

Midlothian Local Development Plan – Report of Examination

Report by Ian Johnson, Head of Communities and Economy

1 Purpose of Report

- 1.1 This report advises Members of the recommended modifications to the Proposed Midlothian Local Development Plan (MLDP) following receipt of the Report of Examination and outlines the next steps towards adopting the plan.

2 Background

- 2.1 Preparation of the Midlothian Local Development Plan is at an advanced stage; and once finally adopted it will replace the existing Midlothian Local Plan (2008), setting out the local planning strategy for Midlothian over the next ten years. In accordance with the relevant statutory process, the Proposed MLDP was published by the Council in May 2015. A total of 838 representations were received comprising 2,770 separate comments. The representations were considered by Council on 17 May 2016 but no modifications were made to the plan as a result and consequently they remained unresolved thereby requiring examination by an appointed Scottish Government Reporter, which commenced on 7 November 2016.
- 2.2 The Planning Committee on 6 June 2017 considered a report updating Members on the progress of the proposed MLDP, in particular the progress of the examination into the unresolved issues in respect of representations made to the proposed MLDP (those representations made which have not been withdrawn). The examination has subsequently concluded and the report of examination was received on 5 July 2017 and published by the Directorate of Planning and Environmental Appeals (DPEA) on 10 July 2017.

Examination and Report of Examination

- 2.3 The Examination is the penultimate stage of the development plan process before the Council considers the adoption of the plan. The Examination is conducted by a Reporter or Reporters from the Directorate of Planning and Environmental Appeals (DPEA). The DPEA are wholly responsible for conducting and managing the examination process from the appointment of the Reporter(s) through to the submission of the final Report of Examination to the Council. Details about the Examination and all information relating to the Examination is published on their website (<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=117629>)
- 2.4 The Examination is the principal means of independently examining any unresolved issues arising from representations made to the Proposed Plan. The Council prepares schedules of the unresolved

issues summarising the representations received, outlining the modifications or changes requested by the representor and setting out the Council's response to the representations. The scope of the Examination is limited only to the issues identified in the representations and it is for the Reporter to consider the arguments presented and any supporting evidence from the Council and the representors on the various issues. The Reporter uses the schedules submitted to the Examination to record their conclusions and recommendations. The completed schedules form the basis of the final report to the Council.

- 2.5 The recommendations in examination reports are largely binding on planning authorities¹. Planning authorities may only depart² from recommendations in the prescribed circumstances where the recommendations:
- (a) would have the effect of making the Local Development Plan inconsistent with the National Planning Framework, or with any Strategic Development Plan or national park plan for the same area;
 - (b) is incompatible with Part IVA of the Conservation (Natural Habitats etc) Regulations 1994; or
 - (c) would not be acceptable having regard to an environmental assessment carried out by the planning authority on the plan following modification in response to recommendations; and
 - (d) are based on conclusions that could not reasonably have been reached based on the evidence considered at the Examination

Note – Criterion (d) addresses the possibility of clear errors having been made by the Reporter. It does not relate to circumstances where the planning authority disagrees with the planning judgement reached by the Reporter.

On receipt of the Report of Examination the planning authority is required to make the modifications recommended and any other requisite changes.

- 2.6 The Examination into the MLDP involved officer participation in one formal hearing session (on housing land supply) and additional written responses to eleven requests for further information, of which only two were issued to the Council as the sole respondent, the remainder involved other interested parties for comment and response.

3 Examination Reporter's Conclusions and Recommendations on the MLDP

- 3.1 In many cases the Reporter has concluded that there should be no changes to the plan. He has also made a number of recommendations but many are of a minor nature (wording, emphasis etc) and are designed to provide greater clarity or consistency with either Scottish

¹ S19(10) of the Planning etc. (Scotland) Act 2006

² The Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009, Circular 6/2013 Development Planning, paragraph 92

Planning Policy (SPP) or the approved Strategic Development Plan (SDP) for South East Scotland. Virtually all of these can be accepted.

- 3.2 Overall the Reporter's recommendations do not fundamentally alter the settled position of the Council as set out in the Proposed Plan.
- 3.3 However, in respect of one matter the Council may wish to consider not supporting a particular recommendation; where the Reporter states in relation to the Midlothian Science Zone (MSZ) (formerly The Bush):

"Modify the proposed local development plan by:

2. Showing the white land within The Bush (north and east of business site b4 and west of strategic employment allocation Bt3) as "open space (outside settlement area)" on the proposals maps."

It is considered that the Reporter has misinterpreted the reference to open space designation in the plan and on the proposals map in respect of its application within town and village settlement boundaries and has incorrectly applied it to the MSZ policy boundary. Accordingly in line with criterion (d) of paragraph 2.5 above it is proposed to reject this recommendation and prepare a statement to this effect and include that justification along with the submission of the modified plan to Scottish Ministers (see part 4 below for details of the next statutory stages).

- 3.4 A list of the Reporter's recommendations (by unresolved issue) and the Council's proposed modifications is appended to this report. Of the 34 issues identified the key conclusions, recommendations and changes proposed include:

Issue 3 - Development Strategy

- ✎ No new housing or economic development sites over and above the sites identified in the plan;
- ✎ Housing land supply provided for in the plan is sufficient to meet SPP and SDP housing land requirements; and
- ✎ No support for calls to delete committed sites which are not yet developed.

Issue 6 – Improving Transport Connectivity

- ✎ Council has undertaken extensive transport analysis and the plan provides sufficient justification for the A701/A702 road proposals;
- ✎ Support for access to the Newton Farm housing site (Hs1) from the A720/A68 junction;
- ✎ Potential route for a railway line to Penicuik should not be safeguarded as there is no provision for it in SESplan and because of uncertainties around deliverability; and
- ✎ The plan supports use of more sustainable modes of transport and does not encourage private car use.

Issue 7 – Site Ec3 at Straiton and A701 Relief Road

Film Studio

- ✎ Film studio to be identified on proposals map as a unique development (reference to Ministerial decision with regard to a planning application). The recommendations provide clarification

that in the event the development does not proceed the land reverts back to its current use (part green belt, countryside and employment (part of site Ec3)). The Reporter has protected the development opportunity but removed the presumption in favour of alternative uses on the green belt and countryside elements of the site.

Extension to Straiton Retail Park

- ↪ Plan provides robust justification to include Ec3 as part of the network of centres in SDP. Supports masterplan approach to avoid piecemeal development and to confirm appropriate uses which should provide for an element of housing but the Reporter does not prescribe how much.

Issue 10 - Mineral Extraction

- ↪ Does not support the addition of Airfield Farm near Cousland as an area of search for coal.

Issue 13 – Green Network & Newbattle Strategic Greenspace

- ↪ The allocation of the Newbattle strategic greenspace provides greater long term protection than green belt allocation.

Issue 23 – General Delivery Issues

- ↪ The Reporter is satisfied that the plan sets out the infrastructure requirements to allow development to proceed, including education needs; community facilities; water and drainage; and health and emergency services.
- ↪ The Reporter is satisfied that there is sufficient provision within the plan (along with accompanying documents) to ensure that satisfactory infrastructure can be delivered to meet future growth.

4 Adoption Process

- 4.1 Following receipt of the report of examination the Council has three months³ in which to consider the recommendations and to modify the plan in line with the Reporter's recommendations or, where the Council does not agree, provide a statement setting out their justification for not modifying the plan.
- 4.2 Within this period the Council must also advertise its intention to adopt the plan indicating if it has modified the plan or not, where and when the plan can be inspected, make copies of the plan (as modified if appropriate) available to inspect at the planning office, in all libraries and online and notify all the people who made representations to the plan of the above. In addition the Council has to submit a list of the modifications made following the report of examination to Scottish Ministers along with a statement explaining why the Council has not accepted any recommended modifications (if applicable); a copy of the plan as proposed to be adopted; the report of examination, and the advert of intention to adopt the Plan and the revised Environmental Report (if applicable). Following a recent screening report the Strategic Environmental Assessment (SEA) Gateway authorities have confirmed

³ S19(12) of the Planning etc. (Scotland) Act 2006, Circular 6/2013 Development Planning, paragraph

that they concur with the Council's view that there are unlikely to be any significant adverse environmental effects arising from the report of examination.

- 4.3 After a period of 28 days following formal submission to Scottish Ministers, unless directed not to by Ministers the Council can adopt the plan. A further report would then be prepared for the Council in November to inform Members of the Ministers' decision and, subject to that decision, to seek approval to take the necessary steps to formally adopt the plan.
- 4.4 The report to Planning Committee on 6 June 2017 highlighted that work was underway to prepare draft Supplementary Guidance and Planning Guidance on a range of policy topics to coincide with the receipt of the Report of Examination. Work is at an advanced stage on some of the key pieces of guidance, including developer contributions and affordable housing, the Midlothian Green Network and mineral resource extraction. If the Council agrees to adopt the plan in line with the report's recommendations then the emerging guidance will be updated to incorporate the changes arising from the Report of Examination.

5 Report Implications

5.1 Resource

The costs associated with producing the Local Development Plan have to date been met within existing budgets. The costs associated with the Examination are greater than projected due to the extent of work undertaken by the DPEA. This excess, together with the costs of subsequent reproduction and publication of the adopted MLDP, will require careful monitoring of this year's allocated Planning budget.

5.2 Risk

Legislation requires that the Council has three months from receipt of the report of examination to submit the proposed plan as modified to the Scottish Ministers. Failure to comply with this timescale will delay the adoption date of the plan. Delay in adoption would mean that the Council would be dependent upon an out of date (2008) local plan. This would result in uncertainty amongst local communities over the future development of their localities; it would undermine the confidence of potential inward investors, as well as that of businesses in Midlothian wishing to grow; and it could result in pressure for housing development on unplanned and unfavoured sites, with the added risk of loss at appeal potentially with either reduced or no developer contributions towards consequential infrastructure.

Equally, in addition to delaying the adoption of the plan, failure to provide sufficient justification in the event that the Council decides not to accept any of the recommendations may result in the Scottish Ministers directing the Council not to adopt the plan as proposed but to direct the Council to modify the plan as Ministers see fit or to approve the plan themselves.

5.3 Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- ☐ Community safety
- ☒ Adult health, care and housing
- ☒ Getting it right for every Midlothian child
- ☒ Improving opportunities in Midlothian
- ☒ Sustainable growth
- ☐ Business transformation and Best Value
- ☐ None of the above

5.4 **Key Priorities within the Single Midlothian Plan**

The MLDP provides the spatial land use policy and development framework for Midlothian for the next ten years. It is a vital component in ensuring economic growth and business support opportunities across Midlothian.

5.5 **Impact on Performance and Outcomes**

The Examination is the penultimate stage of the development plan process before the plan is adopted. Once adopted it will provide the policy and development framework to support improving opportunities in Midlothian and supporting sustainable growth.

5.6 **Adopting a Preventative Approach**

The MLDP provides land use planning policy guidance for investment in future growth and development across the Council area up to 2027 and will help to inform the future investment priorities of the Council and its community planning partners as well as other public, private and voluntary sector bodies.

5.7 **Involving Communities and Other Stakeholders**

The local development plan process has been subject to public consultation at the Main Issues Report stage (in accordance with the activities and timetable set out in Development Plan Scheme No. 5, March 2013) and the Proposed Plan was placed on deposit for a period of representations to be made which ran from 14 May 2015 to 26 June 2015. The latest Development Plan Scheme No. 9 (March 2017) sets out the remaining stages of the development plan process post examination, including the preparation of Supplementary Guidance and Planning Guidance to support the MLDP and looks ahead to the emerging Strategic Development Plan (2) (currently at examination stage) and the corresponding consultation and engagement events and activities associated with the next MLDP, starting in 2018.

5.8 **Ensuring Equalities**

Both Strategic Environmental Assessment and an Equalities and Human Rights Impact Assessment were conducted in the early stages of the plan production process on the Main Issues Report and subsequently at the Proposed MLDP stage. In both cases the assessments were approved by Council. The proposed changes to the proposed plan arising from the Report of Examination (prepared by the Directorate of Planning and Environmental Appeals) do not fundamentally change the objectives, policies and proposals of the plan

which represents the settled position of the Council and therefore it does not warrant further equalities assessment.

This report is seeking Council approval to adopt the Proposed Plan in line with the Reporter's recommendations. As part of that process the Council has a requirement to notify people who made representations to the Proposed Plan prior to the Examination that the Proposed Plan has been published in the form the Council intends to adopt it and where and when it can be viewed.

5.9 Supporting Sustainable Development

Preparation of the plan to proposed plan stage was subject to and informed by the requirements of the Environmental Assessment (Scotland) Act 2005 ('strategic environmental assessment'). The environmental authorities agree that no further significant environmental effects are likely as a consequence of the modifications recommended in the Report of Examination. In the event that the Council agrees to make these modifications, the Act requires the Council to make a determination that the modifications are unlikely to give rise to significant environmental effects. A copy would require to be sent to the environmental authorities and the determination publicised in the local press and online.

5.10 IT Issues

There are no IT issues arising from this report.

6 Summary

- 6.1 The report of the examination submitted to the Council by the independent Scottish Government Reporter includes very few substantive modifications to the Proposed Midlothian Local Development Plan. It is particularly to be welcomed that the Reporter supports the Council's position that it has a sufficient housing land supply, and that no new housing allocations are proposed over and above those identified in the Proposed Plan. The Reporter's report can therefore be regarded as an endorsement of the Council's Proposed Plan. Accordingly it would be appropriate for the Council to accept the proposed modifications, with one justifiable exception (paragraph 3.2 above refers) and to notify Scottish Ministers of its intention to adopt the Plan.

7 Recommendations

- 7.1 Council is recommended to:

- a) approve the proposed modifications to the plan as indicated in appendix 1 to this report;
- b) require the Head of Communities and Economy to make the necessary arrangements to:
 - i. publish a notice of the Council's intention to adopt the Proposed Plan;
 - ii. make the list of proposed modifications and copies of the Proposed Plan available to inspect at the planning office, in all public libraries and on the internet; and
 - iii. notify interested parties who made representations to the Proposed Plan prior to the Examination advising the

Proposed Plan has been published in the form the Council intends to adopt it and where and when it can be viewed.

- c) require the submission of the following documents to Scottish Ministers in accordance with statutory requirements:
 - i. a list of the modifications made following the receipt of the Examination Report;
 - ii. a statement setting out any recommended modifications that the authority has not made and the explanation for this;
 - iii. the Proposed Plan the Council wishes to adopt;
 - iv. the Report of Examination;
 - v. the advert of intention to adopt the plan; and
 - vi. any environmental assessment carried out into the Proposed Plan as modified; and
- d) require the preparation of a further report to Council in due course to confirm the Ministers' direction in respect of adopting the plan and the procedure to constitute the Proposed Plan as the adopted Midlothian Local Development Plan.

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Background Papers:

- Proposed Midlothian Local Development Plan – Report of Examination (July 2017)
- Midlothian Council Planning Committee, 6 June 2017 – Midlothian Local Development Plan Update