one of the caravans approved under 12/00771/DPP had not been removed within the time period prescribed). This was subject to five objections and an objection from the Damhead and District Community Council. The application was withdrawn before a decision was issued.
- 4.15 The second planning application 16/00637/DPP (retrospective) for the partial change of use of land and buildings as an events venue, incorporating weddings and private functions was submitted after the Planning team received complaints from local residents regarding events taking place at the SHG without planning permission. The application was subject to five objections, two letters of support and an objection from the Damhead and District Community Council. The application was withdrawn before a decision was issued.

- 4.16 Planning application 17/00180/DPP (retrospective) to retain the caravan for a temporary period was approved in May 2017. It is conditioned that the caravan be removed from the SHG and the site made good by the end of September 2017. A condition also restricts occupation of the caravan to an employee of the SHG.
- 4.17 Planning application 17/00205/DPP (retrospective) for the partial change of use of glasshouse building to incorporate evening dining events was submitted in March 2017. This, along with the current application for weddings, appears to separate the events applied for in application 16/00637/DPP. This was subject to seven objections, two letters of support and an objection from the Damhead and District Community Council. The application was withdrawn in April before a decision was issued.
- 4.18 The application has been called to Committee for determination by Councillor Parry as the use of land as a wedding venue will support economic development in the local area.

5 CONSULTATIONS

- 5.1 The Council's **Policy and Road Safety Manager** has no objection and is not aware of any road safety or transportation issues arising from the events which have taken place to date. The use of the site as a wedding events venue for a 5 month period does not raise any major transportation issues.
- 5.2 The Council's **Environmental Health Manager** has received complaints over the events taking place at the site. Given the proximity to neighbouring residents, it is considered the site is unsuitable for wedding events with amplified music within marquees. Environmental Health officers carried out an exercise in 2016 to assess the impact of amplified music played within the barn on the neighbouring properties. A reasonable sound level should be achievable within the barn without causing undue disturbance to neighbours, provided suitable noise mitigation measures are undertaken. The noise report submitted with the application assessed the structure of the barn and reported on any potential improvements to sound insulation. The Environmental Health Manager notes that workmanship and attention to detail in the execution of improvements to sound insulation are crucial in achieving the theoretical improvements in practice. If suitable works are undertaken and the management of the SHG can demonstrate that events can take place in the barn with an appropriate internal noise level to make wedding events viable without causing disturbance within neighbouring residential properties, the Environmental Health Manager has no objection to the wedding events provided the following conditions be attached to any consent: no marquees shall be erected on site to be used as part of weddings without prior written approval; the sound insulation measures shall be approved and installed before

live/amplified music is played in the barn; and any amplified music must take place within the barn and be controlled to an agreed level.

- 5.3 The **Scottish Environment Protection Agency** initially objected to the proposal on the grounds of lack of information in respect of foul drainage and the potential impact on the water environment. However the applicant has submitted additional information addressing their concerns. SEPA have subsequently withdrawn their objection.
- 5.4 **Damhead Community Council (DCC)** object to the application. They cannot support the proposal for an unspecified number of wedding events. They object to the open ended nature of the application as the term 'occasional use' can have many interpretations. DCC raise concerns over noise, light pollution, traffic given the potential numbers of guests, loss of amenity and the effect on neighbouring properties.
- 5.5 DCC consider the existing cafe on site for daytime visitors is reasonable, but full scale evening catering has a greater impact at a time when local residents are entitled to a good level of amenity. Wedding events generally involve loud music and physical activity and movement within areas not designed for this purpose with potential for accidents when compared to the dining functions.
- 5.6 DCC also raise concerns over the long term sewage/foul water management, as per SEPA's comments on the existing facilities. The existing septic tank was never designed for this level of use along with the additional waste water from the preparation of meals and washing up.

6 REPRESENTATIONS

- 6.1 Sixteen representations have been received in connection with this application.
- 6.2 Nine letters of support have been submitted on the following grounds:
- The objections on the ground of light and noise pollution are from people who do not live nearby. The closest neighbours have never experienced significant noise or traffic issues;
 - The applicants are actively addressing concerns over noise and light;
 - The approved landfill in the area causes more noise and traffic issues than the wedding events;
 - The SHG is an environmentally sensitive business in the countryside which has improved a neglected piece of land;
 - Concern that the objection from the Damhead and District Community Council's comments are not representative of the course of action agreed at their recent meeting;
 - The SHG is one of the best visitor destinations in Scotland and there would be job losses without the weddings events. The business is successful and warrants support to allow it to thrive

within the boundaries of planning policy and neighbourly cooperation. The applicants have diversified their business in order to succeed in today's climate to provide unique wedding opportunities. It is the most positive development to happen in Damhead for many years;

- If refused it would send a damaging message to the local community about the sort of place the Council would like Damhead to be; and
- Some objections are from an ex-employee which raises the question if this is a personal objection.

6.3 Seven letters of objection have been submitted on the following grounds:

- There is support for the horticultural business at the site but not the wedding events;
- The cafe is ancillary to the horticulture use, however the wedding events operate outwith the legitimate opening hours. It is unjustifiable to state that the wedding events would be ancillary to the horticultural business as this is a significant departure from planning policy;
- The proposal will significantly alter the character of the area and is out of character and scale with the surrounding landscape;
- There is no detail over the number, type or frequency of wedding events, or if the events would be held within the existing buildings or involve the use of outdoor drinking and seating areas;
- The number of quoted attendees does not include staff employed at the wedding events;
- The number of people employed at the site relating to the horticultural business is likely to be lower than those employed in relation to the wedding events and therefore have a reduced impact on local amenity;
- The wedding events would introduce excessive noise, light and traffic pollution into an otherwise quiet setting as this is an isolated business surrounded by rural properties, not conducive to loud, late night light and noise pollution;
- There should be no amplified music at the site. Consideration should be given to the noise and disturbance generated by people attending the wedding events and socialising as well the disturbance from the amplified music;
- The claim that the wedding events has been operating for two years without complaint is untrue as there have been a number of complaints including police incidents;
- Support for the Environmental Health Manager's recommendations;
- The sound test referred to in the acoustic report was purely noise created by a live band, which is not representative of a typical wedding event;
- It is not clear from the noise report if the assessment was with the barn doors open or closed;
- Impact on the privacy of nearby residents;

- Traffic and road safety concerns due to the increased traffic levels and proximity to two blind bends. A survey by the Transportation Department of the Council should be undertaken to assess whether any improvements are required and permission should only be granted if the entrance is deemed sufficient for current/proposed traffic levels. The volume of traffic using Old Pentland Road has increased since previous applications were approved;
- Further parking may be required due to the size of wedding events, which would result in the loss of good quality farm soil and undermine any future occupier carrying out horticultural works;
- The site plan indicates more parking spaces than previously approved;
- It may be necessary for a legal agreement to secure a contributions towards necessary road improvements to make the access safe for patrons;
- The commencement of the wedding events was done covertly without proper processes;
- The existing foul water system has not been upgraded as required by SEPA and there are insufficient toilet facilities provided. The septic tank cannot handle a greater volume of usage and there has already been a noticeable impact on the local burn after events;
- The poor sanitary facilities have been a feature of the site for three years and a permanent solution should be required immediately;
- How can it be ensured that there will be no breaches of foul drainage and who would monitor and enforce this;
- Lack of stewarding despite alcohol being consumed on site. There is an acknowledgement of the stewarding information submitted with the application but it is not clear how this will be carried out, enforced, monitored or the ratio between staff and guests;
- The proposal is contrary to the adopted Midlothian Local Plan and the proposed development plan policies RP1, RP2, RP4, RP7, ECON8 and ENV4, ENV7 ENV18;
- Should permission be granted, it is likely that the business will develop further, more extravagantly with irrevocable impacts;
- It is frustrating that time, effort and resources are spent researching the applications and submitting comments only for these to be withdrawn;
- The multiple applications for individual elements of the business do not clearly demonstrate all events taking place on site or give an accurate reflection of the overall changes to the smallholding. The application should not be considered individually but combined with application 17/00205/DPP;
- The application, along with withdrawn application 17/00205/DPP, appears a mix of application 16/00637/DPP which was withdrawn after being recommended for refusal. Little has changed between the previous and current application;
- The current application and application 17/00205/DPP should be withdrawn and resubmitted as one application in order to accurately assess and demonstrate the events venue;

- The application may be more likely to be supported if it were located on grounds away from residences with good communication and transport links with a fully planned and custom built facility designed to cater for a specific market and clientele;
- It is misleading to state that there would be no loss of agricultural land, with queries over the amount of car parking at the site that has resulted in the loss of prime agricultural land contrary to policy RP4;
- Damage done by guests to a fence on land which does not belong to the applicant;
- The application was submitted as a result of enforcement action which demonstrates a disregard of policy and procedure;
- There is a concern over the difficulty of enforcing planning conditions as there are a number of outstanding breaches of conditions and consents, including the retention of the caravan, conditions relating to 13/00398/DPP, relating to the approved house, retrospective applications applied for the car park and adverts;
- Permission should be refused on the grounds of consistent breaches and disregard for permissions and licences as well as irresponsible behaviour regarding public health and safety and nuisance and impact on neighbours and the area;
- A request for a review of the currently held permissions given the number of breaches and inconsistencies;
- The SHG was put up for sale with the house separate to the business, contrary to conditions attached to the permission for the house;
- A building warrant remains outstanding and consideration must be given to this before the planning application is determined;
- There are a number of other events taking place at the site, including gigs, corporate events, tasting sessions, exhibitions, parties and music nights, as well as full and new moon dinners;
- The application would set a precedent and allow similar schemes, with operating hours in excess of other business in the rural area;
- The value of nearby properties could be affected;
- The site is close to biodiversity assets of Damhead and increased night/evening traffic could lead to an increased level of road kill;
- The proposal does not align with the Damhead and District Neighbourhood Plan 2015-2030 nor enhance the community;
- Should permission be granted, the number of wedding events should be limited to ensure no further incremental growth of this development occurs without the necessary planning procedures being followed;
- Suggestions for conditions, should permission be granted include: to restrict live or amplified music within the acoustically treated barn which should be carried out before any wedding events take place; ensure the barn door be closed when live/amplified music is playing; the number of wedding events be limited to 10 per year as stated by the applicant at a recent Community Council meeting; the numbers of guests limited to 55 to protect the amenity of the area

and prevent further incremental growth of the business; impose noise limits; require compliance monitoring at the nearest noise sensitive properties; prohibit the erection of marquees; restrict operating hours to 11pm to protect residential amenity; restrict guest access to only the areas identified on the site plan during operating hours; require the applicant to make quarterly reports to Midlothian Council detailing all events on site, the nature of the event, number of persons attending, parts of the site used, date and operating hours;

- In times of high wind the glasshouse has been forced to close. It is unlikely that a wedding event would be cancelled if bad weather were to occur. It is imperative there is a building capable of accommodating all guests, therefore the maximum capacity of people attending a wedding should be the capacity of the barn;
- Comments about the licence application which should be considered a material matter if planning permission is granted as well as comments on the building warrant;
- The glasshouse is a safety hazard and queries if a health and safety assessment has been completed;
- If the previous application was refused, then so should the current application;
- It should be queried how successful the events aspect of the business can be if it is operating without a licence, planning permission or building warrants;
- The purpose of planning is not to prop up failing businesses but to determine if the site is appropriate for such a development;
- The claim that the garden centre has been unsuccessful in its traditional form may be because there are two garden centres within a mile of the site;
- The site was never vacant land but was a smallholding;
- The application form is misleading in its description of the size of the smallholding as the majority of the site is now developed which has resulted in the loss of agricultural land;
- Non-compliance with European Convention on Human Rights relating to the human right to the peaceful enjoyment of one's own home and property;
- This is a bad neighbour development;
- No permission has been granted for the yurt, shed or potting shed and these do not appear on the licence plan;
- Query over neighbour notification; and
- The route of the A701 relief road has not yet been decided.

6.4 A number of objections covered both the current application 17/00219/DPP and the withdrawn application 17/00205/DPP. The comments relevant to this application have been referenced in the report.

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 Plan, adopted in December 2008. The Proposed Midlothian Local Development Plan 2014 has been submitted to the Scottish Ministers and is subject to an examination which is likely to be concluded in summer 2017. As this plan is at an advanced stage of preparation and represents the settled view of the Council it is a material consideration of significant weight in the assessment of the application. The following policies are relevant to the proposal:

South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 Policy **12: Green Belts** require Local Development Plans to define and maintain Green Belts around Edinburgh whilst ensuring that the strategic growth requirements of the Strategic Development Plan can be accommodated. This will direct planned growth to the most appropriate locations and support regeneration. Local Development Plans should define the types of development appropriate within Green Belts.

The Midlothian Local Plan 2008 (MLP)

- 7.3 Policy **RP1: Protection of the Countryside** states that development in the countryside will only be permitted if: it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation, tourism, or waste disposal (where this is shown to be essential as a method of site restoration); it is within a designated non-conforming use in the Green Belt; or it accords with policy DP1;
- 7.4 Policy **RP2: Protection of the Green Belt** advises that Development will not be permitted in the Green Belt except for proposals that;
- A. are necessary to agriculture, horticulture or forestry; or
 - B. are for 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. are in accord with policy RP3, ECON1, ECON7 or are permitted through policy DP1.
- Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt;
- 7.5 Policy **RP4: Prime Agricultural Land** states that development will not be permitted which leads to the permanent loss of prime agricultural land unless particular criteria are met;

- 7.6 Policy **RP7: Landscape Character** which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required;
- 7.7 Policy **RP8: Water Environment** aims to prevent damage to water environment, including groundwater and requires compliance with SEPA's guidance on SUDs;
- 7.8 Policy **ECON8: Rural Development** permits proposals that will enhance rural economic development opportunities provided they accord with all relevant Local Plan policies and meet the following criteria: the proposal is located adjacent to a smaller settlement unless there is a locational requirement for it to be in the countryside; the proposal is well located in terms of the strategic road network and access to a regular public transport service; the proposal is of a character and scale in keeping with the rural setting; the proposal will not introduce unacceptable levels of noise, light or traffic into quiet and undisturbed localities nor cause a nuisance to neighbouring residents; the proposal has adequate and appropriate access; it is capable of being provided with drainage and a public water supply, and avoids unacceptable discharge to watercourses; and it is not primarily of a retail nature; and
- 7.9 Policy **DP3: Protection of the Water Environment** sets out development guidelines regarding flooding, treatment of water courses, drainage and Sustainable Urban Drainage Systems (SUDS).

Midlothian Local Development Plan (MLDP)

- 7.10 The MLDP is at Examination and it is anticipated that it will be adopted in 2017.
- 7.11 Policy **ENV1: Protection of the Green Belt** advises that 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 viable.
- Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt, which is to maintain the identity and landscape setting of the City and Midlothian towns by clearly identifying their physical boundaries and preventing coalescence;

- 7.12 Policy **ENV4: Prime Agricultural Land** states that development will not be permitted which leads to the permanent loss of prime agricultural land unless particular criteria are met;
- 7.13 Policy **ENV7: Landscape Character** advises that development will not be permitted where it may significantly and adversely affect the local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New developments will normally be required to incorporate proposals to maintain the diversity and distinctiveness of local landscapes and to enhance the landscape characteristics where they have been weakened;
- 7.14 Policy **ENV10: Water Environment** states there is a presumption against development which may cause a deterioration in water quality;
- 7.15 Policy **ENV18: Noise** states that the Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or require to be modified so that no unacceptable impact at sensitive receptors is generated; and
- 7.16 Policy **IMP3: Water and Drainage** states that development involving private sewerage systems will only be permitted where there is no public system in the locality and where the Council is satisfied that the proposal is acceptable in terms of the environment and public health.

National Policy

- 7.17 **Scottish Planning Policy** sets out the Scottish Government's policies in respect to a number of planning related matters. This states that the planning system should encourage rural development that support prosperous and sustainable communities and businesses while protecting and enhancing environmental quality.

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.

The Principle of Development

- 8.2 Damhead traditionally comprises of small cottages on crofting plots/small holdings. Some of the properties have diversified to incorporate other land uses/business. Acceptable businesses are those which do not adversely affect the character of the area or amenity of nearby residents. The relevant development plan policies seek to ensure that new operations and activities in the countryside do not introduce additional unacceptable noise and disturbance into inherently quiet areas to the detriment of the amenity of the area and nearby residents.
- 8.3 MLP policy RP1 states that development in the countryside will only be permitted if it is for the furtherance of agriculture, horticulture, forestry, countryside recreation, tourism or waste disposal. The consented use of the site as a plant nursery/horticultural business complies with the development plan and application 13/00398/DPP considered the cafe and retail outlet ancillary to the horticulture use, as well as complying with MLP policy ECON8 in support of tourism. The consented uses do not have an adverse impact on the character of the area or the amenity of nearby residents.
- 8.4 The development plan contains restrictive policies relating to proposals for new development within the countryside and green belt. These policies aim to prevent creeping suburbanisation and development in such areas which are under significant pressure due to the convenient commuting distance to Edinburgh, as well as protecting the character of the area. The plan also contains some enabling policies which supports some commercial developments within these areas in some specific circumstances.
- 8.5 MLP policy RP1 sets out the terms for acceptable forms of development in the countryside and aims to restrict development to that required for the furtherance of an established, and acceptable, countryside activity or business. MLP policy RP2 seeks to protect the green belt from development unless it is necessary for an acceptable countryside use or provides for opportunities to access the countryside for sport or recreation. Developments for other uses may be considered acceptable where they are appropriate to the rural character of the area.
- 8.6 The application proposes to retain the plant nursery, cafe and retail unit as well as hold wedding ceremonies and associated receptions. The wedding events began in 2014, and are not ancillary to the horticultural use. There is also a private dining events element to the SHG business which does not form part of this application. The Planning Authority considers both these elements to be new primary uses, not ancillary to the existing horticultural business. These uses both require planning permission. Application 16/00637/DPP covered both these

events, providing clarity over what activities take place at the SHG. This application was withdrawn before it was determined.

- 8.7 The Planning Authority would have preferred that the current application cover both the wedding and private dining events, to provide clarity over what operations currently take place on site and allow an overall accurate assessment of the impact that the events have on the surrounding area, which currently take place without the benefit of planning permission. However, the two elements were submitted as two separate applications and must be assessed as such; although one has subsequently been withdrawn. The Planning Authority is aware of the dining events element and is actively seeking an application related to this use to enable an assessment of its suitability for this location.
- 8.8 The applicant considers the wedding events use ancillary to the horticulture use and requested the description be 'occasional use of land and buildings for wedding events (part retrospective) ancillary to the principle horticultural use'. The Planning Authority has consistently maintained that the wedding events are not ancillary to but are a primary use alongside the horticulture use, therefore requiring a separate planning permission. The wedding events result in a significantly greater impact on the surrounding area than could reasonably be expected from the original use, therefore this cannot be considered ancillary. The wedding events have resulted in a number of complaints from residents in regards noise and disturbance.
- 8.9 The wedding events are to take place yearly between May and September. Details have been provided of the dates of the seventeen weddings booked for 2017 which are mainly on Saturdays but with one on a Friday and one on a Thursday. No details of the maximum numbers of weddings per year have been submitted. The site plan details the buildings and areas of site to be used in connection with the wedding events.
- 8.10 MLP policies RP1 and RP2 allow for some businesses in the countryside provided these meet particular criteria, including the furtherance of a horticulture business. The agent has submitted supporting information stating that the existing horticultural business is not viable and that the proposed wedding events use is required to support the horticultural use of the land. The supporting statement does reference the wedding events use and dining events as supporting the horticultural use. However, it is worth noting that in 2013 planning permission was granted for a dwellinghouse on the site after the owner demonstrated that the horticultural business was viable and not dependant on alternative uses for the site. Furthermore, the applicants submission of turnover for the 12 month period up to September 2016 suggests the wedding event business accounts for approximately 10% of the businesses turnover.

- 8.11 The applicant's statement suggests the horticultural business has been making increasing losses between 2013 to 2015 and that it is only in 2016 that the business overall made a profit, which is attributed to the wedding and dining events. Without the revenue generated from the events element, profitable trading solely from the horticultural business, cafe and shop will be difficult to achieve. The statement notes that the revenue and profit from the wedding events was more than twice that of the dining events. The applicant is willing to consider reducing the number of weddings and increase the numbers of dining events to attempt to limit the impact on residential properties whilst maintaining sufficient revenue to support the horticultural business. However they give no details of the number of weddings required to support the horticultural business.
- 8.12 The Planning Authority is sympathetic to the applicant's view that the horticulture business needs additional diversification but is not convinced the horticultural business will cease trading if the wedding events stop. In addition to the business arguments, the proposal must comply with other criteria of MLP policy RP1, including that the development must be of a scale and character appropriate to the rural area.

Impact on Rural Character of the Area

- 8.13 The Planning Authority must assess the impact the proposal would have on the character and amenity of the surrounding area. A balance must be found between the prospect of the continuation of the SHG operating as proposed and the impact that this would have on the character and amenity of the surrounding area and residents. The argument that the existing business requires additional income to continue operating does not mean that any diversification, at any cost, would be automatically supported.
- 8.14 Acceptable businesses in Damhead are those which do not adversely affect the character of the area or amenity of nearby residents. The use of the site for wedding events has the potential to cause significant disturbance to the surrounding area in terms of traffic and noise, and has done so to date when considering the comments made by objectors.
- 8.15 The wedding events can accommodate up to 100 people between 4pm and midnight. This is a significant amount of people within a quiet rural area with residential properties in close proximity. The site plan identifies a large central area for informal recreation, with an area around the glasshouse and nearby buildings designated as an alcohol consumption area. This means that there should be no alcohol outwith this central area. However, the guests using the area for informal recreation during wedding events are likely to generate noise disturbance. The general nature of weddings is for guests to relax and enjoy themselves within the confines of the venue, which in this case

would include the whole site. The buildings on site have not been designed to accommodate the type of use proposed to ensure that noise is contained. Whilst the Environmental Health Manager considers that it is possible to contain noise by adapting the barn where there will be amplified/live music, the general level of disturbance caused by large groups of people using the site as a whole is likely to, and has, caused undue disturbance to the local area.

- 8.16 Guests leaving the site at the end of events are likely to add to the noise nuisance. Given the rural location, it is likely that the number of vehicles would be sizable thereby creating more noise and disturbance. Although there is an existing business operating at the site, this has more 'standard' day time business operating hours which are acceptable in this area and do not result in large numbers of people accessing/leaving the site late at night. Use of the site for events would also result in additional lighting in terms of hours of illumination and the area of illumination which is likely to cause further disturbance to local residents. The lighting will arise from inside the buildings, external safety lighting and lights from associated vehicles.
- 8.17 It is worth noting that while there will be no more than 100 people in attendance at wedding events, this does not include the 38 employees as stated in the applicants submission. It is likely that the staff members will leave the site later than the guests, meaning that it is likely that the noise and disturbance in the area will continue after midnight when the guests have left.
- 8.18 The applicant has suggested they introduce mitigation measures to try to control the noise, such as acoustic fencing and bunds. The applicants would also accept a permission on a trial basis to try to address the concerns raised by objectors. However, the Planning Authority does not consider the mitigation measures to be appropriate in regards the impact these may have on the character or appearance of the surrounding countryside, or would be sufficient to address the general ambient noise which would arise from such wedding events. Since the use has been implemented in 2014 it has generated numerous complaints from local residents; it is not clear how any trial period would be appropriate or suitable. Had the use not been implemented previously, there may be some merit to granting a temporary permission to assess the impact the use may have, however it is clear that its impact to date has been detrimental to local amenity.

Transportation Issue

- 8.19 The proposal is not located adjacent to a smaller settlement. There is no locational requirement for it to be in the countryside. The site does not benefit from access to a regular public transport service. The proposed use of the site is not of a character or scale in keeping with the landscape of the area and does not enhance the rural environment.

- 8.20 The Council's Policy and Road Safety Manager has not raised any road safety concerns, despite the intensification of the vehicular access and the objections of local residents. They have stated that they are not aware of any road safety or transportation issues relating to previous events. There would be no requirement for a transportation assessment for the proposal. Should additional parking be required, this would be subject to a further application for assessment. The submitted site plan shows more parking spaces than approved in application 16/00045/DPP; however these do not appear to have been formed on site. The formation of new parking spaces does not form part of this application.

Drainage/Water Treatment

- 8.21 As detailed above, the Scottish Environment Protection Agency (SEPA) initially objected to the application on the grounds of lack of information regarding the foul drainage arrangements and potential impact on the water environment. SEPA were consulted as the application site falls within a waste water drainage consultation zone, which they have identified as having a proliferation of private waste water arrangements that is currently causing environmental problems.
- 8.22 SEPA had no objection to application 13/00398/DPP and granted a Water Environment (Controlled Activities)(Scotland) Regulations 2011 (CAR) licence related to the approved uses. Such licences are regulatory controls over activities which may affect Scotland's water environment. The CAR agreed an upgrade from the existing septic tank to a new secondary treatment system which would have a significant improvement to the quality of treated effluent being discharged from the site. A planning condition required the installation of the treatment plant before the cafe opened to the public. On the basis of the CAR being granted, SEPA recommended the two existing registrations for the existing septic tank be withdrawn as all foul flows on site would be treated by the new secondary treatment plant. These have not been withdrawn, but the new treatment plant has not been installed.
- 8.23 SEPA then objected to planning application 16/00637/DPP for the same reason as the initial objection to the current application. The new treatment plant has not been installed and no information was submitted to demonstrate the existing septic tank is appropriately sized to deal with the increased loading from the wedding events in addition to the horticultural, cafe and shop uses. They were also concerned over the proliferation of private discharges into a catchment of small watercourses in the area. SEPA confirmed they had received a complaint relating to foul drainage arrangements at the site.
- 8.24 Since application 16/00637/DPP was withdrawn and the current application submitted, the applicant and SEPA have been in discussions regarding the installation of the new treatment plant, which they estimated would not be installed until May 2017 at the earliest.

The applicants have stated the implementation of the treatment plant depends on planning permission being granted for the wedding events. An interim solution has been proposed which includes the provision of portable toilets to be used by the wedding guests, with the existing toilets for staff members only. The waste from the portable toilets would be disposed of off-site. Should the wedding events application be granted planning permission, the interim arrangements would remain in place until such time as funds/arrangements can be made to install the new treatment plant. This interim solution would also ensure there is no detriment to the receiving watercourse.

- 8.25 SEPA supported the principle of the interim solution before the current application was submitted, provided that consideration was given to the siting of the portable toilets to ensure if they leak there would be limited scope for impact on nearby watercourses. SEPA confirmed to the applicant that they would not regulate the portable toilets.
- 8.26 The applicant has submitted further details of the proposed interim arrangements, including a plan showing the position of the portable toilets and details of the longer term provision of the treatment plant. After considering this information, SEPA subsequently withdrew their objection. Should permission be granted, conditions would be required to secure the timely installation of the new treatment plant.
- 8.27 Although SEPA have withdrawn their objection, it should be noted that the new treatment plant required providing adequate drainage and facilities to the additional customers for the cafe and retail use has not yet been installed. This means that there is insufficient drainage provision for the customers of the cafe and retail unit, before even considering the additional people attending and working at the wedding events.
- 8.28 Also SEPA's acceptance of the interim solution was on the basis that the siting of the portable toilets ensured any leakage would have limited impact on nearby watercourses. Objectors have stated that this is not the case as they have been positioned closer to watercourses than as stated on the submitted plan. Breaches of foul drainage would be enforced by SEPA or the Council's Building Standards team and breaches of a condition relating to the installation of the treatment plant as part of any planning approval would be enforced by the Council as Planning Authority.

Other Matters

- 8.29 The neighbour notification procedures as defined by the regulations were correctly carried out by the Council. The application was also advertised in the local press for the purposes of neighbour notification and as a potential bad neighbour development.
- 8.30 The frustration of the objectors relating to the numerous applications submitted and withdrawn by the applicant is noted. However it is in the

applicants control to withdraw their applications if they feel it appropriate to do so. Any outstanding alleged breaches of planning control will be investigated and resolved.

- 8.31 A building warrant application is under consideration to alter and convert the glasshouse, barn and a number of other buildings from agricultural to commercial premises. This will consider the drainage proposals and ensure that the buildings are fit for their proposed uses. There is no requirement to delay determination of the planning application until the building warrant is determined.
- 8.32 A number of comments were made in relation to the licence application, highlighting a number of differences between the two applications. The Planning Authority can only assess the merits of the planning application. However, the Planning Authority has provided comments with regard which works/uses require the benefit of planning permission, to the licensing process.
- 8.33 Non-compliance with the Damhead and District Neighbourhood Plan 2015-2030 is not a material planning consideration.
- 8.34 Planning permission 16/00045/DPP for the formation of a car park, increasing the parking provision within the SHG to 45 spaces was approved. This application was advertised in the local press and was subject to the Council's neighbour notification procedures.
- 8.35 The Planning Authority is aware all buildings on the site, with the exception of the yurt and shed, have been there for some time and therefore are immune from enforcement action. The yurt (portable round tent structure) does not require planning permission.
- 8.36 The issue of damage to fences is not a planning consideration but a private legal matter between the parties involved.
- 8.37 The impact of the wedding events on the value of nearby properties is not a material planning consideration.
- 8.38 The Planning Authority is actively communicating with the applicant and their agent to address all unauthorised works at the SHG. The current application cannot be refused due to alleged breaches of conditions or alleged irresponsible behaviour regarding public health and safety.
- 8.39 The Planning Authority is aware that the SHG site was previously marketed for sale and that the particulars did not include the associated house. The dwellinghouse is no longer listed as being for sale.

9 RECOMMENDATION

- 9.1 That planning permission be refused for the following reasons:

- 1. The proposed development is located within the countryside and green belt and, as such, is contrary to policies RP1 and RP2 of the adopted Midlothian Local Plan 2008.*
- 2. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed change of use would not have a significant adverse impact on the amenity of the neighbouring dwellinghouses due to the use bringing unacceptable levels of noise, traffic and light into an inherently quiet area and is therefore contrary to policy ECON8 of the adopted Midlothian Local Plan 2008 which seeks to support rural development where it does not introduce unacceptable levels of noise nor cause a nuisance to residents in the vicinity of the site.*

Ian Johnson
Head of Communities and Economy

Date: 23 May 2017

Application No: 17/00219/DPP (Available online)

Applicant: Mr Hamish Martin, Secret Herb Garden, 32A
Damhead, Lothianburn

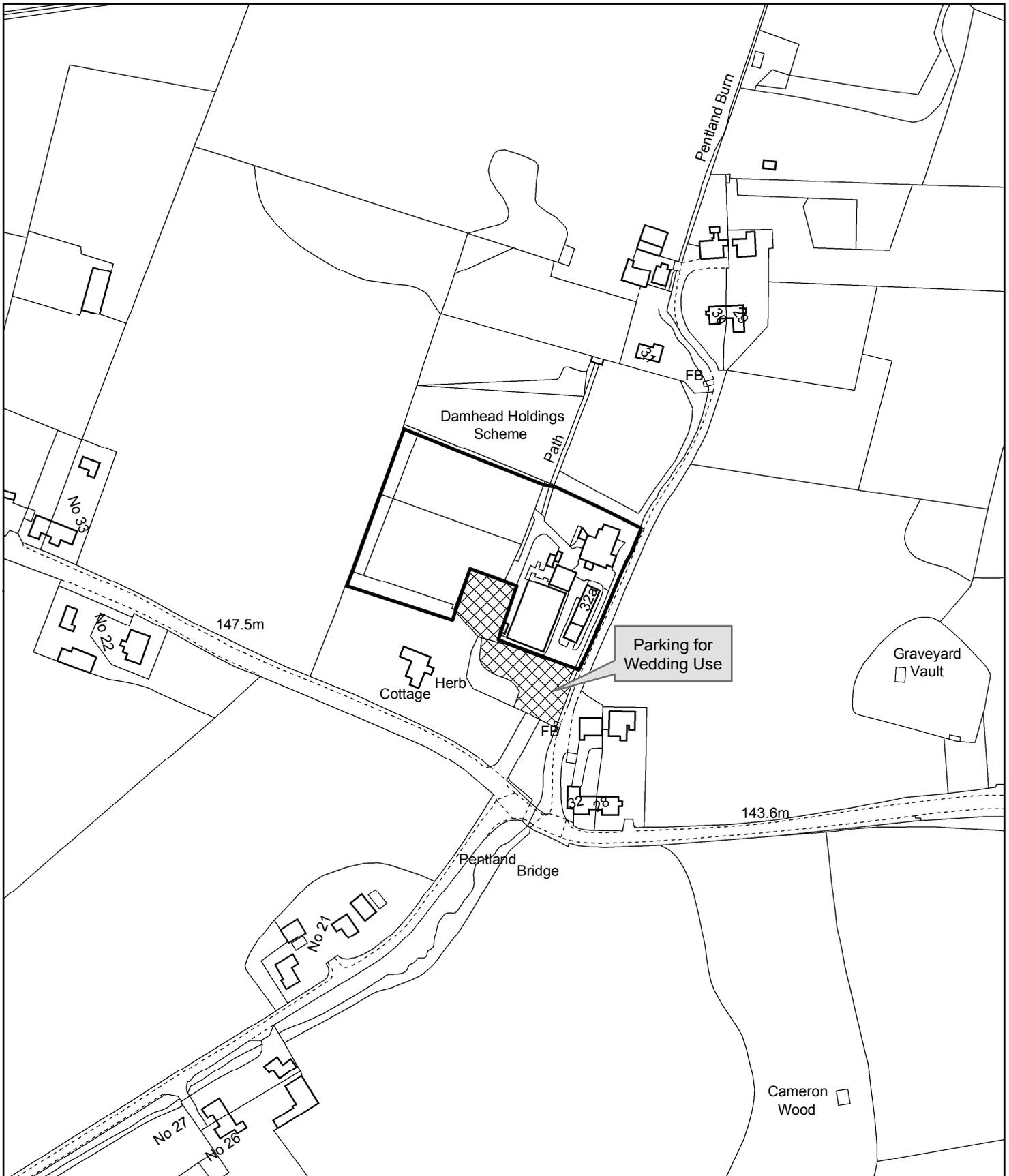
Agent: Albert Muckley, Ironside Farrar Ltd, 111 McDonald
Road, Edinburgh

Validation Date: 29 March 2017

Contact Person: Mhairi-Anne Cowie, Case Officer

Tel No: 0131 271 3308

Background Papers:



**Education, Economy
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APPLICATION FOR PLANNING PERMISSION (17/00170/DPP) FOR THE ERECTION OF 20 FLATTED DWELLINGS, FORMATION OF CAR PARKING AND ASSOCIATED WORKS AT LAND AT THE FORMER MAYFIELD INN, BOGWOOD ROAD, MAYFIELD

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of 20 flatted dwellings on the site of the former Mayfield Inn, Bogwood Road, Mayfield. There has been two representations and consultation responses from the Council's Policy and Road Safety Manager, the Council's Education Resource Manager and the Coal Authority. The relevant development plan policies are RP20, HOUS3, HOUS4, SHOP1, IMP1, IMP2 and DP2 of the Midlothian Local Plan. Policies DEV2, DEV3, DEV6, TCR1, IMP1 and IMP2 of the Proposed Midlothian Local Development Plan 2014 (MLDP) are material considerations. The recommendation is to grant planning permission subject to conditions and securing developer contributions.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site comprises the grounds of the former Mayfield Inn to the north of Bogwood Court, accessed from Bogwood Road.**
- 2.2 The site area is 1,700 square metres (0.17 hectares) and slopes down from Bogwood Road to the east.**
- 2.3 The Inn has been vacant since 2014 and the building is single storey with harled and brick walls and a pitched pantile roof. There is an area of landscaping between the building and Bogwood Road to the east and north. There is a parking area to the west of the site with fencing around the perimeter.**
- 2.4 There is housing to the north and east of the site, with open space to the west. Bogwood Court is to the south, which includes commercial units, flatted dwellings and an area of open space.**

3 PROPOSAL

- 3.1 It is proposed to demolish the existing building and erect 20 affordable flats. These are to be positioned to the east and south of the site, generally within the footprint of the existing building. The building is to be three and four storeys high and of varying height as it steps down with the changes in ground levels from east to west. The building is to be of traditional form with modern detailing and a strong vertical emphasis to the openings. The walls are to be white render, grey brick and zinc cladding, with dark grey roof tiles.
- 3.2 The existing vehicular access is to remain and there will be parking for 20 cars as well as cycle storage. A refuse store is proposed to the north of the site.

4 BACKGROUND

- 4.1 Planning application 16/00764/DPP for the erection of 21 flatted dwellings, formation of car parking and associated works was withdrawn in March 2017 in response to concerns being raised over the design of the building. This application received 9 objections of which one was from the Mayfield and Easthouses Community Council.
- 4.2 Planning permission 17/00499/DPP for the erection of fence for temporary period of 1 year (retrospective) was approved for one year. The fence is acceptable for a temporary period only, as the design and height of the fence would detract from the character and appearance of the surrounding area if in situ for a longer period of time. The temporary permission will allow the landowner to secure the site while alternative occupants or uses are sought for the premises. This permission expires 26 August 2018.
- 4.3 The application has been called to Committee for determination by Councillor Baird who has concerns over the proposed use of the site and the impact this may have on the town centre.

5 CONSULTATIONS

- 5.1 The Council's **Policy and Road Safety Manager** has no objection but recommends conditions regarding the vehicle access, cycle storage facilities and the provision of a bin storage area, as well as details of street lighting, surface water drainage, road and footway surfacing. Furthermore, the parking provision is acceptable for social housing but if the occupation were to change to private housing a higher parking standard would be required.
- 5.2 The **Education Resource Manager** has stated there would be a requirement to secure developer contributions for the provision of eight primary and six secondary school places.

- 5.3 The **Coal Authority** has no objection subject to conditions being attached relating to site investigation and remedial works prior to the commencement of development.

6 REPRESENTATIONS

- 6.1 There have been two representations, one objecting and one supporting. All representations can be viewed fully online.
- 6.2 The objection is from the 'In It Together Partnership', a community group which seeks to improve Mayfield. The concerns are as follows:
- The partnership is currently consulting the local community on their vision for the future of Mayfield Town Centre with the intention of creating a Masterplan for the area around the application site. Approval of the application would mean the new town centre is designed around flatted dwellings and would create a major obstacle in the community endeavour. With the Newbattle Community Campus under construction, there is a one off opportunity to develop the area as a 21st century town centre;
 - The lack of a co-ordinated approach to buildings, spaces and their interconnectivity in the area would result in a piecemeal development;
 - The continued existence of a variety of shops, businesses and social meeting places is essential to prevent further decline and protect future economic and social opportunities in the town centre;
 - The site forms an integral part of Bogwood Court which at present is dedicated to ground floor/commercial use which creates a shopping and business centre to the community. The change of use from retail to residential would be inappropriate and not in the best interests of the community;
 - Mayfield would not benefit from losing the key town centre site for housing, especially given other major housing development in the wider area;
 - The proposal would detract from the character and amenity of the area, contrary to policy RP20;
 - The proposal would be contrary to policy SHOP1 as it would prevent development proposals bringing about an improvement to the range and quality of retail and commercial leisure facilities; and
 - The redevelopment of Mayfield Town Centre was identified as a priority in the Mayfield and Easthouses Neighbourhood plan and the current application is not part of that plan.
- 6.3 The letter of support is from the owner of the site (who is not the applicant), stating that the pub ceased trading in December 2013. The pub has been marketed since January 2014 with no interest for its continued use as a public house or alternatively as a food retailer. Given that there was no interest for commercial uses in the area the landowner entered into discussions with the applicant about a social housing development at the site, hence the current application. They

state that there has been no contact from the objector about the future plans for the surrounding area.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Plan, adopted in December 2008. The Proposed Midlothian Local Development Plan 2014 has been subject to an examination by the Scottish Ministers and was reported to the Council at its meeting of 26 September 2017 with a timetable to adopt the plan by the end of 2017. As this plan is at an advanced stage of preparation and represents the settled view of the Council it is a material consideration of significant weight in the assessment of the application. The following policies are relevant to the proposal:

The Midlothian Local Plan 2008 (MLP)

- 7.2 Policy **RP20: Development within the Built-up Area** states that development will not be permitted within the built-up area where it is likely to detract materially from the existing character or amenity of the area;
- 7.3 Policy **HOUS3: Windfall Housing Sites** advises that within the built-up areas, housing development on non-allocated sites and including the reuse of buildings and redevelopment of brownfield land, will be permitted provided that: it does not lead to the loss or damage of valuable public or private open space; it does not conflict with the established land use of the area; it respects the character of the area in terms of scale, form, design and materials; it meets traffic and parking requirements; and it accords with other relevant Local Plan policies and proposals, including policies IMP1, IMP2, IMP3 and DP2;
- 7.4 Policy **HOUS4: Affordable Housing** requires that on residential sites allocated in this Local Plan and on windfall sites identified during the plan period, provision shall be required for affordable housing units equal to or exceeding 25% of the total site capacity, as follows:
- for sites of less than 15 units (or less than 0.5 hectares in size) no provision will be sought;
 - for sites of between 15 and 49 units (or 0.5 to 1.6 hectares in size) there will be no provision for the first 14 units thereafter 25% of the remaining units will be for affordable housing
 - for sites of 50 units and over (or larger than 1.6 hectares in size), there will be a requirement for 25% of the total units to be for affordable housing.

Lower levels of provision, or a commuted sum, may be acceptable where this has been fully justified. Supplementary planning guidance for the affordable housing provision shall provide advice on: the acceptable tenure split between social and low cost housing; possible delivery mechanisms; the scope for commuted sums; and other relevant matters as necessary;

- 7.5 Policy **SHOP1: Town Centres** states that development proposals which bring about an improvement to the range and quality of retail and commercial leisure facilities provided in the town centres will be considered favourably;
- 7.6 Policy **IMP1: New Development**, this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are transport infrastructure, landscaping, public transport connections, including bus stops and shelters, parking in accordance with approved standards, cycling access and facilities, pedestrian access, acceptable alternative access routes, access for people with mobility issues, traffic and environmental management issues, protection/management/compensation for natural and conservation interests affected, archaeological provision and 'percent for art' provision;
- 7.7 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 requirements, related to the scale and impact of the proposal. This includes education provision, essential roads infrastructure, protecting valuable environmental assets within or adjacent to the site and compensation for any losses including alternative provision where appropriate. In this case the need to upgrade junctions and access arrangements will come through a Traffic Assessment and specific requirements may arise from water and drainage and flood risk assessments; and
- 7.8 Policy **DP2: Development Guidelines** sets out Development Guidelines for residential developments. The policy indicates the standards that should be applied when considering applications for dwellings.

Midlothian Local Development Plan (MLDP)

- 7.9 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;
- 7.10 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from windfall sites identified in the MLDP period for developments of between 15 and 49 homes;

- 7.11 Policy **DEV5** sets out the requirements for development with regards to sustainability principles.
- 7.12 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments;
- 7.13 Policy **TCR1: Town Centres** states that proposals for retail, commercial leisure development or other uses which will attract significant numbers of people, will be supported in Midlothian's town centres, provided their scale and function is consistent with the town centre's role;
- 7.14 Policy **TRAN5** seeks the provision of electric vehicle charging points in new developments.
- 7.15 Policy **IT1** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.16 Policy **IMP1: New Development**, this policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are: essential infrastructure, including transport, required to enable the development to take place; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes; access for people with mobility issues and; traffic and environmental management issues; and
- 7.17 Policy **IMP2: Essential Infrastructure Required to enable New Development to Take Place**, states that new development will not take place until adequate provision (related to the scale and impact of the proposed development) has been made for infrastructure, including education provision and environmental requirements identified in the Plan.
- 7.18 Policy **NRG3 Energy Use and Low & Zero-Carbon Generating Technology** requires that each new building shall incorporate low and/or zero-carbon generating technology projected to contribute an extra percentage reduction in greenhouse gas emissions beyond the emissions standard to which the building is subject under the Building Regulations.
- 7.19 Policy **NRG4: Interpretation of Policy NRG3** interprets Policy NRG3.

National Policy

- 7.20 **The Scottish Planning Policy (SPP)** in respect of housing is also a material consideration. In the interest of sustainability it is good practice to make best use of brownfield sites within towns subject to the protection of the character of the area and amenity of existing residents. This reflects the advice contained within the SPP (para 80)

which seeks more efficient use of land and buildings. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. The individual and cumulative effects of infill must be sustainable in relation to the social and economic infrastructure of a place, and must not lead to over-development;

- 7.21 The SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of the SPP are developed within the local plan policies, in particular policy DP2.
- 7.22 The SPP clearly states that design is a material consideration in determining planning applications and that planning permission may be refused and the refusal defended at appeal or local review solely on design grounds.
- 7.23 The Scottish Government policy statement, **Creating Places**, emphasises the importance of quality design in delivering good places.

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 site is identified in both the Midlothian Local Plan (MLP) and the Proposed Midlothian Local Development Plan (MLDP) as being situated within the built-up area of Mayfield where there is a presumption in favour of appropriate development. The site is not identified as a specific allocated housing site in either the existing or proposed plan, however this should not be considered as a presumption against development of the site; policies RP20 of the MLP and DEV2 of the MLDP are both supportive of development within the built-up area.
- 8.3 The proposed development will result in the loss of a commercial unit from the town centre in Mayfield. This property has traditionally operated as a public house. The policies of the MLP and MLDP do not specifically prevent the loss of public houses. Policies SHOP1 of the MLP and TCR1 of the MLDP provide support to proposals which bring about an improvement to the range and quality of commercial uses within the town centre. The proposal will result in a reduction in commercial opportunities in Mayfield town centre. However, the

premises has been vacant, available and marketed since 2014 with only very limited interest.

- 8.4 The application premises forms a prominent part of the town centre and its current condition has a negative impact on the appearance of the area. Given that there is no realistic prospect of the application premises re-establishing itself as a commercial operation it would be a significant benefit to the area for the site to be redeveloped.
- 8.5 Accordingly, the loss of the commercial unit and its replacement with a residential development is acceptable in principle.

Site layout

- 8.6 The proposed block of flats has an L-shaped footprint, and is orientated in such a way that its principal elevations address the courtyard at Bogwood Court and the main road, Bogwood Road. The development presents a strong frontage to the town centre courtyard, with parking and a small garden area located to the rear of the building.
- 8.7 The guidance in policy DP2 requires that 50m² of garden ground should be provided for each flatted property. The proposed site plan identifies an area of amenity space significantly below the level sought in the DP2 standards. In some cases, depending on the location of the site, the site constraints and the general amenity levels, it may be appropriate to accept lower levels of garden ground within residential developments. There are a number of existing flats in close proximity to the application site which do not benefit from private amenity ground. There is also a large area of open amenity space to the west of the site and a further public park in close proximity. The location of the application site, within the town centre, provides a good level of amenity in terms of the facilities available. Given the levels of public open space in the area and that the occupants would be afforded a good level of amenity, in these circumstances, the absence of private open space in compliance with policy DP2 would not warrant refusal.

Design

- 8.8 The proposed development comprises a building of three and four storeys in height. While the development is fairly traditional in form, with a rectangular footprint and pitched gabled roofs, it has a contemporary appearance.
- 8.9 The proposed building has a strong vertical appearance which has been emphasised by the modular approach to the design. This approach reduces the mass of the building, by interrupting the roof plane, and helps address the changing topography within the site. The contemporary approach to the design of the building is continued through the detailing of the fenestration and the proposed finishing materials, including zinc cladding and render.

- 8.10 Despite the contemporary design of the block of flats the scale and form of the proposed building is reflective of the buildings in the immediate surrounding area and represents a successful approach to the development of this site.
- 8.11 While an objector has raised a concern over the lack of co-ordination over the design of the building with the local community in relation to the plans to redevelop the town centre the proposed building represents a high quality design approach which would positively contribute to the area.

Impact on amenity

- 8.12 The position of the building is such that it would not result in any significant overlooking or overshadowing to existing properties, or have an overbearing impact on these.

Access and transportation matters

- 8.13 The on-site parking provision has been provided to a standard commensurate with that required for affordable housing of this size.
- 8.14 There are no transportation or road safety objections to the proposal. Further information regarding the cycle store is required in order to ensure that it is secure, fully fit for purpose and usable.

Biodiversity

- 8.15 The Council is seeking to encourage biodiversity across the area. This requirement is not reduced on development sites. Small measures can help encourage wildlife. In this case, it would be appropriate for the developer to provide features which encourage biodiversity, such as swift/bat boxes.

Carbon reduction and energy efficiency

- 8.16 It will, be necessary to condition that the development complies with the terms of policies NRG3 and NRG4 of the Proposed Midlothian Local Plan.

Developer contributions

- 8.17 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); and,
 - be reasonable in all other respects.
- 8.18 In accordance with Midlothian Council's 2008 Midlothian Local Plan policies, Proposed Midlothian Local Plan 2014 and Midlothian Council Developer Contributions Guidelines (Supplementary Planning Guidance), the following contributions are sought in respects of land at the site.
- 8.19 This proposed development of 20 flatted dwellings has been assessed in relation to the above guidance and it is considered that a Planning Obligation is required in respect of the following areas;
- Education provision;
 - Affordable housing;
 - Borders Rail;
 - Mayfield Town Centre;
 - Children's Play; and,
 - Maintenance of Open Space
- 8.20 **Non Denominational Primary School Capacity:** the Council has taken the decision to build a new primary school at the site of the former Newbattle High School to provide additional capacity in Mayfield. It is envisaged that the school will be built as a two stream school capable of future expansion to three streams which will be forward funded by the Council. Lawfield Primary School has insufficient spare capacity.
- 8.21 **Denominational Primary School Capacity:** additional denominational primary school capacity will also be required at St Luke's RC school.
- 8.22 **Non Denominational Secondary School Capacity:** the Head of Education has advised that this development gives rise to a need for additional capacity at Newbattle High School (or another high school in the event of a catchment review).
- 8.23 **Denominational Secondary School Capacity:** the Developer Contributions SPG requires that all new residential units in Midlothian contribute towards Midlothian additional denominational secondary school capacity at the Dalkeith Schools Community Campus.
- 8.24 **Mayfield Town Centre:** the Proposed Midlothian Local Development Plan requires identified sites in Mayfield to contribute towards improvements to Mayfield Town Centre.

- 8.25 **Borders Rail:** the site is located in the A7/A68 Borders Rail Line Corridor. As a consequence the applicant is required to contribute towards the Borders Rail Line.
- 8.26 **Children Play and Open Space:** the 2012 SPG on developer contributions identifies a requirement to contribute towards a local play park or make provision on site. For this application it is appropriate for a contribution to be made towards off site provision.
- 8.27 **Affordable Housing:** the applicant proposes that all units in this development will be affordable. Affordable Housing by definition is to be 'housing of a reasonable quality that is affordable to people on modest incomes (Supplementary Planning Guidance (SPG) Affordable Housing Adopted 6th March 2012, paragraph 3.1). Further comment on this is provided in the 'Other matters' section below.
- 8.28 **Open Space Maintenance:** the responsibility for the maintenance of the open space shall be the developers/ owners and provision shall be made in the deeds of sale of all housing units to contribute to the ongoing maintenance of these areas through a regular "factoring" charge.

Other matters

- 8.29 The representations received in response to this application refer to the local community based intention to promote significant improvements to the Mayfield town centre including the option of redevelopment: and this is focussed through the activity of the Mayfield In It Together Group. The Group is currently at a very early stage of scoping the project and seeking funding for masterplanning/feasibility work. In the assessment of this application it is not considered that the redevelopment of the application site for housing would adversely impact on the potential for improvements to, or redevelopment of, the existing Mayfield town centre.
- 8.30 The application has been assessed on the basis of the development comprising affordable flats. This development would not be acceptable on the basis of private housing because of the reduced levels of on-site parking and the proposed level of developer contribution, which does not require an affordable housing contribution. In addition, had the development comprised private dwellings it would have been subject to a requirement for an element of affordable housing. Therefore, should the application be approved it will be essential to ensure that the units within the development are retained in perpetuity as affordable flats.
- 8.31 The percent for art requirement provides an opportunity to support a local craftsman and provide a feature which helps the development create an identity. This requirement can be covered by planning condition.

- 8.32 It is important that the development is adequately served by essential infrastructure. For this reason there will be a requirement for the block of flats to be connected to Broadband infrastructure.
- 8.33 In terms of policy TRAN5 of the MLDP electric vehicle charging points are considered to be an integral part of any new development and should, therefore, be secured on this site.

9 RECOMMENDATION

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

The layout and detailed appearance of the development is of a high quality and will add interest to the street scene and it will not have a significant adverse impact on the amenity of nearby properties. Therefore the proposed development accords with the relevant policies of the Midlothian Local Plan (2008) and the proposed Midlothian Local Development Plan. The presumption for development is not outweighed by any other material consideration.

Subject to:

- i) the prior signing of a legal agreement to secure contributions towards education provision, the Borders Rail line, children's play provision and maintenance of play equipment and town centre improvements. The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.
- ii) the following conditions:
 1. Development shall not begin until details of a 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, protected during development and in the case of damage, restored;
 - iii proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
 - iv location and design of any proposed walls, fences and gates, including those surrounding the bin storage area;
 - 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. 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 and details of sustainable urban drainage systems to manage water runoff;
 - viii proposed car park configuration and surfacing; and
 - ix details of car park and footpath lighting.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi).

Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP20 and DP2 of the adopted Midlothian Local Plan, policies DEV2, DEV6 and DEV7 of the proposed Midlothian Local Development Plan and national planning guidance and advice.*

2. 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: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan, policies DEV2 and DEV6 of the proposed Midlothian Local Development Plan and national planning guidance and advice.*

3. No development shall begin on any part of the site until the following additional procedures have been completed:
 - a) The developer has submitted to the Planning Authority details of the measures it proposes to ensure that all the flats built on the site are occupied in perpetuity only as affordable housing as defined in the adopted Midlothian Local Plan;
 - b) The Planning Authority has approved the proposed measures in writing; and,
 - c) The developer has provided documentary evidence to the Planning Authority that the measures that the authority has approved are in place and the authority has confirmed in writing that the provision that has been made is satisfactory.

Reason: *The application has been assessed on the basis that the development provides affordable housing and this condition in*

essential in order to ensure that the flats remain available for occupation by people on modest incomes to meet locally the identified needs of people who cannot afford to buy or rent housing generally available on the open market.

4. Details of the appearance of the proposed cycle store shall be submitted to and approved in writing by the Planning Authority prior to the commencement of development on site. Details shall include the internal provision of Sheffield storage racks.

Reason: *To ensure that adequate cycle parking facilities are provided on site in order to encourage sustainable forms of transport.*

5. The buildings permitted shall not be occupied or brought into use until vehicular, cycle and pedestrian access details and routes have been constructed in accordance with plans to be submitted and approved in writing. The plans shall include details of construction, visibility, traffic calming measures, lighting and signage.

Reason: *To ensure the future users of the buildings have safe and convenient access to and from the site.*

6. No development shall take place on site until the applicants or their successors have submitted a detailed site investigation report, with regards coal mining legacy, following intrusive site investigation works, to the planning authority and that this report is agreed in writing by the planning authority. The site investigation report shall identify any need for remedial works to treat the areas of shallow mine workings and no development shall commence on site until the agreed mitigation measures have been carried out.

Reason: *The submitted Coal Mining Risk Assessment (Mineral Stability Desktop Report) identifies that further investigation work is required to be undertaken in order to establish the exact situation regarding coal mining legacy issues on the site. The above details are required in order to ensure that the site can safely be developed.*

7. 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 in the adopted Midlothian Local Plan and the Proposed Midlothian Local Development Plan and national planning guidance and advice.*

8. Development shall not begin until details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse. The delivery of high speed fibre broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the Proposed Midlothian Local Development Plan.*

9. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts 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 DEV5 of the Proposed Midlothian Local Development Plan.*

10. 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.*

11. Prior to the commencement of development details to demonstrate how the development complies with either policy NRG3 or NRG6 of the emerging Midlothian Local Development Plan shall be submitted to and approved in writing by the Planning Authority.

12. The flatted dwellings hereby approved shall not be occupied until the zero and/or low carbon equipment or community heating system approved as part of condition 10 of this permission is installed in accordance with a phasing scheme which is to be agreed in writing by the Planning Authority.

Reason for conditions 11 and 12: *To ensure this development complies with the on-site carbon emissions target stated in policy NRG3 of the emerging Midlothian Local Development Plan or secures the infrastructure for a community heating system in*

compliance with policies NRG3, NRG4 and NRG6 of the emerging Midlothian Local Development Plan, in order to promote sustainable development.

Ian Johnson
Head of Communities and Economy

Date: 26 September 2017

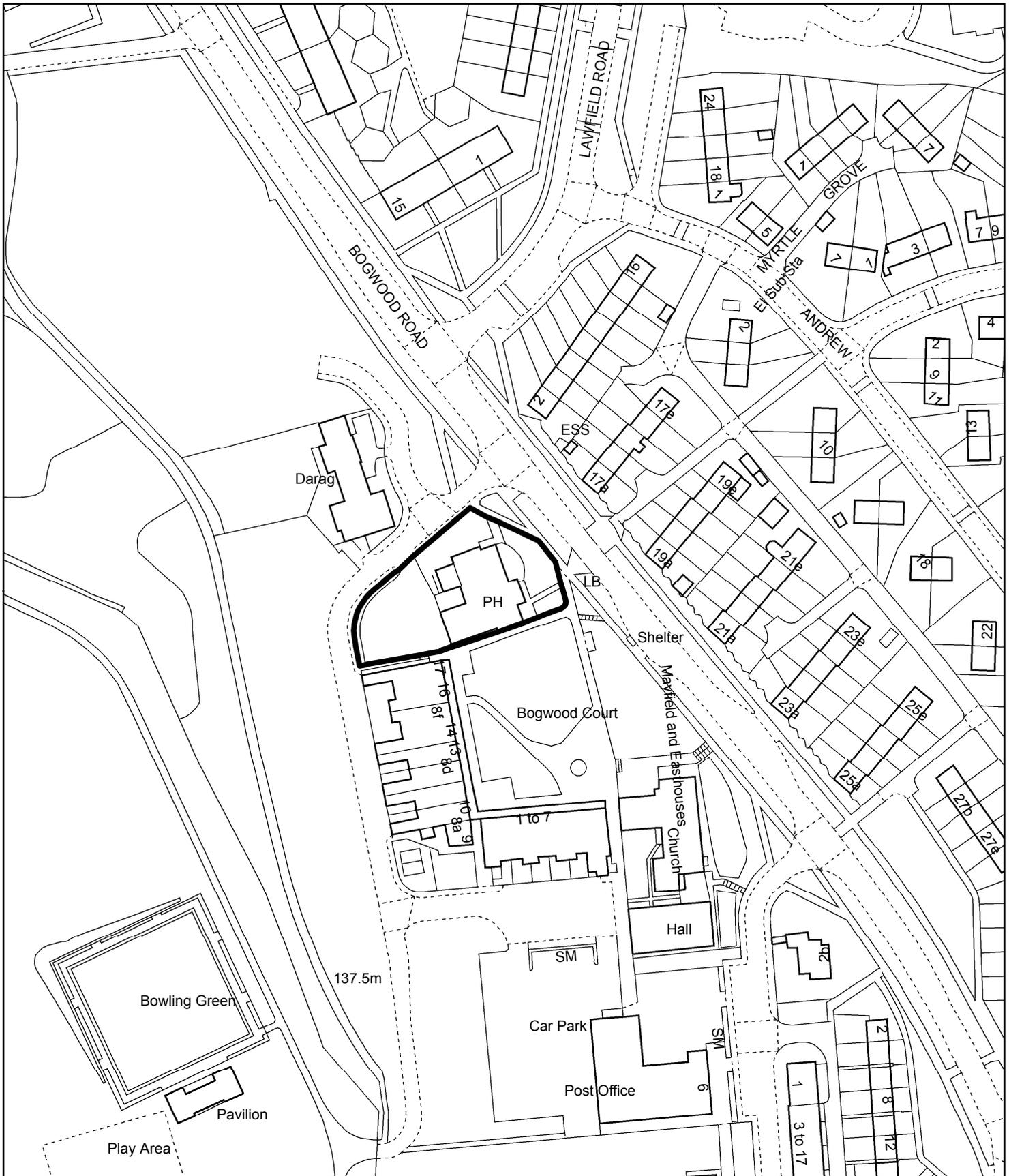
Application No: 17/00170/DPP (Available online)
Applicant: Whiteadder Ltd, 63 Main Street, Aberdour, KY3 0UH

Agent: EMA Architecture and Design, 42 Charlotte Square, Edinburgh EH2 4HQ

Validation Date: 10 March 2017

Contact Person: Mhairi-Anne Cowie, Case Officer

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**Education, Economy
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Land at Former Mayfield Inn, Bogwood Road, Mayfield

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