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**APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE  
21/00252/PPP, FOR RESIDENTIAL DEVELOPMENT, FORMATION OF  
ACCESS ROADS AND CAR PARKING, A SUSTAINABLE URBAN  
DRAINAGE SYSTEM AND ASSOCIATED WORKS AT LAND AT STOBS  
FARM, LADY BRAE, GOREBRIDGE.**

Report by Chief Officer Place

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## **1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

- 1.1 **The application is for planning permission in principle for residential development, formation of access roads and car parking, a sustainable urban drainage system (SUDS) and associated works on land at Stobs Farm, Lady Brae, Gorebridge and it is subject to an appeal for non-determination as it has not been determined by the local planning authority within the statutory period of time.**
- 1.2 **There have been 56 representations and consultation responses from the Coal Authority, Scottish Water, NatureScot, the Gorebridge Community Council, the Council's Archaeological Advisor, the Council's Policy and Road Safety Manager, the Council's Flooding Officer, the Council's Education Resource Manager, the Council's Senior Manager Protective Services and the Council's Land and Countryside Manager.**
- 1.3 **The relevant development plan policies are Policy 5 and 7 of the South East of Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT2, STRAT3, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, RD1, ENV2, ENV4, ENV7, ENV9, ENV10, ENV11, ENV15, ENV17, ENV18, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.4 **The recommendation is to propose to the Scottish Government Reporter determining the appeal to refuse planning permission.**

## **2 LOCATION AND SITE DESCRIPTION**

- 2.1 **The site is approximately 15.53ha of agricultural land to the south east of Gorebridge. The site is within land defined as countryside (under MLDP policy RD1) and is not within the built up area of Gorebridge.**

- 2.2 The site is bound; to the north/north west by Lady Brae (two way/30mph); to the east/north east by Mossend (two way/60mph) separated from the site by a circa 60m wide strip of agricultural land and with Millstone Brow Cottages and land associated with the former Sawmill further to the east; to the west by an unnamed single track road (60mph) and Stobs Farm buildings; and to the south/south east by agricultural land and a path (MID/8-35/4) and field boundary.
- 2.3 The site extends circa 586m to the south west of the existing built limits of Gorebridge. The site presents a circa 188m frontage to Lady Brae to the north and to the south the site is circa 400m in width.
- 2.4 Further to the north of the site is development comprising the south east limits of Gorebridge and committed housing site h39 at Vogrie Road. Further to the west, east and south is agricultural land (predominantly identified as prime agricultural land).
- 2.5 Trees and hedging are found predominantly at the south west and east boundaries. Other trees are identified more sporadically along Lady Brae. Internally within the site there are no landscape features of note and the land is characterised as being open land.
- 2.6 Within the wider landscape the site is elevated to the east of the South Esk and Gore Water river valleys. The elevated nature of the site allows uninterrupted views across Midlothian to the Scottish Borders to the south west and the Pentland Hills to the west.
- 2.7 The site is characterised by a notable incline from the unnamed road to the west of the site up to the east boundaries. The incline is most dramatic at the south of the site where the terrain rises by circa 39m. At the north of the site the gradient is less dramatic and rises by circa 10m to the east.
- 2.8 Bus stops are located on Lady Brae and Barleyknowe Road in close proximity to the site. Stobhill Primary School is located circa 400m to the northwest of the site boundary with Gorebridge Primary circa 450m beyond. Local facilities and services are mainly centred on Hunterfield Road circa 700m (as the crow flies) or a 10 minute walk from the northwest boundary of the site.

### **3 PROPOSAL**

- 3.1 Whilst proposals are indicative at this stage the proposed development identifies the following:
- Residential Development (indicatively 308 units) including 25% affordable housing;
  - Two new vehicular access points from Lady Brae and one from the unnamed road to the west;
  - Internal road and pedestrian network;

- Active travel route (3m wide) from Lady Brae through the site to Mossend at the southeast of the site;
- Areas of open/play space including natural play space;
- Sustainable urban drainage system (SUDS) including dry basin and wet pond;
- New planting including structured landscaping, orchard and pollinator corridor; and
- Removal of trees and hedging from the site.

3.2 The application is accompanied by:

- A pre-application consultation report (PAC);
- An air quality impact assessment (AQIA);
- A design and access statement (DAS);
- An archaeological desk-based assessment;
- An ecological assessment with great crested newt addendum;
- An education statement;
- An environmental noise impact assessment;
- A flood risk and drainage assessment (FRA);
- A housing land supply statement;
- A landscape and visual appraisal;
- A planning statement;
- A site investigations report;
- A site effectiveness statement;
- A sustainability statement;
- A transport assessment;
- A tree survey; and
- A natural play document.

## **4 BACKGROUND**

4.1 The proposal is classed as a Major Development, as defined by the Town and Country Planning (Scotland) (Hierarchy of Developments) Regulations 2009. Therefore, the applicant has certain obligations in relation to pre-application consultation with the community. The applicant submitted a proposal of application notice to the Council (20/00128/PAC) which was reported to the Committee at its meeting in June 2020. The application is accompanied by a pre-application consultation report which details the consultation methodology and the feedback gained from this process.

4.2 The applicant also submitted a request for a Screening Opinion under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (20/00129/SCR). It is the adopted opinion of the Council that the proposal is not an EIA Development as defined by the said Regulations.

## Appeal Position

- 4.3 This report of handling setting out the details of the proposed development, the relevant development plan policies and material considerations, a planning assessment and officer recommendation is here presented to the Committee for consideration.
- 4.4 The extended statutory time period to determine the planning application expired on the 11 January 2022. Rather than waiting until the outcome of this Committee meeting applicants have exercised their right of appeal against non-determination and have requested Scottish Ministers determine the application. A Scottish Government Planning Reporter will be appointed to determine the appeal on behalf of Scottish Ministers.
- 4.5 The Council received notification of the appeal from the Scottish Government's Planning and Environmental Appeals Division on 22 February 2022 and have been given until 9 March 2022 to make a submission setting out their position on the application. Any request for an extension of time to this can only be made at the Reporter's discretion. The appellant has requested that either a hearing or inquiry be undertaken to aid the determination of the appeal.
- 4.6 The Committee needs to reach a position on the application to enable officers to represent the Council's case at the appeal.

## **5 CONSULTATIONS**

- 5.1 The **Coal Authority** does not object to the application, but states that in order to mitigate the risk and to design the required remedial and/or mitigation measures to ensure that the development will be safe and stable, recommendations have been made that intrusive ground investigation works are required in order to determine the geological and mine setting beneath/within the site. The following stipulations were recommended:
- Prior to the submission of the detailed design - the applicant shall undertake a scheme of intrusive site investigations, designed by a competent person and adequate to properly assess the ground conditions on the site and establish the risks posed to the development by past coal mining activity (shallow mining / mine entries);
  - As part of the detailed design the applicant shall submit a report of findings arising from the intrusive site investigations and any remedial and/ or measures necessary, including the submission of the proposed layout plan which identifies the location of any on-site mine entries (if found present) including appropriate zones of influence for all mine entries, and the definition of suitable 'no-build' zones;
  - Prior to the commencement of development the agreed remedial works shall have been undertaken.

- 5.2 **Scottish Water** does not object to the application. They advise that there is currently sufficient capacity within the Rosebery Water Treatment Works for future water supply. However, it was noted that capacity of the Gorebridge Waste Water Treatment Works could not be confirmed and that a detailed Pre-Development Enquiry is required to be provided to consider future connection. They also note that future capacity cannot be reserved and that capacity will be reviewed upon any formal connection application being submitted to Scottish Water.
- 5.3 **NatureScot** does not object to the application, but note that the submitted ecology report seeks to recommend a number of positive actions to enhance biodiversity on the site.
- 5.4 The **Gorebridge and District Community Council** object to the proposed development for the following reasons:
- The site is not allocated for housing;
  - Part of the site is designated prime agricultural land;
  - Lady Brae is described in the transport assessment as “typically 5.5 – 6m in width” - once parked cars are taken into account, the road is essentially single-lane and has a very narrow pavement;
  - This development is likely to push Stobhill Primary School, a six minute walk away, over-capacity. The distance to Gorebridge Primary School is such that young children are likely to be dropped off by car;
  - The GP surgery will not have capacity and a solution to this constraint is not resolvable through the planning process or developer contributions; and
  - The new jobs referenced in the application will only be temporary and so the economic benefit of the development is limited.
- 5.5 The **Council’s Archaeology Advisor** does not object to the application but advises that a condition requiring a programme of archaeological works, including trial trench evaluation, to mitigate the impacts of the proposed development upon the historic environment should be included on any grant of planning permission.
- 5.6 The **Council’s Policy and Road Safety Manager** does not object to the application in principle, but highlights some concerns regarding the impact of the development on the local road network – the concerns are as follows:
- The site is poorly served by public transport with only a single bus service providing an hourly service at present;
  - While the northern section of Lady Brae, over the site frontage, can be improved the southern section, south of Vogrie Road is narrow with sections of on-street residential parking which restrict traffic flows to single carriageway; and
  - A development of this scale with direct vehicle access onto Lady Brae would intensify the number of vehicles using the route and may result in additional traffic congestion at peak times.

It is noted that if the application is to be recommended for approval the following conditions should be applied:

- Details of the proposed vehicle access points onto Lady Brae should be submitted for consideration and approval;
- Details of the new bus stops and shelter on the site frontage should be submitted for consideration and approval;
- Details of the new pedestrian crossing on Lady Brae should be submitted for consideration and approval; and
- The new traffic signals required at the A7/Stobhill Road junction (TA section 7.13) should be operational prior to the first house being occupied.

- 5.7 The **Council's Flooding Officer** does not object to the application subject to the following conditions:

Details of the proposed surface water management scheme and outfall for the development should be submitted for approval.

- 5.8 The Council's **Education Resource Manager** has stated that:

*"The capacity at the schools within the Gorebridge catchment will be retained for developments that have been included in the Midlothian Council Local Development Plan.*

*Any windfall developments will be require a roll projection to assess whether the pupil product from these development(s) could be accommodated. A full, realistic phasing plan, detailing completions by year would be required. There would have to be no detrimental impact on the allocated sites within the LDP for any windfall application to be considered"*

- 5.9 The Council's **Senior Manager Protective Services** has set out concerns regarding the planning application due to its proximity to a nearby dog day care centre, scaffolding yard, former sawmill and historic coal mining and the potential impact of noise, air quality and contaminated land on the development site.

#### *Noise*

It was noted that the submitted environmental noise impact assessment (2021) sets out that adverse impact from neighbouring uses may result and set out that further assessment at a full detailed application stage would be required. The following condition is recommended, should the application be approved:

- At the detailed design stage, a further noise assessment be submitted to demonstrate, through the use of appropriate site layout, mitigation measures, etc. that no external garden or amenity area will be subjected to a noise level in excess of 50dB LAeq(16hr) and that the internal daytime and night time noise

levels can be achieved as well as the WHO sleep disturbance criteria. This additional assessment should also include, once detailed site plans are available, further consideration of the impact of dog barking from the dog day care facility on the nearest housing.

### *Air Quality*

Whilst the air quality impact assessment states that no significant impact would result from the development, it does refer to the impacts of dust during construction. The following condition is recommended:

- A detailed construction management plan should be submitted to and approved by the planning authority prior to any construction activity taking place on site. This management plan should include all the measures discussed in Appendix 4 of the The Airshed Ref No. AS0734 Air Quality Impact Assessment.

### *Contaminated Land*

The applicant has submitted a report on site investigations, but it is noted that there is a lack of information in the report. The following conditions are recommended:

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

- 5.10 The Council's **Land and Countryside Manager** does not object to the application as the proposed masterplan seeks to accommodate existing routes into the development.

## 6 REPRESENTATIONS

- 6.1 There have been 56 representations received, which can be viewed in full on the online planning application case file. All of the 56 representations object to the proposed development. A summary of the main points raised are as follows:

- There is a lack of infrastructure to service the development;
- The existing road network is not sufficient to cope with the resulting increase in traffic. Local roads are already under strain;
- Development would mean to loss of land used by the local community for walking and dog walking;
- Stobhill Primary school experiences issues with car parking and pupil safety that the proposed development would exacerbate;
- Previous development proposing access onto Lady Brae was amended to remove this access due to safety grounds;
- Hagbrae is a small rural track not suitable for a main entrance into the new development;
- Concern that the transport assessment underestimates the quantum of car movements resulting from the site;
- The proposed toucan crossing would create noise disturbance to existing residents;
- The proposed highway changes would result in the loss of landscaping beyond the site boundaries;
- There is no speed limit sign on Lady Brae resulting in increased vehicle speeds;
- The proposed development and traffic generation would result in harm to air quality and produce air pollution;
- The construction traffic would harm Lady Brae and Barley knowe Road as they are unsuitable for such traffic;
- The proposed development appears to remove trees along Lady Brae only to propose replacement planting in their place. Existing trees and landscaping should be retained;
- New residents using the Gorebridge Station would in some instances drive to the station due to the gradient of the walk from the site to the station (particularly on return). The existing car parking at the Station is insufficient;
- Concern that the Borders Railway will not have capacity for the new demand;
- Local services and facilities do not have capacity for the new development. There is no large scale retail in Gorebridge to cater for demand;
- Local scale development (19/00928/PPP) was refused by Midlothian Council in the local area due to lack of school places;
- Whilst the site has access to public transport the journey times on the bus are much longer than car;

- Developing on prime agricultural land when other sites are coming forward not appropriate;
- Dependence on private cars for commuting would generate further CO2 emissions;
- The development at Redheugh including the provision of a new school and a potential new railway halt is a better site;
- The development does not address unsightly brownfield land to the east of the site;
- The development would have an impact on the Borthwick and Crichton Conservation Area;
- There would be a loss of habitat and open greenspace;
- The site is in the green belt;
- Concern that bus routes 39 and 33 no longer serve Gorebridge;
- The land is not designated for housing within the MLDP 2017; and
- The noise impact assessment was undertaken when COVID-19 restrictions meant noise generating activities (dog day care centre in particular) was not being operated at full capacity.

## 7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan June 2013 (SESplan1) and the Midlothian Local Development Plan 2017 (MLDP). The following policies are relevant to the proposal

### Edinburgh South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 **Policy 5 (HOUSING LAND)** requires local development plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing requirements for each period.
- 7.3 **Policy 7 (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY)** states that sites for greenfield housing development proposals either within or outwith the identified strategic development areas may be allocated in local development plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) the development will be in keeping with the character of the settlement and local area; (b) the development will not undermine green belt objectives; and (c) any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

### Midlothian Local Development Plan 2017 (MLDP)

- 7.4 Policy **STRAT2: Windfall Housing Sites** supports housing on non-allocated sites within the built-up area provided: it does not lead to loss

or damage of valuable open space; does not conflict with the established land use of the area; has regard to the character of the area in terms of scale, form, design and materials and accords with relevant policies and proposals.

- 7.5 Policy **STRAT3: Strategic Housing Land Allocations** states that strategic land allocations identified in the plan will be supported provided they accord with all other policies. The development strategy supports the provision of an indicative 350 housing units on the site (Hs0) to 2024, with a further 200 units safeguarded for the longer term up (beyond 2024).
- 7.6 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.7 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.8 Policy **DEV6: Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.9 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.10 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility).
- 7.11 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.12 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area.

- 7.13 Policy **TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.14 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.15 Policy **RD1: Development in 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 or tourism; it accords with policies RD2, MIN1, NRG1 or NRG2; or it accords with the Council's Supplementary Guidance on Development in the Countryside and Green Belt . For housing, this is limited to homes required to support an established countryside activity.
- 7.16 Policy **ENV2: Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the Midlothian Green Network.
- 7.17 Policy **ENV4: Prime Agricultural Land** does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification to do so.
- 7.18 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.19 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.20 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system

(SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.

- 7.21 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.22 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.23 Policy **ENV17: Air Quality** states that the Council may require further assessments to identify air quality impacts where considered requisite. It will refuse planning permission, or seek effective mitigation, where development proposals cause unacceptable air quality or dust impacts.
- 7.24 Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.
- 7.25 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.26 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.27 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.
- 7.28 Policy **IMP1: New Development** ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural

and conservation interests affected; archaeological provision and 'percent for art' provision.

- 7.29 Policy **IMP2: Essential Infrastructure Required to Enable New Development** to Take Place states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.30 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.
- 7.31 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. 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.
- 7.32 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
- 7.33 The SPP states that *design is a material consideration in determining planning applications and that planning permission may be refused and the refusal defended at appeal or local review solely on design grounds.*
- 7.34 The SPP supports the Scottish Government's aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.
- 7.35 The SPP notes that "high quality electronic communications infrastructure is an essential component of economic growth across Scotland". It goes on to state that "*Planning Authorities should support the expansion of the electronic communications network, including telecommunications, broadband and digital infrastructure, through the development plan and development management decisions, taking into account the economic and social implications of not having full coverage or capacity in an area*".
- 7.36 The Scottish Government policy statement, Creating Places, emphasises the importance of quality design in delivering good places.

- 7.37 Designing Places, A Policy Statement for Scotland sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.38 The Scottish Government's Policy on Architecture for Scotland sets out a commitment to raising the quality of architecture and design.
- 7.39 In particular reference to the SEPA objection and comments made in objections the following contents of SPP are important. In relation to Flood Risk SPP states at paragraph 256 the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. Piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity.
- 7.40 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.

## 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 The site is not allocated for residential development in the MLDP and is not identified as safeguarded land for future development within the MLDP. The site is identified as being countryside beyond the built up area of Gorebridge where there is a presumption against large speculative housing developments such as the one proposed. MLDP policy RD1 seeks to control development within the countryside – in countryside locations limited residential development will be only support if it:
- supports the furtherance of an existing agricultural, horticultural, forestry, countryside recreation or tourism operation;
  - comprises the conversion of a redundant rural building, or the redevelopment of a site occupied by a redundant rural building which cannot be converted; or
  - comprises a single dwellinghouse which supplements an existing small cluster of five or more dwellinghouses.

The details of which are set out in the Council's Supplementary Guidance on Development in the Countryside and Green Belt (adopted by the Committee at its meeting of May 2019).

- 8.3 The proposed indicative 308 residential unit development is outwith the scope of MLDP policy RD1.
- 8.4 The site is further identified as being part covered by a spatial designation as prime agricultural land. Development influencing prime agricultural land is controlled by policy ENV4. The policy sets out that development on prime agricultural land would only be permissible in three circumstances, which are:
- A. the site is allocated as part of the development strategy of this Plan (MLDP); or
  - B. the development is necessary to meet an established need (such as essential infrastructure); where there is no alternative site available; and where the need for the development outweighs the environmental or economic interests in retaining the farmland for productive use; or
  - C. it is a small-scale development directly linked to an existing rural business.
- 8.5 In response to the above criteria, the proposed development does not form part of the MLDP and is not small-scale. In response to point B above the applicant has set out a housing land supply argument that could result in the need for the development to outweigh the environmental or economic interests in retaining the farmland for productive use. It is considered that the Council can currently deliver a sufficient supply of housing land and that the environmental and infrastructure impact of the development would outweigh any benefit achieved through granting planning permission for a major development on an unallocated site. The housing land supply matter is considered in more detail below.
- 8.6 The principle of development is not established through the MLDP, which as set out above, would seek to resist such development at this location. It therefore needs to be assessed as to whether any material considerations exist that would outweigh the above policy position. These material considerations include:
- the supply of effective housing land;
  - site effectiveness;
  - infrastructure delivery; and
  - sustainable development.

#### The Supply of Effective Housing Land

- 8.7 The Council is required to maintain a five year supply of effective housing land at all times (SPP paragraph 125). The number of homes required in a local authority area is identified through the Strategic Development Plan (SESplan) (to be replaced by NPF4) and is met by the development strategy and policies of the MLDP. Where a shortfall in the supply of effective housing land emerges, sites that are not

allocated for residential development should be considered as possible additional sites to make up the shortfall. Sites accepted in this way are presumed in favour (in principle) subject to the applicant demonstrating that:

- they are effective;
- they contribute towards sustainable development;
- avoid any significant impacts on their locality in relation to amenity and environmental concerns; and
- their impact on local infrastructure can be mitigated.

- 8.8 The supply of effective housing land in Midlothian is subject to annual review in the Housing Land Audit (HLA21). The HLA is reviewed and endorsed by Homes for Scotland, the umbrella body which represents the housebuilding industry. The effectiveness of the housing land supply is also reviewed in the MLDP Action Programme. This will identify the trigger for introducing actions to make up any shortfall, if one is identified. These actions will be set out in the latest Action Programme approved by Council. Similarly, the MLDP also sets out policies to address a shortfall in the housing land supply where this arises during the lifetime of the plan. One such action would be the support for early delivery of safeguarded sites, provided that a proposal can demonstrate it can/will contribute to new homes to make up the shortfall – this approach is supported by MLDP policy STRAT3. Whilst the Committee has previously approved housing development on safeguarded sites it is reiterated that the proposed development is not a safeguarded site.
- 8.9 The most recent Housing Land Audit (HLA21) covers the period up to 31 March 2021. It identifies land for housing which can deliver 11,938 new homes in Midlothian. The five year supply of effective housing land equates to 4,500 homes due to be delivered between 2021 and 2026. Calculated against housing supply targets, this is a 5.1 year supply of effective housing land, meaning there is a small surplus of effective housing land in Midlothian.
- 8.10 The latest MLDP Action Programme was presented to the Committee in June 2021. It reviews the performance of policies of the MLDP and provides an update on development progress within Midlothian. The Action Programme reiterates the position that there is an effective five-year land supply in Midlothian (para 6.15).
- 8.11 This position confirms the assessment of Midlothian's Housing Land Supply in the Department of Planning and Environmental Appeals (DPEA) Examination of the MLDP. Paragraph 40 of the Reporter's Examination Report confirms that the "*proposed plan would be sufficient to ensure the maintenance of a 5-year effective housing supply*". Therefore, there is a surplus of housing land in Midlothian and the policies relating to housing land within the MLDP remain as the primary determining policies in the assessment of this application. This

means that there is no need to allocate more land for housing and that the protective MLDP policies RD1 and ENV4 cannot be easily set aside.

- 8.12 A complication has recently emerged which must be considered as part of this assessment. SESplan was approved in 2013, with Supplementary Guidance on Housing Land Supply approved a year later. These documents are both more than five years old and are, therefore considered out of date under the terms of SPP 2014. SESplan was due to be replaced by SESplan2. However, Scottish Ministers rejected SESplan2 as its spatial strategy did not fully consider transport implications. The result of this is that the strategic plan is out of date with no new targets approved against which to measure the current supply. However, despite this position SESplan still forms part of the development plan and is a material consideration. The other part of the development plan, the MLDP, allocates sufficient land to meet the Council's housing targets (set by SESplan) although they are increasingly becoming outdated and vulnerable to challenge at appeal and will be superseded by NPF4. The consultation draft of the NPF4 set out an annual housing supply target for Midlothian of approximately 800 units (8,050 units for the period 2026-2036 and 805 units per year between the adoption of NPF4 and the adoption of MLDP2). Although supporting this development would contribute towards any future housing land supply needs, it is not certain at this stage if additional sites are required, and if they were, if this site is appropriate.
- 8.13 For planning authorities in the SESplan area, and the Reporters for the DPEA, this situation has led to unique challenges. This is because the approach to determining an application for residential development that is not allocated in the development plan for housing differs significantly if there is a shortfall in housing land or not. The Reporters in these circumstances have taken slightly different approaches in each case, but, in general, they have adopted a presumption in favour of development, with the assessment focussing on the impacts of development. Where these impacts are demonstrably significant and adverse, then consent has been refused. But in the absence of these impacts, and where the proposal has been proven to be sustainable and effective, approval has generally been granted.
- 8.14 It is important to highlight two points at this stage. The first is that there have not been any appeals in Midlothian where this type of issue has been central to the consideration of the case. The second is that the appeal decisions that have emerged are in local authority areas like Fife and the City of Edinburgh Council. In both of these planning authority areas, the adopted local development plans (LDPs) acknowledge a shortfall in the five year supply of effective housing land after this was identified during the Examination of these LDPs. By contrast, the MLDP was adopted following the Examination by the DPEA which concluded the plan provided a surplus of effective housing

land. So there are limitations in how applicable the approach taken in other planning authorities is to Midlothian.

- 8.15 The applicant's case seeks to address the approach taken by the Reported in assessing the MLDP 2017. It is set out in their arguments that housing land supply requirements as set by the SPP should include a "generosity buffer". It is their opinion that the MLDP Reporter's interpretation in this matter is incorrect and that an additional 10% buffer should be applied to the Council's HLS requirement. The assessment of Midlothian's HLS is based on the Council's 2020 Housing Land Audit and their assessment sets out the Council can only demonstrate a 2.3 year effective land supply.
- 8.16 It should be noted that the report of inquiry into the MLDP (held in 2017) found that the 'housing requirement' in SDP1 was the housing land requirement, and there was no case made to retrospectively add a generosity allowance to it. The previous SPP did have a requirement to allocate a generous supply of housing and the SDP1 was prepared in that context.
- 8.17 Were a shortfall to be identified, actions to meet a shortfall (as set out in paragraph 2.3.9 of the LDP), should it arise could include (amongst other things) support for the early development of land identified in the plan for longer term growth (safeguarded sites). There are 5 of these longer term safeguards, including one at Redheugh in close proximity to Gorebridge.
- 8.18 The applicant has provided analysis which, in their opinion, demonstrates that the Council is not maintaining a five-year supply of effective housing land (this is at odds with the HLA21 and the Council's Action Programme). The applicant then argues that more land is required to meet unmet need and this site should be brought forward early to bolster the supply.
- 8.19 Care must be taken by the Council to determine if there is a need for additional housing land to meet the demands of their area. This is because development places a burden on the natural capital of an area, a burden on supporting services provided by the Council and others and a burden on communities. These burdens can be offset by the benefits of well-designed, well-situated development that supports investment and economic growth of the area. But the purpose of housing need and demand assessments, strategic planning and local planning is intended to ensure that the benefits outweigh the burdens and that we only use the land that we need. It is intended to prevent unfettered growth at the expense of the environment and communities.
- 8.20 The below table provides some analysis which measures the current supply audited in HLA21 against a variety of housing supply targets derived from different sources. The table shows that, in the right hand

column, the length of housing land supply depends on the method of calculation:

Source of Housing Supply Targets (HST)	Annual HST	5 x Annual HST	Supply of 4,500 (in years)
Strategic Development Plan (SDP1) 2019 – 2024	882	4,410	5.1
SDP1 2019 – 2024 + generosity allowance +20%	882 + 20%	5292	4.3
SDP1 2019 – 2024 + shortfall from previous plan period	882 + [8080 – 5601 / 5 (496)] = 1378	6,890	3.3
As above + 20%	1058 + 496 + 20% of 496 = 1,653	8,265	2.7
SDP2 (rejected SESplan2)	534	2,670	8.4
HNDA2 (lowest growth scenario)	411	2,055	10.9
HNDA2 (highest growth)	467	2,335	9.6
SDP2 + 20%	641	3,205	7.0
HNDA2 (lowest growth scenario) + 20%	493	2,465	9.1
HNDA2 (highest growth) + 20%	560	2,800	8.0
Draft NPF4 (November 2021)	805	4,025	5.6

- 8.21 The second column shows a series of potential annual housing supply targets which are then multiplied by five to derive a 5-year housing supply target against which the current supply can be measured (column 4). The first four rows are variations of targets taken from SESplan1's Housing Need and Demand Assessment (HNDA). The remaining rows are taken from SESplan2's more up-to-date assessment. In some scenarios, an additional 20% is added which represents the generosity allowance promoted in SPP, but which was predated by SESplan1.
- 8.22 It is not the intention for this assessment to provide a definitive answer as to which method of calculation is correct. This question has been the subject of rigorous debate within the development industry, the Scottish Government and the courts. The Scottish Government had published a draft Planning Advice Note PAN 1/2020 which provided a definitive calculation methodology. However, the public consultation process involving this document and an amendment to SPP to remove the tilted balance in favour of sustainable development from national policy were

deemed unlawful by the courts in the summer of 2021 and the guidance has been withdrawn. This leaves the question around methods to determine supply vs demand unresolved, albeit the courts appear to favour a compound/residual method as promoted by the applicant in this case. On the other hand, the updated assessments provided by SESplan2 and NPF4 supersede a compound method based on SESplan1 and by capturing unmet demand.

- 8.23 To guide the decision-making process through this uncertainty, it is instructive to note that in all but three scenarios, the Council's supply of housing land meets the five-year demand. The three scenarios where a shortfall emerges are based on: 1) the out-of-date SESplan HNDA with a 20% generosity allowance; 2) the out-of-date SESplan HNDA with the additional inflation of unmet shortfall from previous years; and, 3) the out-of-date SESplan HNDA with both the 20% generosity allowance plus the unmet shortfall added. These scenarios are considered to be unrealistic measures of demand in Midlothian in 2021. This unmet demand from previous years is captured by the more up-to-date SESplan2 targets. Furthermore, the recently published draft NPF4 sets a target of 8,050 homes over ten years in Midlothian. This equates to an annual target of 805 homes or 4,025 over five years. The current supply of 4,500 homes is sufficient to cover these updated requirements if all the sites allocated and planned come forward and deliver.
- 8.24 The applicant's approach to analysing the supply of effective housing land is set out in their assessment dated September 2021. It takes the SESplan plan-period (2009 – 2024) requirement for Midlothian of 12,490 homes proceeds to:
- Add a 10% buffer to the MLDP housing land supply target;
  - Add demolitions (201 units);
  - Minus the total completions from 2009 to 2020;
  - Minus the established land supply of 4,243 (HLA 2020)
  - Minus four years of expected windfall development of 492 (123 units per annum)
- 8.25 Into this the applicant adds a calculated shortfall of housing supply of 3,251. These calculations are variations of the scenarios presented in the table above. The applicant's analysis is considered to be an inflation of requirement which presents an inaccurate representation of supply vs need.
- 8.26 The key message that an analysis of housing land supply provides is that, although we cannot say for certain if the Council is maintaining a five-year supply of effective housing land, it most likely is. SESplan2 provides a more up-to-date assessment of need than SESplan1. But, as the Plan was not approved (not due to erroneous housing demands calculations) it cannot be solely relied upon to provide a definitive measure of demand. Nevertheless, the SESplan2 measure of demand

suggests that a lower target would have been required of Midlothian than in SESplan1. This suggests that the Council's supply would remain in surplus if SESplan2 was approved. NPF4 updates the targets further and keeps the requirement below the current supply. However, this document is only in preparation stage and is indicative only. It is acknowledge also that NPF4 considers the targets to be minimum requirements which should not, in of themselves, be used as inhibitors to otherwise sustainable development proposals.

- 8.27 This analysis adds weight to the Council's position set out in HLA21, and the Reporter's conclusions in the Examination of the LDP, that there is no shortfall in the supply of effective housing land. To go back to the original question of do we need more land for housing, the answer is probably not, but there is no certainty based on the different approaches taken by Reporters at appeal.
- 8.28 The effect that this position has is to maintain the primacy of the development plan in the determination of applications for residential development. Whilst part of the development plan, the SDP, is out-of-date, the LDP is less than five years old and is promoting a development strategy that meets the substantial needs of the county. If a shortfall were identified, then the protective policies in the plan (RD1 and ENV4 in this case) would fall and there would be presumption in favour of the principle of development. But, there is likely to be a surplus of housing land within the plan area. This means that a proposal must identify significant material considerations that would be afforded sufficient material weight to overcome the primacy of the development plan.

#### Site Effectiveness

- 8.29 Related to the above topic is the question of site effectiveness. This refers to the potential of a site to deliver housing in the short term in a way that is free from constraints to development. PAN 2/2010: Affordable Housing and Housing Land Audits provides a criteria for assessing the effectiveness of a site. The criteria comprises:
- Ownership: the land is in control of a party who can develop it or release it for development;
  - Physical: the site, or relevant part of it, is free from physical constraints such as topography, flood risk and access which would otherwise preclude its development;
  - Contamination: the site is either not contaminated, or commitments are secured to remediate a site for its proposed use;
  - Deficit Funding: relates to the security of any required public funds;
  - Marketability: the site, or a relevant part of it, can be developed in the period under consideration;
  - Infrastructure: the site is either free of infrastructure constraints or can be secured from the developer to allow development; and,

- Land Use: housing is the sole preferred use of the land in planning terms, or is one of a range of possible uses.

8.30 The application is accompanied by a site effectiveness statement, which provides an assessment of the site against the above criteria. They assess the site to comply with all the above requirements. These are assessed below:

#### *Ownership*

8.31 The applicant identifies that both Hallam Land Management and CEG control the site and that the road network from which access is proposed is a public road.

#### *Physical*

8.32 The site's primary characterisation, apart from its greenfield nature, is the gradient it features sloping steeply down to the west. The applicant proposes a cut and fill approach as well as delivering split level housetypes. Whilst this approach has been delivered with some success in other areas, including in proximity to the site, the indicative levels submitted with the application include the delivery of an extensive networks of retaining wall features. Indicatively some of these are indicated as being 4.0m in height at site boundaries and up to 3.7m in height at some locations internally within the site. Midlothian recognises the need for retention in some instances however excessive retention can result in a poor development with overshadowed and overlooked houses. As such, Midlothian would seek that retention features within residential developments be limited to 1m in height. The need for such large retention raises significant concerns that the sites topography renders the site, at least in part, as ineffective. In addition, proposed levels within steep southern parts of the site also limit the ability to create useable open space. In order to create effective open space on the site additional cut and fill may be required.

8.33 The proposed development would result in the loss of a number of mature, attractive trees that are predominantly located as site boundaries. Whilst their removal is not supported it is considered that these trees would not render the site as a whole ineffective.

8.34 The site is located in an elevated position to the south of Gorebridge and would seek to deliver 308 dwellings. The site is bound by built form only on its north boundary. The site is not characterised by significant natural screening at boundaries. The proposed development would therefore be prominent in the landscape. The submitted landscape and visual appraisal (LVA) indicates that there is potential for extensive visibility across the rural landscape between the River South Esk and the Gore Water; and parts of the local road and path network, including the A7 and B6372. Visualisations in the LVA

technical appendix show that the proposed development is likely to have a significant effect on key views within the local area. It is considered that the introduction of development at this scale would result in a harmful landscape impact.

#### *Contamination*

- 8.35 The Council's Senior Manager Protective Services has provided comments on the submitted material. In regards to contaminated land it was assessed that due to a lack of information submitted within the report on site investigations dated 2015, an effective assessment of the information was not able to be made. Additional information has not been made available following this response. As such, there is no certainty provided that the site is effective in this matter.

#### *Deficit Funding*

- 8.36 The site is not understood to be dependent on any public funding.

#### *Marketability*

- 8.37 Submitted information indicates the site can be constructed within a seven year period seeking to deliver an average of 40 market dwellings per annum. There are no identified constraints that preclude a portion of site being delivered subject to details of layout, design, landscaping and access being agreed.

#### *Infrastructure*

- 8.38 The site itself is generally considered to be free from physical infrastructure apart from the presence of some overhead lines. It is considered that these would not hinder the site significantly.
- 8.39 Further infrastructure matters relating to offsite requirements are addressed later in this report.

#### *Land Use*

- 8.40 There would be no competing land uses within the proposed development. It is reiterated that parts of the site are identified as prime agricultural land.

#### Infrastructure Coordination

- 8.41 Key to determining whether a site is an appropriate location for new residential development is infrastructure. A focus on infrastructure is required in the assessment of non-allocated sites as site-specific requirements of allocated sites is typically expressed in the settlement statements of the MLDP. SESplan Policy 7 has traditionally been used

to bring this consideration into the assessment of non-allocated housing sites and should be applied in this case.

- 8.42 If infrastructure constraints suggest a site cannot be developed then permission should not be granted. Conversely, if developing a site would release development value that could help fund shared infrastructure then this could weigh in favour of granting planning permission. Relevant infrastructure required to support residential development includes vehicular access, education, drainage, strategic landscaping, open space and play facilities, green networks and active travel routes and other utilities.
- 8.43 These issues will be examined in more detail in subsequent sections of this report. This section will look at both shared/external infrastructure, and address concerns relating the required provision of onsite landscaping and play/open space.
- 8.44 In relation to education, the Council's Education Manger has raised particular concerns regarding the ability of existing educational facilities to be able to accommodate the demand that would arise from the proposed development. It has been expressed that existing facilities have limited capacity that can only cater for pupil production from the allocated housing sites in the MLDP can be accommodated at the catchment schools.
- 8.45 The applicant's education statement refers to Midlothian school roll projections 2019, which indicate the school roll exceeding planned capacity at both Stobhill and St Andrews RC School.
- 8.46 The need for education space in the area is further defined by the requirement for allocated sites at Redheugh (h50 and Hs7) to deliver onsite education facilities. The new Redheugh Primary School is proposed to primarily cater for associated housing development at that site, including MLDP sites h50 (700 dwellings) and Hs7 (200 dwellings - not including an adjacent safeguarded site of potentially 400 dwellings).
- 8.47 At this time, no opportunity to expand existing facilities has been identified by the Council's Education Resource Manager, over and above what is required to meet allocated development. Whilst the applicant may be willing to contribute to school infrastructure, no practical expansion has been identified at an existing facility that would be able to utilise such contributions. It is the Council's position that there is currently no suitable proposal for resolving the lack of educational infrastructure in the area that could lead to this development being adequately catered for alongside the delivery of allocated sites.
- 8.48 The delivery of the additional housing on this scale would be seen to absorb capacity in schools earmarked to support committed/allocated

development. This development would therefore serve to frustrate the aims of the MLDP in delivering housing on allocated sites and be contrary to the principles of a plan based planning system.

- 8.49 The Council's Policy and Road Safety Manager has raised concerns that whilst bus stops are located in close proximity to the site, it is considered that current public transport access is poor, with a single service every hour. Furthermore, the intensification of the use of Lady Brae and Vogrie Road to the west of the site, where on street parking limits the road to a single carriageway, likely to result in additional traffic congestion at peak times.
- 8.50 Whilst it is possible for financial contributions to be sought to provide improved public transport, it is noted that opportunities to deliver road widening or improvements are limited to Lady Brae, whereas improvements to Vogrie Road are not seen as possible at this time.
- 8.51 In relation to the delivery of landscape, open space and play space on the site, the site is 15.53ha and on the surface should have no issues delivering these facilities of a scale sufficient to meet the demands of the development. However, as has been raised previously, the levels of the site present a significant challenge to delivering development. The gradients on the site would render open spaces and some play spaces as inappropriate for effective use. It is recognised that the application is for planning permission in principle, and that there may be more appropriate areas of the site to give to open spaces. However, there is concern that the required cut and fill to deliver an effective site would be excessive.
- 8.52 The applicant considers the proposed development accords with the MLDP. The argument presented identifies that policy STRAT 2 (Windfall Development) in that the supporting text sets out that "Outwith the built-up areas, there is a general presumption against housing development unless a deficit in the 5 year effective housing land supply emerges." It is their position that a five year supply does not exist and as such development outwith built up areas can be supported. It is the Council's position that a deficit of housing does not exist and as such the development does not comply with policy STRAT 2. Furthermore the site is out with the built-up area of Gorebridge and as such cannot be classed as windfall development under policy STRAT2.

### Sustainable Development

- 8.53 SPP promotes sustainable development as a key policy feature cutting across a range of government concerns. Planning has a role to play in determining the right development in the right place, where the economic benefits of development are balanced with the protection of the environment and neighbouring communities. The presumption in favour of sustainable development is a nationally applied policy tool

that ensures the planning system places a central focus on promoting economic growth. At times where the development plan fails to allocate enough land for housing then SPP provides 13 principles which can be used to assess additional sites. If a proposal meets these tests, then we can presume in favour. If not, then other sites should be sought.

- 8.54 The application of this provision of SPP has been the subject of recent judicial review cases. The most recent case quashed the Scottish Government's update of SPP and a Planning Advice Note concerned with the calculation of the five-year supply of effective housing land. The Government's update of SPP was made in response to the decision of the Inner House, Court of Session 3 June 2020. It attempted to remove the "tilted balance" from decision making. However, the Courts found the update of SPP2020 was unlawful and so the approach to determining residential applications where there is a shortfall in the supply of effective housing land is as Lord Carloway sets out. In short, the presence of a shortfall is a significant determining factor in an application for residential development. The decision maker must then take into account any adverse impacts in their assessment of the proposal as sustainable development, and balance this assessment against the presence of a shortfall. In practical terms, where there is a shortfall in housing land, the planning authority must presume in favour of all residential developments unless there are demonstrable and significant adverse impacts that would result from development.
- 8.55 The circumstances in this case are that a surplus of housing land in Midlothian is presumed at the point of the HLA21 (a 5.1 year housing supply). Although in light of the assessment above, this cannot be established with absolute certainty and is also the determined surplus is marginal comprising only a few hundred units. Yet the position taken is that the MLDP is likely to provide a five-year supply of effective housing land at this time although there is a risk that HLA22 when prepared in the coming months does not reflect this position. In times of a surplus, the presumption in favour of sustainable development is a material consideration, with lesser weight than the development plan. In times of shortfall, the weight given to the presumption in favour is elevated beyond the restrictive land use policies of a development plan.
- 8.56 However, the circumstances the Council currently faces are more complicated. Part of the development plan (SESplan) is out of date but the MLDP remains in date and allocates significant amount of land to meet high demand.
- 8.57 The presumption in favour of sustainable development is there to ensure that the growth needs of our communities are met. In the first instance, the MLDP serves this function and there is no analysis presented by the applicant to suggest it isn't. Policy DEV5 (Sustainability in New Development) sets out principle (ai) that new

development should adhere to in delivering sustainable development. It is noted that in relation to many of these principles additional detail would be required to deliver a full assessment. No outstanding objection exists that the site cannot be delivered in a way that fosters Biodiversity (principle 'b'), however, in relation to principle 'a' there are concerns that the development would be inappropriate. As set out previously, the indicative levels plan indicates a serious demand for retention and cut and fill works to deliver residential development on the site. Whilst specific solutions can be amended as part of a MSC application, the general levels of the site are considered to be a significant challenge. The levels may allow for appropriate levels of cut and fill on specific areas of the site, but development on the scale proposed is considered to fail the requirement to be in harmony with the site.

- 8.58 MLDP policy TRAN1 (Sustainable Travel) is also a consideration into the sites sustainability credentials. This sets out that "Major travel-generating uses will only be permitted where they are well located in relation to existing or proposed public transport services, are accessible by safe and direct routes for pedestrian and cyclists". Whilst no in principle objection has been raised from the Council's Policy and Road Safety Manager concern has been raised as to frequency of public transport services in the region and in regards to the local highway networks capacity to effectively absorb additional traffic.
- 8.59 The applicant identifies the sustainability principles of paragraph 29 of the SPP as material consideration. These are set out in turn below:
- Giving due weight to economic benefit – all development has an economic benefit. But, as described above, the development is not able to confirm net economic benefit as in instances of a housing land surplus, the degree that displacement reduces net benefit cannot be assumed;
  - Responding to economic issues challenges and opportunities, as outlined in local economic strategies – again, all development has an economic benefit in providing jobs through investment;
  - Supporting good design and the six qualities of successful places – the application is in principle and design is a matter to be secured by conditions. Notwithstanding the assessment in latter sections of this report, concerns exist regarding public transport connections and the local highway network being able to accommodate the development;
  - Making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities – As has been identified, the capacity of the local education facilities is deemed to be insufficient to meet the requirements of the development as well as committed/allocated housing sites.
  - Supporting the delivery of accessible housing etc. – notwithstanding concerns regarding public transport the proposal would create market and affordable housing. Despite this it is noted

that the SESplan states that “New development proposals will complement and not undermine the delivery of existing committed development.” Were the existing school capacity to be used up to deliver this site, it would frustrate the delivery of other housing sites leading to a potential weakening, rather than strengthening of the housing land supply in the short term;

- Supporting delivery of infrastructure etc. – as discussed in previous sections contributions can be sought for off-site infrastructure, however it’s assessed that no education solution can be delivered for the site at this time. It is held that the development cannot meet this requirement of sustainable development;
- Supporting climate change mitigation and adaption/flood risk – again, this is examined in detail below but there are no issues in relation to this principle that the detailed application(s) could not overcome;
- Improving health and well-being etc. – this principle is also a matter of detailed design;
- Accord with the principles of the Land Use Strategy – the third Land Use Strategy for Scotland (2021 – 2026) aligns with NPF4 which is currently in production. It is a high level document which draws together a wide variety of policy concerns. It recognises the competing demands on land and advocates balance in decisions taken on land use. The site is prime agricultural land and is not planned for nor needed for development to satisfy unmet demand for housing as part of the MLDP;
- Protecting the historic environment – the proposal should be able to comply with this, subject to conditions relating to archaeology;
- Protecting natural heritage – the proposal should be able to comply with biodiversity, open space and active travel requirements subject to conditions, however, the elevated nature of the site for a development of this nature would have landscape impacts. The scale proposed would likely be only be able to be mitigated in part;
- Reducing waste etc. – the proposal should be able to comply with this, subject to conditions relating to construction works and domestic waste provision; and
- Avoiding over-development and protecting amenity, particularly water, air and soil – the proposal should be able to comply with these matters, however the scale and density of the proposed development would result in significant engineering operations. Conditions relating to noise, air quality and the detailed design of new development would be required.

8.60 Therefore, whilst the proposal is broadly compliant with a number of the principles of sustainable development, there are particular concerns relating to the availability of education infrastructure. There are further concerns relating to the scale of the proposed development and particularly to highway impacts, frequency of bus services and the impact on the landscape.

- 8.61 One area of concern relates to the land use strategy and the site's designation as prime agricultural land. SPP paragraph 80 states that "where it is necessary to use good quality land for development, the layout and design should minimise the amount of such land that is required. However, this is a high-level policy which has typically been set aside by decision takers in favour of supporting proposals for homes where needed. Deciding whether or not a proposal is sustainable development under the direction of SPP must balance competing demands on land across all factors. It should not be used as a checklist which requires complete compliance with all 13 principles.
- 8.62 Therefore, based on the above, it is concluded that the proposal cannot at this time be considered sustainable development even if a deficient housing land supply position was confirmed.

#### Balanced Assessment

- 8.63 The above discussion is a comprehensive examination of the pertinent matters in this assessment. It is a complex discussion because the facts of the case are not straight forward. The policy position in the absence of an up to date strategic development plan is a significant contributor to this complexity. The underlying support the planning system must give to sustainable development is another key factor. To navigate this complexity, it is important to focus on the material weight of competing factors which lead to a decision. The material weight given to a particular factor is for the decision maker.
- 8.64 This assessment finds that the MLDP presumes against the development in favour of protecting rural areas from unplanned development protecting areas of designated countryside and avoiding the loss of prime agricultural land from sites not allocated for development. The weight that these policies are given is dependent on whether or not the development strategy provides enough land for housing to meet demand. This is complicated in the absence of firm targets from the strategic development plan and ahead of the adoption of NPF4. The applicant challenges that the supply of effective housing land is insufficient to meet its housing requirements which would lead to the consideration of sites outwith settlement areas in accordance with MLDP policy STRAT2. Were this position to exist it would form a significant material consideration. Whilst housing land supply matters are complex and in a state of transition, the position as set out in the Council's HLA21 indicates that sufficient effective housing land is being delivered, furthermore MLDP policy STRAT2 relates to windfall development in the built-up area – this site is in the countryside, not the built-up area of Gorebridge.
- 8.65 On balance, it is considered that the proposed development is contrary to the development plan and that material considerations do not

outweigh this conflict and the development should be refused as the principle of development is unacceptable.

#### Indicative Layout, Form and Density

- 8.66 The application is for planning permission in principle which, if granted, would be subject to conditions requiring the submission of details relating to layout, form and density. Nevertheless, it is appropriate at the planning permission in principle stage to examine the constraints and opportunities of a site and capture these so that they can inform the design of detailed matters if permission is forthcoming.
- 8.67 The proposals include a holistic development of the site, with areas of open space located centrally, at the site's southern boundary and the site's west corner. A pollinator corridor is further proposed following the course of the existing water main at the north of the site.
- 8.68 The use of the site's contours to promote a westerly orientation for dwellings would be necessary to comply with MLDP policy DEV5. This is promoted in the design and access statement.
- 8.69 Regarding the structure of open space and landscaping, the site boundaries are identified for tree planting with more structured planting at the south boundary of the site. The open spaces would generally be connected to each other by the perimeter landscaping. However, central open space is more isolated from these proposals. Additional links from the proposed orchard area to the southeast to the central open space and onto the west boundary would be sought as part of any future detailed planning application. Considering the topography of the site, north south landscaping corridors would serve to break up the exposure of the site. Landscaping to the south of the site seeks to achieve this to a degree but larger unbroken parcels of development would persist in both the north and southern sections of the site.
- 8.70 The quantum of open space provided on the site will require assessment at the detailed application stage based on the population generation from the development. However, the submitted design and access statement appears to include areas of boundary planting, SUDS basin and pond and steep areas of the site within these calculations. Such areas of open space need to be accessible to be used as amenity or open space. As such, these areas should be removed from any amenity/open space provision in accordance with MLDP policy DEV9. Caution needs to be taken when delivering open spaces on gradients as a steep gradient would deter their use and functionality. According MLDP policy DEV9 and appendix 4 of the MLDP and assuming a population generation of 750 as provided in the design and access statement the development would generate the following requirements:
- 1.08ha of playing fields (circa 1 full sized pitch);
  - 0.18ha of equipped playing space;

- 0.4ha of informal play space; and
- 1.2ha of amenity open space.

- 8.71 Section 8.6 of the design and access statement addresses the middle two points above only. The site is large and the provision of open space should be practical, however considering the topography of the site the provision of sports pitches is unlikely to be practical. As such, were the application granted, the proposed development would require to provide contributions to offsite provision. In view of the lack of such opportunities on the site, areas for informal “kick about” space should be provided within open spaces. Provision for community growing should also be made.
- 8.72 Considering the existing use of the site the proposed landscape types, such as orchard and pollinator corridor can add biodiversity benefits to the site. These should be maintained with any detailed design.
- 8.73 The density of site raises concern. 308 dwellings across the site area would result in a general density of circa 20 dwellings per hectare. Such densities would tie in with the existing built form to the north, but this does not mean that they are acceptable in more southerly locations of the site that relate more to the rural countryside. Densities should seek to reduce towards the development edge, particularly in the south.
- 8.74 As has been identified earlier in the report the levels on the site have indicated an excessive need for retaining structures. These should be kept to not more than 1m in height with dwelling under builds not more than 0.5m. The proposed use of retaining features of 3.7m is unacceptable at back to back garden locations, and 4m at site boundaries is concerning. The reduction in the density of development at steeper areas of the site would be needed to deliver acceptable residential development.
- 8.75 In addition, and future detailed planning application would require suitable private amenity space to be provided for each dwelling.
- 8.76 In regards to active travel, a principle multi user route is proposed from the southeast to the northwest boundary of the site. This is welcome as it will connect up existing routes around the development. Consideration will need to be given to delivering safe cycle routes into other parts of the development.
- 8.77 Detailed design matters would be subject to further assessment as required by conditions. It is recommended that were the application be approved, the indicative site plans should not become approved plans. Whilst the above concerns could be satisfied at a more detailed stage it is considered that amendments are required in order to achieve this.

### Access and Transportation Issues

- 8.78 The MLDP prioritises sustainable modes of transport over trips by private car, whilst acknowledging that the impacts on the local road network from new development must be considered. The applicant's transport assessment provides an overview of the connections available to the site and mitigation measures to address impacts on the road network. The applicant's submission discusses active travel options and connections to active travel and public transport routes in the area.
- 8.79 The Council's Policy and Road Safety Manger has no objection to the application in principle, but does raise concerns over the impact of development on the local road network, particularly in relation to Lady Brae south of its junction with Vogrie Road. This concern could be reduced through a reduction in the number off dwellings proposed and by improved public transport links. Contributions to new bus stops and improving the frequency of the service can be secured.
- 8.80 The Council's Policy and Road Safety Manger suggests conditions to be applied if planning permission is granted.
- 8.81 It is noted that Gorebridge Railway Station is within 0.6 miles of the site and does add to the sustainability of the area. Public comments have raised particular concern in relation to the convenience of Gorebridge Railway Station given the levels involved. Whilst narrow, it is understood that a footpath links the site to the station.
- 8.82 There is concern that the quantum of development will lead to congestion at the site. A reduction in the quantum of development may ease this pressure. Improvements to public bus stops and service can be sought, but there is no guarantee that improved bus services can be delivered. Pedestrian and cycle trips from the site are considered possible.

### Landscape and Visual Impact

- 8.83 MLDP policy ENV7 protects local landscape character. As has been established the submitted LVA indicates that there is potential for extensive visibility across the rural landscape between the River South Esk and the Gore Water; and parts of the local road and path network, including the A7 and B6372. Visualisations in the LVA technical appendix show that the proposed development is likely to have a significant effect on key views within the local area. It is considered that the introduction of development at this scale would result in a harmful landscape impact.
- 8.84 The use of landscaping and strategically positioned open space can be effective tools for mitigating landscape and visual impact and it is noted within the applicant's submission that the visual impact will reduce as

proposed landscaping establishes itself. Due to the scale of the proposed development, concerns remain that the landscape impact will reduce to “minor” (as set out by the applicant). Mitigation of landscape impact from a development of this scale, on such an elevated position would be very unlikely. Whilst views of the development can be broken up, the extent of development into the open countryside is considered to have likely adverse visual and landscape impact. The site is open on three boundaries and despite the presence of built form on its north boundary, its intrusion into undeveloped land would result in significant change to the landscape to the south of Gorebridge. The proposed development is therefore conflicts with MLDP policy ENV7.

#### Ground Conditions

- 8.85 The application is in principle and no objections have been raised from the Coal Authority or the Council’s Senior Manager Protective Services subject to conditions on any grant of planning permission.

#### Flood Risk and Drainage

- 8.86 The site is distant from watercourses and the coast which typically present the greatest flood risk. A review of the SEPA flood risk maps confirms the lack of flood risk from these sources. SPP and MLDP policies require applicants to assess all potential sources of flooding.
- 8.87 A flood risk assessment has been submitted with the application and the Council’s Flooding Officer has not raised any objections to the development subject to the provision of a detailed SUDS strategy. The proposed development seeks to deliver a SUDS basin and a SUDS pond, details of which could be secured by condition on any grant of planning permission.

#### Cultural Heritage

- 8.88 There are no historic environment statutory designated assets within the site or at the site boundaries. Borthwick & Crichton Conservation Area is located to the south of the site and separated from it by more than 200m.
- 8.89 The Council’s Archaeological Advisor has raised no objection to the application subject to a condition requiring the undertaken of and reported upon a programme of archaeological (trial trench evaluation) work in accordance with a written scheme of investigation.

#### Amenity

- 8.90 The development itself is of a scale that is likely to impact on the amenity of existing sensitive receptors in a negative sense. There could be impacts during the construction phase relating to dust, noise and construction vehicle movements. The assessment undertaken

indicates that there is the potential for a detrimental impact on future residential properties. However, appropriate measures to mitigate amenity impacts can be secured by condition - a further noise assessment could be submitted to demonstrate, through the use of appropriate site layout, mitigation measures, etc. that no external garden or amenity area will be subjected to a noise level in excess of 50dB LAeq(16hr) and that the internal daytime and night time noise levels can be achieved as well as the WHO sleep disturbance criteria.

- 8.91 In regards to air quality, the applicant has submitted an air quality impact assessment (AQIA) for the site carried out by The Airshed Ref No. AS0734 dated 18th February 2021. This reports that, based on predictive modelling, the proposed development will have no significant impacts on air quality in and around the development. Were the application to be approved a condition seeking a detailed construction management plan should be secured in order to mitigate dust and other air impacts during construction and to secure the mitigations set out in the submitted AQIA.
- 8.92 In regards to contaminated land this has previously been addressed and it is reiterated that the report on site investigations by Mason Evans dated August 2015 contained a lack of information so no thorough review of the report was undertaken by the Council's Senior Manager Protective Services. As such, were the application to be approved, conditions seeking the submission of a scheme to deal with any contamination of the site and/or previous mineral workings should be attached to any planning permission.
- 8.93 Whilst the lack of information is regrettable, the proposal in terms of ground conditions is likely to be acceptable in principle, but the issue of environmental noise and the amenity provided to future residents will be a key determining matter in the assessment of detailed design.

### Ecology

- 8.94 The applicant has undertaken an ecological assessment dated February 2021 which was prepared by JDC Ecology. It identifies that the site does not lie within any, nor will it impact directly upon any statutory or non-statutory designated sites. The report identifies that there is scope to increase the diversity in habitat and plant species on the site.
- 8.95 In regards to protected species, it was identified from a previous ecological assessment undertaken in July 2020 that some bat foraging was taking place at the sites west boundary. It is assessed that these bats were not roosting on the site. Recommendations include avoiding light spill that could inhibit foraging routes of bats.
- 8.96 It was assessed that "The site is not suitable for otters, there is no water vole presence, it is not suitable for species such as red squirrel

or pine marten”. However, it was noted that badgers were present on the site. Mitigation would be required within the development and a Badger Management Plan would be required by condition were the application to be approved. This will require careful consideration at such a stage as it is received in order to deliver appropriate mitigations and avoidance where necessary.

- 8.97 In regards to great crested newts a separate addendum was submitted to the application following the assessment of an adjacent pond. The survey of the pond (via eDNA testing) identified that there were none present.
- 8.98 The report identifies that with effective management and mitigation, the development could deliver a net gain in biodiversity on the site. A formal biodiversity action plan would should be secured by condition were the application to be approved.

### Infrastructure

- 8.99 The infrastructure requirements of new residential development have been touched on in the previous section of this report, as it pertains to the principle of development. This section will examine the specifics in more detail.
- 8.100 In terms of education infrastructure, in a normal scenario, a development would seek to deliver a financial contribution towards the provision of additional education infrastructure to meet the demands of the development. The education report submitted sets out that the site is located within the catchment areas of Stobhill Primary School, St Andrew’s RC Primary School, Newbattle High School, and St David’s RC High School. The report further indicates that existing capacity (year 2022) of the primary schools equates to 45 spaces. At Newbattle High School a capacity of 15 space is identified and 161 spaces at St. David’s High School. The MLDP already identifies the need to expand Stobhill Primary School and The Council’s Education Resource Manager has set out that the remaining capacity of these schools are required to meet committed development and housing allocations within the MLDP. No other opportunities to expand these facilities is identified. As such, even with a financial contribution towards those facilities at/near capacity, the situation would not be resolved.
- 8.101 The report further mentions the commitment to deliver a new high school at Gorebridge. However, no indication of when this will be delivered is known and as such cannot be relied upon as a possible solution.
- 8.102 Considering the lack of a viable education solution to delivering this site, the proposed development is considered to be inappropriate.

8.103 If the proposed development were to be approved it would be considered necessary to impose a condition that would prevent any development commencing until such a time as appropriate education capacity has been identified and if necessary, delivered. The development would further have to comply with MLDP policy IMP1 and deliver contributions to meet other infrastructure needs.

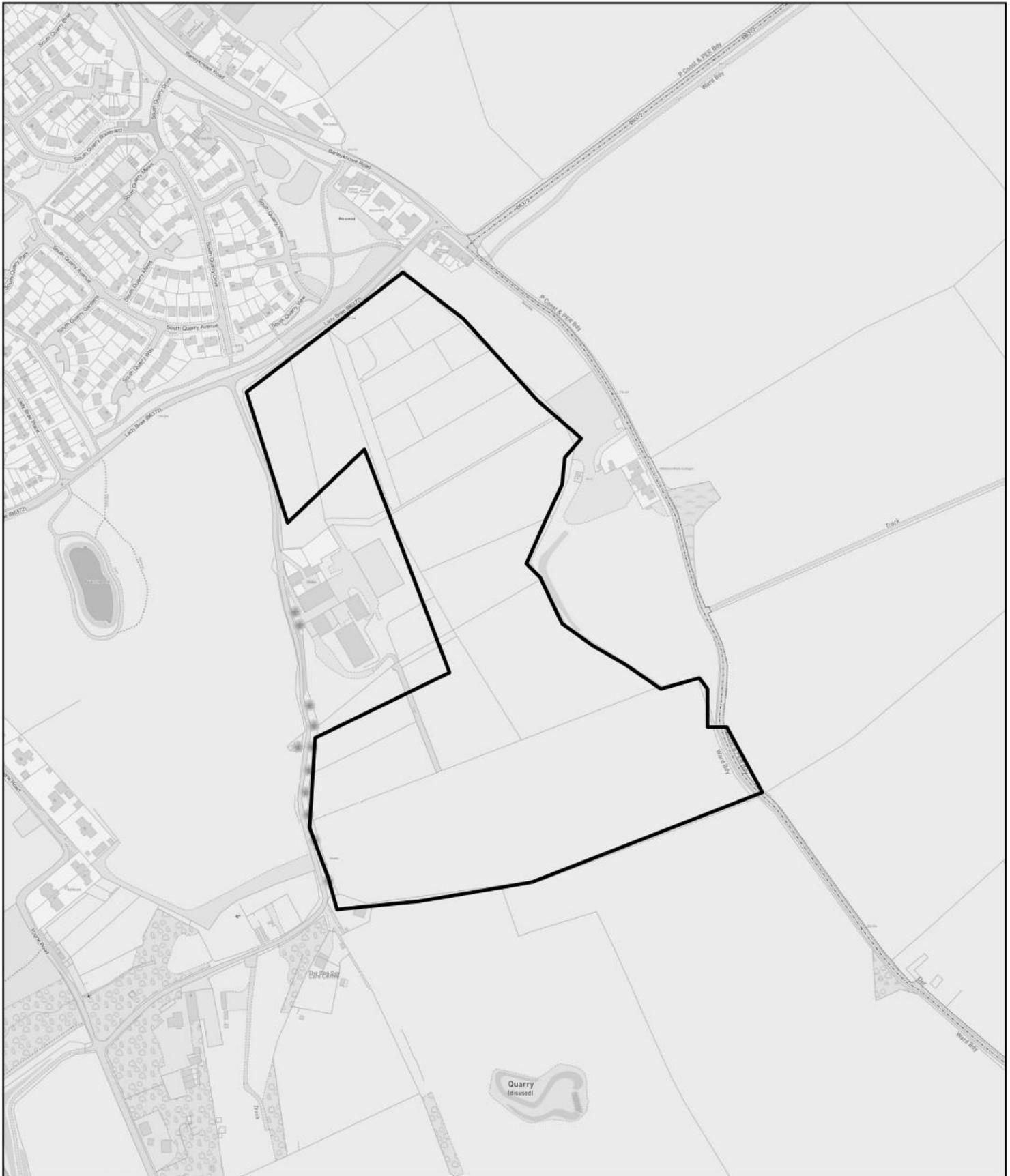
## **9 RECOMMENDATION**

9.1 It is recommended that the Scottish Government Reporter appointed to determine the appeal is invited to refuse planning permission for the following reasons:

1. The proposed site is not allocated for housing, is outwith the built-up area of Gorebridge and is located on land designated as countryside and prime agricultural land. Therefore, there is a presumption against residential development which is not outweighed by any material considerations. The proposed development is contrary to policies RD1 and ENV4 of the Midlothian Local Development Plan and Scottish Planning Policy.
2. The sites sloping topography, the limited bus service and constrained local road infrastructure means that the site cannot be considered to be a sustainable location for residential development.
3. Residential development of the scale proposed would have a detrimental impact on the landscape and as such would conflict with policy ENV7 of the Midlothian Local Development Plan.
4. As the site is not allocated for housing or in an appropriate location for residential development of the scale proposed there is currently no local education capacity to meet the need arising from the site. Furthermore, there is not currently an education solution to meet the demand arising from the site that can be delivered by the provision of developer contributions. As such the proposed development is contrary to policy IMP1 of the Midlothian Local Development Plan.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 4 March 2022  
**Application No:** 21/00252/PPP  
**Applicant:** Hallam Land Management and CEG  
**Agent:** Geddes Consulting  
**Validation Date:** 09 April 2021  
**Contact Person:** Hugh Shepherd  
**Email:** hugh.shepherd@midlothian.gov.uk  
**Background Papers:** 20/00129/SCR and 20/00128/PAC



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

Application for planning permission in principle for residential development and associated works at Land At Stobs Farm, Lady Brae, Gorebridge,

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File No: 21/00252/PPP

Scale: 1:5,000

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**NOTES**

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- ① Multi-modal access
- ② Possible emergency access/pedestrian access
- ③ Cycle/pedestrian access
- ④ SUDs (detention)
- ⑤ SUDs (retention)
- ⑥ Equipped play
- ⑦ Natural play
- ⑧ Pollinator corridor and edible hedgerows
- ⑨ Orchard
- ⑩ Coppice

- Midlothian path network
- ☼ Proposed toucan crossing point
- Active travel shared 3m route
- Tertiary Streets
- Trees
- - - Existing walling/ repaired, rebuilt

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Client  
**CEG / Hallam Land Management**

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Project  
**Lady Brae  
 Gorebridge**

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Drawing Title  
**Development Framework**

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Scale Bar North  
 25m 50m 75m 100m

Scale: 1:2500@A3 Date: February 2021

By: DR Status: PLANNING

Checked: KE Approved:

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Drawing Number  
**191395\_LB\_DF\_01**

Rev  
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