

## Hallam Land Management Limited

### Candidate Housing Allocation EOI 0127, Bathgate

#### Housing Land Report



AMEC Environment & Infrastructure UK Limited

October 2014

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# Hallam Land Management Limited

## Candidate Housing Allocation EOI 0127, Bathgate

Housing Land Report/

AMEC Environment & Infrastructure  
UK Limited

October 2014

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# Executive Summary

## Purpose of this Report

The purpose of this report is to assess the effective housing land supply within the West Lothian council area against national policy criteria and applicable strategic development plan housing land requirements. The report identifies and discusses West Lothian's current and emerging housing land supply targets, and then presents a quantitative analysis of the adequacy of the current and near future effective housing land supply against these targets. The report concludes by identifying the implications of this quantitative assessment for the proposed housing allocation and residential development at land east and west of the A801 (site EOI 0127), located west of Bathgate.

The allocation of site EOI 0127, as promoted through a previous submission to the West Lothian LDP Call for Sites and through multiple representations regarding the LDP Main Issues Report, would assist West Lothian Council in meeting its anticipated growth and housing land requirements over the LDP plan period. The allocation and subsequent development of the site would help to support economic development which is of national importance.

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# 1. Introduction

## 1.1 Background

AMEC Environment & Infrastructure UK Ltd (AMEC) was commissioned by Hallam Land Management Limited (Hallam) to prepare and submit representations regarding the West Lothian Local Development Plan (LDP) Main Issues Report ('the MIR'). This Housing Land Report has been prepared as a supporting document to these representations, particularly in respect of representations regarding: questions 15 - 22 within the MIR, the schedule of 'preferred' housing sites identified in MIR Appendix 3, and the site assessments presented in the Appendices to the MIR SEA Report. This report presents an analysis of West Lothian's housing land supply requirements and then presents a quantitative assessment of the adequacy of the current effective housing land supply against these requirements. The report concludes by identifying the implications of this quantitative assessment for the proposed housing allocation and residential development at land east and west of the A801, situated west of Bathgate.

## 1.2 Aims

The aims of this housing land report are:

- To identify the housing land supply requirements for the West Lothian council area;
- To determine whether or not there is a current shortfall in either the 5 year or total effective housing land supply within the West Lothian council area;
- To determine whether or not the 'preferred' housing sites identified in MIR Appendix 3 would be sufficient to eliminate any current shortfall within West Lothian and ensure that a five year effective land supply can be maintained at all times; and
- To identify the implications of any identified shortfall in the 5 year or total effective housing land supply, for the proposed housing allocation and residential development of land east and west of the A801, immediately west of Bathgate.

## 1.3 Report Structure

The remainder of this report is structured as follows:

**Section 2** – outlines the current housing land supply **policy context**

**Section 3** - identifies the **housing land requirements** for West Lothian

**Section 4** – sets out evidence from the West Lothian MIR, its associated documents relevant to determining whether or not there is currently a shortfall in either the **five year or total effective land supply in West Lothian**.

**Section 5** – provides an **analysis of the effectiveness** of the West Lothian’s current and LDP MIR ‘effective’ housing land supply. This section also discusses the proposed phasing of the ‘preferred’ housing allocations identified in the MIR Appendices.

**Section 6** – sets out a **quantitative analysis** to determine whether or not there is currently a shortfall in either the 5 year or total effective housing land supply within West Lothian.

**Section 7** – sets out evidence from the Chief Planner’s letter of October 2010 and recent **appeal decisions** relevant to determining whether or not there is currently a shortfall in either the five year or total effective land supply in West Lothian.

**Section 8** – **summarises** the key points from sections 1-7 of this report and provides a **conclusion**.



## 2. Policy Context

Relevant national planning policy is contained within the National Planning Framework (NPF) 3 and the Scottish Planning Policy (SPP), both of which were published on 23<sup>rd</sup> June 2014. The finalised NPF3 was informed by consultation exercises on the NPF3 Main Issues Report (April 2013) and NPF3 Proposed Framework (January 2014), whilst the SPP was informed by consultation exercises regarding a draft revised SPP (April 2013) and a proposed ‘Sustainability & Planning’ Principal Policy (October 2013).

### 2.1 National Planning Framework

Scotland’s Third National Planning Framework (NPF3 – Scottish Government, 2014) provides a statutory framework around which to orientate Scotland’s long-term spatial development. The Framework represents the spatial expression of the Scottish Government’s Economic Strategy (2011) and it highlights the spatial planning implications of multiple national policy documents and commitments. Overall, the NPF3 emphasises the Scottish Government’s commitment to increasing sustainable economic growth across all areas of Scotland, and therefore orientates the efforts of Scotland’s planning system towards this purpose. Specifically in relation to maintaining an effective housing land supply, paragraph 2.18 of the NPF3 states that in all parts of Scotland “*there will be a need to ensure a generous supply of housing land in sustainable places where people want to live, providing enough homes and supporting economic growth*”.

### 2.2 Scottish Planning Policy

The stated purpose of the Scottish Planning Policy (SPP – Scottish Government, 2014) is “*to set out national planning policies which reflect Scottish Ministers’ priorities for operation of the planning system and for the development and use of land*” (paragraph i). In doing so the SPP sets out the Scottish Government’s expectations regarding the treatment of specific planning issues within development planning and development management. Paragraph ii of the SPP states that “*the content of the SPP is a material consideration that carries significant weight*” in the determination of planning applications.

The SPP aims to contribute to the achievement of the Scottish Government’s overarching purpose of achieving sustainable economic growth. Paragraph 10 of the SPP makes clear that planning relates to all 16 of the Scottish Government’s national outcomes, which explain how the purpose of sustainable economic growth is to be achieved.

#### 2.2.1 SPP Housing Land Requirements

The ‘Enabling Delivery of New Homes’ Subject Policy within the SPP sets out a number of requirements related to maintaining an effective housing land supply which all planning authorities (SDPAs and LPAs) must comply with. Paragraph 110 identifies 3 planning principles which underpin this subject policy:

- “identify a generous supply of land for each housing market area within the plan area to support the achievement of the housing land requirement across all tenures, maintaining at least a 5-year supply of effective housing land at all times;
- enable provision of a range of attractive, well-designed, energy efficient, good quality housing, contributing to the creation of successful and sustainable places; and
- have a sharp focus on the delivery of allocated sites embedded in action programmes, informed by strong engagement with stakeholders”.

In relation to the provision of housing land, paragraph 113 of the SPP states that development plans “*should be informed by a robust housing need and demand assessment (HNDA), prepared in line with the Scottish Government’s HNDA Guidance*”. The importance of the HNDA is emphasised in paragraph 114, which states that HNDAs, development plans and local housing strategies “*should be closely aligned*”.

Paragraph 115 states that development plans should “*set out the housing supply target (separated into affordable and market sector) for each functional housing market area, based on evidence from the HNDA...the target should be reasonable, should properly reflect the HNDA estimate of housing demand in the market sector, and should be supported by compelling evidence*”. This confirms the need for housing supply targets to be evidence based and reflective of HNDA estimates, although it does allow for some variation from HNDA estimates providing that these are robustly justified and supported by clear evidence.

Paragraph 115 defines a Housing Supply Target as “*a policy view of the number of homes the authority has agreed will be delivered in each housing market area over the periods of the development plan and local housing strategy, taking into account wider economic, social and environmental factors, issues of capacity, resource and deliverability, and other important requirements such as the aims of National Parks*”.

Paragraph 116 states that “*within the overall housing supply target, plans should indicate the number of new homes to be built over the plan period. **This figure should be increased by a margin of 10 to 20% to establish the housing land requirement**, in order to ensure that a generous supply of land for housing is provided. The exact extent of the margin will depend on local circumstances, but a robust explanation for it should be provided in the plan*”. This confirms that **housing land requirements** should be based on a figure 10-20% higher than **housing supply targets**.

Paragraph 117 states that “*the housing land requirement can be met from a number of sources, most notably sites from the established supply which are effective or expected to become effective in the plan period...*”. Therefore only the component of a planning authority’s established land supply which is effective or capable of becoming effective within the plan period should contribute to meeting the housing land requirement. **By implication, any housing sites which are currently constrained and which are not capable of becoming effective within the plan period cannot contribute to meeting the housing land requirement, even if they are included within a planning authority’s established land supply.**

Paragraph 118 clarifies the role of SDPs in setting housing supply targets and housing land requirements:

*“Strategic development plans should set out the housing supply target and the housing land requirement for the plan area, each local authority area, and each functional housing market area. They should also state the amount and broad locations of land which should be allocated in local development plans to meet the housing land requirement up to year 12 from the expected year of plan approval, making sure that the requirement for each housing market area is met in full. Beyond year 12 and up to year 20, the strategic development plan should provide an indication of the possible scale and location of housing land, including by local development plan area”.*

Paragraph 118 confirms that the **housing land requirement** should be met **in full** for each functional housing market area through LDPs. In addition LDPs should include sufficient housing land allocations to meet the local authority’s housing land requirement up to 12 years after the approval of an SDP.

Diagram 1 (page 30 of the SPP) confirms that within SDPA areas SDPs should “*set out the Housing Supply Target*” which should then be met (by a generous margin) by local planning authorities through LDPs.

The role of LPAs within SDPA areas in meeting their housing land requirements is clarified in paragraph 119 of the SPP, which states:

*“Local development plans in city regions should allocate a range of sites which are effective or expected to become effective in the plan period to meet the housing land requirement of the strategic development plan up to year 10 from the expected year of adoption. They should provide for a minimum of 5 years effective land supply at all times. In allocating sites, planning authorities should be confident that land can be brought forward for development within the plan period and that the range of sites allocated will enable the housing supply target to be met”.*

The key requirements set on in paragraph 119 are:

- LDPs should provide for a minimum of 5 years effective land supply at all times. The SPP makes clear that a LDP should allocate sufficient land to meet this requirement, rather than relying on unallocated sites within housing land audits (which may have the potential to support residential development) to make up the 5 year effective housing land supply. By implication, if a LDP allocate sufficient land to meet this requirement there will not be a shortfall in the authority’s 5 year effective land supply.
- All LDP housing allocations should be effective or capable of becoming effective within 10 years of the LDP adoption date. Sites which are not currently effective, and are not capable of becoming effective within this period, cannot contribute to meeting housing land requirements.

Paragraph 112 states that in allocating housing land to meet housing land requirements “*local development plans should allocate appropriate sites to support the creation of sustainable mixed communities and successful places and help to ensure the continued delivery of new housing*”.

It should be noted that the specific requirement which was contained within paragraph 72 of the previous SPP (2010) for SDPs to specify how much of the housing land requirements should be met through LDP allocations by

the end of year 7 after the SDP approval date (i.e. five years after an expected LDP adoption date) is not retained within the current SPP. However, all of the approved SDPs are underpinned by the previous SPP, so this 7 year requirement has been implemented within all of the approved SDPs, including the approved SESplan SDP (2013). LDPs are required to be in conformity with SDPs, so any LDPs prepared under the current SDPs will still be expected to demonstrate compliance with the 7 year requirement.

## 2.3 Summary of Policy Context

Key points from national planning policies relating to housing land supply matters include that:

- The content of the SPP is a material consideration that carries significant weight in the determination of planning applications
- The Scottish Government's overriding purpose is to achieve sustainable economic growth
- The three planning principles set out in the SPP relating to maintaining an effective housing land supply which all planning authorities must comply with are:
  - To identify a generous supply of land across all tenures maintaining at least a 5 year supply of effective housing land at all times
  - To enable the provision of a range of housing in sustainable places and
  - To focus on the delivery of allocated sites informed by strong engagement with stakeholders
- The housing supply target (separated into affordable and market sector) is to be based on evidence from the HNDA; some variation from the HNDA estimates is allowed, but only subject to clear and robust evidence
- To ensure generosity of supply, housing supply targets should be increased by a margin of 10 to 20% to establish housing land requirements

## 3. Housing Land Requirements

### 3.1 SDP and LDP Requirements Overview

As noted in Section 2 of this report, the Scottish Planning Policy (SPP) requires SDPs to set out the housing supply target and the housing land requirement for the plan area, each local authority area, and each functional housing market area. LDPs should then allocate a range of sites which are effective or expected to become effective in the plan period to meet the housing land requirement of the strategic development plan up to year 10 from the expected year of adoption. LDPs should provide for a minimum of 5 years effective land supply at all times.

As required by the SPP, the Edinburgh and South East Scotland Strategic Development Plan (hereafter ‘SESplan or ‘the SDP’), which was approved by Scottish Ministers with modifications in June 2013, outlines the housing land requirements for all local authorities within the SESplan area, including West Lothian.

The SESplan SDP housing land requirements cover the period 2009-2032. To ensure that a 5 year effective land supply is maintained at all times, and that the aforementioned 7 year requirement is implemented, the SESplan SDP sets out housing land requirements for three periods: 2009-2019, 2020-2024 and 2025-2032. Taken together these provide an overall housing land requirement for the period 2009-2032. However, as LDPs need to include sufficient housing land allocations to meet housing land requirements up to 12 years (after the approval of an SDP), the first two periods, 2009-2019 and 2020-2024 are of particular importance.

### 3.2 SESplan Area Requirements

#### 3.2.1 Importance of Establishing SESplan Housing Land Requirements

The examination report into the SESplan Proposed Plan (2012), the SESplan ministerial approval letter (June 2013) and the SESplan Supplementary Guidance ministerial approval letter (June 2014), all emphasise the importance afforded by the Scottish Government to ensuring that planning authorities maintain a 5 year effective housing land supply at all times. This is also reflected in SESplan Policy 7 (Maintaining a Five Year Housing Land Supply), which states that sites for Greenfield housing development may be allocated in LDPs, 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”.*

### 3.2.2 Housing Land Supply within SESplan Proposed Plan (2012)

This and subsequent subsections of the report considers the approach to housing land supply adopted within the SESplan Proposed Plan and the modified approach taken within approved SESplan SDP, in order to highlight the importance afforded by Scottish Ministers to ensuring that housing allocations are sufficient to meet assessed housing needs, and that a 5 year effective housing land supply is maintained at all times.

Owing to the fact that the SESplan Proposed Plan identified insufficient housing land requirements to meet identified housing demands, SESplan was modified substantially before being approved to properly reflect this policy position. Therefore, it is necessary to set out in some detail the background to the formulation of the SESplan housing land requirements.

In the SESplan examination report (2013), the SESplan reporters recommended significant changes to the plan's spatial strategy in relation to housing land supply. The original wording of the SESplan Proposed Plan included the following:-

*"23.....The SESplan estimates of housing need and demand are built upon 2006 based household projections. The latest projections based on 2008 data indicate that need and demand have in fact been some 45% less than estimated. There is also a significant amount of land already allocated across the SESplan area within existing development plans - which, based on a five year average completion rate, equates to 21 years supply. It is evident that completions of housing developments have been reduced by the economic downturn, with the programmed effective five year housing land supply significantly reduced as a result. An issue of delivery rather than supply.*

*24. There will continue to be major challenges to the delivery of housing and other elements of the Plan both in the short and medium terms, since the resources available for both development and the supporting infrastructure will continue to be constrained.*

*25. It is clear that the recession has had a marked effect on both prospective home owners and the development industry with the difficulties in accessing finance acting as a barrier to both demand for and delivery of housing. Allocating further development land in the short term would undermine existing development plan strategies and provide for an over allocating of land."*

Essentially then, the strategic development plan sought to argue that sufficient land has been allocated for development or had planning permission. The shortfall in the 5 year effective land supply was due to marketing difficulties caused by the economic recession, as opposed to a shortage of available sites.

However, the approach of the SESplan SDPA to housing land supply was rejected by the SESplan reporters, who recommended the deletion of paragraphs 22 to 26 of the Proposed Plan and the substitution of the following:-

*"22. While the current economic downturn has affected delivery and demand for housing, it is particularly important in supporting economic growth and recovery to ensure that sufficient land is allocated and available for development in the period up to 2024.*



23. The housing requirements have been identified through a housing need and demand assessment (HNDA) which has been undertaken for the SESplan area. There is a significant amount of land currently allocated or with planning permission across the SESplan area. The extent to which those sites remain capable of delivering housing completions by 2024 will be re-assessed in development plans. Where necessary, alternative sites will be allocated, and a five years' effective housing land supply will be maintained at all times to ensure that delivery is not unnecessarily constrained.

25. It is clear that the recession has had a marked effect on both prospective home owners and the development industry, with the difficulties in accessing finance acting as a barrier to both the demand for and delivery of housing. Allocating sufficient land and maintaining a five years' effective housing land supply at all times will assist in increasing the delivery of new housing as soon as restrictions ease."

It is clear from these modifications that allocation of sufficient housing land and maintenance of an effective five year housing land supply at all times was seen by the SESplan examination reporters as a critical national planning policy requirement, not due to the recognised importance of housebuilding in assisting with economic recovery.

### 3.2.3 SESplan HNDA Housing Land Requirements

As part of the preparation of SESplan a Housing Needs and Demand Assessment (HNDA) was prepared. The assessed housing land requirement through the HNDA is summarised in Table 1 on page 182 of the SESplan examination report, as shown in Table 3.1 below (for illustrative purposes, the percentage of the assessed housing requirement allocated to each of the three time periods has been added in an additional column).

**Table 3.1 Summary of the Assessed Housing Requirement through the HNDA**

<b>Table 1: Outcome of the housing need and demand assessment</b>	<b>Assessed Housing Requirement 2009-2019</b>	<b>Assessed Housing Requirement 2019-2024</b>	<b>Assessed Housing Requirement 2024-2032</b>
Edinburgh	34,290	14,200	22,505
East Lothian	5,210	2,740	3,820
Fife	16,260	7,400	10,363
Midlothian	1,700	500	171
Scottish Borders	5,955	2,780	3,802
West Lothian	11,420	5,090	7,338
<b>SESplan</b>	<b>74,835 (48%)</b>	<b>32,710 (21%)</b>	<b>47,999 (31%)</b>

Table 3.1 above indicates that the assessed housing requirement for West Lothian is 11,420 units over the period 2009-2019 and 5,090 over the period 2019-2024 (assuming that all of the pre-2019 requirement is delivered by 2019 and there is no backlog demand).

Table 2 of the SESplan Proposed Plan subtracted from the total HNDA housing land requirement of 155,600 some assumptions for the contributions which would be made to this requirement from the existing land supply and windfall, arriving at an **overall housing land supply shortfall of 34,200** as follows:-

**Table 3.2 SESplan area Housing Land Supply Shortfall**

SESplan Housing Land Requirement	155,600
Existing Housing Land Supply	105,600
Loss of Supply Due to demolitions	5,500
Completions 2009/2010	4,300
Windfall Assumption	17,000
Total Supply	121,400
Housing land shortfall	34,200

Source – SESplan Proposed Plan Table 2

To address this shortfall of 34,200 units the SESplan Proposed Plan included the spatial distribution Matrix shown in Table 3.3 below (Table 3 of the SESplan Proposed Plan):

**Table 3.3 SESplan SDP Proposed Plan (2013) Table 3**

	Strategic Development Area	Committed Development*	SDP Housing Land Requirement		
			2009 - 2019	2019 - 2024	2024 - 2032
Regional Core <sup>1</sup>	West Edinburgh	800	1,000	1,000	24,050
	South East Edinburgh	7800	600	850	
	City of Edinburgh	3,800	500	500	
	Midlothian	4,000	700	350	
	Central Edinburgh	4,000	0	0	
Edinburgh Waterfront	28,500	0	0		
East Coast <sup>2</sup>	East Lothian	6,400	0	750	
	Eastern Borders	2,000	0	50	
Fife Forth	North Dundee/Inverkeithing	1,000	0	500	
	Ose / Upper Leven Valley	5,700	0	500	
	Development outwith SDAs (Fife)**	-	600	200	
Midlothian / Borders <sup>3</sup>	A7 / A68 / Borders Rail Corridor	5,900	350	900	
	A701 Corridor	1,600	250	500	
	Central Borders	7,000	0	200	
	Western Borders	1,000	0	100	
West Lothian	Development outwith SDAs (Scottish Borders)**	-	0	50	
	West Lothian	22,300	500	1,250	
<b>Total</b>		<b>94,000</b>	<b>1,300</b>	<b>4,850</b>	<b>24,050</b>
<b>Total Housing Land Requirement 2009 - 2032</b>					<b>34,200</b>

Source: SESplan SDP (2013) Table 3

Table 3.4 (SESplan Table 3) shows that that the SESplan SDPA re-allocated the housing land shortfall, rather than just allocating the 34,200 shortfall proportionately to the 3 time periods on the basis of the HNDA analysis set out in Table 3.1 above. The changes in the allocation of the housing land requirement between the HNDA and SESplan Proposed Plan can be summarised as follows:-



**Table 3.4 Changes in the allocation of the Housing Land Requirement between the HNDA and SESplan Proposed Plan**

Document	Housing Requirement 2009-2019	Housing Requirement 2019-2024	Housing Requirement 2024-2032
HNDA	48%	21%	31%
Proposed SDP	10%	20%	70%

The result of the re-allocation of the housing land requirement within the SESplan Proposed Plan was that the vast majority of the housing land requirement was moved from the 2009-2019 period to the 2024-2032 period.

The reasons given by the SESplan SDPA for not following the outcome of the HNDA are set out in paragraphs 9 and 10 on page 182 of the SESplan examination report. First, the SDPA considered that the requirement was derived from trend-based analysis. Second, they considered that it would be over-optimistic to believe that the house building industry could deliver the necessary scale of completions for the 2 periods up to 2024. The SESplan SDPA also considered that the re-allocated housing requirement was a responsible and realistic approach, as it would still result in the quantitative requirements being met over the whole of the plan period to 2032.

Both of these reasons for not following the HNDA findings were rejected by the SESplan examination reporters. In paragraph 9 on page 182, the reporters rejected the first reason on the basis that it is related to the methodology which had been certified by the Scottish Government as credible and robust in line with paragraph 67 of (the then) SPP. The second reason was rejected because:-

- It does not derive from any wider strategic economic, social or environmental policy objective which might justify setting aside the HNDA and hence was unsupported by paragraph 70 of (the then) SPP (page 182 paragraph 11 and page 249 paragraph 2 of the examination report);
- It was inconsistent with SESplan's vision for the plan area which identified South East Scotland as the main growth area and key driver of the Scottish economy (page 182 paragraph 12 of the examination report);
- Failure to identify the assessed level of housing land requirement would not assist the serious economic difficulties faced by the housebuilding and construction industries (page 183 paragraphs 13 and 14 of the examination report); and
- It would be inconsistent with paragraph 72 of (the then) SPP, which required the identification of the housing land requirement for each local development plan area up to year 12 beyond the predicted year of approval and an indication of the possible scale and location of housing up to year 20 (page 183 paragraphs 14 and 15 and page 249 paragraphs 4 and 5 of the examination report).

### 3.2.4 SESplan Examination Conclusions & Recommendations

The covering letter to the Scottish Ministers enclosing the SESplan examination report concludes in relation to housing land supply:-

*"...we have found that the provisions of the submitted plan related to its housing land requirements are neither sufficient nor appropriate, as they are not consistent with Scottish Planning Policy in important respects. As explained in Issue 15, we consider that this matter cannot be resolved through the examination process, and therefore recommend that a requirement for the preparation of supplementary guidance is introduced to the plan, which will enable the deficiencies to be addressed".*

The difficulty which the reporters identified was that the SESplan SDPA had not carried out the necessary analysis to allow the examination to recommend how the HNDA housing land requirements should be divided amongst the 6 LDP areas for each of the three plan periods. The reason for the difficulty is explained on page 273 of the examination report, which set out proposed replacement text for paragraph 110 of the plan:-

*"Tables 3 and 4 show the scale of potential contribution which might be secured from sites currently committed for housing development. However, it is known that a significant proportion of these potential house completions will not be delivered before 2024, and that some of the sites will not be completed until after 2032, or may not prove deliverable at all.*

*Also, the housing need and demand assessment identified in that, in the combined period from 2009 to 2024 only, the number of households likely to be generated from within the City of Edinburgh is some 44,500. Environmental constraints and other restrictions on land availability within the city's boundaries may mean that a significant proportion of these additional housing needs and demands will require to be met on housing land allocations in the other five local development areas."*

To avoid recommending that the SESplan SDP Proposed Plan be rejected, the reporters recommended that Table 2 of SESplan Proposed Plan should be replaced by the following table, setting out the full housing land requirements of the HNDA:-

**Table 3.5 Replacement (approved) SESplan Area Housing Land Requirements**

Table 2: Assessed housing requirements by plan period	Assessed housing requirement	Assessed housing requirement	Assessed housing requirement
	2009-2019	2019-2024	2024-2032
SESplan area	74,835	32,710	47,999

The examination reporters also recommended that Policy 5 of SESplan should require the preparation of supplementary guidance, to provide further information for local development plans as to how they assess housing land requirements in each of the six LDP areas in the periods 2009-2019 and 2019-2024.

In relation to the proposed allocation of candidate allocation site EOI 0127 within the West Lothian LDP, it is important to note that the SESplan examination reporters identified a need to partially re-allocate the 44,500 housing land requirement for the City of Edinburgh amongst other LDP areas. No other spatial redistributions of SESplan housing land requirements were recommended by the examination reporters.

Furthermore, to provide for a generous housing land supply, the SESplan examination reporters noted at paragraph 3 on page 181 of the examination report that:-

*"It is also likely that land with a higher capacity than the numerical housing land requirement will have to be allocated in each local development plan, because not all sites prove to be effective or capable of delivering all their potential house completions in the time-scale initially anticipated."*

The implication of this is that housing land requirements set through the SESplan SDP and associated Supplementary Guidance, are minimum requirements which must be met in full, and indeed should be exceeded, by LDP housing allocations. This provides the basis upon which the adequacy of the West Lothian's effective housing land supply (including sites 'preferred' in the West Lothian LDP MIR) can be assessed.

Overall, the reporters' recommendations and recommended modifications to SESplan emphasise the importance of maintaining an effective 5 years housing land supply at all times. Paragraph 1 on page 181 states:-

*"In Scottish Planning Policy at paragraph 66 (now superseded), the Scottish Government confirms that the planning system should allocate a generous supply of land to meet identified housing requirements across all tenures. The key role in ensuring this lies with the constituent planning authorities, firstly in allocating land on a range of sites which are effective or capable of becoming effective to meet the housing requirement up to year 10 from the predicated year of adoption, but secondly, and critically, in ensuring that a five years effective housing land supply is maintained at all times".*

The central importance of housing land supply is set out in Paragraph 11 on page 274 which modifies paragraph 114 of the SDP by stating that:-

*"Scottish Planning Policy confirms that allocating a generous supply of land for housing in the development plan will give the flexibility necessary for the continued delivery of new housing, even if unpredictable changes to the effective land supply occur during the life of the plan. Maintaining a supply of effective land for at least 5 years at all times, should ensure that there is a continuing generous supply of land for house building."*

Paragraph 12 on page 275 modifies the plan by inserting a new Policy 6 as follows:-

*"Each planning authority in the SESplan area shall maintain a five years' effective housing land supply at all times. The scale of this supply shall derive from the housing requirements for each local development plan area identified through the supplementary guidance provided for by policy 5. For this purpose, planning authorities may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the local development plan."*

### 3.2.5 SESplan Housing Land Supply Supplementary Guidance 2014

The SPP requires that SDPs identify the housing requirement in full by Plan phase and with reference to LDP area. Unfortunately, the SESplan Proposed Plan failed to comply properly with either of these requirements. Scottish Ministers corrected the first of these two failings by incorporating modifications into SESplan to identify the correct phasing of SESplan wide housing requirements. However, a lack of available information prevented these housing land requirements from being broken down into each Council area. This issue has been dealt with through the introduction of SESplan Policy 5, which requires the production of Supplementary Guidance in order to set out housing land requirements for each SESplan member authority.

The SESplan Housing Land Supplementary Guidance identifies the total amount of housing land which must be allocated in each of the LDPs covering the SESplan area to provide 107,560 new homes by 2024, as specified in Table 2 of the approved SESplan (2013). The housing land requirements for each SESplan member authority are shown in Table 3.6.

**Table 3.6 SESplan Housing Land Supplementary Guidance (2014) Housing Land Requirements**

Local Development Plan	2009 - 2019	2019 - 2024
City of Edinburgh	22,300	7,210
East Lothian	6,250	3,800
Fife	17,140	7,430
Midlothian	8,080	4,410
Scottish Borders	9,650	3,280
West Lothian	11,420	6,590
SESplan Totals 2009 - 2019 and 2019 - 2024	74,840	32,720
SESplan Total 2009 - 2024	107,560	

The figures detailed in Table 3.6 include housing completions since 2009 and any existing housing allocations which are carried over into emerging LDPs. However, paragraph 3.8 of the Supplementary Guidance confirms that *“the extent to which sites already identified for housing remain capable of delivering house completions by 2024 must be re-assessed in LDPs (SDP paragraph 23). Any changes in this figure will have implications for the amount of additional housing land needed. Where necessary, alternative housing sites will need to be allocated”*. Therefore the figures detailed in Table 3.6 represent minimum net housing land requirements to be allocated in LDPs across the SESplan area.

In order to implement the housing land requirements detailed in Table 3.6 above, the Supplementary Guidance identifies the need for *“additional allowances”* to be allocated in LDPs covering relevant areas, including an additional allowance of 2,130 within West Lothian. This additional allowance must be allocated within the emerging West Lothian LDP as a net addition to the existing effective housing land supply.

After a period of consultation and ratification by each SESplan member authority, the Supplementary Guidance was submitted to Scottish Ministers in May 2014 and was subsequently approved on 18<sup>th</sup> June 2014. In approving the Supplementary Guidance, the Scottish Ministers directed that before each of the SESplan member authorities adopt the Supplementary Guidance on Housing Land it must be modified to remove the 2<sup>nd</sup> sentence of paragraph 3.13 of the guidance which reads: “*Member authorities will base their calculation of the five year land supply on the period 2009-2024, taking into consideration housing completions*”.

This modification clarifies that a 5 year effective land supply needs to be maintained at all times, including the period up to 2019, as well as the period up to 2024. Therefore, the 5 year effective land supply needs to be calculated, not by averaging the requirement over the period 2009-2024, but throughout all periods including shorter periods such as pre-2019. Therefore, if emerging LDP’s within the SESplan region (including the emerging West Lothian LDP) cannot demonstrate a 5 year effective land supply at all times, including pre-2019, they will not be in conformity with the Strategic Development Plan.

After taking legal advice, the SESplan Joint Committee agreed to modify the Supplementary Guidance and as directed and adopt it as modified. The decision to adopt the modified SESplan Housing Land Supplementary Guidance requires to be ratified by all SESplan member authorities. In this regard the modified Supplementary Guidance was considered and approved at a meeting of West Lothian Council’s Council Executive on 16<sup>th</sup> September 2014. In total five of the six SESplan member authorities have now ratified the decision to adopt the modified Supplementary Guidance (as of 8<sup>th</sup> October 2014), and it is expected that East Lothian Council will ratify the decision on 28<sup>th</sup> October at their Council meeting.

Given that the Housing Land Supplementary Guidance was ratified by West Lothian Council’s Executive on 15<sup>th</sup> April 2014 and that the modified Supplementary Guidance was ratified by the Council Executive on 16<sup>th</sup> September 2014, this demonstrates that there is an accepted **effective** housing land shortage and a quantifiable need to bring forward additional effective housing land in West Lothian. If a shortfall in West Lothian’s **effective** land supply did not exist compared with the 2019 and 2024 housing land requirements (see section 3.3), there would have been no need for the SESplan Supplementary Guidance to specify that a specific level of housing land should be allocated through the emerging West Lothian LDP, even if a wider shortfall in the effective housing land supply across the SESplan area was apparent.

The committee report prepared for the consideration of the modified Supplementary Guidance by the West Lothian Council Executive on 16<sup>th</sup> September 2014 states that the implications of modifying the Supplementary Guidance by removing the sentence on calculating five year housing land supply are “*significant*”. This implies that the methodology adopted to date by West Lothian Council for calculating their housing land supply requirements for the emerging LDP is not compliant with the modified Supplementary Guidance and will require alteration. It is submitted that the material effect of the modified Supplementary Guidance is that the West Lothian Council’s LDP housing land requirement covering the period up to 2019, and consequently the level of proposed LDP housing allocations, requires to be significantly increased.

### 3.3 Summary of SESplan Housing Land Requirements

At the time of approval (June 2013) SESplan was subject to a fundamental modification in relation to the proposed housing land supply, as Scottish Ministers found that the proposed approach was inconsistent with national planning policy requirements. In recommending modifications to SESplan on housing land supply, the SESplan Examination Reporters identified the delivery of a 5 year effective housing land supply as being of critical importance. The Scottish Ministers required that SESplan meets the housing land requirement in full, as identified in the Housing Needs and Demand Assessment (HNDA) for the SESplan area. Furthermore, the Scottish Ministers instructed the SESplan SDPA to prepare and adopt statutory Supplementary Guidance within a year of approval of the SESplan SDP (i.e. by the end of June 2014) in order to identify the distribution of housing land requirements between the SESplan member authorities.

The Scottish Ministers approved the SESplan Housing Land Supply Supplementary Guidance with modifications on 18<sup>th</sup> June 2014, and the modified Supplementary Guidance was ratified by the West Lothian Council Executive on 16<sup>th</sup> September 2014. This document sets the housing land requirement for West Lothian at 11,420 homes for the period 2009-2019 and 6,590 homes for the period 2019-2024. In accordance with the Scottish Planning Policy at paragraph 116, a 10% generosity margin should be added to these housing land requirements.



## 4. Evidence of Five Year and Total Effective Housing Land Shortfalls in the West Lothian MIR

A number of points within the MIR, its supporting documents and the West Lothian Housing Land Audit 2013 (HLA 2013) are relevant to determining whether or not there is currently a shortfall in either the five year or total effective land supply in West Lothian, as detailed below. This is of critical importance because if a current effective housing land shortfall can be demonstrated then SESplan Policy 7, which allows the allocation of greenfield housing sites subject to compliance with 3 sustainability criteria, would be engaged. This would allow the proposed housing site at Land east and west of the A801, west of Bathgate (site EOI 0127), to be allocated within the emerging West Lothian LDP.

### 4.1 Evidence regarding West Lothian's Current Five Year Effective Land Supply

- Paragraph 7.20 of the Draft Monitoring Statement (June 2014) stated explicitly that “*since the credit crunch, a five year effective housing land supply has not been maintained in West Lothian and the Lothians*”. The Draft Monitoring Statement was approved for consultation by the West Lothian Council Executive on 19<sup>th</sup> June 2014; however this sentence has subsequently been deleted from the version of the Monitoring Statement published alongside the MIR in August 2014. The reason for this deletion are unclear, as the minutes of the Council Executive meeting held on 19<sup>th</sup> June 2014 indicate that the draft Monitoring Statement was approved for consultation without any modifications being sought or approved.
- Table 16 (page 38) of the Monitoring Statement states that in 2012 West Lothian's five year effective land supply for the period 2012-2017 was 3418 units (this is confirmed in paragraph 4.29 of the Housing Land Supply Background Paper). This represents just 49% of West Lothian's residual housing land requirement for 2012-2015 (6907 units) which was derived from the Edinburgh & Lothians Structure Plan (note that the Structure Plan set a target of 16,100 units to be delivered between 2001 and 2015).
- The 2012 five year effective land supply of 3418 units noted in Table 16 of the Monitoring Statement represents 28% of the total housing land requirement for West Lothian from 2009-2019 (11,420 units), as set out within ratified SESplan Supplementary Guidance on Housing Land Supply (see Table 3.1).
- The Housing Land Supply Background Paper (Figure 28 on page 31) clearly sets out West Lothian's Housing Land Supply target in the context of the SESplan Housing Land completions target (11,420 units between 2009 and 2019). The figure states that based on the 2012 Housing Land Audit, West Lothian's five year effective housing land supply target for 2012-2017 was 7,225 units but that **the 5 year effective land supply in 2012 was just 3,418 units**. Therefore this table indicates that **as of 2012, West Lothian had a housing land shortage of 3,807 units and that only 47% of the 5 year requirement was being met**. This suggests that West Lothian Council acknowledge that there is currently a significant and quantifiable shortfall in West Lothian's 5 year effective land supply.

- The 2012 five year effective land supply of 3418 units noted in Table 16 of the Monitoring Statement represents just 49.3% of the required 5 year effective land supply from 2012 ( $11,420 - 1724 = 9696 / 7 = 1386$  per annum  $\times 5 = 6,930$  units).
- Table 13 of the Monitoring Statement confirms that there were 1724 completions in West Lothian between 2008/09 and 2011/12. Taking into account the 523 completions during 2012/2013 which are recorded within the approved 2013 Housing Land Audit, West Lothian's effective land supply requirement between 2013/2014 and 2018/19 was 9,173 units ( $11,420 - 1724 - 523 = 9,173$ ). This generates a 5 year land supply requirement of 7,645 units ( $9,173 / 6 = 1529$  per annum  $\times 5 = 7,645$  units) for the five year period 2013/14 - 2017/18. Similarly, taking into account expected completions during 2013/14 (573), there is currently a five year land supply requirement of 8,600 over the five year period 2014/2015 – 2018/19 ( $11,420 - 1724 - 523 - 573 = 8600$ ).
- The West Lothian Housing Land Audit 2013 projects that the sum of programmed completions over the 5 year period 2013/14 - 2017/18 will be 3,625 units. Including the 2018/19 programmed completions (711) as a precautionary measure (i.e. providing a six year effective land supply) the total expected programmed completions for the period 2013/14 - 2018/19 is 4,336 units.
- West Lothian's 5 year effective land supply for the current five year period (2014/15 – 2018/19) is 3,763 units ( $4336 - 573 = 3,763$ ). Compared with the current 5 year land supply requirement (8,600 units) there is currently a 56.2% shortfall in West Lothian's 5 year housing land supply ( $3,763 / 8600 \times 100$ ).

4.2

## Evidence regarding West Lothian's Total Effective Housing Land Supply

- The West Lothian Housing Land Audit 2013 states that the "total effective housing land supply" is 14,470 units. Discounting the 8,551 expected completions which are earmarked for "post 2020" but which are not programmed for delivery in specific years (and therefore cannot be proven to be effective in a specific year) generates a maximum total effective land supply of 5,919 units which could conceivably contribute to meeting the 2019 SESplan housing land requirement for West Lothian between 2013 and 2019 (assuming that the 2019 SESplan housing land requirement deadline is extended to 2019/20 rather than terminating in 2018/2019). This is 31.2% less than the current 5 year land supply requirement (8,600 units), so even if all of West Lothian's effective land supply was delivered by 2018/2019 (i.e. 2019/20 completion were delivered early, which is unlikely) a significant shortfall in the five year effective land supply would still exist. Therefore there are clearly significant and quantifiable shortfalls in both West Lothian's five year and total effective land supplies.
- Taking into account completions from 2009/10 to 31<sup>st</sup> March 2013 ( $1,724 + 523 = 2,247$ ) with the current total effective land supply of 5,919 units gives a net total of 8,166 units which are either completed or could be delivered from the effective land supply by 2019. Even if all 8,166 units are delivered by 2019, against West Lothian's SESplan Housing Requirement for 2009-2019 (11,420 units) a shortfall of 3,254 units (28.5%) in the total effective land supply would exist. Therefore there is clearly a significant and quantifiable shortfall in West Lothian's current total effective land supply.



- Table 17 (page 38) of the Monitoring Statement states that in 2012 West Lothian's predicted effective land supply to 2015 was 1845 units (27% of the 6907 units required between 2012 and 2015 in order to achieve the Structure Plan target of 16,100 units between 2001 and 2015). Therefore, West Lothian is expected to miss the long term housing land supply target previously set within the Structure Plan by 5,062 units (i.e. a 31.4% shortfall).
- Within Table 17 (page 38) of the Monitoring Statement indicates that West Lothian's "total effective land supply" in 2012 is stated as being 13,294 units (192% of the 6907 units required over 2012-2015 to meet the Structure Plan target). However the table states that this includes a "5-year land supply" component, which includes sites which are acknowledged to be constrained. Therefore West Lothian's actual total effective land supply is significantly less than 13,294 units; as calculated above it is currently 5,919 units.

## 4.3

## Evidence regarding the achievability of West Lothian's Effective Housing Land Requirement by 2019

- As detailed above 3,254 net additional units will be needed to achieve the SESplan Housing Land Supply target for West Lothian (11,420 units by 2019). The approved SESplan Supplementary Guidance requires West Lothian Council to identify land for an 'additional allowance' of 2130 units. On the basis of the calculations detailed above, allocating only 2130 additional units would leave an effective land supply shortfall of 1124 units (3,254 -2130) in West Lothian. Therefore to eliminate the current total effective housing land shortfall the West Lothian LDP needs to allocate 3,254 additional effective sites (i.e. discounting constrained sites and existing allocations, and factoring in proposed de-allocations) within the period up to 2019.
- The Settlement Statement section of the MIR (chapter 5) briefly reviews all currently allocated and candidate housing sites and it identifies West Lothian Council's preferred housing sites for inclusion in the LDP. A significant majority of these preferred sites are existing allocations which would be carried over from the adopted Local Plan, including a number of large sites which are acknowledged by West Lothian Council in their 2012 and 2013 Housing Land Audits to be constrained. 'Carried over' sites cannot contribute to the additional 2,130 units required under the SESplan Supplementary Guidance, and by definition all sites which are constrained cannot contribute to West Lothian's current effective land supply. In addition, proposed de-allocations represent a net reduction in the effective land supply.
- The Settlement Statements detailed in section 5 of the MIR indicates that new housing sites which are afforded 'preferred' or 'alternative' status within the MIR have a total capacity of 3,839 units. At first glance this would appear to be in excess of the SESplan 'additional allowance' requirement (2,130 units by 2019) and in excess of the current shortfall in West Lothian's total effective land supply (3,254 units, as calculated above). However, an analysis of MIR Appendix 3 indicates that approximately 2,029 units within new sites put forward through the 'Call for sites' consultation that have been afforded 'preferred' status in the MIR are not proposed to be released until after 2019. In addition the Settlement Statements detailed within the MIR indicate that existing housing allocations within the West Lothian Local Plan (2009) with capacity for approximately 707 units are proposed to be de-allocated through the West Lothian LDP.

- Therefore only 1,103 net additional units would contribute to the effective housing land supply up to 2019 (3,839-2,029-707=1,103). This is clearly insufficient to achieve the SESplan 'additional allowance' requirement for West Lothian of 2,130 net additional units. In addition, compared with the 3,254 units required to meet West Lothian's effective land supply shortfall, there would continue to be a shortfall in the total effective land supply of 1,444 units. This demonstrates that allocating only the sites within the MIR which are afforded 'preferred' or 'alternative' status would not eliminate the current effective housing land supply shortfall by 2019. Therefore, there is a clear need to allocate additional effective housing sites within the LDP.

#### 4.4 Summary

All of the evidence above supports the position that was stated in paragraph 7.20 of the draft Main Issues Report (June 2014) that there is currently a shortfall in West Lothian's 5 year effective land supply and that this shortfall has existed for a number of years. The reason for the deletion of this crucial sentence from the final version of the MIR (August 2014) is unclear, but regardless of this, from the evidence presented above it is clear that:

- There is currently a 56.2% shortfall in West Lothian's 5 year effective land supply. This shortfall is significant and is demonstrably quantifiable.
- West Lothian has experienced a protracted shortfall in its effective land supply.
- The Structure Plan target (16,100 units over 2001-2015) will be substantially missed, consolidating 'backlog' housing demand. If the 2019 SESplan housing land requirement (11,420 units) is also missed this would further increase backlog demand.
- Even if the current total effective land supply of 5,919 units is fully delivered by 2019, taking into account actual completions since 2008/09 West Lothian will fail to meet the SESplan Housing Land Supply target for West Lothian (11,420) by 28.5%. Therefore, to avoid generating a substantial backlog in housing demand, there is a need to urgently bring forward a significant amount of land for housing development in the short term.
- Even if all of the potential housing sites with 'preferred' status are allocated within the West Lothian LDP (including a number of sites which are currently constrained), compared with the 3,254 units required to meet West Lothian's effective land supply shortfall, there would continue to be a shortfall in the total effective land supply of approximately 1,444 units by 2019. Thus, there is there is a clear need to bring forward a significant additional amount of land for housing development through the emerging LDP to prevent the persistence of the current effective housing land shortfall.
- The need to bring forward a significant additional amount of land for housing development through the emerging LDP is further exacerbated by the national policy requirement to provide a "generous" effective land supply, as this requires the West Lothian LDP to allocate sufficient effective housing land to exceed housing land requirements by at least 10%, rather than merely to meet the 2019 and 2024 SESplan housing land requirements. Therefore it is submitted that West Lothian Council's preferred housing strategy to be delivered through the LDP would fail to ensure the provision of a sufficient and generous effective land supply.

In summary, the evidence presented in this section of the Housing Land Report demonstrates that there is a significant and quantifiable shortfall in the five year effective land for new housing in West Lothian. As a result,

SESplan Policy 7 should be engaged and West Lothian Council should allocate a significant amount of new effective housing land within the LDP, over and above the 'preferred' and 'alternative' housing sites identified in MIR Appendix 3.

## 5. SESplan Housing Land Requirements for West Lothian & the West Lothian MIR

### 5.1 West Lothian Housing Land Requirements

As discussed in Section 3, the modified SESplan Housing Land Supply Supplementary Guidance sets out the housing land requirements for each of the SESplan member authorities over the periods 2009-2019 and 2020-2024. The Supplementary Guidance sets the housing land requirements for West Lothian as detailed in Table 5.1:

**Table 5.1 SESplan Supplementary Guidance Housing Land Requirements for West Lothian**

	2009 - 2019	2019 – 2024	Total 2009-2024
SESplan Supplementary Guidance Housing Land Requirements (also the SESplan HNDA Housing Land Requirements) for West Lothian	11,420	6,590	18,010
SESplan Supplementary Guidance 'Additional Allowance' Requirement		2,130	

### 5.2 MIR Housing Land Strategy

The MIR at paragraph 3.57 explains that West Lothian Council's preferred housing land strategy is to retain support for significant delivery within the previously defined Community Development Areas (CDAs). To achieve the housing land supply requirements set out within the SESplan SDP Housing Land Supplementary Guidance document WLC also propose to allocate "*a small number of new housing sites that will complement the existing development strategy*" within the LDP. Therefore, in essence the MIR states that West Lothian Council propose to 'top up' their established land supply with a small number of new sites in order to achieve the SESplan SDP and modified Supplementary Guidance housing land requirements.

The MIR outlines three options for the WLC's housing land strategy are outlined:

- Scenario 1 – plan for a total of 24,977 houses which represents 2,130 units above the base supply. The MIR contends that this would meet SDP requirements in full.
- Scenario 2 – plan for a total of 25,447 houses which represents 2,600 houses above the base supply. The MIR states that this would provide greater flexibility than under scenario 1 and by implication would exceed SDP requirements.

- Scenario 3 - plan for a total of 26,347 houses which represents 3,500 houses above the base supply. The MIR states that this would provide greater flexibility than under scenarios 1 and 2, and by implications would further exceed SDP requirements.

The MIR at paragraph 3.58 recommends that scenario 3 should be used in order to maximise flexibility, regeneration opportunities and housing choice, and also to improve the robustness of the strategy and prevent “*planning by appeal*” on unallocated sites. However, it is of critical importance that neither the MIR or its associated documents demonstrate how any of these three scenarios would achieve the SESplan effective housing land requirements over the periods 2009-2019 and 2019-2024, as all of the scenarios focus on achieving housing land requirements over the longer period 2009-2024. This is clearly contrary to the modified SESplan Supplementary Guidance, which requires 5 year effective housing land requirements to be calculated over the period 2009- 2019 and then over the period 2019-2024, rather than over the longer period 2009-2024.

All three of the scenarios outlined in the MIR include a reference to “*the base supply*” and imply that this base supply would provide 22,847 units. Similarly, a box on page 30 of the MIR which summarises the Council’s proposed housing land strategy refers to “*existing committed development*”. The terms “*base supply*” and “*existing committed development*” are undefined in the MIR, but it is assumed that they both (incorrectly) refer to WLC’s established land supply, as calculated in the West Lothian Housing Land Audit 2013. Given that all of the scenarios presented in the MIR rely on the calculated **established** land supply and do not identify the current **effective** housing land supply, it is not possible to confirm that any of the three scenarios would deliver sufficient **effective** housing land to achieve the 2019 and 2024 SESplan housing land requirements.

### 5.3 Proposed Allocation of Constrained Sites

By definition sites which are constrained or otherwise non-effective cannot contribute to the effective land supply and therefore cannot contribute to achieving SESplan effective housing land supply requirements. However, a review of the Settlement Statements detailed in Chapter 5 of the MIR suggests that West Lothian Council propose to re-allocate a number of sites which are constrained or otherwise non-effective but are currently allocated within the West Lothian Local Plan (2009), despite a lack of evidence that these constrained sites are likely to become effective within the LDP period.

Unless many of these constrained and non-effective sites from the established land supply (“*the base supply*”) are replaced with new, demonstrably effective sites, and sufficient additional sites are also allocated to comply with the modified Supplementary Guidance additional allowance requirement, the emerging West Lothian LDP will clearly fail to meet the critical housing land supply and national planning policy requirements. To avoid this it is recommended that West Lothian Council should undertake a comprehensive and transparent review of the effectiveness of all sites which are proposed to be carried over as housing allocations from the West Lothian Local Plan (2009). Within this review the Council should consider greater de-allocation of constrained/non-effective sites than is proposed within the MIR, and these de-allocated sites should be replaced on a unit for unit basis with the allocation of new effective sites. This includes the allocation of site EOI 0127; as demonstrated in a representation submitted regarding the West Lothian MIR appendices this clearly an effective site.

## 5.4 Reliability of Post 2020 Data

The HLA 2013 indicates that there are 8,551 post 2020 expected completions on sites which are currently within the “total effective land supply”. However, the audit does not provide any details regarding the prospects for the delivery of some or all of these units by 2023/2024 (i.e. the final year of the SESplan housing land requirement for the period 2019-2024). Therefore, no evidence is available within the HLA 2013 to suggest that completions from these sites can be delivered by 2024 to meet the 2019-2024 SESplan housing land requirements for West Lothian. In addition, whilst the MIR appendices do provide an estimate of total expected completions for ‘preferred’ and ‘alternative’ housing sites in periods beyond 2020, these estimates do not identify projected completions in specific years. In addition, the phasing estimates provided in the MIR appendices are not substantiated by site-specific justifications and this phasing (discussed further below) has not been agreed with Homes for Scotland.

## 5.5 Proposed Phasing of LDP Housing Sites

Appendix 3 to the West Lothian MIR identifies expected completions from ‘preferred’ housing sites over five – phases: 2014-2019, 2019-2024, 2024-2029, 2029-2034, and 2034-2036. Column 2 in Appendix 4 to the MIR identifies “Potential LDP Allocations 2014 – 2024”. Taken together this suggests that West Lothian Council propose to allocate a number of housing sites within their emerging LDP that are not expected to deliver any completions until 2020 or later.

Under section 16 (1) (ii) of the Planning etc. (Scotland) Act 2006 West Lothian Council are required to prepare a new LDP at least every 5 years. In addition, the SPP at paragraph 33 confirms that a development plan is considered to be out of date where it is more than 5 years old. Thus it is clear that an LDP plan period should be 5 years long. Assuming that the first West Lothian LDP is adopted in late 2015, the first plan period should run from 2015-2020, after which a new LDP would be adopted and a new plan period (2021-2026) would commence.

Given that the first LDP plan period would only extend to 2020, any proposed allocations which are phased for release during any phase after 2020 would clearly not be within the 2015-2020 LDP plan period. The SPP at paragraph 119 makes clear that LDPs should intend to meet the housing requirement up to 10 years from the date of expected adoption, but that “*in allocating sites, planning authorities should be confident that land can be brought forward for development **within the plan period** and that the range of sites allocated will enable the housing supply target to be met*” (our emphasis). Therefore, it should be expected that all allocated sites are, or can be effective, within the first 5 years of an LDP plan period, in order to contribute to meeting the 10 year housing land requirement. However, by proposing to include a number of allocations which are phased for release post 2020 within the LDP, West Lothian’s proposed phasing of housing land allocations is clearly contrary this national policy requirement.

## 6. Quantitative Assessment of Effective Land Supply in West Lothian

### 6.1 Introduction

Section 4 of this report demonstrates that there is a currently a significant and quantifiable shortfall in both the five year and total effective land supplies within West Lothian. Section 4 also demonstrates that that the level of ‘preferred’ and ‘alternative’ housing sites identified in the MIR would be insufficient to ensure that the 2019 and 2024 SESplan housing land requirements are met.

This section of the report provides a quantitative analysis of the West Lothian Housing Land Audit 2013 (HLA 2013) to identify the projected scale of the shortfall in the 5 year effective housing land supply within West Lothian over the expected LDP plan period to 2019/2020. The HLA 2013 only identifies expected and actual completions as determined at 31<sup>st</sup> March 2013; therefore using the methodology set out below it is only possible to quantitatively assess the adequacy of the five year effective land supply as at 31<sup>st</sup> March 2013. Therefore the calculations set out in this section of the report are not able to consider the impact of future LDP housing allocations on West Lothian’s five year effective land supply. However, it has already been established in section 4 of this report that allocating only the MIR ‘preferred’ and ‘alternative’ housing sites within the West Lothian LDP would be insufficient to ensure that the 2019 SESplan housing land requirement is met.

The SESplan Housing Land Supplementary Guidance document identifies the housing land requirements for West Lothian over the period 2009-2024, as detailed in Table 5.1. In line with the requirement within the SPP to provide a generous housing land supply, a 10% margin has been added to these requirements, as shown in Table 6.1. These figures provide the basis upon which to calculate dynamic five year effective land supply requirements.

**Table 6.1 SESplan Supplementary Guidance Housing Land Requirements for West Lothian 2009-2024**

	2009 - 2019	2019 – 2024	Total 2009-2024
	11,420	6,590	18,010
+10% Generosity Margin	12,562	7,249	19,811

Table 6.2 below outlines the average annual housing land requirement for West Lothian over the full SESplan SDP period, calculated from either 2008/9 to 2023/24 or 2009/10 to 2023/24.



**Table 6.2 Average Annual Housing Land Requirements (based on SESplan SDP requirements)**

Year	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	Total
<b>08/09 – 23/24 Average Annual Requirement</b>	952	952	952	952	952	952	952	952	952	952	952	1318	1318	1318	1318	1318	18,014
<b>09-24 Average Annual Requirement</b>		1039	1039	1039	1039	1039	1039	1039	1039	1039	1039	1318	1318	1318	1318	1318	18,019

The MIR does not explicitly state whether 2008/09 or 2009/10 is the base year for the SESplan housing land requirements. However, on the basis that actual completions from 2008/09 are included in the calculations provided in the MIR Housing Background Paper, the calculations in this report assume that the base year is 2008/09 and the final year of the period is 2023/2024.

Table 6.3 below identifies West Lothian's current effective housing supply for the period 2008/9 – 2023/24, derived largely from the HLA 2013. However, neither the HLA 2013 nor the MIR identify annual expected completions over the period 2020/201 - 2020/2023/24, so it has been necessary to make an assumption for expected completions in this four year period. This assumption is based on the historic completion rate and is similar to the five year programmed completion rate for years 13/14 to 17/18 in the Housing Land Audit 2013 (3,625 units). It has therefore been assumed that total of 3,000 units may be completed over the four year period 20/21 to 23/24, which equates to annual average expected completions of 750 units.

Using West Lothian's annual effective housing supply for the period 2008/9 – 2024/5, Table 6.3 also calculates West Lothian's dynamic annual effective housing land requirement from 2013/14 onwards based on the SESplan SDP requirements. The dynamic housing land requirement takes into account actual completions to 2012/2013 set out in the MIR and expected completions detailed in the HLA 2013. Overall Table 6.3 compares annual actual and expected completions with the dynamic annual effective housing land requirement to indicate whether this requirement is expected to be met in individual years.



**Table 6.2 Annual Effective Housing Land Supply & Requirements 2008/9 – 2023/24 (based on SESplan SDP Supplementary Guidance Requirements)**

Year	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	Total	
<b>Annual Completions (actual, expected and assumed)</b>	2,247 (Actual Completions)					573	649	755	875	773	711	679	750	750	750	750		<b>10,262</b> <b>(6,583 by 2018/19, 3,600 over 2019/20-2023/24)</b>
<b>Dynamic Annual Effective Housing Land Requirement to 2019 and 2024 (2019/20-2023/24 Requirement in red)</b>	From Table 6.2, static requirement of 952 per annum (total of 4,760 units over 5 year period)					1529	1720	1988	2399	3161	5548	1318 2286	1478 2687	1721 3333	2206 4624	3661 8498		
<b>Annual Surplus/Deficit against Requirement</b>	As only 2,247 completions have occurred against a total requirement of 4,760 units there is a deficit of 2,513 units. This means that in future years the annual requirements to 2018/19 will need to significantly exceed 952 units.					-956	-1071	-1233	-1524	-2388	-4837	-639 -1607	-728 -1937	-971 -2583	-1456 -3874	-2911 -7748		<b>Total Shortfall of 7,748 units</b>

Table 6.3 above demonstrates that on the basis of the HLA 2013 and assumptions (i.e. in the absence of net additional LDP housing allocations but including an assumed 750 per annum completions from 2020/2021 – 2023/24), there would be a shortfall in West Lothian's total effective

land supply of 4,837 units by 2018/19 against the 2009-2019 SESplan housing land requirement, a shortfall by 2023/24 of 2,911 units against the 2019-2024 SESplan housing land requirement, and an overall shortfall by 2023/24 of 7,748 units against the 2009-2024 SESplan housing land requirement. Therefore, West Lothian's effective land supply is clearly insufficient to meet both the 2009-2019 and 2020-2024 SESplan Housing Land Requirements, and thus also the 2009-2024 housing land requirement. It should be noted that the analysis detailed above includes an assumption of 750 units per annum completions from 2020/2021 – 2023/24 instead of site specific annual completions from sites identified in MIR appendix 3, as no evidence is provided within the MIR appendices to demonstrate that these 'preferred' sites are capable of delivering a specific number of completion in a specific year.

Overall, the analysis provided in Table 6.3 demonstrates that there is a significant long term shortfall in West Lothian's total effective land supply. Therefore there is an urgent need to bring forward a significant amount of additional new effective land for development through the West Lothian LDP. This analysis indicates that West Lothian Council will need to allocate a net additional 5,4,837 units by 2018/19 and a net additional 7,748 units by 2023/24 over and above the current effective land supply (and taking into account an assumption of 750 annual completions from 2020/21 – 2023/24. This will be required to ensure that the SESplan SDP Housing Land requirements are met in full, as clearly required under paragraph 118 of the SPP.

### 6.1.1 Assessment of 5 year Effective Land Supply

West Lothian's dynamic 5 year effective land supply requirement from 2013/14 onwards ('Period 6', taking 2008/09 as the base year) is calculated in Table 6.4 below. This Table also assesses the current effective land supply against these dynamic 5 year effective land supply requirements. For each five year period which commence up to 2018/19 the dynamic 5 year effective land supply is calculated by multiplying the Dynamic Annual Housing Land Requirement from the first year of the period by the number of years remaining up to 2018/19 and then adding the static Annual Housing Land Requirement (1,318 units per annum) for each year post 2020 within the period. The Dynamic Annual Housing Land Requirements are calculated in Table 6.3 above.

**Table 6.3 West Lothian's dynamic 5 year effective land supply requirement (based on SESplan SDP Supplementary Guidance Requirements)**

Year	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	Total		
<b>Annual Completions</b>	2,247 (Actual Completions)					573	649	755	875	773	711	679	750	750	750	750	9,761	(6,161 by 2018/19, 3,600 over 2019/20-2023/24)	
<b>Period 6 (13/14-17/18)</b>						5 year Effective Land Supply Requirement= 7,645													
						Total Actual & Expected Completions= 3,625													
						Shortfall of 4,020 units													
<b>Period 7 (14/15-18/19)</b>						5 year Effective Land Supply Requirement= 8,600													
						Total Actual & Expected Completions= 3,763													
						Shortfall of 4,837 units													
<b>Period 8 (15/16-19/20)</b>						5 year Effective Land Supply Requirement= 9270 (7952 +1318)													
						Total Actual & Expected Completions= 3,793													
						Shortfall of 5,477 units													



Year	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	Total
<b>Annual Completions</b>	2,247 (Actual Completions)					573	649	755	875	773	711	679	750	750	750	750	<b>9,761</b>  (6,161 by 2018/19, 3,600 over 2019/20-2023/24)
<b>Period 9 (16/17-20/21)</b>									5 year Effective Land Supply Requirement= 9,833 (7197+(1,318x2))  Total Actual & Expected Completions= 3,788  Shortfall of 6,045 units								
<b>Period 10 (17/18-21/22)</b>									5 year Effective Land Supply Requirement= 10,276 (6,322+(1,318x3))  Total Actual & Expected Completions= 3,663  Shortfall of 6,613 units								
<b>Period 11 (18/19-22/23)</b>									5 year Effective Land Supply Requirement= 10,820 (5,548+(1,318x4))  Total Actual & Expected Completions= 3,640  Shortfall of 7,180 units								



Year	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	Total	
<b>Annual Completions</b>	2,247 (Actual Completions)					573	649	755	875	773	711	679	750	750	750	750	750	<b>9,761</b>  (6,161 by 2018/19, 3,600 over 2019/20-2023/24)
<b>Period 12 (19/20-23/24)</b>												5 year Effective Land Supply Requirement= 6,590 (1,318x5)  Total Actual & Expected Completions= 3,679  Shortfall of 2,911 units						

Table 6.4 demonstrates that calculated against the housing land requirements within the SESplan Housing Land Supply Supplementary Guidance document, there is currently a quantifiable shortfall in West Lothian’s 5 year effective land supply, and that there will continue to be a shortfall in every 5 year period up to 2025. The shortfall will continue to grow dramatically until Period 11, and will only decline in Period 12 if calculated according to the 2019/20-2023/24 housing land requirement (i.e. an annual requirement of 1,318 units per annum). This does not take into account the overall housing land requirement of 18,010 units over the period 2008/09-2023/24, against which there would be an even greater five year effective land shortfall over the 2019-2024 period due to the need to accommodate significant backlog housing need. Therefore it can be concluded that West Lothian’s current effective housing land supply (programmed completions to 2019/2020) plus assumed completions (750 per annum) from 2020/2021 – 2023/2024 would result in a significant shortfall in the critical five year effective land supply throughout the LDP plan period.

The analysis set out in this section of the report has quantitatively assessed the adequacy of West Lothian’s effective housing land supply against the SESplan housing land requirements (11,420 units by 2018/19, 5960 units between 2019/20 – 2023/24). Given that continual significant



shortfalls in the five year and total effective land supplies have been identified, it is clear that these shortfalls would be greatly exacerbated by the need to increase the SESplan housing land supply requirements by 10% to “*to ensure that a generous supply of land for housing is provided*”, as required by the SPP at paragraph 116.

## 7. Other Considerations

As detailed in section four of this report, the MIR, its associated documents and the Housing Land Audit 2013 provide clear evidence that there is currently a significant shortfall in West Lothian's five year and total effective land supplies, and that these shortfalls would continue if the Council's 'preferred' housing land strategy is implemented in the West Lothian LDP. This evidence is supported by a Scottish Government Chief Planner letter and the conclusions reached at a number of recent appeal decisions, as detailed below.

### 7.1 Letter from Scottish Government Chief Planner

Further evidence of the need for significant additional new effective housing land allocations within the emerging West Lothian LDP is provided in the Chief Planner's letter of October 2010 on housing land supply. See Appendix 1. This letter confirmed that there will be *'a need to bring forward new sites'* in circumstances where there *'is no longer a 5 year supply of effective housing land.'* The letter was issued to all planning authorities in Scotland, and confirms that the Government supports a *'flexible and realistic approach'* to the delivery of housing land, and this may require a *'reassessment of previous constraints'* and *'the approach to the planning and delivery of housing land has to be reconsidered.'* The Chief Planner's letter confirms that, *'Scottish Ministers continue to place a strong emphasis on the provision of new housing and therefore on maintaining a supply of land in the right places which is free of all constraints and can be developed'*, and there is recognition that *'housing development is also important as a contribution to the Government's overarching objective of increasing sustainable economic growth.'* The letter reinforces the requirement in the SPP that *'a supply of effective land for at least 5 years should be maintained at all times [our underlining] to ensure a continuing generous supply of land for housing.'* The Chief Planner also confirmed that *'development plans should identify triggers for the release of...effective sites where a 5 year effective supply is not being maintained.'*

### 7.2 Appeal Decisions

#### Land at Falside, Bathgate (PPA-400-2044)

See Appendix 2. In relation to West Lothian's five year and total effective land supplies, the Reporter concluded that *"the large shortfall in effective housing land is very significant"* (paragraph 16). The Reporter also concluded that *"the level of housing land available in West Lothian does not currently fulfil the SESplan requirement under Policy 6 to maintain a five year effective housing land supply at all times"* (paragraph 17). Therefore, the Reporter confirmed that there is currently a very significant effective housing land shortage in West Lothian, including a five year effective land supply shortfall. Consequently, the Reporter noted in paragraph 17 of his decision that SESplan Policy 7 was engaged in the determination of this application. SESplan Policy 7 relates to the allocation of greenfield sites for housing, as well as to the determination of residential planning applications, so due to the significant shortfall in West Lothian's five year effective land supply, it is clear that SESplan Policy 7 must be engaged in the preparation of the West Lothian LDP.



The Reporter also found the shortfall in the housing land supply presented by the Appellant “to be a reasonable assessment of the SESplan implications” (paragraph 16). This Housing Land Report draws upon the same data, evidence and analysis of West Lothian Council document which was submitted to the Reporter by the Appellant. Therefore, it is considered that the analysis and conclusions of this Report are robust and reliable. Any differences between the analysis presented in this Housing Land Report or the West Lothian MIR representations and the analysis presented in support of the Land at Falside appeal case are the result of methodological refinements or calculation corrections.

### Blackburn, West Lothian (30<sup>th</sup> October 2013)

The Blackburn decision notice (Ref: PPA-400-2036) was issued on 30<sup>th</sup> October 2013. See Appendix 3. The reporter, RW Maslin, refused planning permission in principle for residential development. The appeal was made by Hallam Land Management Ltd. The Blackburn decision is currently subject to a legal challenge; the appeal is with the Court of Session. A central issue with the Blackburn appeal, which is pertinent to the housing matters in West Lothian is the housing land supply issue. The reporter found in paragraph 32 that SESplan gave a high priority to the need to ensure that there is at all times a five-year supply of effective housing land. However, he then went on to say in paragraph 33 that the required scale of supply is to be set in supplementary guidance required by policy 5 of SESplan. As this guidance has not been approved, he found that it was not possible at present to identify the West Lothian housing land requirement. This finding is considered unsustainable and is contradicted by the same reporter's own findings in the Dovecot Road appeal. As set out earlier in this report, and as agreed by the various reporters in the East Lothian appeal decisions, SESplan requires a 5 year housing land supply to be maintained at all times, including immediately following its approval by Scottish Ministers. SESplan contains a mechanism to assess housing land supply prior to adoption of the supplementary guidance. This is because the SESplan examination reporters found that the supplementary guidance was necessary in order to re-allocate part of the HNDA assessed Edinburgh housing land requirement to the other SESplan authorities. In other words, it was only the housing land requirement for Edinburgh which would reduce significantly through the Supplementary Guidance. The assessed requirements as set out in the HNDA for the other authorities should therefore be treated as a minimum requirement for the purposes of assessing the adequacy of the housing land supply. It is difficult to understand how Mr Maslin could find, as a matter of fact, what the housing land requirement was in East Lothian in the Dovecot Road appeal but find - again as a matter of fact - that the same exercise was not possible in West Lothian. There is no possible rational basis for this finding in the Blackburn Road appeal.

It may be that the difficulty which Mr Maslin faced in the Blackburn Road appeal was that (unlike Dovecot Road and the other East Lothian appeals – see below) he was not presented with an assessment of the HNDA-derived housing land requirement for West Lothian and an assessment of the 5 year land supply against that requirement. If that was the problem then it is not the case here. The required figures for West Lothian are detailed earlier in this report. These figures demonstrate a shortfall in the 5 year housing land supply in West Lothian.

### Beveridge Row, Belhaven, Dunbar (16<sup>th</sup> October 2013)

The Dunbar Intention Notice (Ref: PPA-210-2031) was issued on 16th October 2013. See Appendix 4. The Reporter confirmed that he was minded to allow the appeal and grant planning permission in principle for residential development, access, open space and associated infrastructure subject to conditions and a legal

agreement. The appeal was made by Hallam Land Management Ltd. The Dunbar appeal post-dated the approval of SESplan and parties made submissions on the implications of the new strategic development plan.

The determining issues in the appeal, which are pertinent to the proposed allocation of site EOI 0127, are: i) whether there is a shortfall in effective allocated housing land sufficient to justify allowing the development of further land; and ii) if there is a shortfall, whether the proposal can satisfactorily address site specific matters, including development in the countryside, coalescence, traffic generation, infrastructure capacity and provision of affordable housing. At paragraph 19 of the decision letter, the reporter considered how housing land supply should be addressed in the context of the unusual circumstances of SESplan:-

*"It would be normal for a strategic development plan to set the housing land requirement for local development plans. It is clearly unfortunate that there is a delay in the case of SESplan. However, I am unaware of any document that would indicate that the Scottish Ministers consider that a delay in addressing housing land supply is acceptable. The general thrust from the Chief Planner's letter dated 29 October 2010, the current Scottish Planning Policy, proposed Scottish Planning Policy and the proposed National Planning Framework 3, is that the matter is addressed as soon as possible and that a 5 year supply must be maintained at all times."*

At paragraphs 20 to 27, the reporter considered the method for calculating the 5 year housing land supply and approved the method agreed between the appellant and East Lothian Council of utilising the housing land requirement calculated for East Lothian in the HNDA. The formula is set out in detail on page 5 of the decision letter and is the same formula which has been used to calculate the West Lothian housing land requirement in this report.

The Reporter's conclusions at paragraphs 64 to 65 are particularly relevant to this application and are outlined below:

*"64. Overall, I conclude that the proposal is contrary to the provisions of the development plan. The site is prime agricultural land and not allocated for development. As the development plan currently stands, it is not possible to calculate a precise 5 year housing land supply figure in order to apply fully Policy 7 of SESplan."*

*65. However, as set out in the housing land supply section above, I consider that there are compelling material considerations that indicate there is currently a significant shortage of effective housing land in East Lothian. This shortage is serious enough to justify the exceptional release of new housing land where there are no overriding planning objections."*

### **Dovecot Farm, Pencaitland Road, Haddington (11<sup>th</sup> October 2013)**

As has already been demonstrated above, West Lothian Council is not meeting their 5 year effective housing land supply and more land is required in order to meet this. Recent appeal decisions and notice of intentions from the DPEA give weight to this argument in the wider SESplan area. The Notice of Intention prepared by R W Maslin for Planning Appeal Reference: PPA-210-2037 Dovecot Farm, Pencaitland Road, Haddington looks at this issue, and although in East Lothian, it is pertinent in terms of the overall effective housing land supply shortfall. See Appendix 5.

The following are relevant statements from the Notice of Intention:

*“15. Paragraph 23 of SESplan says that a five years’ supply of effective housing land is to be maintained at all times. This is confirmed in Policy 6.*

*16. Table 2 of page 40 of SESplan shows that the assessed housing requirement from 2009 to 2019 is land for 74,835 dwellings. Policy 5 says that supplementary guidance is to be prepared to show how much of the requirement should be met in the area of each local development plan.*

*17. The Appellant says that East Lothian has not maintained a five-year supply of effective housing land. In its appeal statement, the council says that, until the supplementary guidance has been drawn up, there is no definitive figure against which it can calculate the five-year effective housing land supply in relation to the requirements of SESplan.*

*18. The Council suggests that, in the interim, a reasonable approach would be to compare the SESplan Housing Need and Demand Assessment figure for East Lothian over the period from 2009 to 2019 with completions to date and programmed supply. This could give a minimum figure, bearing in mind a significant part of Edinburgh's housing needs and demand is to be redistributed among other Council areas (SESplan, paragraph 110).*

*19. Calculations have been carried out by the Council, based on the latest agreed Housing Land Audit (2012) and adjusted for the five year period to 2017. These show a shortfall of 867 dwellings. The Council accepts that there is need to augment land supply in the short-term to achieve an increased rate of house completions that can contribute to meeting East Lothian’s Housing Needs Assessment figure in the period to 2019.*

*20. Regarding housing land supply for the whole of East Lothian, I find that there is a deficiency in terms of a five year supply of land that is effective.”*

The Dovecot Farm appeal therefore approved of use of the HNDA housing land requirement figure to calculate the minimum housing land requirement figure for East Lothian and found, as a matter of fact, that there was a deficiency in terms of a five year supply of land that is effective.

### Ferrygate Farm, Dirleton Road, North Berwick (2<sup>nd</sup> October 2013)

The Appeal Decision also by R W Maslin, Appeal Reference PPA-210-2036 for Ferrygate Farm, Dirleton Road, North Berwick also looks at this issue. See Appendix 6. The Appeal Decision notes in paragraph 37 *“that high priority is to be given to providing and maintaining a five years’ supply of effective housing land.”* Paragraph 40 states *“The Appellant says that the shortfall in the regional land supply is “massive, being approximately 50% of the 5 year requirement.”* Paragraph 41 states *“Regarding the effective land supply, the Council does not dispute the broad picture presented by the Appellant’s calculations. I find nothing in the submissions to suggest that the effective land supply in East Lothian is adequate. There is no suggestion that the regional shortfall is concentrated in other parts of the area covered by the strategic development plan. Paragraph 110 of SESplan indicates that non-city authority areas may have to help meet Edinburgh-generated housing needs. I find nothing in the submissions to suggest that East Lothian is somehow exempt from accommodating a portion of the city-generated housing need.”*

The Reporter's conclusion on housing land supply is noted in paragraph 42 which states *"My conclusion is that there is clear need to bring forward more land for new housing in East Lothian to achieve and maintain a five-year supply of such land."*

### Edmonstone Estate, Old Dalkeith Road, Edinburgh (21<sup>st</sup> March 2013)

The Edmonstone Intention Notice (Ref: PPA-230-2087) was issued on 21<sup>st</sup> March 2013. See Appendix 7. The Reporter confirmed that he was minded to allow the appeal and grant planning permission subject to conditions and a legal agreement. The Edmonstone appeal was determined in the context of the previous structure plan. The findings on housing land supply are, however, of relevance to the WLDP MIR housing matters:-

*"15. There is no dispute between the parties that there is a shortfall in the five year effective housing land supply for Edinburgh. The Lothian-wide shortfall has exceeded 10% since 2008, when it stood at 19%. The 2009 housing land audit indicated that shortfall to be 54%; in 2010 the figure rose slightly to 55%. In January 2012, the five year requirement was for 12,254 units, whereas the council calculated that the city's effective supply was expected to deliver 5,468 units – a shortfall of 55%.*

*16. In these circumstances, Policy HOU 10 requires the city council to bring forward additional land. The policy states that this will be found within the Core Development Areas and is expected to be brought forward by a local plan alteration, failing which by granting planning permission in advance of local plan adoption, provided that the proposals comply with other policies of the structure plan. It adds that the infrastructure required to bring forward such sites must either be available or committed.*

*17. The council has followed neither of those courses of action, but is instead relying on the adoption process for its emerging Edinburgh Local Development Plan to identify and allocate fresh sites.*

*18. In justification of its stance, the council has drawn my attention to the Housing Monitor for 2010 and related reports. Here it is argued that "in the current market conditions, it would not be appropriate to make additional land releases for housing development under the terms of structure plan Policy HOU 10". Instead, measures are suggested "aimed at maintaining a reasonable level of new house building" which fall short of additional releases other than "supporting appropriate new windfall applications which are in accord with the development plan."*

*19. The reports argue that the shortfall is an artificial figure which reflects reduced completion rates but not reduced demand arising from the depressed condition of the housing market. However, no evidence is produced to quantify that reduced demand. They maintain that there is actually a very large supply of "effective" housing land in Edinburgh (sufficient for 35,500 units), but in the material before me this is not defined, substantiated or tested against the criteria set out in PAN 2/2010: Affordable Housing and Housing Land Supply. They argue that infrastructure constraints have held back completions, although it has been countered that this is at least in part a function of many of the allocated sites being large scale or otherwise costly in infrastructure provision.*

*20. None of this persuades me that current economic circumstances relieve the council of the requirements of Policy HOU 10. The letter from the Chief Planner to Heads of Planning dated 29 October 2010 was written in the light of the economic downturn but maintains the expectation that planning authorities will take steps to comply with government policy to maintain an effective five year land supply. The expectation in Scottish Planning Policy*

is for that supply to be available “at all times” and not just when the economy is thriving. It is also expected to be “generous”.

21. For these reasons, I consider that the council should be acting without delay and looking constructively at proposals coming forward which might not satisfy every aspect of their development plan (including the locational restrictions in Policy Hou 10), but would address housing supply without significant harm to local and national policies overall.

22. With respect to delay, I am uncomfortable with the council’s reliance on sites coming forward in the emerging Edinburgh Local Development Plan. There is often a degree of uncertainty attached to any development plan timetable. In this case, the timetable is linked to that for SESplan, on which it relies for its overall housing land requirement figures. From a recent procedure notice issued by reporters charged with examining the SESplan, it is clear that fundamental issues have been identified with respect to that plan’s housing chapter. The response from the SESplan authority refers to the possibility of legal action affecting the progress of the plan towards approval. Even on the assumption that the examination itself will proceed on schedule, it seems likely that its outcome will necessitate considerable extra work by both the strategic authority and the constituent planning authorities before local development plans, including that for Edinburgh, can be adopted. Indeed, the updated timetable for the Edinburgh Local Development Plan acknowledges that “substantial further work” may be required at SESplan level, and allows for an additional procedure for a modified local development plan. I consider that this potential for delay in addressing the housing land shortage is unsatisfactory.”

The Edmonstone decision therefore rejected the contention that the potential availability of sites from the “total effective supply” (i.e. the potential output from all the sites in the established land supply excluding constrained sites) was an answer to a shortfall in 5 year effective land supply. The Edmonstone decision supports the contention within this report that the use of a “total effective supply” figure in this way is inappropriate and unsupported by national policy. The correct approach is to look at the 5 year housing land supply against the criteria for effectiveness in PAN 2/2010 and compare that 5 year effective land supply against the housing land requirement.

### Land east of Muir Wood Road, Currie, Edinburgh (19<sup>th</sup> June 2013)

This appeal decision was issued on the 19th June 2013 (Ref: PPA-230-2091). See Appendix 8. The Currie appeal was dismissed due to the site’s ‘sensitive location in the green belt, separating two communities, and sits outside an identified CDA or SDA where Structure Plan and emerging SESplan policies direct new housing developments’ (paragraph 37).

However, the appeal decision is considered relevant in the following ways:

- The recognition of the critical nature of the housing land supply shortfall; and
- The identification of lack of a 5 year effective housing land supply

### Land south of Cockburn Crescent, Balerno, Edinburgh (25<sup>th</sup> March 2014)

See Appendix 9. The Reporter acknowledged that, *'the amount of housing land needed to meet Edinburgh's share of the requirement for the SESplan area will depend on the Supplementary Guidance (SG) which has not yet been finalised.'* (para.10). In this context however, he referred both to the draft SPG (September 2013) and the agreed Housing Land Audit 2013, as a basis of assessing whether the 5 year effective housing requirement was being met at all times. Albeit, the appellant presented a different calculation based on these sources, the Reporter concluded that, *'it is not necessary for me [the Reporter] to make a choice as to which figures should be preferred, as in both cases the available supply falls well short of the five year requirement and indicates an urgent need to allocate additional sites [our emphasis] (para.11).'*



## 8. Summary

### 8.1 Summary of Housing Land Requirements

At the time of approval (June 2013) SESplan was subject to a fundamental modification in relation to the proposed housing land supply, as Scottish Ministers found that the proposed approach was inconsistent with national planning policy requirements. In recommending modifications to SESplan on housing land supply, the SESplan Examination Reporters identified the delivery of a 5 year effective housing land supply as being of critical importance. The Scottish Ministers required that SESplan meets the housing land requirement in full as identified in the Housing Needs and Demand Assessment (HNDA) for the SESplan area. Furthermore, the Scottish Ministers instructed the SESplan SDPA to prepare and adopt statutory Supplementary Guidance within a year of approval of the SESplan SDP (i.e. by the end of June 2014) in order to identify the distribution of housing land requirements between the SESplan member authorities.

The Scottish Ministers approved the SESplan Housing Land Supply Supplementary Guidance with modifications on 18<sup>th</sup> June 2014. The modified Supplementary Guidance was considered and approved by the West Lothian Council Executive on 16<sup>th</sup> September 2014. This document sets the housing land requirement for West Lothian at 11,420 homes for the period 2009-2019 and 5,690 homes for the period 2019-2024. Under the SPP at paragraph 116, a 10% generosity margin should be added to these housing land requirements. Taking this into account the overall housing land requirements are 24,530 units for the period 2009-2019 and 7930 for the period 2019-2024, giving an overall housing land requirement of 32,460 units between 2009 and 2024.

### 8.2 Summary of Housing Land Supply Analysis

Sections 4-6 of this report identify that against the housing land requirements for West Lothian set out within the SESplan Housing Land Supplementary Guidance document (i.e. not including a 10% generosity margin) there is currently a shortfall in West Lothian's 5 year and total effective land supplies. The analysis further identifies that in the absence of significant net additional new effective land allocations within the emerging West Lothian LDP, the shortfall in the five year effective land supply would persist in every period up to 2025.

### 8.3 Implications of identified Effective Land Supply Shortfall's for Candidate Housing Allocation EOI 0127

The primary implication of the current and predicted shortfall in West Lothian's five year effective land supply is that there is a clear and urgent need to bring forward additional land for housing development in order to close the significant shortfall. This is needed to comply with housing land supply policy requirements within the Scottish Planning Policy (2012) and to achieve the housing land requirements for West Lothian set out in the SESplan Housing Land Supply Supplementary Guidance document. The most appropriate mechanism for bringing forward such a large new effective land supply will be through allocating sites within the emerging West Lothian LDP.



However, individual sites could also be brought forward through applying for planning permission on unallocated land.

The identification of significant shortfalls in West Lothian's current and projected future five year land effective supplies means that SESplan Policy 7 (Maintaining a Five Year Housing Land Supply) is engaged in the consideration of proposed housing allocations within the emerging West Lothian LDP. SESplan Policy 7 states that sites for Greenfield housing development may be allocated in LDPs, 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”.*

An assessment of candidate housing allocation EOI 0127 against each of these criteria is included within the representations submitted on behalf of Hallam in response to the West Lothian MIR.

An additional implication of the identified shortfall in the West Lothian's effective land supply is that, in accordance with the SPP at paragraph 126, planning policies within the adopted West Lothian Local Plan (2009) relating to the supply of housing land cannot be considered up to date. Therefore the presumption in favour of development which contributes to sustainable development will be a significant material consideration (under paragraph 33 of the SPP) in the determination of any planning applications for residential development, until such time as the identified shortfall in the five year effective land supply is eliminated. Although this does not relate directly to the allocation of housing sites such as EOI 0127 within the emerging West Lothian LDP, it would apply to the determination of any residential planning applications on unallocated land until the identified shortfall in the five year effective land supply is eliminated.

## 8.4 Conclusion

In light of the identified significant shortfalls in West Lothian's five year and total effective land supplies, there is a clear need for West Lothian Council to allocate a significant amount of additional new effective housing land within the emerging West Lothian LDP. Related to this, due to the identified shortfalls, SESplan Policy 7 (Maintaining a Five Year Housing Land Supply) must be engaged in the consideration of proposed LDP housing allocations, particularly EOI 0127 (Last east and west of the A801, Bathgate).

In determining whether candidate housing site EOI 0127 should be allocated within the emerging West Lothian LDP, it is a key material consideration that the proposed housing allocation and residential development would directly contribute to ensuring that a five year effective land supply can be maintained at all times by West Lothian Council, as required by Scottish Planning Policy.

# **Appendix 1**

## **Chief Planner's letter of October 2010 on housing land supply**

Directorate for the Built Environment  
Jim Mackinnon, Director and Chief Planner

T: 0131-244 0770 F: 0131-244 7555  
E: jim.mackinnon@scotland.gsi.gov.uk



Heads of Planning

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29 October 2010

Dear Colleague

### **Providing an Effective Supply of Land for Housing**

I am sure you are aware that questions have been raised in some areas regarding the provision of an effective housing land supply as a result of the changed economic climate. In some cases developers have found it difficult or even impossible to finance housing developments and this situation threatens the delivery of new housing. The main issues have been the cost and difficulty of raising debt finance, shorter repayment periods, the tighter mortgage market and the general uncertainty over the long term market conditions. In some cases these factors have led to the land owner withdrawing land from the market because the price being offered is now below expectations. These factors mean that in some instances the approach to the planning and delivery of housing land has to be reconsidered.

Scottish Ministers continue to place a strong emphasis on the provision of new housing and therefore on maintaining a supply of land in the right places which is free of all constraints and can be developed. It is the role of the planning system to enable the development of well designed, energy efficient, good quality homes in sustainable locations. Housing development is also important as a contribution to the Government's overarching objective of increasing sustainable economic growth.

Scottish Planning Policy (SPP) states that a supply of effective land for at least 5 years should be maintained at all times to ensure a continuing generous supply of land for housing. Planning authorities should monitor land supply through the annual housing land audit, prepared in conjunction with housing and infrastructure providers. Development plans should identify triggers for the release of future phases of effective sites where a 5 year effective supply is not being maintained.

The concept of 'effective housing land' centres on the question of whether a site can be developed i.e. whether "residential units can be completed and available for occupation" (Planning Advice Note (PAN) 2/2010: Affordable Housing and Housing

Land Supply paragraph 55). The PAN also says an effective site has to be free of seven specified constraints and bearing in mind the current economic climate I would like to draw your attention to the following extracts:

**Ownership** – the site is in the ownership or control of a party which can be expected to develop it or release it for development;

**Physical** – the market is strong enough to fund the remedial work required;

**Deficit funding** – any public funding required to make residential development economically viable is committed by the public bodies concerned;

**Marketability** – the site or a relevant part of it can be developed in the period under consideration;

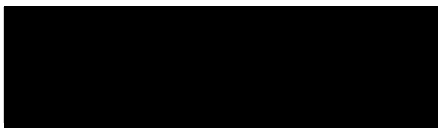
**Infrastructure** – any required infrastructure can be provided realistically by the developer or another party.

In the changed economic climate, maintaining an effective 5 year land supply which meets these criteria will require a flexible and realistic approach. Constraints may have to be reassessed and the 'deliverability' of sites reconsidered.

If the circumstances affecting sites mean that there is no longer a 5 year supply of effective housing land, my expectation is that planning authorities will take steps to comply with the SPP. The housing land audit can be used to achieve this by identifying sites that are no longer effective and highlighting a need to bring forward new sites. This process will allow infrastructure providers to comment and enable any implications for the development plan strategy to be considered. Consideration should be given to a range of actions which may render sites developable, for example, phased funding and prioritisation of infrastructure. Where a planning authority has a 5 year supply of effective housing land but the impediment to developing that site is the general availability of mortgages or low level of demand from purchasers then there will be little if anything to be gained by releasing additional sites.

Work on many development plans is progressing well. Actions to deliver the housing policies and proposals, and the key infrastructure, are expected to be included in the Action Programmes. They will be an opportunity to demonstrate that an effective land supply for housing is being provided through an up-to-date, plan-led system. Supplementary guidance will be appropriate for detailed policies and small allocations. There may however be areas where the changed economic climate requires a more urgent response because a 5 year effective supply is no longer available and in those circumstances you should consider whether non-statutory supplementary guidance would be of benefit.

Yours faithfully

A large black rectangular redaction box covering the signature area.

**JAMES G MACKINNON**  
**Chief Planner**

**Appendix 2**  
**Land at Falside decision notice (PPA-400-2044)**  
**issued on 20<sup>th</sup> August 2014**

## Appeal Decision Notice

T: 01324 696 400  
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Decision by Richard Dent, a reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-400-2044
- Site address: land at Falside, Sibbalds Brae, Bathgate, West Lothian
- Appeal by Hallam Land Management Limited against the decision by West Lothian Council
- Application for planning permission in principle, reference 0203/P/13 dated 18 March 2013 refused by notice dated 13 November 2013
- The development proposed: residential development, access works and improvements, and other associated works
- Date of hearing: 29 & 30 April 2014

Date of appeal decision: 20 August 2014

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### Decision

I dismiss the appeal and refuse to grant planning permission in principle.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan, the main issues are whether the proposed development is justified in strategic terms and whether there are any constraints to development. In this latter respect particular account must be taken of landscape character and visual impacts and education infrastructure.
2. The development plan comprises the South East Scotland Strategic Development Plan (SESplan) which was approved in June 2013 and the West Lothian Local Plan (WLLP), adopted 2009.
3. SESplan Policy 5, Housing Land, sets housing targets for the period from 2009 to 2024. The policy explains that supplementary guidance will provide detailed further information for local development plans as to how much of the total requirement should be met in each of the six constituent areas, including West Lothian.
4. Policy 6, Housing Land Flexibility, requires each planning authority to maintain a five year effective housing land supply at all times. The scale of this supply is to be derived

from the housing requirements for each local development plan area identified through the supplementary guidance.

5. Policy 7, Maintaining a Five Year Housing Land Supply, indicates that sites for greenfield housing development proposals may be allocated in local development plans or granted planning permission to maintain the required effective supply. Any such permissions must satisfy criteria relating to the character of the settlement and local area, green belt objectives and the provision of any required additional infrastructure.

6. Supplementary guidance has been prepared and submitted to the Scottish Ministers who, on 18 June 2014, directed that a modification be made. The modified supplementary guidance now requires to be formally adopted by all the SESplan member authorities. That process has not yet been completed and therefore, although it must be anticipated the supplementary guidance will, in due course, form part of the development plan, it does not have that status at present.

7. The appellant asserts that there is not a five year effective housing land supply in West Lothian, contrary to the requirements of SESplan Policy 5. In support of this argument, the appellant points to Figure 28 of the recently approved Housing Background Paper of the West Lothian Local Development Plan (WLLDP) which is currently under preparation. Figure 28 indicates that, based on the 2012 housing land audit, 47% of the five year requirement was being met. Although Table 17 of the Main Issues Report (MIR) states the total effective supply is 13,294 units, the appellant explains that, in fact, this includes sites acknowledged as being constrained. Taking account of anticipated completions, the actual total effective land supply is therefore said to be 5,919 units, 26% less than the current five year land supply requirement of 7,995 units.

8. In the opinion of the appellant, 3,676 additional units will be needed to achieve the SESplan target of 11,420 units by 2019, taking into account also the 2,130 units included in the supplementary guidance. On this basis, claims the appellant, there is an urgent need in West Lothian to bring forward additional sites for residential development to fulfil the terms of Policy 5.

9. The council explains that the WLLP allocated land for some 23,500 residential units, significantly more than the previous strategic requirement, although it was anticipated that many houses would be built after 2015. House building rates declined significantly after 2008-09, for the most part because of the economic downturn. Accordingly, the council argues, the slow rate of construction has not been the result of the lack of the availability of land capable of being developed. Indeed, although the situation was generally beyond the control of the council, action has been taken to encourage an increased rate of house building including the establishment of a fund for the improvement of infrastructure.

10. The council further states that the 2013 housing land audit forecasts a five year building rate of 725 houses a year. This rate, it is argued, is accepted as being realistic by the house building industry. On this basis, says the council, the effective five year housing land supply from 2013-2018 is 3,625 with some 9,941 units programmed for development beyond 2018.



11. If necessary, states the council, development that is programmed post 2018 could be brought forward. In this respect, the housing land audit is undertaken annually and therefore permits regular monitoring. However, the council is optimistic as the position is already showing improvement. Indeed, some major development is underway including house building at the nearby large-scale “Heartlands” project. The appellant accepts the situation has improved but argues the building rate has not reached pre-recession levels.

12. Although the supplementary planning guidance requires to be approved by the SESplan authorities, the council explains it is working towards meeting the stipulated targets. A “call for sites” exercise has been undertaken as part of the WLLDP preparation process. Whilst the number of additional houses required by SESplan (2,130) is greater than the calculated housing need for West Lothian, it is not anticipated that there will be any difficulty in identifying sites for the specified level of housing land.

13. I believe that the 2013 housing land audit is a significant document as it provides details of the situation as agreed by both the council and the house building industry. The council’s argument in terms of lack of control over the rate of building is reasonable. However, the anticipated agreed rate of 725 houses a year until 2018 is above the level of construction achieved in recent years. As this rate appears to both the council and the builders to be achievable I accept it as being credible. In any event, there is an annual monitoring process.

14. I also note the level of potential effective land beyond 2018. This should provide a basis for maintaining an adequate effective supply. Although the council states that sites scheduled for development post 2018 could be brought forward if necessary, this seems somewhat at odds with the council’s parallel concerns in respect of severe infrastructure constraints.

15. The SESplan supplementary guidance, when adopted, will add to the housing land requirement in West Lothian. The council points out that ratification of all member authorities cannot be guaranteed although the appellant suggests the guidance is likely to be capable of adoption by September. Nevertheless, as explained, it has been made clear that, as a planning authority, West Lothian is working towards meeting the land requirements set out in the draft supplementary guidance. This objective is being pursued through the WLLDP and I have no reason to doubt that the call for sites exercise will provide scope for identifying the land required in the likely event that the guidance is adopted and becomes part of SESplan.

16. Nevertheless, relating the current housing land situation to the provisions of SESplan, it is clear that even the rate of development predicted in the 2013 housing land audit would not meet the strategic target. The supplementary guidance has increased the initial target of 11,420 houses in West Lothian between 2009 and 2019 by an additional 2,130 houses. This requires the development of effective land at a level significantly greater than forecast in the 2013 housing land audit. Indeed, the shortfall had previously been recognised in Table 17 of the MIR and Table 28 of the Housing Background Paper. Despite the council explaining that the terms of the MIR and background paper have been superseded, the large shortfall in effective housing land supply is very significant. Overall, despite the council believing the housing land audit 2013 provides a pragmatic and practical approach

to house building to 2018, the shortfall claimed by the appellant appears to be a reasonable assessment of the SESplan implications.

17. In development plan terms, the process for achieving a full allocation of effective housing land will be through the WLLDP which, on the basis of the council's development plan programme, is likely to be adopted during 2016. This process will comply with the core value in Scottish Planning Policy (SPP) and ensure the planning service is plan-led. In the interim, as I have concluded, the level of housing land available in West Lothian does not currently fulfil the SESplan requirement under Policy 6 to maintain a five year effective housing land supply at all times. As a consequence, it is necessary to consider the site in terms of SESplan Policy 7.

18. SESplan Policy 7 makes provision for allocating greenfield land for housing either through local development plans or by granting planning permission to maintain a five year effective land supply. In this respect the guidance in paragraph 125 in SPP is of particular relevance. Where a shortfall in the five year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up to date, and SPP paragraphs 32-35 will be relevant. On this basis, the terms of the WLLP must be considered as not being up to date insofar as housing land is concerned. This situation will not be remedied through the development plan prior to the adoption of the WLLDP in 2016 and so the possibility of granting planning permission at the appeal site, which is greenfield land, must be considered under Policy 7.

19. In assessing whether the site should be granted planning permission it is necessary to have regard to satisfying the three criteria set out in Policy 7 and also take full account of the guidance in SPP and, in particular, the presumption in favour of sustainable development. Paragraph 15 of SPP explains the importance of delivering sustainable development in the right place. However, as explained in SPP, this presumption does not change the statutory status of the development plan as the starting point for decision-making. In this respect, more detailed planning guidance is contained in the WLLP. Adopted in 2009, the local plan, as explained, is likely to be replaced by the WLLDP in 2016. In the meantime, whilst some aspects of the local plan, including housing land allocations, may have become outdated, other policies remain relevant to the development management process. The proposed development must therefore be assessed against these policies along with SESplan policy 7 in order to ensure the decision is made in accordance with the provisions of the development plan as set out in paragraph 1 above.

20. The site is shown on the local plan proposals map as being within a countryside belt and is further designated as an area of special landscape control. The local plan glossary defines a countryside belt as an area identified to prevent coalescence, urban sprawl and inappropriate rural development. Areas of special landscape control are defined as landscapes of character and of local importance, with potential for environmental enhancement.

21. Policy ENV 23 protects countryside belts from development that has no specific locational need in order to prevent coalescence. The countryside belt at this location has an important role in providing separation between Bathgate and Armadale. Clearly, physical coalescence would not result from the development of the site. Indeed, the

appellant argues that the separation distance of 800 metres between the development and Armadale compares with other separation distances in West Lothian. However, I consider that the proposed residential development would have a significant detrimental impact. The belt is both narrow and sensitive and its designation is well merited. Although the appellant also argues that existing development weakens the value of the countryside belt and has set a precedent, I do not consider this to be the case. To the contrary, I believe the existing small development area to the north-west of the appeal site would exacerbate the impact and adds weight to the need to retain the countryside belt.

22. Policy ENV 21 protects Areas of Special Landscape Control from intrusive development to retain landscape character. The character of the landscape in the vicinity of the appeal site is attractive, albeit not exceptional. There are some signs of planned landscaping and design although this is not formally designated in the Inventory of Gardens and Designed Landscapes. I believe the local plan identification of the land as being of local importance to be justified and therefore the proposed housing on the appeal site would represent intrusive development contrary to Policy ENV 21.

23. Policy ENV 31 sets out those limited forms of development that might be acceptable in the countryside. The proposed development is not within any of the categories and therefore the proposal would also be contrary to this policy.

24. The council further believes the proposal would be contrary to Policy ENV 11 and Policy ENV 14 in respect of the protection of woodland and trees. The impact of the proposed access would have an impact on the woodland close to Sibbalds Brae. This loss may well not have been an over-riding factor should other aspects of the proposal be acceptable but, in the context of Policies ENV 31 and ENV 23, I agree with the council that the formation of an access at this point would be contrary to Policies ENV 11 and ENV 14.

25. On the basis of the foregoing, I conclude that the proposal would have an unacceptable environmental impact in respect of both landscape character and the setting of this part of Bathgate and would have a similarly adverse visual impact. In turn, I conclude that the proposal would be contrary to local plan Policies ENV 11, ENV 14, ENV 21, ENV23 and ENV 31.

26. The eighth reason for refusal states that “there is a lack of education capacity to support the scale of windfall housing development proposed” and that the proposal is therefore contrary to local plan Policy IMP3.

27. Problems in the provision of education infrastructure in West Lothian have been recognised for many years and have been referred to in various development plans. Most recently both SESplan and the WLLP have recognised the need for significant investment in education infrastructure. The council has acknowledged the tensions between the need to meet housing targets and the provision of supporting infrastructure. Indeed, as explained previously, the West Lothian Local Infrastructure Fund was established to remove existing constraints including problems resulting from lack of education infrastructure.

28. Should development take place, Windyknowe primary school, St Mary's, Bathgate denominational primary school, Armadale Academy secondary school and St Kentigern's Academy denominational secondary school would serve the appeal site.

29. The council explains that the capacity of Windyknowe primary school will increase to 462 once an alternative to the existing unsatisfactory access has been provided. The council anticipates the early implementation of a new pedestrian access and drop-off point. Nevertheless, the school roll will require close monitoring.

30. St Mary's primary school is expected to exceed capacity by 2020 and, again, states the council, close monitoring is required.

31. The council believes the situation at Armadale Academy to be critical with the S1 intake to exceed its limit in 2018. This will have implications for placing in other secondary schools which are also likely to be over-subscribed. There would be some flexibility as more senior classes are unlikely to be fully occupied and so some capacity might remain. However, close monitoring will be essential.

32. It is possible, states the council, that St Kentigern's may be under its intake limit for 2020 although careful management and monitoring would be required between 2018-2020.

33. On this basis, council concludes, the various secondary schools in this part of West Lothian will all be approaching capacity from 2018 onwards. Various possible solutions are being explored involving reviews and school consultations, some of which have already informed a number of feasibility studies to examine options. Primary school consultations and school extensions will be also be necessary to support the development plan strategy across West Lothian.

34. Overall, the council concludes, there would be no capacity at primary or secondary level to serve the proposal. There are no current options for extending capacity and any capacity that does exist must be reserved for schemes that comply with the development plan. The prospect of any additional development would result in the council being faced with problems in Bathgate in meeting its statutory education responsibilities.

35. The appellant is very critical of the council's school roll forecasting methodology. Indeed, the appellant asserts that the under-supply of school places in this part of West Lothian is due to poor education planning. I do not consider that this appeal decision notice is an appropriate vehicle in which to pass judgement on the council's education planning. Indeed, the council has provided a robust defence of its methodology as it has evolved over many years. It has recognised the difficult balancing exercise between promoting new housing and fulfilling the statutory requirement to provide children with appropriate standards of education. In recent years a significant school building programme has been undertaken and it is clear that the council is endeavouring to explore options for future education provision.

36. It is significant that the appellant recognises that capacity problems do exist. In respect of Windyknowe primary school the appellant states that, despite the anticipated increase in the school roll to 462, the council must consider further extensions. To this end, the

appellant has prepared a proposal for an extension to indicate, at least in principle, that it would be possible to satisfactorily provide additional building within the school site. Alternatively, pupils in the new development could attend a primary school in Armadale. There might also be the possibility of providing land for a new primary school adjacent to the appeal site. The appellant believes that these options, supported by a fair and reasonable developer contribution, offer the basis for providing non-denominational primary school infrastructure.

37. Whilst not disputing the possibility of extending Windyknowe primary school, the council is not prepared to accept the indicative drawings prepared by the appellant without detailed assessment. In any event, the council points out, should the capacity at Windyknowe be increased, first call on the additional accommodation could well be made by children other than those generated by the proposed development.

38. The appellant believes that because of the relatively low numbers involved, the provision of denominational primary school education is not an issue.

39. Insofar as non-denominational secondary education is concerned, the appellant argues that it is by no means certain an extension to Armadale Academy will be required. However, the appellant would be willing to provide a proportionate developer contribution towards any extension to Armadale Academy that is found to be necessary.

40. The appellant considers that St Kentigern's Academy could accommodate the modest scale of the new development in the medium term. In the longer term, additional capacity would be provided in other schools that would more than meet the needs of the appeal proposal.

41. I can appreciate the concerns of the council in respect of the provision of education infrastructure. Although the appellant has questioned the education planning of the council, there can be no doubt that the provision of an adequate level of school places has been, and remains, a widely recognised issue. House building targets and the uncertain level of house building add to the complexity of the situation. More recently, the prospect of additional houses being required under the provisions of the SESplan supplementary guidance, to be reflected in the WLLDP, has added a further dimension to future education infrastructure provision.

42. It seems to me that the scale of impact on primary and secondary denominational schools, as a consequence of the proposed development, would be limited. Whilst the close monitoring envisaged by the council would be prudent, if not essential, I believe that the proposed development would conform to Policy IMP 1 in these respects.

43. Secondary non-denominational education is more of a problem and I recognise the council's opinion that the situation at Armadale Academy is "critical". However, it appears that careful management of school accommodation may well enable the council to cope with anticipated rises in S1 intakes. Again I consider that the development complies with Policy IMP 1 on this basis.



44. There is general acceptance that non-denominational primary school capacity at Windyknowe requires to be increased. No matter the forecasting methodology, it is also agreed that the proposed development would generate a significant number of pupils in this sector. I am unwilling to accept that any of the three solutions suggested by the appellant would be suitable. Should the development proceed, I believe undue pressure on the council, financially or in terms of education management would result. These pressures could be to the detriment of the wider education planning process of the council. The appellant would be willing to make a proportionate financial contribution but there has been no suggestion that this would fund an appropriate extension at Windyknowe primary school. In any event, as pointed out by the council, any increased capacity could well be better utilised to meet existing forecast demand. I therefore conclude that the proposal would be contrary to the terms of local plan Policy IMP3 in respect of primary non-denominational education infrastructure.

45. Overall, I conclude that the proposal would be contrary to various local plan policies. I further conclude that the proposal does not justify the granting of planning permission to maintain a five year effective housing land supply under SESplan Policy 7. In particular, the proposal would fail to satisfy the need to be in keeping with the character of the settlement and additional infrastructure required as a result of the development is not committed or would be funded by the developer. In this latter respect, I appreciate that a developer contribution could be required but, as explained, I cannot be confident that any such proportionate contribution could make good the deficiency.

46. These conclusions point to the refusal of planning permission. It is therefore necessary to take account of material considerations and determine whether planning permission should be granted notwithstanding the provisions of the development plan.

47. National Planning Framework 3 seeks a significant increase in house building with a greater and more concerted effort to deliver a generous supply of housing land in the Edinburgh and south-east city region. Despite this clear high level support, environmentally unsuitable sites, such as the appeal site, should not be released as housing land.

48. SPP supports the provision of housing land through the identification of a generous supply for each market area with a sharp focus on delivery. On the other hand, as pointed out by the appellant, the principal policies of SPP relate to sustainability and place-making. Indeed SPP indicates that there is a presumption in favour of sustainable development. Paragraph 29 sets out the principles which should guide decisions. It is clear that the proposal would not fly in the face of many of the principles listed although, in this case, the most directly relevant principles are those relating to education infrastructure and the protection of landscape and the wider environment.

49. In the light of my conclusions on the landscape and visual impact of the proposal and education infrastructure I do not consider the use of the land for housing could be regarded as sustainable. I am also concerned that the proposal would not accord with the principle of place-making. The development, although adjacent to existing housing, would have an individual access resulting in a largely separate residential area. There would be the potential for providing a link with the adjacent small residential development to the west which would be beneficial. Additionally, there is reference to pedestrian and cycling links to

existing streets, but, in wider townscape terms, I consider the proposal would be generally unconnected. The central spine road is shown in the masterplan to extend southwards but this is beyond the site boundary and is not part of the application.

50. The presumption in favour of sustainable development is severely weakened because of the adverse landscape and education infrastructure impacts. In turn, non-compliance with the provisions of the local plan, to which I have referred in paragraphs 25 and 44, and the criteria in SESplan Policy 7, identified in paragraph 45, outweigh the presumption in favour of sustainable development. On balance, therefore, I conclude that the development does not draw support from SPP.

51. The letter from Scottish Government Chief Planner was written in 2010 at a time of economic recession. Indeed this situation is reflected in the house completion rates for West Lothian provided by the council. It is not surprising that the Chief Planner referred to a flexible and realistic approach under the circumstances. Since then, there appears to have been an improvement in the housing market and the council remains committed to providing an effective five year housing land supply. In view of the passage of time I do not believe the letter constitutes support for granting planning permission for the appeal site. However, I recognise that SPP still calls for a flexible and realistic approach to the delivery of housing.

52. Whilst planning appeals may have similarities, the circumstances of each must be considered individually. It is inevitable that there will be differences as sites are not identical. Although an appeal at Blackburn, West Lothian was dismissed, my decision in this case does not rely or found on that earlier appeal. The intentions notice at Dunbar, refers to a situation where there are no over-riding planning objections. In my opinion, such a situation does not apply in this case. Similarly, despite the terms of the decision notices in the appeals at Haddington, North Berwick and Edinburgh, I am not persuaded that the current appeal should be allowed. Equally, I note that the appeal at the Edmonstone Estate involved a green belt site and that a designed landscape would be compromised. However, in the current case, I do not believe there are such “compelling reasons” to justify allowing the appeal.

53. All-in-all, the appeal decisions that have been brought to my attention do not lead me to set aside my conclusions in respect of the development plan.

54. I have noted the consultation responses. Apart from education infrastructure, the development has not raised any objections provided, in some cases, appropriate conditions were to be applied to any grant of planning permission. Education infrastructure has been considered separately but, despite the terms of the other consultation responses, my fundamental concern about the location of the proposed development remains.

55. Some issues raised in representations have already been dealt with. I have also noted other matters of concern insofar as relevant to planning, including concern about impact on wildlife, the inadequacy of the local road network and drainage infrastructure, the threat to archaeological remains and noise, pollution and safety.



56. The site is not within an area designated for nature conservation and therefore I do not believe any special protection for wildlife can be justified other than that afforded by statute to protected species. The consultation process undertaken by the council has not identified any problems, other than education infrastructure, that could not be remedied by the imposition of conditions.

57. Some limited support for the proposal was also received but this does not persuade me that planning permission should be granted.

58. Other material considerations that have been brought to my attention have been taken into account as part of my analysis of the proposal against the provisions of the development plan. Having assessed the material considerations, I conclude that no over-riding matters lead to the conclusion that planning permission should be granted. On this basis, I dismiss the appeal.

*Richard Dent*  
Reporter

**Appendix 3**  
**Blackburn appeal decision notice (Ref: PPA-400-2036) issued on 30 October 2013**

## Appeal Decision Notice

T: 01324 696 400  
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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-400-2036
- Site location: land to the north and south of Seafield Road, Blackburn, West Lothian EH47 7AL
- Appeal by: Hallam Land Management Limited against the decision by West Lothian Council
- Application for planning permission in principle 0704/P/12 dated 10 October 2012 refused by notice dated 22 April 2013
- The development proposed: residential development and associated open space, landscaping, tree planting, SUDS pond, development access road, junction improvements, enhancement of pedestrian routes and ancillary works
- Date of site visit by Reporter: 21 October 2013

Date of appeal decision: 30 October 2013

### Decision

I dismiss the appeal and refuse planning permission in principle.

### Reasoning

1. The determining issues in this appeal are: whether there is a deficiency in the supply of land for new housing and whether the proposed development would help make good any such deficiency; whether there is adequate school accommodation for children from the proposed development; and whether the proposed development accords with local plan policy for development in the countryside.

#### *The site*

2. The site covers 6.5 hectares of land on the south-east side of Blackburn. One part of the site is to the north of Seafield Road (A705). This part of the site is pasture land, gently undulating and with a low point towards the south-west corner. To the west are the houses in Pinewood and Graham Court. Along the boundary between these houses and the site is a narrow strip of trees along which there is an informal path. The north boundary is marked by some small trees and several oak trees at the north-east corner. To the north is an arable field. To the east are further grazing land and a collection of buildings, including a house, on the north side of Seafield Road.



3. The other part of the site is to the south of Seafield Road. To the west of this part are the houses in Happy Valley. Again the boundary between the houses and the site is marked by a woodland strip, along which there is a footpath. The west section of this part of the site is sown to grass, a central section is uncultivated and the easternmost section is arable. The central and easternmost sections are separated from Seafield Road by the houses at Hillview Cottages and Rockvale Cottages. Riverside Lea, a low-density residential area to the east, is separated from the site by a strip of young trees. The south part of the site generally slopes down to the south, in the direction of the River Almond. From this part of the site there is an extensive view to the south.

4. Seafield Road, where it crosses the site, is carried on an embankment, the height of which at its greatest is two to three metres above the adjoining ground. Mature trees and hedgerow planting on both sides of the road create continuous lines of vegetation and largely screen views from the road to the appeal site.

#### *The proposal*

5. The proposed development is described as “residential development and associated open space, landscaping, tree planting, SUDS pond, development access road, junction improvements, enhancement of pedestrian routes and ancillary works”. The application for planning permission is in principle. The Indicative Masterplan submitted with the application indicates that the site could accommodate approximately 120 dwellings. There would be a roundabout on Seafield Road, from which vehicular access to each half of the site (north and south of the road) would be taken.

#### *Representations*

6. During its consideration of the planning application, the Council received objections from Mr Graeme Morrice MP, Blackburn Community Council, Seafield Community Council and four local residents. In addition, 280 identical-format standard letters of objection were received. After the appeal was submitted, the Directorate for Planning and Environmental Appeals received further representations from Mr Morrice, Blackburn Community Council and one local resident.

#### *The development plan*

7. The development plan consists of SESplan and West Lothian Local Plan. SESplan, the strategic development plan for Edinburgh and South-east Scotland, was approved by Scottish Ministers on 27 June 2013. SESplan supersedes the Edinburgh and the Lothians Structure Plan 2015. West Lothian Local Plan was adopted in 2009.

## SESplan

8. Relevant parts of SESplan are summarised in the following paragraphs.
9. SESplan has eight aims (paragraph 17). Two of the aims are to:  
  
set out a strategy to enable delivery of housing requirements to support growth and meet housing need and demand in the most sustainable locations; and  
  
promote the development of urban brownfield land for appropriate uses.
10. The spatial strategy focuses further development on thirteen strategic development areas, one of which is West Lothian. The strategic development areas are to be the primary locations for growth and investment (paragraph 18).
11. Where possible, new housing will be focused on brownfield land and across the strategic development areas. It is particularly important in supporting economic growth and recovery to ensure that sufficient land is allocated and available for housing development in the period up to 2024 (paragraph 22). A five years' effective housing land supply will be maintained at all times to ensure that delivery is not unnecessarily constrained (paragraph 23). The spatial strategy steers housing growth to sustainable locations where there is infrastructure capacity or which minimise the requirement for additional investment (paragraph 27).
12. SESplan says that over 22,300 new homes are already committed in West Lothian. Significant investment in infrastructure, particularly education, is required to implement existing committed development. Further investment will be needed to support SESplan strategy (paragraph 88). Provision of infrastructure may be an obstacle in the short term (paragraph 89). New housing allocations in West Lothian could be directed towards existing committed developments. The smaller settlements in west West Lothian may also provide for additional growth (paragraph 91).
13. Supplementary guidance will show how much of the requirement for more housing land is to be met in each part of the SESplan area. Local development plans will allocate land accordingly (policy 5).
14. One of SESplan's priorities is the delivery of the development strategy and related infrastructure projects currently under construction or committed through existing plans and strategies (paragraph 114).
15. Each planning authority is to maintain at all times a five years' supply of effective housing land. The scale of this supply is to derive from the housing requirements for each local development plan area identified through the supplementary guidance called for in policy 5 (policy 6).

16. Policy 7 says that planning permission may be granted for greenfield housing development to maintain a five years' supply of effective housing land. This is subject to 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) additional infrastructure required as a result of the development is either committed or to be funded by the developer.

### *SESplan spatial strategy*

17. I find that the proposed development accords in broad terms with SESplan spatial strategy in that it is within a strategic development area and that it is located beside one of west West Lothian's smaller settlements. On the other hand, the strategy promotes reuse of brownfield land, and this counts against the proposed development because the appeal site is greenfield.

### *Greenfield development*

18. Greenfield development may be permissible under policy 7. Approval of the proposed development is permitted by policy 7 if:

there is need in terms of maintaining a five-year supply of effective housing land;

the appeal site would be effective; and

criteria (a), (b) and (c) in policy 7 are met.

### *Maintaining a five years' supply of effective housing land – the Appellant's case*

19. The Appellant says that the Council confirms in its committee report that there is not a continuing five years' supply of effective housing land. The shortfall in the SESplan five-year housing land supply is of the order of 22,000 houses. This equates to almost 50% of the total five-year requirement. There is an urgent need to bring forward land for housing development in appropriate, sustainable locations. The scale of the shortfall is such that it must be addressed now, in advance of any local development plan process. Recent decisions on two appeals regarding housing development in Edinburgh confirm the substantial shortfall in housing land supply.

20. The Council claims that the housing land supply position has changed because the housing requirement for West Lothian cannot be established prior to approval of the supplementary guidance called for by policy 5 of SESplan. This is an unreasonable approach and is in conflict with the requirements of SESplan. The Council has previously

accepted that there is a considerable shortfall in the five-year effective housing land supply in West Lothian. The housing land supply position does not change simply because the structure plan has been replaced by SESplan.

21. The lack of an effective five-year housing land supply remains and must be addressed. This was one of the key findings of the SESplan examination. The scale of the housing land shortage across the SESplan area is significant.

22. The Council's wish to await approval of the supplementary guidance conflicts with SESplan, Scottish Planning Policy, PAN 2/2010 and the Chief Planner's letter of October 2010. These all confirm that a five-year supply of effective housing land should be maintained at all times.

23. The Council's approach conflicts with that adopted by East Lothian Council in response to three similar appeals. There is need to address the critical shortage in effective housing land throughout the SESplan area. Action is needed now and not through a lengthy local development plan process. In a fourth East Lothian appeal, the reporter concluded that there was an urgent need to achieve more private house completions. Departure from the development plan was justified. The same approach can be applied to the present appeal. This would also follow the approach in the two Edinburgh appeals.

24. The Council's position conflicts with Scottish Planning Policy, SESplan, the position adopted by a neighbouring authority and the conclusions of three reporters.

#### *Maintaining a five years' supply of effective housing land – the Council's case*

25. The Council says that the housing requirement for West Lothian cannot be established until the supplementary guidance required by policy 5 of SESplan has been approved. The most suitable locations for new development can be established only after an assessment of all options. Following a 'call for sites', the Council's assessment of over 200 submissions is nearing a conclusion.

26. Many of the reasons for decline in housing output in West Lothian are beyond the Council's control. In 2009, the Council set up a West Lothian Local Infrastructure Fund to forward-fund infrastructure. The Council has engaged with the house building industry through two housing recovery conferences and has approved two Housing Recovery Action Plans. The rate of house completions in West Lothian has made a good recovery since the low point in October 2011. Progress is being made on various fronts, including the CDAs at Armadale, Winchburgh and Calderwood, council housing, approved private housing developments and six sites where the Council is minded to grant planning permission for a total of 1,244 houses.

27. The West Lothian Housing Land Audit 2012 confirms that the total effective supply is 14,281 units. The constrained supply is 8,566 units. Of the 14,281 units in the effective supply, only 3,418 are programmed for the five years from 2012-2013. This is because economic factors continue to have an adverse impact. The effective supply is expected to be greater in the 2013 Audit as a result of progress with the housing recovery initiatives.



28. The considerable land supply in Bathgate, Blackburn and Whitburn will not be exhausted in the next five years. Construction of 1,266 houses is forecast in the five years from 2012-13. The established supply is for 4,132 houses, of which land for 3,584 houses is effective.

29. Table 4 in SESplan shows 22,300 potential house completions on land committed for housing development in West Lothian. This is 6,490 above the assessed need and demand for the period from 2009 to 2019.

30. The Appellant's Housing Market Report (page 22) says 880 house completions per year will be needed in West Lothian over the next 25 years. The Housing Land Audit forecasts 796 completions by 2015-2016. This figure does not include proposed council house construction. The draft Housing Land Audit 2013 forecasts 957 completions in 2016-2017. This figure does not include proposed council-house construction on land not allocated for development.

31. The Edinburgh appeal decisions cited by the Appellant are not comparable for a number of reasons, including: they relate to a time prior to approval of SESplan; infrastructure was not an issue; and the local housing demand and supply picture was different from that in West Lothian.

#### *Maintaining a five years' supply of effective housing land – conclusions*

32. I find that SESplan gives high priority to the need to ensure that there is at all times a five-year supply of effective housing land. This is clear from what SESplan says in paragraphs 22 and 23 and policy 6.

33. Policy 6 also addresses the question of how much land has to be allocated for new housing if there is to be a five-year supply. Policy 6 says that the scale of the supply is to derive from the housing requirements for each local development plan area identified through the supplementary guidance called for in policy 5. As this guidance has not yet been approved, I find that it is not possible at present to identify with certainty whether there is in West Lothian, in terms of the development plan, a shortage of effective land for new housing development.

34. I note from submissions that the rate of house building in West Lothian declined sharply following onset of the recession. I also note that the Council has taken a number of initiatives with the aim of increasing the rate of house building in its area. These initiatives include efforts to bring forward provision of essential infrastructure and implementation of a programme of council-house building. Planning permission has been or is being given to a number of proposed housing developments.

35. I note that the approved Housing Land Audit 2012 identifies an effective land supply for 14,281 dwellings and that this figure may well increase in the 2013 audit. Forecasts suggest that the number of house completions will be at least 796 in the year 2015-2016 and possibly at least 957 in 2016-2017. In the area local to the appeal site, there are

effective sites for 3,584 houses within the established land supply. Construction of 1,266 houses is forecast in the five years from 2012-13.

36. From the submissions, in particular the considerations in the previous two paragraphs, I find that the supply of effective housing land in West Lothian is adequate to meet current market demand for new houses. This is also the case in relation to the area local to the appeal site.

37. The situation in West Lothian is different from that in Edinburgh and East Lothian, in that it appears that the supply of housing land in West Lothian is more generous than that in the other two areas. For this reason, I find that the Edinburgh and East Lothian appeals cited by the Appellant cannot be used to point the way in which the present appeal should be determined.

#### *Effectiveness of the appeal site*

38. The Appellant submits that the appeal site would be effective. It is adjacent to existing services, utilities and access roads. There is no constraint to immediate development. The Appellant's parent company is a long-established, leading property and construction organisation. There is house-builder interest in developing the site. An indicative development programme shows first house completions in 2015 and completion of the development in 2019.

39. The Council says that education issues in relation to the appeal site cannot readily be addressed. For this reason, the site would not be effective.

40. The Council submits that there is need for additional primary school capacity to serve the proposed development. The Council would require at least three years from the grant of planning permission to have the additional capacity in place. If extension of Bathgate Academy does go ahead, it will not be complete until 2017-18. No houses on the appeal site should be occupied until the extension is complete. The site would not make an early contribution to housing output.

41. In response, the Appellant says that the Council's reasons for refusal related to a perceived lack of capacity in local secondary schools. No concerns were expressed regarding primary schools. There is sufficient spare capacity in all local primary schools. There is significant spare capacity in Blackburn Primary School, which is occupied at less than a third of its planned capacity.

42. I note from the Appellant's Education Capacity Assessment that Murrayfield Primary School is reaching capacity and that some 35 pupils are from outwith the school's catchment area. The Assessment indicates that Murrayfield Primary school could accommodate pupils from the proposed development if there were no non-catchment pupils on the school roll.

43. The Education Capacity Assessment (paragraph 6.14) also says that no further significant new housing development is planned for Blackburn.

44. It seems to me that existing non-catchment pupils at Murrayfield Primary school could not be required to relocate to Blackburn Primary or some other school. Reducing the number of non-catchment pupils would have to be a gradual process, taking place as pupils worked their way through the school and progressed to secondary level.

45. I am not convinced that it is accurate to say that no further significant new housing development is planned for Blackburn. Submissions have drawn to my attention a site known as Redhouse West which is allocated for housing development in the local plan and which has an estimated capacity for 70 dwellings.

46. I note that there is considerable spare capacity at Blackburn Primary School. From submissions, my understanding is that creating space at Murrayfield Primary School by transferring some of its catchment area to Blackburn Primary School requires statutory consultation procedures to be followed and that the result of such consultation cannot be pre-empted. In other words, there can be no guarantee that the outcome desired by the Appellant will be achieved.

47. In its response to the appeal (paragraph 5.4), the Council says “developer contributions could be used at the catchment primary schools to provide additional capacity within existing site and building constraints”.

48. My conclusions from all this are that at the present time Murrayfield Primary School lacks capacity to accommodate pupils from the proposed development. That this is not given as a reason for refusal of planning permission appears to be because there is a possible solution using developer contributions to provide additional capacity. Provision of such additional capacity is needed before any of the proposed houses are occupied.

49. I note that the Education Services’ consultation response says that Our Lady of Lourdes Primary School has capacity for 171 pupils. The response goes on to qualify this. The school tends to be organised on the basis of six classes. These classes are mainly composite, making the maximum roll 150 pupils. The 2012 start-of-session roll was 148 pupils. Under the heading “School Implications”, the consultation response says that the proposed development would require additional accommodation.

50. From the preceding paragraph and from the lack of reference to Our Lady of Lourdes Primary School in the reasons for refusal of planning permission, I conclude that capacity to accommodate pupils from the proposed development could be made available. This might require developer contributions.

51. My overall conclusions regarding provision of primary education are that there are capacity constraints, that these are capable of being addressed and that the process of addressing them could delay the stage at which any of the proposed houses should be available for occupation.

52. I give consideration to provision of secondary education below, in relation to SESplan policy 7, criterion (c).

*In keeping with the character of the settlement and local area*

53. Criterion (a) in SESplan policy 7 requires development to be in keeping with the character of the settlement and local area. In its response to the appeal (paragraph 2.34), the Council does not suggest that the proposed development infringes this criterion.
54. In the representations against the proposed development, it is submitted that the established trees on the road frontage define the entrance to Blackburn. The proposed development would entail loss of this natural corridor of trees.
55. I have noted the Appellant's Landscape and Visual Appraisal (which includes material relating to a site larger than the appeal site) and the Design Statement. The latter (on page 18) refers to the development being set back from Seafield Road by some 20 metres to provide a landscaped corridor into Blackburn. Structure planting on site boundaries would provide visual integration and a more robust boundary between the urban areas and the adjacent agricultural land than that which currently exists.
56. From my inspection, I note that roadside trees and hedging come right up to the southern edge of the Seafield Road carriageway and the northern edge of the footway on the opposite side of the road.
57. The Appellant's Indicative Masterplan shows proposed tree planting along the north side of the road, suggesting that the existing vegetation will be removed. "Existing trees" are shown on the south side of the road, suggesting that, apart from the gap needed to accommodate the roundabout and its southern arm, trees on this side of the road would be retained.
58. In the Transport Assessment, figure 3 shows a possible layout for the roundabout and its approaches. This layout indicates that much of the existing vegetation to the west of the roundabout on the south side of the road is likely to be removed. Proposed provision of a footway on the south side of the road would also affect existing vegetation.
59. I note that the Appellant's Ecological Report (page 7) refers to "the broadleaved woodland strip along the A705" and describes it as "a significant feature in an otherwise open landscape".
60. I find that the existing roadside vegetation in the appeal site creates a distinctive feature and that most of it is likely to be removed if the proposed development were to go ahead. This loss of vegetation would remove a feature that constitutes one element of the character of Blackburn and its environs and so result in some loss of overall character.
61. Regarding structure planting on site boundaries to provide a more robust boundary between the urban area and the adjacent agricultural land, during my inspection I noted that, where it adjoins the appeal site, the existing edge of Blackburn is marked by trees and is quite robust. The appeal site boundaries, particularly on the east side of the northern part of the site and on the south side of the southern part, lack robustness. The new planting

proposed by the Appellant could eventually create robust boundaries, but this would take time.

62. I conclude that the proposed development would have some adverse effect on local character, but not to an extent that would justify refusal of permission if other considerations demonstrated clear need for the development to proceed.

#### *Green belt objectives*

63. In terms of criterion (b) of SESplan policy 7, development must not undermine green belt objectives. The appeal site is not in the green belt, so this criterion is not infringed.

#### *Availability of infrastructure*

64. SESplan policy 7 criterion (c) says that any additional infrastructure required as a result of the proposed development must be either committed or funded by the developer. The first reason for refusal of planning permission refers to lack of education capacity at Bathgate Academy and St Kentigern's Academy.

#### *Secondary education – the Appellant's case*

65. The Appellant's Education Capacity Assessment assumes that the proposed development would contain 120 dwellings, 90% of which would have more than two bedrooms. First occupation would be summer 2015 with a build rate of 30 units per year thereafter and completion by mid-2019. The development would require 19 non-denominational secondary school places and 6 Roman Catholic secondary school places.

66. The Education Capacity Assessment acknowledges the challenges facing education provision in West Lothian. The Council has revised the catchment area of Bathgate Academy and has approved plans to extend Bathgate Academy (for Session 2014-15) from 1,210 pupils to 1,320 pupils. These measures have introduced a significant level of spare capacity at Bathgate Academy. Its pupil roll has decreased quite sharply over recent years, probably as a result of the catchment changes. The current roll is 890 pupils (73% of capacity), with spare capacity for 320 pupils. St Kentigern's Academy provides the denominational secondary provision for Blackburn and has had a more consistent pupil roll over recent years. The roll now stands at 1215 (85% of capacity), with spare capacity for 215 pupils.

67. The Education Capacity Assessment recognises that there are significant new housing developments in the Bathgate area which will have an impact on Bathgate Academy's pupil roll. The Assessment says that catchment reviews and extension proposals address this matter. As a result, the available capacity at Bathgate Academy is significant. In addition, the slow-down in housing completions in the Bathgate area and in West Lothian as a whole will allow the impact of any new housing development to be managed and absorbed over a much longer period. As a consequence, there is sufficient capacity to allow for the modest development at Seafield Road in addition to any committed allocations in the Bathgate Academy catchment. Similar conclusions can be drawn in

respect of the available capacity at St Kentigern's Academy. Capacity is sufficient to allow for significant levels of new housing development in its catchment area.

68. To put capacity figures in context, the Appellant says that the proposed development would take up 6% of the currently-available spare capacity at Bathgate Academy and 3% of the currently-available spare capacity at St Kentigern's Academy. The Council's approach ignores the fact that a five-year supply of effective housing land is not being maintained. Delayed delivery of housing on allocated sites ensures that there remains sufficient spare capacity to accommodate the proposed development.

69. The Appellant's Education Impact Analysis concludes that the extension to Bathgate Academy will easily be large enough to incorporate the pupil product arising from the proposed development (page 6). Consistent with this is the Council's Education Services' consultation response dated 5 April 2013, in particular the passage that says that on 16 June 2008 the Education Executive approved an extension to Bathgate Academy and that contributions of £2,437 per residential unit are being requested from all developers with applications within the Bathgate Academy catchment area.

70. The Education Impact Analysis refers to the projected denominational secondary product from the proposed development as being seven pupils. The Analysis says that this number of pupils, when set against the scale of the issue which West Lothian Council is facing, is statistically inconsequential and well within the margin of error of the roll projections. St. Kentigern's Academy will experience rolls far in excess of its current or planned capacities. This demands a solution of a scale that far exceeds any issues raised by the application site, a solution which will create enough school capacity easily to accommodate the pupil product from the proposed development.

71. The conclusion of the Education Impact Analysis is that there is no education constraint on the proposed development in relation to provision of secondary education.

#### *Secondary education – the Council's case*

72. The Council refers to the database which it uses when forecasting numbers of school pupils. The database was computerised in 1970. The school forecasting system has been developed since 1986. Child per house ratios can be generated in relation to housing tenure and number of habitable rooms. The Council also uses actual numbers of primary school pupils to forecast demand for places at secondary schools.

73. Consultation regarding non-denominational secondary schools led to primary schools at Torphichen and Seafield being removed from the Bathgate Academy catchment. A critical element of the school review was to facilitate development plan housing allocations.

74. On 1 July 2013, the latest version of the Council's "Potential S1 admissions – analysis by associated primary school catchment area" became available. This shows that the S1 intake for Bathgate Academy in 2019 and 2020 will exceed capacity and that St Kentigern's Academy is also moving towards maximum capacity.

75. The Council's October 2012 school roll forecast report indicates the scale of housing currently outwith the ten-year period of the forecast. Improved economic circumstances would result in earlier completion of this housing and increased school rolls. In relation to Bathgate Academy, 367 houses not within the ten-year period are supported by the development plan. These houses could add 116 pupils and Bathgate Academy would be expected to manage an average intake of around 260 pupils at S1 at the end of the forecast period. This is 40 pupils greater than the current intake limit. If implemented, the proposed Bathgate Academy extension could cater for 20 pupils out of these 40 pupils.

76. The Council goes on to say that the proposed extension to Bathgate Academy is not yet agreed with the public-private partnership contractor, the school and the community. The cost of the extension is as yet unproven through an agreed feasibility study. The school site size is currently below regulation, so any capacity increase may need dispensation from the Scottish Government.

77. Regarding St Kentigern's Academy, placement pressure is building up through the primary schools. Consideration is being given to extending St Margaret's Academy or to construction of a new school at Winchburgh. A new school would require a school consultation, the outcome of which cannot be pre-empted. Consultation regarding denominational secondary schools led to redrawing of school boundaries and has reduced pressure on St Margaret's Academy. This has delayed need for a third denominational secondary school.

78. SESplan (paragraph 114) supports development committed in existing plans. The Council has plans for 100 houses for social rent at Redhouse West. School capacity issues mean that, if the Appellant's development were approved, development at Redhouse West would not be able to proceed.

#### *Secondary education - conclusions*

79. I find that the Appellant's approach tends to focus on comparisons between forecast total demand for places in each of the two academies and total capacity of each school. The Council's approach is more oriented to comparing demand for places in S1 with capacity in S1. I find the Council's approach more convincing. This is because, when a pupil comes to enrol, it is availability of a place in a particular year that is crucial, not what the school's total roll might be.

80. The Council's forecast of demand for S1 places is informed by the numbers of pupils in each year in each of the feeder primary schools. These numbers are known quantities rather than forecast quantities. I recognise that not all pupils in the primary feeders will eventually progress to one of the two academies, and that there will also be demand for academy places from pupils who move into the catchment areas. In addition, stay-on rates at S5 and S6 may vary. These factors mean that demand for S1 places and for places in later years cannot be known with complete certainty, but I am satisfied that the Council's methodology means that its S1 forecasts may be used with confidence.



81. I note that forecasting can be based on analysis of pupil occupancy rates per dwelling and that the Council's database facilitates analysis in relation to such characteristics as size, age and location of dwellings.

82. I note that the table headed "Potential S1 admissions – analysis by associated primary school catchment area" (document WLC43) shows the number of S1 pupils entering Bathgate Academy increasing throughout the period from 2013 to 2019, with the forecast for 2019 exceeding the available capacity. The recent annual update of this table (document WLC44) shows a similar trend, with the forecasts for both 2019 and 2020 exceeding available capacity. The same two tables show the S1 forecast for St Kentigern's Academy as exceeding capacity in 2019.

83. Current forecasting in relation to Bathgate Academy for the ten-year period 2012 to 2022, as set out in the Education Service's consultation response, predicts construction of 847 houses while assuming that development of a further 367 houses supported by the development plan will not proceed before 2022. On this basis, the number of P7 pupils in 2018, 2020 and 2022 would be greater than the S1 capacity. If the national economic recovery were to accelerate and house-building were to increase more rapidly than envisaged, I find that the forecast shortage of capacity at Bathgate Academy would be exacerbated.

84. The ten-year forecast for St Kentigern's Academy contained in the consultation response shows the number of P7 pupils in 2018 exceeding S1 capacity. The situation does not appear to be quite as pressing as that in relation to Bathgate Academy, but it is not satisfactory. It gives very little scope to accommodate extra pupils arising from a faster rate of house-building.

85. The Appellant places some reliance on measures that the Council has in mind, such as increasing the capacity of Bathgate Academy and commencement of construction of a third denominational secondary school. In view of the various uncertainties surrounding any rearrangement of educational provision, including need not to pre-empt statutory consultation and the difficult state of local authority finances, I attach little weight to the possibility that new capacity will become available at Bathgate Academy and St Kentigern's Academy in the short-term. Even if some new capacity were to become available, an increase in house-building activity on sites identified for development could leave little or no surplus to permit development of windfall sites such as the Appellant's site.

86. My conclusion is that Bathgate Academy and St Kentigern's Academy do not have adequate capacity to accommodate the additional secondary school pupils likely to arise from the proposed development.

#### *SESplan policy 7 conclusions*

87. Supplementary guidance required by policy 7 of SESplan has not yet been approved. I find that this means that it is not possible at present to identify with certainty whether there is in West Lothian, in terms of the development plan, a shortage of effective land for new housing development. From the submissions, I find that the supply of effective

housing land in West Lothian and in the area local to the appeal site is adequate to meet current market demand for new houses.

88. If permission for the Appellant's development were to be granted, the site would not be immediately effective. Time would be required to address, as far as possible, lack of school places for the proposed development's school-age residents. In the meantime, house-building rates on other sites in West Lothian may well have increased.

89. In all the circumstances, I find that the proposed development is not justified in terms of maintaining a five-years' supply of effective housing land. This means that policy 7 is not activated. Even if there were a shortage of effective housing land and policy 7 were activated, lack of secondary education capacity means that criterion (c) would not be satisfied.

### *West Lothian Local Plan*

90. The Appellant states that West Lothian Local Plan is significantly dated and does not accord with the recently-approved strategic development plan.

91. I note that the local plan includes the following.

The life time of the local plan is anticipated as being around 10 years, although some of the land allocations have a time frame of 15 years or more (paragraph 1.4).

The [housing] allocations identified in the local plan are the maximums in the structure plan (paragraph 2.11).

From these particular points and from my reading of other parts of the local plan, I find that, in relation to allocation of land for new dwellings, the plan continues to have considerable relevance. Regarding conflict with SESplan, I note that the spatial strategy in SESplan "builds on approaches in existing development plans" (paragraph 18). This is repeated in policy 1A. I do not find the housing land aspects of the local plan to be in conflict with SESplan.

92. The sixth reason for refusal of planning permission says that the proposed development is contrary to policy ENV 23 of the West Lothian Local Plan. "The proposal would constitute unjustified development in the Livingston Countryside Belt and would erode the countryside belt and harm its aims of protecting land from development and protecting coalescence of settlements".

93. For a number of reasons, the Appellant disputes that there is conflict with policy ENV 23.

94. I find that policy ENV 23 is directed against two kinds of development. The first is "development that will lead to coalescence between settlements and for which there is no specific locational need". I find that the proposed development would not lead to

coalescence, Seafield being about one kilometre away to the east. As there would be no coalescence, development does not need to be justified by specific locational need. My conclusion is that the proposed development does not conflict with this part of policy ENV 23.

95. The second kind of development against which policy ENV 23 is directed is development “that would result in sporadic development, or the expansion of existing clusters of houses and for which there is no specific locational need”. In that the appeal site is adjacent to the built-up area of Blackburn and that the proposed development would in effect be an extension of the built-up area, I find that the development would not be sporadic and would not conflict with the second part of the policy.

96. Supporting text for policy ENV 23 (paragraph 3.64) says, in relation to the Livingston Countryside Belt, “it protects agricultural land, forestry and land of natural heritage value from development”. I find that the wording of policy ENV 23 does not reflect this intention. My conclusion is that the proposed development does not conflict with policy ENV 23.

97. The fifth reason for refusal of planning permission says that the proposed development is contrary to policy ENV 31 of the West Lothian Local Plan.

98. The Appellant argues that the proposed development is not contrary to policy ENV 31. Reasons for this include the following.

The Council is adopting a narrow interpretation of countryside policies. The purpose of these policies is to direct development to urban areas and prevent loss of valuable agricultural land or sensitive landscape areas.

The appeal site is within the existing built-up entrance to Blackburn and has existing development to the east and west.

The site is not subject to any special designations. The southern part of the site is in an area where low-density housing is encouraged due to poor landscape quality and limited agricultural value.

The present situation is not normal: there is an acute shortfall in housing land supply.

99. From a straightforward reading of policy ENV 31, I find that the proposed development bears no relationship to any of the seven exceptions specified in the policy. While particular care would have to be taken if a proposal affected land designated for its agricultural or landscape value, policy ENV 31 applies to all areas in the countryside.

100. I do not accept that the appeal site is within the existing built-up entrance to Blackburn. That part of the Seafield Road entrance to Blackburn which is included in the site is lined with trees and hedging, beyond which is open farmland. The west-bound traveller experiences a sharp transition from rural to urban character when crossing the west boundary of the appeal site. On the east side of the appeal site, the row of houses on

the south side of Seafield Road and the farm steading area on the opposite side of the road do diminish to some extent the countryside character of the locality, but they are clearly separated from the built-up area of Blackburn. The low-density housing at Riverside Lea, to the east of the appeal site, has limited impact on the appearance of its surroundings. My conclusion is that the appeal site cannot be characterised as being within the existing built-up entrance to Blackburn.

101. Although not mentioned in submissions, during my site inspection I noted the existence of two place-name signs displaying “Blackburn” some distance to the east of the site. In my view, these signs do not affect the status of the appeal site. The signs also denote a change in the speed limit, and it is this function that is likely to have determined their position.

102. For reasons already given, I do not find that there is an acute shortfall in housing land supply.

103. My conclusion is that the proposed development is contrary to local plan policy ENV 31.

104. The first reason for refusal of planning permission says that the proposed development is contrary to local plan policy IMP 3 because there is a lack of capacity at Bathgate Academy and St Kentigern’s Academy.

105. I note that policy IMP 3 says “Where education constraints cannot be overcome there will be a presumption against housing development.” I have already concluded that Bathgate Academy and St Kentigern’s Academy do not have adequate capacity to accommodate the additional secondary school pupils likely to arise from the proposed development. In the light of this, I find that the proposed development does not accord with local plan policy IMP 3.

#### *Development plan conclusion*

106. In relation to the development plan as a whole, I summarise the chief points as follows.

The proposed development accords in broad terms SESplan spatial strategy but has the disadvantage of a site that is not brownfield.

Ensuring that there is at all times a five-year supply of effective housing land is a high priority.

At the present time, it is not possible to identify with certainty whether West Lothian has, in development plan terms, a shortage of effective housing land. The supply of effective housing land in West Lothian is adequate to meet current market demand for new houses.

If planning permission for the proposed development were to be granted, the appeal site would not be immediately effective.

The requirements that have to be met if there is to be a SESplan policy 7 approval are not met in the present case.

West Lothian Local Plan continues to have considerable relevance and the proposed development is contrary to local plan policies ENV 31 and IMP 3.

My conclusion is that the proposed development does not accord with the development plan.

*Other material considerations – national policy*

107. The Appellant states that national policy gives support to the proposed development. Scottish Planning Policy includes reference to supporting sustainable economic growth, maintaining a generous supply of land for house building and directing development to existing settlements. The Chief Planner's letter of October 2010 confirms the need to bring forward sites where there is no longer a five-year supply of effective housing land. National Planning Framework 2 says that there is a pressing need for the planning system to help to deliver growth in the supply of new homes. The draft National Planning Framework 3 refers to seeing a greater and more concerted effort to deliver a generous supply of housing land in South-east Scotland.

108. I find that the aspects of national policy cited by the Appellant have relevance to a situation in which there is an inadequate supply of housing land. Submissions indicate that the supply of housing land in the local plan was the maximum permitted by the now-superseded structure plan and thus was generous. Much of this supply remains available for development. I find that it has not been demonstrated that the supply of housing land in West Lothian is deficient. Nor has it been demonstrated that the appeal site could make an immediate contribution to the supply of new homes. My conclusion is that national policy with regard to supply of land for house-building does not justify approval of the proposed development as a departure from the development plan.

*Other material considerations – traffic*

109. Representations include concerns about additional traffic on the local road network. From submissions, including the Appellant's Transport Assessment and the consultation response from the Council's Roads and Transportation Manager, I find that the local road network is capable of adequately accommodating the extra traffic that the proposed development would create.

110. Representations also express concern about the proposed roundabout: it would be dangerous, cause congestion and prevent access to existing property. I find that the roundabout would reduce traffic speed at the appeal site and that this would be beneficial to safety. The Transport Assessment indicates that the roundabout would have sufficient

capacity to deal with the volume of traffic. For this reason, I find that the roundabout would neither cause congestion nor impede access to nearby property.

*Other material considerations – wildlife*

111. Representations say that the proposed development would have an adverse effect on wildlife. I note that the Appellant's Ecological Report (page 15) concludes that development of the appeal site would not result in any significant negative impact on local biodiversity. The Report does however say that the broadleaved woodland strip along the A705 is a valuable habitat for a range of breeding, roosting and feeding passerine bird species. Since much, if not all, of this strip is likely to be removed as part of the proposed development, I find that there would be an adverse effect on wildlife.

112. I find that submissions do not make clear the wildlife value of the woodland strip in the context of local biodiversity and the extent to which new woodland planting might offset loss of the strip. In the circumstances, I conclude that effect on wildlife is not a determining issue in the present appeal.

*Other material considerations – infrastructure*

113. In the representations, concern is expressed about infrastructure. Availability of school places is considered above. Regarding water supply and waste water treatment, I note that Scottish Water has raised no objection to the proposed development. I find that, apart from education, infrastructure is available to service the proposed development.

*Reasons for refusal*

114. The Council gave seven reasons for its decision to refuse planning permission. The policy basis for reasons 2, 3 and 4 relates solely to Edinburgh and the Lothians Structure Plan 2015. This plan is now superseded. Reasons 2, 3 and 4 no longer have relevance in the determination of the appeal.

115. Reasons for refusal 1, 5 and 6 refer to policies in West Lothian Local Plan. These policies have been given consideration above.

116. The seventh reason for refusal says that the proposal is premature pending outcome of the examination of SESplan and consideration of spatial strategy options in the emerging West Lothian Local Development Plan. Prematurity is also raised in reason six.

117. In brief, the Appellant's case against the prematurity argument is that the site is well-suited to the proposed development, Blackburn is within a SESplan strategic development area, there is an acute shortage of housing land and SESplan policy 7 permits a grant of planning permission. Adoption of a local development plan for West Lothian is unlikely before summer 2015 at the earliest, and waiting for this would exacerbate the housing land shortfall.

118. My earlier findings, in particular regarding housing land supply and availability of school places, mean that any need to permit housing on the appeal site is not pressing and does not justify approval in advance of adoption of the local development plan. It is national policy that the planning system should be genuinely plan-led (Scottish Planning Policy, paragraph 8). I conclude that the prematurity argument carries weight in the present case.

*Final conclusion*

119. I conclude that the proposed development is contrary to the development plan and that there is no other material consideration that would justify approval of the proposed development as a departure from the plan.

*R W Maslin*

Reporter



**Appendix 4**  
**The Dunbar Intention Notice (Ref: PPA-210-2031)**  
**issued on 16th October 2013**

## Appeal: Notice of Intention

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Notice of Intention by Dan Jackman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-210-2031
- Site address: Land adjacent to Beveridge Row, Belhaven, Dunbar, East Lothian
- Appeal by Hallam Land Management Limited against the failure of East Lothian Council to issue a decision within the prescribed period
- Application 12-00553-PPM for planning permission in principle dated 13 July 2012.
- The development proposed: Residential development, access, open space and associated infrastructure
- Application drawings are listed in Schedule 2 at the end of this notice
- Date of hearing and site visit by Reporter: 30 April 2013 & 1 May 2013

Date of notice: 16 October 2013

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### Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the 6 conditions listed below, following the signing and registering or recording of a planning obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended), or some suitable alternative arrangement, covering the matters listed in paragraphs 69 - 78

### Preliminary Matter

The appellant also made a claim for expenses against the council. The claim for expenses is dealt with in a separate decision notice.

### Reasoning

1. The determining issues in this appeal are firstly, whether there is a shortfall in effective allocated housing land sufficient to justify allowing the development of further land. Secondly, if there is a shortfall, whether the proposal can satisfactorily address site specific matters including: development in the countryside; coalescence between Belhaven and West Barns; adequate provision for drainage and prevention of flooding; traffic generation; provision for pedestrians and cyclists; provision of affordable housing; and adequate school capacity, bearing in mind the provisions of the development plan, Scottish Planning Policy and associated guidance published by the council and the Scottish Government.



*c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer”*

10. SESplan defines the East Coast Corridor of East Lothian as a strategic development area and it is clear from the text that Dunbar would be included. The appeal site therefore falls into a strategic development area.

11. The adopted East Lothian Local Plan has policies relating to general land allocations, policies relating to particular land uses or issues and the general development policies that would apply to any development.

12. I consider Policy DC1 to be relevant. As mentioned above, the site is identified as countryside and in short, a residential development would not comply with this designation. Criterion 5(d) of Policy DC1 seeks to minimise the loss of prime agricultural land. I note that the site is not situated within an identified green belt.

13. It was agreed by the appellant and council that the following policies were relevant, INF3, H1, H4, C1, C2, T1 and T2. In summary these policies aim to make sure that a housing development provides for any physical and social infrastructure that is a consequence of it, has good design, provides for affordable housing, provides for open space and play provision, is accessible by public transport and considers any road safety implications.

14. Some of the general development policies are more directly relevant to the consideration of a detailed proposal. The policies that I consider are relevant to the appeal proposal are policies DP1 – landscape and streetscape character, DP 2 – design, DP 15 – sustainable urban drainage systems, DP 16 – flooding and DP20 – pedestrians and cyclists.

15. The East Lothian Local Plan will at some point be replaced by the East Lothian Local Development Plan. Some preliminary work has started and at the hearing the council referred me to the current development plan scheme which envisages adoption by 2015. Until the supplementary guidance mentioned in Policy 5 above is approved, knowing how much new housing land to identify would be difficult. It would seem inevitable that adoption would be delayed by at least a year. Any new site identified would still need to receive planning permission. It is unlikely that any new housing site identified through an approved local development plan could commence construction much before 2017. It is possible that timings could slip even further.

### **Housing land supply**

16. The appellant’s position, in summary, is that there is a serious shortage of effective housing land regionally, for East Lothian and for Dunbar. The previous Policy HOU 10 and now Policy 7 of SESplan would allow the exceptional granting of planning permission for acceptable sites to help address this situation.

17. At the hearing the council argued that there was no shortage of housing land. Completions had been lower than expected and this impacted on the arithmetic of calculating a 5 year supply. However, the reason for the low completions was primarily the general economic situation. In later written submissions, the council acknowledged that the approval of SESplan by Scottish Ministers was a material change in circumstances.

18. Policy 7 is premised by the need to maintain a 5 year effective housing land supply. However, until the supplementary guidance mentioned in Policy 5 is approved, it is not possible to carry out the complete housing land supply calculations. As it currently stands, the development plan does not enable a definitive 5 year housing land supply to be calculated.

19. It would be normal for a strategic development plan to set the housing land requirement for local development plans. It is clearly unfortunate that there is a delay in the case of SESplan. However, I am unaware of any document that would indicate that the Scottish Ministers consider that a delay in addressing housing land supply is acceptable. The general thrust from the Chief Planner's letter dated 29 October 2010, the current Scottish Planning Policy, proposed Scottish Planning Policy and the proposed National Planning Framework 3, is that the matter is addressed as soon as possible and that a 5 year supply must be maintained at all times.

20. The method for calculating a 5 year supply was agreed at the hearing. Completions since 2009 were agreed and it was also agreed that the 2012 housing land audit was the most up to date information on developer intentions. Whilst the development plan does not currently provide a total housing requirement for East Lothian, the housing need and demand assessment prepared on behalf of SESplan (and certified by the Scottish Government as robust and credible) does. This information can be used as a proxy to assess the minimum likely 5 year requirement in order to compare with the latest agreed effective housing supply.

21. Completions and future programming are shown in table 1 below. These figures have been taken from the council's housing land supply and effectiveness paper and the agreed 2012 housing land audit. In table 1, page 182 of the report of the strategic development plan examination, the assessed housing requirement for East Lothian for the period 2009 – 2019 is 5210. As mentioned above, this figure is derived from the housing need and demand assessment and SESplan housing technical note.

**Table 1 East Lothian completions and forward programming**

Years	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Houses	<b>193</b>	<b>481</b>	<b>433</b>	<i>209</i>	<i>298</i>	<i>512</i>	<i>526</i>	<i>519</i>	<i>778</i>	<i>676</i>

Note: completions in bold, forward programming in italics

### Agreed five year land supply formula

$$\frac{(\text{Housing land requirement} - \text{Completions})}{\text{Years left to run}} \times 5 = \text{The required 5 year land supply}$$

Where:

Housing land requirement = 5210 (taken from the housing need and demand assessment 2009 - 2019)

Completions = 1107 (i.e. 193 + 481 + 433)

Years left to run = 7 (i.e. 2012/13 – 2018/19)

$$\frac{(5210 - 1107)}{7} \times 5 = 2931$$

22. The 5 year forward programming 2012/13 – 2016/17 shows an effective supply of 2064. There is therefore a shortfall in the 5 year effective supply of housing land of 867 units, which I consider to be significant. I note that there is no dispute between the appellant and council over the above figures and that such an approach is consistent with other appeal decisions mentioned to me. I therefore agree with the appellant that Policy 7 provides the framework for releasing additional housing land from acceptable sites.

23. I accept that the 2012 housing land audit is only a snapshot in time and is already out of date. I am aware that developer intentions can radically change and accurate predictions of the output of a site 4 or 5 years into the future are unlikely.

24. However, at the same time, the actual housing land requirement is likely to be higher than 5210. This is because it does not take into account any potential re-distribution between the different council areas, notably the City of Edinburgh. In addition, it is normal to actually allocate land for a higher number in order to provide flexibility and to comply with the Scottish Government's policy of a generous supply of housing land.

25. I also recognise that housing land supply is not just a matter of applying a simple formula. It is also necessary to look into the reasons for fewer completions. I accept that the economic context is an important factor in determining overall construction activity. I also accept that there were good planning reasons why only a relatively few number of larger sites were part of the previous planning strategy.

26. Nonetheless, the fact remains that insufficient houses are being built to meet acknowledged needs and this has been the case for some time. It is clear to me that the Scottish Ministers expect councils to address this problem proactively and not simply wait in the hope that pre-recession activity levels return.

27. I therefore find that in East Lothian there is currently not a 5 year supply of effective housing land and that an exceptional grant of planning permission may therefore be justified.

### *Site's effectiveness*

28. Although it is not mentioned in Policy 7, it is self evident that if a site is to be exceptionally released, it should be effective itself. The appellant's forward planning estimate is 2014/15 – 18 units, 2015/16 – 27 units, 2016/17 – 23 units and 2017/18 – 22 units. At the hearing the council considered this to be possible but optimistic. Later on it expressed more doubts. I accept that much has still to be done, much of which will be beyond the control of the appellant. An agreement would have to be reached over any planning obligations. The site would have to be sold to a house builder. The new purchaser would have to have a detailed design worked up and the necessary approvals obtained. The timing for all this is uncertain. Nonetheless, even if a start in 2014 was not possible, a start in 2015 or 2016 would still be within an acceptable time frame to address current housing needs.

29. There was a suggestion that granting planning permission for additional land might undermine the chances of development of the existing allocated sites, in particular the Hallhill site in Dunbar. I find no evidence for this. It is clear from the modifications made by Scottish Ministers to SESplan that they do not accept that simply relying on existing allocations is an adequate response. The council has provided me with no specific examples of where infrastructure requirements between the appeal site and Hallhill would conflict.

30. Furthermore, there is evidence that economic activity is picking up. In any event, Dunbar and East Lothian are part of a much larger housing market area. There are already several sites expected to be active at anyone time in East Lothian. I see no good reason to suppose the development of a relatively small site, with modest construction rates, should undermine the activity at any other housing site.

31. I recognise that ultimately, when the site is sold on to a house builder and when a house builder decides when to actually start construction is a commercial decision. Whatever the appellant's evidence at the hearing, there can be no guarantees for any particular building programme. Nonetheless, I consider that on the balance of probabilities, the site can be considered effective and would contribute much needed houses more quickly than waiting for the local development plan process to be followed.

### **Site specific matters**

#### *Countryside*

32. As mentioned previously the site is identified as countryside. A residential development of up to 90 houses would not comply with Policy DC 1. Furthermore, the site is grade 2 prime agricultural land. The appellant suggested that the loss of this land would be less important because the field is separated from the main agricultural unit and not all the site would be developed.

33. It is obvious from my site visit and the comments from local residents that the site is actively farmed. If the development were to go ahead then the site would be lost to productive agriculture. Paragraph 97 of Scottish Planning Policy states that development on prime agricultural land should not be permitted unless it is an essential component of the settlement strategy. Paragraph 69 of the draft Scottish Planning Policy has a similar intent.

34. The local residents group also considered that the development of the site would have a detrimental impact on the natural beauty of Belhaven Bay. I agree that Belhaven Bay is an attractive place, which is important for recreation and the general enjoyment of the coast. I cannot agree that a well designed residential development on the appeal site would have any detrimental impact. I consider that the site, if it is seen at all, would be read as part of the general urban area of Dunbar/Belhaven.

### *Coalescence*

35. The council and local residents group argued that the appeal proposal would lead to the coalescence of Belhaven/Dunbar with West Barns. In their view, the separation of communities is important in terms of their character and identity. The remaining gap would be vulnerable to pressure for further development. Design measures could not mitigate this situation. Any tree planting would take many years and the residential development and new access would be seen as an obvious urban extension into the countryside.

36. I agree that physical separation can often be important in retaining the character and identity of communities. However, the proposal will not actually result in the linking of Belhaven/Dunbar with West Barns. Furthermore, the perception of separation is as important as any physical separation. Although the red line of the appeal site would be closer to West Barns, that does not mean that a well designed urban extension has to have urban development up to that point.

37. Alternative design options are available and one such option is shown in the indicative concept layout. I accept that any tree planting would take many years to mature. I also accept that even a well designed residential extension will be read as such. However, based on my site inspection, I do not agree that a well designed residential development will result in any harmful perception of coalescence or harm the current character and identity of either Belhaven or West Barns.

38. If any future proposal was promoted to develop the remaining land, that would have to be considered on its individual merits and in the light of the planning policies prevailing at that time. I do not accept that it is an inevitable consequence of the appeal proposal that Belhaven/Dunbar will coalesce with West Barns.

### *Drainage and flooding*

39. Policies of the development plan, Scottish Planning Policy and numerous other publications all have the clear objective of making sure that new development is not built in areas liable to flood or increase the risk of flooding elsewhere. It is strongly recommended that a holistic approach to the design of water drainage systems is taken.



40. The appeal proposal is an application for planning permission in principle. At the planning permission in principle stage the developer should be able to demonstrate that the site is capable of development. It is not expected of the developer to have a fully worked up design.

41. Part of the site is shown on the Scottish Environment Protection Agency's indicative flood map to be liable to coastal flooding. I have seen photographs of standing water in the fields and on the main road. There are potential limits to the current capacity of the local water treatment works. I am aware that in a flooding situation, the normal operation of drainage systems can be disrupted.

42. However, the appellant is aware of all these matters. They have appointed consulting engineers who have considered these points in a report and in correspondence, including discussions with the Scottish Environment Protection Agency and Scottish Water. They conclude that there is no unmanageable flood risk. They also conclude that foul and surface water drainage solutions are possible. There is therefore no reason why these matters should preclude development.

43. I see no basis for disagreeing with the appellant's consultant. I have seen several letters from the Scottish Environment Protection Agency, so they are obviously aware of the site and its issues. Their advice and comments does not include a recommendation that planning permission in principle should be refused. Scottish Water did not comment on the planning application and flooding and drainage issues are not matters that the council argues are a basis for refusal.

44. Obviously, the detailed design will be considered carefully by the responsible authorities both through the planning process and other regulatory approvals. This is intended to make sure that the issues of flooding and drainage are satisfactorily addressed.

45. I accept that it is possible, upon further investigations that new matters arise or that assumptions the appellant's consulting engineers have used turn out not to be realistic. However, if this were to occur, it might mean that the site is more expensive to develop than hoped, or the site takes longer to build or it means that fewer houses can be built. It could even be a combination of all these eventualities. However, I find no basis for concluding that flooding and drainage matters automatically preclude **any** residential development. I therefore do not consider there to be any conflict with Policies DP 15 and DP 16 of the local plan or other relevant government guidance.

### *Traffic*

46. A number of local residents had concerns about traffic issues. These included the creation of a new access onto a busy road, close to an existing cross road junction with a poor accident record, close to an access for a busy caravan site and with limited visibility at some points. There were also concerns that Beveridge Row may become a rat run, particularly as a secondary access was shown. This road would be unsuitable for traffic and has a dangerous junction with the A1.

47. In addition, West Barns Primary School already experiences traffic congestion problems and new houses with children zoned to that school would exacerbate the problem. There were also concerns that the development would most likely be occupied by commuters to Edinburgh who would be car dependent.

48. On behalf of the appellant a transport assessment has been prepared. This shows that a new access onto the main road can be designed to meet the normal guidelines for visibility and junction spacing. The capacity of the new access has been assessed using information from a national database and widely accepted software models. The report had also been assessed by the council's transport experts. The council had no objections to the traffic elements of the proposal. Unfortunately road traffic accidents do occur. They are more frequent at junctions. I have been presented with no statistical evidence that the development would increase the risk of accidents on the surrounding road network compared to the case without any development.

49. I agree that Beveridge Row and the lane that continues from it is narrow, bendy and in a poor state of repair. In my opinion, it would be unsuitable for any significant increase in traffic. However, it seems unlikely to be an attractive alternative route to most facilities. The secondary access would be for emergency vehicles only and in any case is a matter of detailed design. In any event, if the use of Beveridge Row and the lane became a problem, the council as highway authority has the ability to introduce various traffic management measures.

50. It is not unusual for there to be congestion outside of schools. However, any such problems can be satisfactorily managed by the school and highway authority. It would not be reasonable to restrain residential development on this basis alone.

51. The general aim of Policy T1 is to make sure development is located so that alternative modes of transport other than the car are available. This does not mean that every prospective occupier will make such a choice. The site is close to a bus route, which in the context of a rural area has a reasonable service. There are facilities, including schools that are within reasonable walking distance. Overall, I consider that the information supplied on behalf of the appellant shows that the proposal would comply with Policy T1 and T2.

### *Pedestrians and cyclists*

52. Policy DP 20 states that, *“Development proposals should be designed to make walking and cycling as attractive as possible. Where possible, links should be provided to existing pedestrian and cycle networks and segregated routes should be provided....”*

53. It is obviously desirable that new developments link into existing and planned footpath and cycling routes, particularly to important facilities such as schools. The area of dispute between the council and the appellant relates to potential links to facilities south of the railway line and the new paths to be provided as part of the Hallhill development.

54. I note that the policy refers to “*where possible*”. I agree with the appellant that it is unreasonable to expect a developer to directly provide off site links on land that they do not control and use this inability as a basis for the refusal of planning permission.

55. The normal mechanism in such circumstances is for an appropriate and proportionate financial contribution to be made to the council. The council can then use the money (perhaps from a number of sources) either to improve existing links or to help fund new planned links. I consider this further below under planning obligations. Subject to an agreement over an appropriate financial contribution for related pedestrian and cycle links, I can see no basis for concluding that the appeal proposal breaches Policy DP20.

#### *Affordable Housing and School provision*

56. There is no dispute that the requirements of Policy H4 should be met as part of the development. This requires further detailed discussions and is considered again below under planning obligations.

57. There is no dispute that any shortage in existing school capacity has to be addressed under the terms of Policy INF 3. A similar requirement is included in Policy 7 of SESplan. There is a dispute over the scale of financial contributions required and the methodology employed to calculate the additional facilities required and their cost.

58. Subject to further discussions, as I set out below under planning obligations, there is no reason at this stage to believe that an agreement cannot be reached in order that school capacity issues can be addressed as set out in the development plan.

#### *Other matters*

59. Some local residents had additional concerns. It was considered that a range of other services, including local shops and health services would not be adequate. There was also a concern about the impact on wildlife and the impact of the new development on the amenities of the adjoining existing properties in Edinburgh Road and Beveridge Row.

60. I would be surprised if a residential development of up to 90 houses had a significant impact on the provision of essential services in the town the size of Dunbar. It is the responsibility of service providers to meet the needs of the local population and I am not aware of any objections from such providers. I note that the lack of provision of local services is not one of the reasons that the council put forward for recommending that I dismiss this appeal.

61. The site is an agricultural field intensively farmed. I do not doubt that local residents have seen bats around their houses and in their gardens. However, it would be surprising if bats used a farmed field for roosting or nesting. I accept the advice of the council's biodiversity officer that the proposal raises no significant issues regarding impact on wildlife or habitat loss.

62. I accept that a residential development on the site would change the outlook and setting for the existing houses in Edinburgh Road and Beveridge Row. However, subject to ensuring a satisfactory design at the detailed stage, there is no reason to suppose this change need be unacceptable.

63. All settlements evolve and grow over time. It is an inevitable consequence of the Scottish Government's housing and planning policies that this is so. Provided the relationship with the existing properties is satisfactorily addressed in the final design, I can see no basis for assuming that the proposal would breach any of the design policies or guidance published by the council or Scottish Government.

## Conclusions

64. Overall, I conclude that the proposal is contrary to the provisions of the development plan. The site is prime agricultural land and not allocated for development. As the development plan currently stands, it is not possible to calculate a precise 5 year housing land supply figure in order to apply fully Policy 7 of SESplan.

65. However, as set out in the housing land supply section above, I consider that there are compelling material considerations that indicate there is currently a significant shortage of effective housing land in East Lothian. This shortage is serious enough to justify the exceptional release of new housing land where there are no overriding planning objections.

66. Subject to appropriate conditions and a planning obligation (or similar mechanism) to address affordable housing, offsite pedestrian and cycling provision and school capacity, I find no matter that should automatically preclude development.

67. I accept that granting planning permission outwith the formal development planning process is far from ideal. Adopting such an approach has the obvious disadvantage that there may be better sites elsewhere. It also means it is difficult to identify any cumulative impacts.

68. However, the alternative of waiting for the full local development plan process would most probably mean that for any identified site, actual construction could not occur until 2017 at the earliest. The delay could be much longer than that. I therefore consider that the risks of granting an exceptional planning permission are outweighed by the more likely early construction of much needed houses.

## Planning Obligations

69. There is no dispute that the development must address the affordable housing policy, off site provision for pedestrians and cyclists and school provision. There is also agreement that the usual mechanism would be a planning obligation under Section 75 of the Planning Acts. I note that the appellant does not own the land and is likely to sell it on to another house builder. At this stage the precise numbers of dwellings are not known. Any agreement would therefore have to be enforceable against future developers. I

therefore consider that it is necessary for any planning permission in principle to be subject to a planning obligation (or other appropriate legal instrument) covering the above matters.

70. There seems to be agreement regarding the council's affordable housing policy. There is not agreement over the scale of the financial contributions required for the other matters.

71. At the hearing, I was advised that I should indicate the size of the financial contributions. I do not agree. I am not in a position to know the precise cost or full range of acceptable solutions. This can only be resolved by further discussions between the appellant and the council. I consider that more time is required for the appellant and council to understand each others position and any reasons for disagreement. I do not consider that it is reasonable at this stage to conclude that any agreement is impossible.

72. The principles to be followed are clearly set out in circular 3/2012 – Planning Obligations and Good Neighbour Agreements. In the case of off site pedestrian and cycle provision, any contribution must go to improvements or new links that are related to the development. Any costs attributable to the development must be reasonable and proportionate. Improvements to ensure a safe route to the two catchment schools are likely to qualify. Linkages to the south east of the site would need careful justification to comply with the terms of the circular and any proportionate financial contribution is unlikely to be large.

73. In relation to West Barns Primary School, the council can only seek contributions for improvements to facilities that directly follow from the development. My expectation is that further discussions will clarify the assumptions used to calculate the future school population, the implications for class sizes and therefore the needed facilities. On the other hand, the appellant must be realistic about the operational realities of individual schools, particularly those with composite classes and take into account practical site planning factors.

74. In relation to Dunbar Grammar School, the council is already committed to financing an extension to increase capacity because of planned housing development in Dunbar. This extension would allow the development to be accommodated. It is therefore reasonable for the appellant to reimburse a proportionate share of the council's costs. The evidence before me is that the council has satisfactorily received contributions from other developments for similar reasons. There would have to be good reason why a different approach was adopted for the appeal proposal.

75. Finally, I note that it would be open to the appellant to make a unilateral undertaking, setting out the contribution it considered to be reasonable, if agreement between the parties was not possible.

76. I will accordingly defer determination of this appeal for a period of 13 weeks from the date of this notice to enable the relevant planning obligation (under Section 75 of the Town and Country Planning (Scotland) Act 1997 or such other appropriate legal instrument) to be completed and registered or recorded, as the case may be. If by the end of the 13 week

period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without it.

77. At the hearing the local residents group argued that a planning obligation should also cover various road improvements, improved health facilities and support for improved public transport. However, the council is not seeking a contribution for these matters and I have no evidence that they are necessary in order to make the development acceptable. They would not therefore meet the terms of circular 3/2012.

78. The local residents also referred to improvements to the water treatment works. I agree this matter is relevant. However, there is separate legislation defining the obligations upon developers and Scottish Water in relation to water supply and drainage infrastructure. There is therefore a separate mechanism to make sure there is sufficient water and drainage infrastructure in place before any development would commence.

### Conditions

79. The council has proposed 5 conditions and these were agreed by the appellant. I consider the proposed conditions to be necessary and comply with the guidance in circular 4/1998 – The use of conditions in planning permission. In practice, no development of this size can be designed without reference to site levels or providing details of associated infrastructure. Any developer would have to liaise with Scottish Water. However, for the avoidance of doubt, I have added a requirement for level details to be submitted and for Scottish Water to be consulted over any sustainable urban drainage scheme. I have also added an archaeological evaluation condition as requested by the council's heritage officer.

80. The local residents proposed a range of additional conditions, some repeating comments made in relation to planning obligations, including: no houses to be built on the area shown on the Scottish Environment Protection Agency indicative flood map; woodland planting (including along the boundaries of the existing houses with the site); development of good quality housing; funding of offsite pedestrian and cycle routes; no development until a joined up plan has been prepared for sea, river and surface water flooding; no additional cost to public service providers for increased use of services (e.g. schools, road, social services etc); development to be completed within 3 years; habitat survey (including for bats); archaeological survey; and no pumping station near houses.

81. Matters of design, landscaping and archaeology are addressed in the proposed conditions. Funding for offsite pedestrian and cycle links are included as a matter for negotiation in the planning obligations.

82. With regard to making sure the development addresses flooding and drainage issues, the suggested conditions require the submission of details for sustainable urban drainage systems. Other design details, for example, proposed site levels would be a more appropriate way of managing flood risk than referring to an indicative map that may not be accurate.

83. It is important to note that the Scottish Environment Protection Agency and Scottish Water would normally be consulted on any detailed submission. Both agencies have their own separate legislative obligations. I am confident that no house would be built unless the responsible authorities (including the council) were completely satisfied that flooding and drainage matters were addressed. The appellant is satisfied that no pumping station would be needed. If this proves incorrect, the design details required by the suggested conditions would adequately cover the design and location of a pumping station.

84. There is no Scottish Government policy support for the hypothesis that new residential development automatically increases costs of providing local services. Neither is there any expectation that as a matter of course, routine costs must be funded by the developer. There is therefore no need for such a condition. The council's biodiversity officer does not consider that there is any requirement for a habitat survey.

85. I do not consider that a condition requiring the development to be completed in 3 years is reasonable or enforceable. I understand the sentiment behind such a condition. However, for all practical purposes a judgement has to be made at the outset whether the appellant's claim that the site is effective is reasonable. As I have found such a claim to be so, I consider that the statutory time limits for submission of details and commencement to be adequate. If in the fullness of time, the appellant's claims about future programming are shown to be unfounded, the council could take that into account in any application for renewal.

*Dan Jackman*

Reporter

### **Schedule 1: List of conditions**

1. The submission for approval of matters specified in this condition of this grant of planning permission in principle shall include details of the siting, design and external appearance of the houses, the means of access to it and the means of any enclosure of the boundaries of the site and those details shall accord with the following principles of development for the site:

- (a) there shall be a maximum of 90 housing units. No building shall be higher than two storeys, which may include living accommodation in the roof space;
- (b) the housing units positioned on site in a manner which ensures that windows of them (i) would not overlook windows on adjacent or nearby houses where the distance between those windows is less than 18 metres, and (ii) would not face towards a garden of a neighbouring house within 9 metres of it;
- (c) the layout of the development shall be designed in accordance with Designing Streets the Council's Design Standards for New Housing Areas and Policies

C1 and C2 of the adopted East Lothian Local Plan 2008, including open space, the means of vehicle access, parking, turning and provision for pedestrian and cyclist access and movement and the means of enclosure of the boundaries of the site and between housing units;

- (d) details of the layout, size, height and elevations of the proposed housing units and associated infrastructure, including the materials proposed for external finishes of them;
- (e) the housing units provided with private parking spaces and with visitor parking which shall be compliant with the East Lothian Council Parking Standards;
- (f) details of materials to be used for roads, footpaths and other hard surfaces;
- (g) details of a continuous footpath link along the south side of the A1087 to connect to the existing pedestrian network at West Barns; and
- (h) details of existing and proposed site levels

*Reason: To enable the Planning Authority to control the development to safeguard against over development of the site and to ensure the development is integrated with its surroundings in the interests of safeguarding the character and appearance of the area, the privacy and amenity of neighbouring residential properties and of future residents of the development; road safety and managing any potential flood risk.*

2. No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall provide details of: the height and slopes of any mounding on or recontouring of the site; tree and shrub size, species, habitat, siting, planting distances and a programme of planting. It shall include a woodland management plan for the western part of the site. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

*Reason: In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.*

3. Prior to the commencement of development, a SUDS scheme shall be submitted to and approved by the Planning Authority, following consultation with the Scottish Environment Protection Agency and Scottish Water, and all work shall be carried out in accordance with the details so approved.

*Reason: To ensure adequate protection of the water environment and to manage flood risk from surface water run off.*



4. A noise consultants report to include an assessment of: (i) noise from the use of the main east coast rail line and of any impact of such noise on the housing development of the site; and (ii) any mitigation measures considered necessary to achieve satisfactory internal and external noise levels for the occupiers of a residential development of the site, shall be submitted to and approved by the Planning Authority prior to the commencement of development. Any identified mitigation measures shall be fully undertaken prior to the occupation of any housing unit built on the site.

*Reason: To ensure that the future occupants of any of the housing units benefit from a satisfactory level of amenity.*

5. No residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority. The artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

*Reason: To ensure that artwork is provided in the interest of the visual amenity of the locality or the wider area.*

6. No development shall take place until a scheme of archaeological evaluation has been submitted to and approved in writing by the planning authority. The approved scheme shall be implemented unless otherwise agreed in writing by the planning authority.

*Reason: To ensure that there is an archaeological evaluation of the site and that matters of archaeology are considered during the development.*

## **Schedule 2: Application drawings**

- Site location plan (drawing ref: A1204L(--))001)
- Opportunities and constraints (drawing ref: A1204L(--))002)
- Concept masterplan option analysis (drawing ref: A1204L(--))003)
- Indicative concept layout (drawing ref: A1204L(--))004)
- Indicative concept layout in context (drawing ref: A1204L(--))005)
- Outline landscape proposals (drawing ref: A1204L(--))006)

# **Appendix 5**

## **The Notice of Intention (Ref: PPA-210-2037) for Dovecot Farm, Pencaitland Road, Haddington**

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Notice of intention by R W Maslin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-210-2037
- Site address: Dovecot Farm, Pencaitland Road, Haddington EH41 4NH
- Appeal by: Hallam Land Management against the failure of East Lothian Council to determine the following application
- Application for: planning permission in principle 13/00071/PPM dated 25 January 2013
- The development proposed: residential development with associated engineering and infrastructure works
- Application drawings:
  - Site Location Plan (drawing number 9025-MP-D034-A);
  - PPP Application Boundary (drawing number 9025-MP-P005); and
  - Indicative Masterplan for PPP (drawing number 9025-MP-P003-B)
- Date of site visit by Reporter: 26 September 2013

Date of this intention notice: 11 October 2013

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## Notice of Intention

For the reasons given below, I am minded to allow the appeal and grant planning permission in principle subject to the fifteen conditions listed at the end of this notice. I will grant planning permission after a planning obligation has been entered into by the Appellant in agreement with the Council or unilaterally as provided for by section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). The obligation is to relate to a contribution to the cost of additional school accommodation and to provision of affordable housing, as set out in paragraphs 110 to 115 of this notice.

I therefore defer determination of this appeal for a period of three months to enable the Appellant, in agreement with the Council, to enter into a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). If the agreement of the Council is not forthcoming, the Appellant may proceed with a unilateral planning obligation.

If, by the end of the three-month period, a copy of the planning obligation and evidence of registration has not been submitted to the Directorate for Planning and Environmental Appeals, I will consider whether planning permission should be refused or granted without a planning obligation.

## Reasoning

1. The determining issues in this appeal are: spatial strategy and housing land requirement as set out in SESplan, need for a five-year supply of effective housing land, whether the proposed development is in keeping with Haddington and the local area, availability of infrastructure, countryside policy and other policies in East Lothian Local Plan 2008, Clerkington House designed landscape, privacy, amenity, development at Letham Mains and the forthcoming local development plan.

### *The site*

2. The site covers 6.7 hectares of land on the south-west side of Haddington. The north side of the site adjoins Pencaitland Road (A6093). The east side adjoins a tree belt which, at its narrowest, is about 60 metres wide. The west side of the site generally follows a field boundary hedge from Pencaitland Road to a tree belt that extends away to the south-west. The south side is marked by a minor burn and some trees. The site slopes gently down to the south.

3. Within the overall boundary, two areas are excluded from the site. Both of these areas are set back a short distance from Pencaitland Road. The larger enclave contains a house (Dovecot), farm buildings, commercial premises and open storage. The smaller enclave contains a house (Dovecot Bungalow) with garden ground. The two enclaves are separated by an access track (itself part of the appeal site) which goes from Pencaitland Road to Clerkington Mill. At Clerkington Mill, which is just beyond the south-east corner of the site, there are two buildings in residential use.

4. The site has several components. The largest is an arable field that stretches from the west side of the site to the Clerkington Mill access track. East of the track is a grass field which, at the time of my inspection, was being grazed by sheep. A small grassed area is contained in the re-entrant south-east corner of the larger enclave, with the track on its east side and the arable field on its south side. On the west side of the larger enclave is an area of open storage, containing, among other things, a stack of logs and farm machinery. Finally, there is a strip of land along the frontage to Pencaitland Road. This strip consists of mown grass next to the road, with trees along its southern edge. It is crossed by various accesses.

5. The tree belt on the east side of the site separates the site from houses in Long Cram, which is the nearest part of the built-up area of Haddington. To the south and west of the site is agricultural land. Land on the north side of Pencaitland Road opposite to the site is also in agricultural use, but is identified in the development plan as a site (Letham Mains) for mixed-use development, including 750 houses.

### *The proposal*

6. The Appellant seeks planning permission in principle for residential development with associated engineering and infrastructure works. The Indicative Masterplan submitted

with the application for planning permission shows 113 dwellings within the site. Of these, 28, or 25%, would be affordable homes.

### *Representations*

7. During its consideration of the application, the Council received 22 representations expressing opposition to the proposed development. After the appeal was submitted, the Directorate for Planning and Environmental Appeals received 12 representations expressing opposition to or concern about the proposed development.

### *The development plan*

8. The development plan consists of two documents. SESplan, the strategic development plan for Edinburgh and South-east Scotland, was approved by Scottish Ministers on 27 June 2013. East Lothian Local Plan 2008 was adopted by the Council in October 2008. SESplan supersedes Edinburgh and the Lothians Structure Plan 2015.

### *East Lothian Local Plan 2008*

9. In East Lothian Local Plan 2008, the site is designated as part of the countryside and thus is subject to policy DC1. New development in the countryside is permitted only in the specific circumstances defined in policy DC1. The Appellant's proposed development is not of a kind that is permitted in terms of the policy. For this reason, I find that the proposed development is contrary to policy DC1.

### *SESplan spatial strategy*

10. Two of the eight aims set out in paragraph 17 of SESplan are to meet housing need and demand in the most sustainable locations and to integrate land use and sustainable modes of transport, thus reducing need to travel and cutting carbon emissions.

11. The spatial strategy set out under paragraph 18 of SESplan "builds on existing committed development, focusing further development along preferred corridors optimising connectivity and access to services and jobs.....further development will be focused in thirteen Strategic Development Areas.....New development proposals will complement and not undermine the delivery of existing committed development". Figure 1 in SESplan shows that Haddington is within one of the Strategic Development Areas. Figure 2 shows that Haddington is within a national transport corridor. Figure 8 shows that Haddington is within an economic corridor.

12. Paragraph 22 of SESplan says that the supplementary guidance that is to be prepared in terms of policy 5, together with subsequent local development plans, will determine the distribution of further housing development. Where possible, it will focus new housing development on brownfield land and across the thirteen Strategic Development Areas. Paragraph 26 says that SESplan gives priority to the development of brownfield land and to land within the thirteen Strategic Development Areas.

13. SESplan Policy 1A says that local development plans will direct further strategic development to the thirteen Strategic Development Areas. As already noted, Haddington is in the East Lothian Strategic Development Area.

14. I find that the Appellant's proposed development accords in principle with the spatial strategy of SESplan in that Haddington is within one of the areas to which further strategic development is to be directed.

#### *SESplan housing land requirement*

15. Paragraph 23 of SESplan says that a five years' supply of effective housing land is to be maintained at all times. This is confirmed in policy 6.

16. Table 2 on page 40 of SESplan shows that the assessed housing requirement from 2009 to 2019 is land for 74,835 dwellings. Policy 5 says that supplementary guidance is to be prepared to show how much of the requirement should be met in the area of each local development plan.

17. The Appellant says that East Lothian has not maintained a five-year supply of effective housing land. In its appeal statement, the Council says that, until the supplementary guidance has been drawn up, there is no definitive figure against which it can calculate the five-year effective housing land supply in relation to the requirements of SESplan.

18. The Council suggests that, in the interim, a reasonable approach would be to compare the SESplan Housing Need and Demand Assessment figure for East Lothian over the period from 2009 to 2019 with completions to date and programmed supply. This could give a minimum figure, bearing in mind a significant part of Edinburgh's housing need and demand is to be redistributed among other Council areas (SESplan, paragraph 110).

19. Calculations have been carried out by the Council, based on the latest agreed Housing Audit (2012) and adjusted for the five-year period to 2017. These show a shortfall of 867 dwellings. The Council accepts that there is need to augment land supply in the short-term to achieve an increased rate of house completions that can contribute to meeting East Lothian's Housing Needs and Assessment figure in the period to 2019.

20. Regarding housing land supply for the whole of East Lothian, I find that there is deficiency in terms of a five-year supply of land that is effective.

21. Grounds for objection submitted in the representations include the points that there is plenty of land at Letham Mains and there is no need for development on the appeal site. The Council points out that other appeal decisions have considered the overall supply of effective housing land in East Lothian, rather than the supply in a particular community. Thus, if it is considered that there is a shortfall in the overall land supply, progress with development at Letham Mains is not of material weight.

22. I note that a planning application for housing development on the western portion of Letham Mains has been submitted and that an application for housing development on the eastern part of the site is expected soon (letter dated 1 August 2013 from CALA Homes (East) Limited).

23. In connection with the significance of Letham Mains, I note that policy 1A in SESplan refers to directing *further* strategic development to the East Lothian Strategic Development Area (my emphasis). SESplan seeks a five year supply of effective housing land in East Lothian as a whole. From these considerations, I find that the prospect of housing development at Letham Mains does not count against the Appellant's argument that the proposed development would help meet the deficiency in the supply of effective housing land.

#### *SESplan policy 7*

24. Policy 7 of SESplan says that, if necessary to maintain the five years' supply of effective housing land, planning permission may be granted for greenfield housing development provided three criteria are met:

- (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 is to be funded by the developer.

I find that, as there is a deficiency in the five-year land supply, policy 7 of SESplan is applicable to the present proposal.

25. Policy 7 is concerned with effective housing land. In ascertaining whether it would be appropriate to grant planning permission, the first question must be whether the proposed site would be effective. In the present case, the Appellant has prepared a site effectiveness matrix. This concludes that the site is effective. The Council accepts this. I find that the site, if planning permission were granted, would be effective.

26. The first criterion in policy 7 that has to be satisfied is that the development will be in keeping with the character of the settlement and local area.

27. From information contained in the Appellant's Design Statement and from my inspection of the site, I find no reason why residential development within the appeal site could not have a design character in keeping with that of the nearby relatively recent residential areas on the south-west side of Haddington.

28. Representations include the following points.

The proposed development would not be contiguous with any part of Haddington.

The site is poorly-related to the town and not capable of integration with the built-up area.

The Clerkington woods on the east side of the site form a barrier on the south-west side of the town. A natural division between Haddington and the surrounding agricultural land would be lost.

The proposed development would look isolated and would be a substantial intrusion into the countryside.

The proposed development would be highly detrimental to the setting of Haddington.

29. I find that the woodland adjacent to the east side of the site provides a most effective demarcation of the boundary of the built-up area which lies immediately to the east. The woodland screens the built-up area, so that the appeal site, when viewed at close range, or from the footpath on the west side of the field to the south of the site, or when glimpsed from the track south of Blackhouse appears to be in a countryside setting.

30. From my inspection, I note that, for travellers on Pencaitland Road, well-established trees along the frontage of the site and further to the west screen the site from view. When travelling towards Haddington, the built-up area to the north of the road is clearly visible. The built-up area is due to be extended onto all of the land on the north side of the road opposite to the appeal site, as part of the Letham Mains development.

31. With these considerations in mind, I find that development on the appeal site would be in keeping with the local area in that there is to be other residential development to the north. In this context, the proposed development would not be seen as unacceptably isolated in or intrusive into the countryside.

32. I find that views of the proposed development from Pencaitland Road would be extremely limited. Views from pedestrian routes to the west and south are partly screened by existing vegetation and could be further screened by additional planting. This being so, I find that there would be no unacceptable effect on the setting of Haddington.

33. Regarding integration with the built-up area, I note the Design Statement (section 3.6) says that the southern and eastern edges of the site provide good opportunities to link into the local informal path network. During my inspection, I noted use of informal paths from Long Cram into the woodland that adjoins the east side of the appeal site.

34. If planning permission for the proposed development were to be granted, the possibility of providing recognised pedestrian access from the development into the



woodland adjoining the east side of the site should be explored. Such access, if it could be continued over the Letham Burn to Long Cram, would help integration with the existing built-up area and would address the concern that has been expressed. If any necessary agreement with the adjoining landowner cannot be reached at the present time, I do not see this as being fatal to the case for granting planning permission, but the layout should still allow for the possibility of access at some later date. Planning conditions could address this matter.

35. My conclusion in relation to criterion (a) is that, subject to submission of satisfactory details in a further planning application, the proposed development would be in keeping with the character of the settlement and local area.

36. Criterion (b) relates to the green belt. I note in the representations a contention to the effect that SESplan policy 13 brings into play green belt considerations. I find that policy 13 is directed primarily to the local development plan preparation process. I conclude that, as the appeal site is not in the green belt, there is no conflict with criterion (b).

37. Criterion (c) relates to infrastructure. In the representations, there is concern that the proposed development would impose strain on infrastructure and services. There would be increased traffic and parking pressure in the town centre. Congestion at the junction of Knox Place and Station Road (A6093 and B6471) would increase. Road traffic accidents would increase. Drainage and school accommodation might be inadequate.

38. In its appeal statement, the Council says:

the impact of the proposal on the wider road network would be acceptable, provided the traffic signal installation at the junction of Knox Place and Station Road is improved; and

there should be a combined footway and cycle path along the frontage of the site and continuing eastwards on the south side of Pencaitland Road as far as the existing footway at Dobson's Well.

The Appellant is willing to fund a traffic signal improvement and to provide the combined footway and cycle path.

39. I find that the proposed development would increase the amount of vehicle and other traffic on surrounding roads. In the light of the Appellant's Transport Assessment, subsequent discussion with the Council, proposed traffic signal improvement and proposed combined footway and cycle path provision, I find that the effect of the proposed development on the road network would be acceptable. There would be some extra pressure on town centre parking, but not to an extent that would justify refusal of planning permission.

40. Regarding road traffic accidents, the Transport Assessment describes Pencaitland Road as lightly trafficked (paragraph 3.28). This accords with my own observations during

my site inspection. In the vicinity of the site, the road is reasonably straight with adequate forward visibility. Evidence does not indicate that there is any unusual or special hazard for users of this section of road. I find that the proposed development would not result in an unacceptable increase in accidents.

41. My conclusion is that transport aspects of infrastructure accord with criterion (c) of policy 7.

42. Regarding drainage, the letter from Scottish Water, stamped as received on 1 March 2013, raises no objection to the proposed development. From this, I find that adequate arrangements for disposal of foul drainage can be made.

43. Regarding school accommodation, the Council says that Haddington Infant School and Knox Academy would not have capacity to accommodate children from the proposed development. The Appellant is willing to fund provision of additional school accommodation. I find that this would accord with criterion (c) of policy 7.

44. From all the preceding considerations, my conclusion is that the proposed development satisfies the three policy 7 criteria and accords with the policy as a whole. This also means that the proposed development accords with SESplan paragraph 27, where it says that the Spatial Strategy steers housing growth to sustainable locations where there is infrastructure capacity or which minimise the requirement for additional investment.

#### *East Lothian Local Plan 2008 – other policies*

45. The Council says that most of the appeal site is prime quality agricultural land and that the loss of some six hectares of such land would be contrary to local plan policy DC1 part 5. It would also be contrary to *Scottish Planning Policy*. Loss of prime-quality farmland is also raised in the representations.

46. I note that the local plan policy says that development must minimise loss of prime agricultural land. This is not the same as saying that there shall be no loss of prime land. Similarly, *Scottish Planning Policy* (paragraph 97), while recognising that prime land is a finite national resource, does not prohibit all development on it.

47. In the present case I find that need for the proposed development has been established in terms of the requirement for a five-year supply of effective housing land. I also find that it has not been demonstrated that the proposed development could be located on some other site of smaller size or lesser agricultural value. In these circumstances, I find that the prime agricultural land policies are not infringed.

48. The Council's appeal statement also includes reference to landscape and visual aspects of local plan policy DC1 part 5. I have already given consideration to these aspects in relation to criterion (a) of SESplan policy 7.

49. In addition to the above, I am not convinced that local plan policy DC1 part 5 is applicable to this appeal. It seems to me that part 5 is intended to apply to development

that is being approved in terms of policy DC1. The proposed development does not fall into this category.

50. Local plan policy DP14 says that erection of buildings near trees should conform to British Standard 5837:1991 and any subsequent revisions of the standard. I understand that this standard was replaced in 2005 and that the 2005 standard was itself replaced in 2012.

51. As already noted, the east side of the appeal site adjoins a tree belt. This belt of trees is subject to a tree preservation order.

52. In its appeal statement, the Council records concern that some of the houses on the indicative layout plan could damage trees covered by the tree preservation order. Lack of daylight and potential health and safety risks could lead to demands for lopping or removal of trees. The development should be designed in accordance with the current British Standard and with a setback of at least ten metres from the drip line of the tree canopy to the edge of any new property boundaries to provide adequate clearance from the root protection area.

53. In the representations, it is stated that there is difficulty in retaining protected trees if they are close to housing. There has been illegal felling beside Long Cram.

54. The Appellant says that the British Standard does not specify a setback of at least ten metres from the drip line of a tree canopy. On the other side of the tree belt, housing at Long Cram sits comfortably adjacent to the existing woodland. The Appellant would accept a condition that simply required design to be in accordance with the current British Standard.

55. During my inspection, I noted that some houses in Long Cram were very close to the protected tree belt. I have no information as to whether this closeness is a source of concern to any of the residents at Long Cram.

56. In my experience, trees that are close to houses are often a cause of concern to residents for one or more of the following reasons:

effect of tree roots on house foundations;

effect of tree rooting systems on cultivation of garden ground;

loss of sunlight and daylight in relation to house windows and garden ground;

leaf or needle fall blocking gutters and drains and affecting garden ground;

build-up of moss on roofs; and

fear that tree limbs or whole trees might fall onto garden ground or houses.

Where these concerns arise, it may be difficult for a planning authority to resist requests for protected trees to be lopped or felled.

57. From submissions, it appears that the British Standard does not include a requirement for a ten-metre setback. I note that local plan policy DP14 part 2 only requires conformity with the British Standard. The policy does not refer to need for setbacks.

58. I find that, as a normal part of the development management process, detailed design of the proposed development should take into account foreseeable reasonable concerns of future residents regarding the effect of nearby trees. This will require some setback, consideration of the orientation of windows and so on. In these circumstances, I find that there is no need to specify a particular setback distance as a condition of any permission that might be granted. A condition requiring conformity with the British Standard would be adequate to ensure compliance with local plan policy DP14.

59. Local plan policies C1 and C2 relate to a minimum open space standard and to play space provision in new housing developments. In its appeal statement, the Council says that the proposed development would be consistent with these policies. I see no reason why a detailed design for the proposed development should not be in accordance with policies C1 and C2.

60. Local plan policy H4 indicates that 25% of the proposed dwellings should be affordable. The Appellant's proposal accords with this.

61. Local plan policy DP16 contains a presumption against development in areas subject to risk of flooding. Among the representations, there is concern that the site is liable to flooding, with particular reference to the southern part of the site.

62. The Appellant's Flood Risk Assessment concludes that the site is outwith the 1 in 200 year floodplain for all three of the adjacent or nearby watercourses. In relation to the channel of the unnamed burn that runs along the south side of the site, land in the south-east and south-west corners of the site is predicted to be close to bank-full level for a 1 in 200 year event. The Assessment suggests that finished floor levels of properties be set at certain specified heights so that they would not be affected by flood waters.

63. In a letter dated 6 March 2013, the Scottish Environment Protection Agency says that it has no objection to the proposed development on flood risk grounds. It supports the recommendation that there be no development in two small areas of the site.

64. I note that the Indicative Masterplan shows the southern part of the site as open space, with a pond as part of a sustainable drainage system. I find that the proposed development could be designed in such a way as to avoid unacceptable risk of flooding. This could be ensured by imposing on any planning permission that might be granted a condition requiring the ground floor level of all proposed dwellings to be above a specified height.

65. I find that the proposed development is capable of according with local plan policy DP16.

66. Local plan policy INF3 says developers must make provision for infrastructure and community facilities required as a consequence of their developments. This topic is addressed above in relation to SESplan policy 7, criterion (c). Imposition of conditions and making binding agreements can satisfy the requirements of policy INF3.

67. Local plan policy T1 says new developments shall be located where they are capable of being conveniently and safely accessed by public transport, on foot and by cycle, as well as by private vehicle. Local Plan policy DP21 says that new development shall be designed and laid out to maximise the use of public transport. Easy access to bus services should be provided. Road layout should allow bus penetration. No dwelling should be more than 400 metres from a bus stop.

68. Availability of public transport in relation to the proposed development is described in paragraphs 3.22 to 3.27 of the Appellant's Transport Assessment.

69. In its appeal statement, the Council says that the site is capable of being conveniently accessed by public transport, on foot and by cycle, as well as by private car. This accessibility accords with local plan policy T1.

70. I note that the nearest reasonably frequent bus service is on West Road. This is reached by having to walk up Clerkington Road. This is not particularly convenient, but policy T1 refers to sites that are capable of being accessed rather than sites that are already served by convenient public transport. If the Letham Mains development were to include pedestrian access along the length of its eastern boundary, access to bus stops on West Road would be somewhat more convenient. I find that, overall, the proposed development does not infringe policies T1 and DP21.

71. Local plan policy T2 requirements include no significant adverse consequences for road safety or residential amenity. Road safety is addressed above, in relation to SESplan policy 7, criterion (c).

72. In the representations, it is contended that rat-running along Clerkington Road will be made worse, especially in advance of development at Letham Mains with its new road from Pencaitland Road to Haddington Road. The effect of the proposed development on the minor road through the Letham Mains Smallholdings is also a matter of concern.

73. In the Local Plan, I note that one of the requirements in connection with the Letham Mains development is provision of a distributor road linking Pencaitland Road and Haddington Road (paragraph 10.34). During my inspection, I noted that traffic calming measures are in place along Clerkington Road.

74. I find that the proposed development is likely to result in some extra traffic on Clerkington Road and on the minor road through Letham Mains Smallholdings. I find that this extra traffic will have some detrimental effect to a limited extent on the amenity of

residential properties along these roads. The effect would not be so great as to transgress policy T2 or to justify refusal of planning permission.

75. If the Letham Mains development does eventually proceed and incorporates the distributor road required by the Local Plan, traffic to and from the Appellant's development would no longer use Clerkington Road and the smallholdings road as short cuts.

76. The Council says that the appeal site is potentially of archaeological significance. Local Plan policy ENV7 requires archaeological investigation prior to commencement of development. This may be addressed by imposing a condition on any planning permission.

77. My conclusion is that the proposed development does not conflict with local plan policies, apart from policy DC1: development in the countryside.

#### *The development plan – conclusions*

78. With regard to SESplan, I find that the proposed development accords with the spatial strategy and with policy 1A, with its indication that further strategic development is to be directed to the East Lothian Strategic Development Area. Policy 6 requires that each planning authority maintain at all times a five years' supply of effective housing land. Approval of the proposed development would help East Lothian to achieve the policy 6 requirement. Provided various criteria are satisfied, policy 7 permits granting planning permission for greenfield housing development. The proposed development meets the policy 7 criteria.

79. I conclude that the proposed development accords with and is supported by SESplan.

80. With regard to East Lothian Local Plan 2008, the proposed development is generally in accord with all the policies to which my attention has been drawn, apart from policy DC1: development in the countryside. From submissions, it is clear to me that housing land requirements in the recently-approved SESplan mean that, when the local plan comes to be replaced, land that is now designated as countryside will have to be allocated for housing development. SESplan, through its policy 7, permits such allocation to be anticipated through the planning application process.

81. I find that SESplan support for the proposed development outweighs the conflict with local plan policy DC1. My conclusion is that the proposed development is in accordance with the development plan.

#### *Other material considerations*

82. Grounds for objection contained in the representations include a number of material considerations to which consideration must be given.

### *Designed landscape*

83. Objectors point out that the eastern part of the appeal site (east of the access to Clerkington Mill) was part of the parkland associated with Clerkington House. In connection with this:

the proposed development would degrade the designed landscape associated with Clerkington House;

the Christopher Dingwall report of February 2010 finds that the landscape at Clerkington has considerable significance in a local context and that the value of the landscape could be enhanced by a package of measures;

building on the eastern part of the appeal site and destroying the Mill access would also destroy the integrity of the designed landscape and render it unreadable to future generations;

*Scottish Planning Policy*, paragraph 122, endorses the protection, preservation and enhancement of designed landscapes;

*Scottish Historic Environment Policy 2011*, paragraph 3.79, encourages use of policies to identify and manage those designed landscapes that make an important contribution to the local historic environment and landscape character of the area; and

the Garden History Society recommends protection for Clerkington and objects to the proposed development.

84. The Appellant says that the appeal site is not designated in the Local Plan as part of a designed landscape. The Local Plan includes references to a number of areas where landscape setting and character should be protected. The appeal site is not in one of these areas.

85. The Council says that the lands of Clerkington are not included in the Inventory of Gardens and Designed Landscapes and are not under consideration for inclusion by Historic Scotland.

86. From submissions, I find that the chief purpose of that part of the Clerkington landscape which extended up to Pencaitland Road was to provide a setting for the driveway that entered the estate at the North Lodge and headed south to the mansion house (now no longer in existence). This driveway still exists. It traverses the belt of woodland that is adjacent to the east side of the appeal site.

87. I note that the Dingwall report (page 6) includes the following: “service drives.....would have allowed the business of the estate.....to be carried on without impinging on views”. I find it likely that the Clerkington Mill access, which crosses the appeal site, was one such service drive.

88. I find that the most important part of the Clerkington landscape within or near to the appeal site is the woodland adjacent to the east side of the site. From the driveway through the woodland it is possible to gain an impression of the original intention of the landscaping in this northern part of the mansion's policy ground. The houses at Long Cram are well-screened from the driveway. Screening of the appeal site from the driveway is less complete because the driveway is closer to the west side of the tree belt.

89. I find that, if the proposed houses and any associated boundary fencing were carefully positioned in relation to the west side of the tree belt, screening provided by the existing trees would be adequate to maintain the ambience of the driveway. My conclusion is that the proposed development would not necessarily have an unacceptable effect on the Clerkington landscape.

#### *Effect on Clerkington Mill access*

90. In the representations, the point is made that the Clerkington Mill access is bordered by ancient mixed hedges. A rare, single leaf ash tree is present.

91. I note that the Indicative Masterplan shows retention of the Mill access and its hedgerows except where it would be crossed by the proposed primary street. The access would also be crossed by what appears to be a footway leading from the south side of the village green to the eastern play area.

92. I find that, if the Mill access were retained as indicated on the Indicative Masterplan, its ambience would be radically different, but that much of its value in relation to wildlife and as a pleasant walking route would be retained. I conclude that the effect of the proposed development on the Mill access does not justify refusal of planning permission.

#### *Privacy of existing houses*

93. In the representations, there is concern that outlook from and privacy of nearby existing houses would be adversely affected. In its appeal statement, the Council refers to separation distances that would normally be sought to avoid harmful overlooking and loss of privacy.

94. I find that space within the appeal site is sufficient to enable design of a layout that has no unacceptably adverse effect on the privacy of or outlook from existing houses.

#### *Spray-painting and noise*

95. The Council is concerned about spray-painting and noise within the larger enclave enclosed by the appeal site. These could be harmful to the amenity of nearby proposed houses. The Appellant has control over these activities. The Appellant is agreeable to a relocation of the spray-painting so that it is further from the proposed houses. The Appellant would also accept a planning condition requiring erection of an acoustic fence two metres high on the boundary where the enclave adjoins the appeal site.



96. I find that the suggested relocation and fence, combined with giving careful attention to the layout of that part of the appeal site which adjoins the larger enclave, would adequately address concern about the amenity of houses in the northern part of the appeal site.

#### *Effect on development at Letham Mains*

97. One ground for objection to the proposed development is that the Appellant's proposal could delay development on the Letham Mains site.

98. From the representations, I note that Mactaggart and Mickel and Taylor Wimpey have made application for planning permission for the western portion of Letham Mains and that Cala Homes (East) Limited is preparing to lodge an application for the eastern part. I am not aware of any of the three developers having made representation to the effect that the Appellant's proposed development would delay house-building at Letham Mains.

99. I find no evidence to demonstrate that the Appellant's proposal would cause unacceptable delay to development at Letham Mains.

#### *Await the local development plan*

100. In the representations, it is submitted that it is under the local development plan process that the proposed development ought properly to be considered.

101. Submissions do not indicate that preparation of the local development plan that is to replace East Lothian Local Plan 2008 is at a reasonably advanced stage. Prior to finalisation of any new local development plan, the supplementary guidance required by policy 5 of SESplan will have to be available. I find that it may be a matter of some years before the present local plan is replaced by a local development plan.

102. I find that SESplan, in particular with reference to policies 6 and 7, places clear emphasis on maintaining a five-year supply of effective housing land. At present, the supply in East Lothian falls short of what is required.

103. My conclusion in the present case is that the need to have a five-year supply of effective housing land and the contribution to meeting this need that the proposed development could make carry greater weight than any advantage in awaiting adoption of the forthcoming local development plan.

#### *Overall conclusion*

104. My overall conclusion is that the proposed development is in accordance with the development plan and that none of the other material considerations justifies refusal of planning permission. Planning permission should be granted.

### *Conditions*

105. As requested, the Council has suggested what conditions should be imposed if permission is being granted. The Appellant takes issue with two matters in the Council's conditions. The first is a requirement for, on or to the west of the west side of the site, tree planting of a size and style similar to the existing Clerkington Wood. The second is a requirement that there be a setback of at least ten metres from the drip line of the tree canopy on the east side of the site.

106. I have already noted that the appeal site is well-screened from Pencaitland Road. This is in contrast to the north side of the road, where the existing development at Burnside is in view as one approaches the town. The Letham Mains site is also open to view, though submissions indicate that its frontage to Pencaitland Road is to be landscaped. In all the circumstances, I find that there is no need for tree planting on the scale suggested by the Council.

107. I have previously described how the proposed development would be seen by pedestrians on the track to the west of the site. I find that the existing hedge on the west side of the site would not form an adequate demarcation between what would be the edge of the built-up area and the countryside. I find that the Appellant's suggested ten metres wide landscape buffer would provide a suitable demarcation.

108. Consideration is given above to the ten-metre setback, in the context of local plan policies. I find no need to specify a minimum distance of ten metres.

109. I have considered all the suggested conditions in the light of policy and advice in Circular 4/1998: *The Use of Conditions in Planning Permissions*. I have made changes to the text and layout of the Council's suggested conditions to ensure that they meet the six criteria set out in paragraph 2 of the circular.

### *Planning obligation*

110. It is the Council's view that the Appellant should enter into a planning obligation in terms of section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). The obligation should be designed to secure from the Appellant:

a financial contribution to the Council towards the cost of additional accommodation at Haddington Infant School and Knox Academy;

a financial contribution to fund updating of and improvements to the traffic signals at the junction of Knox Place, Court Street, Station Road and Hope Park; and

provision of 25% of the dwellings to be erected on the site as affordable houses or provision of the affordable housing on some other site or payment of a sum to be used for such provision.

111. I note that Circular 3/2012: *Planning Obligations and Good Neighbour Agreements*, at paragraph 15, says that planning conditions are generally preferable to a planning or legal obligation. I find that the traffic signal updating and improvements can be secured by conditions and that there is no need for them to be included in the obligation proposed by the Council.

112. I find that a contribution to the cost of additional school accommodation is necessary in accordance with Local Plan policy INF3: *Infrastructure and Facilities Provision*. I also find that provision of affordable housing is necessary in terms of Local Plan policy H4: *Affordable Housing*.

113. I am satisfied that, in terms of Circular 3/2012 and the circumstances of the proposed development, it would be appropriate to seek a planning obligation with regard to school accommodation and affordable housing. The Appellant has indicated a willingness to enter into an obligation with respect to a financial contribution to the cost of additional school accommodation and to provision of affordable housing within the appeal site.

114. I will therefore defer determination of this appeal for a period of three months to enable the Appellant, in agreement with the Council, to enter into a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). If agreement with the Council is not forthcoming, the Appellant may proceed with a unilateral planning obligation.

115. If, by the end of the three-month period, a copy of the planning obligation with evidence of registration has not been submitted to the Directorate for Planning and Environmental Appeals, I will consider whether planning permission should be refused or granted without a planning obligation.

*R W Maslin*

Reporter

## Conditions

### Interpretation

In these conditions, Pencaitland Road where it adjoins the site is taken to have a west-east alignment and the words north, south, east and west shall be construed accordingly.

1. No more than 113 dwellings are approved by this grant of planning permission in principle.

*Reason: To ensure that education capacity is sufficient to accommodate children from the proposed development.*

2. Details of the following shall be submitted to the Planning Authority in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended):

- (a) the siting, design and external appearance of all the dwellings and other buildings proposed to be erected on the site;
- (b) the means of access to the dwellings and other buildings;
- (c) the location, number and size of parking spaces for use by residents and for use by visitors;
- (d) the construction materials, appearance and colour of all means of enclosure proposed to be erected on the boundaries of the site and between the dwellings;
- (e) the construction materials, appearance and colour of a two-metres high acoustic fence that is to be erected on the west, south and east boundaries of the larger enclave contained within the overall site boundary;
- (f) a scheme of landscaping and planting for the whole site and a habitat management plan;
- (g) steps taken to explore the possibility of providing a footpath link from the site into the woodland that adjoins the east side of the site;
- (h) the layout of all play areas and the equipment to be provided within them;
- (i) a timetable for installation of the play areas and their equipment in relation to the completion of houses and details of how the play areas and their equipment will be maintained;
- (j) the location to which the spray-painting activity will be moved within the larger of the two enclaves within the overall site boundary;
- (k) the layout of visibility splays to both sides of both vehicle accesses from the site to Pencaitland Road;
- (l) an independent road safety audit which shall include identification of pedestrian safeguards and locations for bus stops and traffic islands needed to ensure safe movement of persons and vehicles within, to and from the site and an implementation programme describing when measures identified in the audit will be provided in relation to construction of the proposed development;
- (m) proposals for implementation of a 40 miles per hour speed limit on Pencaitland Road in the vicinity of the site;
- (n) provision of street lighting over the full extent of the proposed 40 mph speed limit on Pencaitland Road from the existing lighting at the junction with Clerkington Road to a point beyond the proposed western site access;

- (o) management arrangements for continuing access to the two enclaves within the overall boundary of the site and for continuing access to the residential properties at Clerkington Mill;
- (p) a 2.5 metres wide shared pedestrian/cycle link on the south side of Pencaitland Road from the proposed west access to Dobson's Well;
- (q) a scheme for updating and improving operation of the existing traffic signals at the junction of Knox Place, Station Road, Hope Park and Court Street;
- (r) a scheme for archaeological investigation of the site including a 5% evaluation, a programme for implementation and proposals for recording and safeguarding items of archaeological value that are found;
- (s) a construction method statement in relation to construction of the proposed development;
- (t) proposals for an integrated sustainable urban drainage system for the whole site, including a programme for implementation and details of arrangements for ensuring that the system will be maintained in good working order; and
- (u) details of artwork to be provided on the site or in the vicinity and a programme for implementation.

*Reasons: These essential details are not part of the present application. To accord with section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).*

3. The details required in terms of condition 2 shall comply with the following requirements.
  - (a) The houses or any flatted buildings shall in no case be higher than two storeys with accommodation in the roofspace.
  - (b) Other than in exceptional circumstances where the layout or particular building type does not permit, houses and flatted buildings shall be orientated to face the street.
  - (c) Notwithstanding anything to the contrary shown on the Indicative Masterplan there shall be no integral garages, unless justified as an exceptional design feature.
  - (d) The detailed design of the layout shall accord with the principles set out in the Planning Authority's *Design Standards for New Housing Areas* and with *Designing Streets*.
  - (e) The external finishes of the residential units shall be in accordance with a co-ordinated scheme of materials and colours that shall respect the layout of the development and shall promote render as the predominant finish to the walls of the residential units.

- (f) With respect to trees on or adjoining the east boundary of the site, the proposed development shall accord with British Standard BS5837: 2012 *Trees in relation to design, demolition and construction – Recommendations*.
- (g) The scheme of landscaping and planting and the habitat management plan shall include details of:
- (i) all existing trees and hedgerows within the site;
  - (ii) which of the existing trees and what parts of the existing hedgerows are to be retained and measures for their protection during the course of development;
  - (iii) any removal of trees and parts of any of the trees along the northern frontage of the site;
  - (iv) replacement tree planting for any proposed removal of trees or parts of trees from the northern frontage of the site;
  - (v) the height and slopes of any mounding or recontouring of ground that is to be landscaped;
  - (vi) the species, sizes and planting density of all plants proposed to be planted;
  - (vii) a programme for implementation of the scheme of landscaping and the habitat management plan; and
  - (viii) proposals for maintenance of all landscaping and landscaped areas that are outwith the private curtilages of the proposed dwellings.
- (h) If provision a footpath link from the site into the woodland that adjoins the east side of the site is possible, the said footpath link shall be included in the scheme of landscaping. If such provision is not possible, the scheme shall nevertheless be designed so as to facilitate provision of such a link at a future date should circumstances change.
- (i) The scheme of landscaping and planting shall include a belt of tree planting on or adjacent to the west boundary of the site or within the field that adjoins the west boundary of the site. This tree planting belt shall be at least ten metres wide.
- (j) The scheme of landscaping shall be based on the landscape proposals shown in principle on the Indicative Masterplan.
- (k) The new location for the spray-painting operations shall be as far to the north as is practicable.

(l) The dwellings in the development shall be so positioned and screened by fences as to ensure that no window of a dwelling:

- (i) faces, within nine metres, a garden boundary of Dovecot Cottage; and
- (ii) directly faces, within eighteen metres, an existing window in Dovecote Cottage

unless the window within the development is a high-level window or is fitted with obscure glass.

(m) The window separation distances set out in (l)(i) and (ii) above shall also apply to the layout of dwellings within the site.

(n) The proposed dwellings shall be designed and laid out to ensure that:

- (i) they do not result in an unacceptable loss of daylight or sunlight at Dovecot Bungalow; and
- (ii) each dwelling has sufficient sunlight and daylight.

(o) The finished floor levels of all dwellings shall be no lower than forty-nine metres above Ordnance Datum.

(p) The visibility splays on both sides of the east access to the site shall be 4.5 metres by 120 metres. The visibility splays on both sides of the west access shall be 4.5 metres by 215 metres.

(q) The internal road layout of the development shall be designed in conjunction with a swept-path analysis which demonstrates that the required design vehicle size can be accommodated within the site.

(r) Access to the non-residential uses located on the larger of the two enclaves within the overall site boundary shall be restricted to the existing western vehicular access from Pencaitland Road. Vehicular access to the residential properties within both enclaves and to the residential properties at Clerkington Mill shall be via the eastern existing access.

(s) Parking shall be provided to the standards of the Planning Authority, with at least 150% parking required for dwellings with five or fewer habitable rooms and 225% for dwellings with six or more habitable rooms.

(t) The construction method statement shall specify hours of construction work and shall include measures to mitigate the effects of construction work on the amenity of the area, with particular reference to noise, dust and movement of construction traffic.

4. No part of the development hereby approved shall be begun on the site until all of the details required in terms of condition 2 have been submitted to and approved in writing by the Planning Authority.

5. The development shall be carried out in accordance with the details approved in terms of condition 4.

*Reasons for conditions 3, 4 and 5: To ensure that the appearance and functioning of the proposed development are acceptable. To ensure that as far as possible trees and hedgerows worthy of retention are retained. To ensure that the effects of the proposed development on the amenity of existing dwellings and on road safety and traffic flow are acceptable. To ensure that activities within the larger enclave do not have an unacceptable effect on the proposed dwellings. To ensure that dwellings are not subject to an unacceptable risk of flooding. To minimise the effects of construction activities on local amenity.*

6. No dwelling on a plot beside which means of enclosure are to be erected or an acoustic fence is to be erected in accordance with details approved in terms of conditions 2 and 4 shall be occupied prior to erection of the said means of enclosure and acoustic fence.

*Reason: To ensure that residents have adequate privacy and adequate protection from activities within the larger enclave.*

7. The scheme of landscaping approved in terms of conditions 2 and 4 shall be carried out in accordance with the approved programme for implementation. Any trees or plants that form part of the scheme and that die, are removed, are seriously damaged or become diseased within ten years from the completion of the development shall be replaced in the next planting season with trees or plants of similar size or species unless the Planning Authority gives written consent to any variation.

*Reason: To ensure that the development is provided with adequate landscaping and that new planting is satisfactorily established.*

8. Before any dwelling is occupied or at such other time as may be agreed in writing by the Planning Authority:

- (a) the proposals for maintenance of landscaping and landscaped areas approved in terms of conditions 2 and 4 shall be put into effect;
- (b) the proposals for maintenance of play areas and their equipment approved in terms of conditions 2 and 4 shall be put into effect;
- (c) the spray-painting activity shall be moved to the location approved in terms of conditions 2 and 4;



- (d) the Pencaitland Road street lighting approved in terms of conditions 2 and 4 shall be installed and brought into use;
- (e) the management arrangements for continuing access to the two enclaves and to the Clerkington Mill properties approved in terms of conditions 2 and 4 shall be put in place;
- (f) the shared pedestrian/cycle link approved in terms of conditions 2 and 4 shall be constructed and be available for use;
- (g) the scheme approved in terms of conditions 2 and 4 for updating and improving operation of the traffic signals at the junction of Knox Place, Station Road, Hope Park and Court Street shall be carried out; and
- (h) the arrangements approved in terms of conditions 2 and 4 for ensuring that the sustainable urban drainage system will be maintained in good working order shall be put into effect.

*Reasons: To ensure that the landscaping, the play areas and the sustainable urban drainage system are properly maintained. To ensure that the spray-painting activity does not have an unacceptable effect on the amenity of the proposed dwellings. In the interests of the safety and convenience of road users.*

9. No work on site shall begin until the proposals for implementation of a 40 miles per hour speed limit on Pencaitland Road approved in terms of conditions 2 and 4 have been put into effect.

10. Before either of the two new accesses from Pencaitland Road into the site is brought into use, all obstructions to visibility that are within the visibility splay areas for that access as approved in terms of conditions 2 and 4 and that have a height greater than 1.05 metres above the level of the nearest part of the adjacent carriageway shall be removed. Thereafter and so long as the access remains available for use the visibility splay areas shall be kept free of all such obstructions to visibility.

11. Measures identified in the road safety audit approved in terms of conditions 2 and 4 shall be implemented in accordance with the approved implementation programme.

*Reason for conditions 9, 10 and 11: To ensure that the site may be entered and left safely.*

12. The scheme for archaeological investigation approved in terms of conditions 2 and 4 shall be implemented in accordance with the approved programme for implementation.

*Reason: The site may contain items of archaeological interest. Any such items should be identified and recorded and, if possible, preserved.*

13. Construction of the proposed development shall be carried out in accordance with the construction method statement approved in terms of conditions 2 and 4.

Reason: *To minimise the effects of construction activities on local amenity.*

14. The sustainable urban drainage system approved in terms of conditions 2 and 4 shall be provided in accordance with its approved programme for implementation.

Reason: *To eliminate any increase in flood risk that the proposed development might cause and to avoid any adverse effect on water quality in local watercourses.*

15. The artwork to be provided on the site or in the vicinity as approved in terms of conditions 2 and 4 shall be provided in accordance with the approved programme for implementation.

Reason: *To improve the environment and support artists and craftspeople.*

### Advisory notes

**1. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

**2. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)

**3. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.)

**Appendix 6**  
**Appeal Ref PPA-210-2036 for Ferrygate Farm,**  
**Dirleton Road, North Berwick**

## Appeal Decision Notice

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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-210-2036
- Site address: Ferrygate Farm, Dirleton Road, North Berwick EH39 5DJ
- Appeal by Miller Homes against the decision by East Lothian Council
- Application for planning permission in principle 12/00680/PPM dated 24 August 2012, refused by notice dated 24 April 2013
- The development proposed: residential development with landscaping, road improvements and associated works
- Date of site visit by Reporter: 30 August 2013

Date of appeal decision: 2 October 2013

### Decision

I dismiss the appeal and refuse planning permission in principle.

### Two preliminary matters

1. At the time when the planning application was determined by the Council and when this appeal was submitted, the development plan consisted of Edinburgh and the Lothians Structure Plan 2015 and East Lothian Local Plan 2008. On 27 June 2013, Scottish Ministers approved SESplan, the strategic development plan for Edinburgh and South-east Scotland. From that date, the 2015 structure plan is of no effect. I informed the Appellant and the Council that I intended to determine this appeal on the basis that the development plan consists of SESplan and the 2008 local plan. The Appellant and the Council responded to my request that they submit observations on the extent to which the proposed development does or does not accord with the approved version of SESplan.
2. The application for planning permission is in principle. In the application, the proposal is described as “residential development with landscaping, road improvements and associated works”. Information accompanying the application indicated that a development of 140 dwellings was envisaged.
3. The Appellant’s Appeal Statement, at paragraph 2.5, says that, for legal reasons, access to lay services into that part of the site east of Gasworks Lane cannot be achieved. Development of 29 houses and a public park had been envisaged on the land east of Gasworks Lane. Development of these houses is no longer intended. It is suggested that

the proposed area of open space be extended. The remainder of the site is said to have an indicative capacity of 111 houses.

4. Section 32A, subsection (3) of the Town and Country Planning (Scotland) Act 1997 (as amended) prohibits variation of an application after it becomes subject to appeal. For the avoidance of doubt, I do not consider that the Appellant's change of intention regarding land east of Gasworks Lane amounts to a variation in terms of section 32. My reasons for this are that the application is in outline; no number of dwellings is specified in the description of the proposal contained in the planning application form; the development as now envisaged by the Appellant accords with the description of the proposal given in the planning application form; and application drawing 11019(11)0020, which shows houses to the east of Gasworks Lane, is clearly marked as being indicative.

## Reasoning

5. The determining issues in this appeal are: countryside policy in the local plan; locational aspects of SESplan strategy; local plan strategy; land supply for new housing; and loss of prime agricultural land. Other material considerations are: site effectiveness and local demand for new housing; whether to await preparation of the local development plan; effect on development of allocated sites; *Scottish Planning Policy*; and the reasons for refusal of planning permission.

### *The site*

6. The site has an area of 10.29 hectares and is in agricultural use. It is immediately to the west of North Berwick. Its northern boundary is defined in part by Dirleton Road (A198) and in part by the rear boundaries of a row of houses that front onto Dirleton Road. To the east is woodland and residential development. To the south and west is agricultural land. The site is traversed by Gasworks Lane on a roughly north-south alignment.

### *The proposal*

7. In the application for planning permission, the proposal is described as "residential development with landscaping, road improvements and associated works". As already explained, it is now the Appellant's view that the site has an indicative capacity for 111 houses.

### *Representations*

8. When the planning application was under consideration, the Council received 26 written representations. Of these, 24 objected to the proposed development. Following submission of the appeal, the Directorate for Planning and Environmental Appeals received 62 written representations, all of which were objections to the proposal.

### *The development plan*

9. The development plan consists of two documents: SESplan, the strategic development plan for Edinburgh and south-east Scotland, which was approved by Scottish Ministers on 27 June 2013, and East Lothian Local Plan 2008, which was adopted by the Council in October 2008.

10. In East Lothian Local Plan 2008, the proposed development is not on one of the sites that are identified for new housing at North Berwick. The appeal site is within the area defined as countryside. The appeal proposal is not a kind of development that is permissible in the countryside in terms of the first paragraph of local plan policy DC1. For these reasons, I find that the proposal is contrary to the local plan.

11. Conflict with the local plan does not necessarily mean that the proposed development must be rejected. The local plan requires review because it is now five years old. In addition, the structure plan in force in 2008 has now been superseded by SESplan, which provides new strategic guidance for development planning in East Lothian.

12. The Appellant says that the appeal site, in local plan terms, is countryside only because the plan is not up to date. I do not accept this contention. I find it possible that a review of the local plan might result in the appeal site being allocated for residential development but, as shown later in this decision notice, allocating the site for residential development is not an inevitable outcome of a review.

### *Locational aspects of SESplan strategy*

13. Two of the eight aims set out in paragraph 17 of SESplan are to meet housing need and demand in the most sustainable locations and to integrate land use and sustainable modes of transport, thus reducing need to travel and cutting carbon emissions.

14. Appeal submissions indicate that people travel daily from North Berwick to work places in and in the direction of Edinburgh. I am not aware of any prospect of significant numbers of new jobs becoming available in North Berwick to reduce daily travel to workplaces outside the town. In connection with this, I note that figure 8 on page 34 of SESplan shows economic clusters and corridors, one of which extends from Musselburgh to Haddington and thence to Dunbar. It does not include North Berwick.

15. The Transport Assessment (table 5.2) predicts that half of the trips generated by the proposed development will be made by car drivers. Of all the vehicle trips generated by the proposed development, a large majority (73%) will be routed onto the A198 travelling west towards Edinburgh (paragraph 6.1.7 and table 6.1). I find no reason to suppose that travel patterns of future residents on the allocated sites at Gilsland and Mains Farm will differ significantly in these respects.

16. I find that the number of daily journeys by North Berwick residents to workplaces outwith the town will be increased by housing development on the existing allocated sites at North Berwick and further increased if housing on the appeal site were to be built.

17. I conclude that the appeal site is not a sustainable location, in that housing development on it would increase the number of relatively lengthy daily journeys to and from work made by car by North Berwick residents.

18. The SESplan Spatial Strategy (paragraph 18) includes the following.

The Strategic Development Plan Spatial Strategy.....builds on existing committed development, focusing further development along preferred corridors optimising connectivity and access to services and jobs.

.....further development will be focussed in thirteen Strategic Development Areas acting as the primary locations for growth and investment.

19. One of the strategic development areas is “East Lothian”. Figure 1 on page 7 and figure 4 on page 21 indicate that the East Lothian strategic development area does not include North Berwick.

20. Paragraph 22 of SESplan refers to the distribution of further housing development. Where possible, new housing development is to be focused on brownfield land and across the thirteen strategic development areas. This is affirmed in policy 1A: local development plans are to direct further strategic development to the strategic development areas.

21. I find that the strategic development area element of SESplan indicates that North Berwick is not a priority location in the search for additional land for new housing development.

22. Under the heading “East Coast”, paragraphs 48 to 59 of SESplan set out considerations specific to East Lothian and Eastern Borders. Paragraphs 50 to 52 say:

50 The East Coast experiences significant pressure for housing growth and, in the absence of a more diverse employment base, many residents commute out of the area to access the wider range and choice of jobs, as well as goods and services. This has resulted in less sustainable commuting and travel patterns and restricted access to affordable housing.

51 There are also issues in relation to the transport network and infrastructure capacity with substantial investment being required to deliver committed development. While the timely procurement of these interventions is important, much of this is not in the control of SESplan nor the relevant local authorities. In relation to the A1, the SDP supports the completion of its dualling, while Transport Scotland is concerned about the capacity of Old Craighall junction as well as merge and interchange capacity at Wallyford, Dolphingstone and Bankton.

52 The lack of passenger capacity and low frequency of existing local passenger services on the ECML and North Berwick branch is also a significant and related issue to that of trunk road capacity. Investment in education and drainage will be required to support development.

23. In its appeal statement (paragraph 4.49), the Appellant says that the site is within walking distance of North Berwick railway station. Representations against the proposed development include the comment that rail services to Edinburgh are crowded at peak periods. From information in the Appellant's Transport Assessment and from my visit to the station during my inspection, I note that there is a relatively limited number of trains to and from the town during peak periods, with an hourly service at other times.

24. I note from submissions that car-based commuters from North Berwick to places of work in and around Edinburgh generally use the A198 road. This road goes through Gullane and Aberlady and joins the A1 at Bankton, one of the interchanges mentioned in paragraph 51 of SESplan.

25. I find that the considerations in the three preceding paragraphs of this decision notice emphasise the need to give careful attention to any development that might increase the number of residents in North Berwick who travel to workplaces in and around Edinburgh.

26. My conclusion is that locational aspects of the SESplan strategy do not identify North Berwick as a place for significant additional new housing development.

#### *Local plan strategy*

27. In the East Lothian Local Plan 2008 (paragraph 1.16), part of the then regional context was a structure plan requirement that land be allocated for 4,800 new dwellings in East Lothian. Of this total, 3,600 were to be at Musselburgh, Wallyford and Blindwells, 750 at Haddington, 500 at Dunbar and 500 at North Berwick. The local plan identifies two strategic housing proposals at North Berwick: Mains Farm (approximately 400 houses) and Gilsland (approximately 100 houses). In addition, a site at Lochbridge Road is identified for approximately 40 affordable houses.

28. The vision and strategy section of East Lothian Local Plan 2008 includes the following.

1.25 East Lothian remains an area of small towns and villages set in attractive countryside and coastal landscapes. At the same time it is inextricably linked to the wider Edinburgh and The Lothians area, as an integral part of its housing market and travel-to-work areas. Current and previous structure plans have accepted that landward areas like East Lothian have a role to play in accommodating the housing land requirements of the growing Edinburgh city region. This is a role that is likely to continue for the foreseeable future. Accordingly, the local plan adopts a strategy that accommodates growth through managing change, while retaining key assets.

1.26 This growth cannot continue to be wholly directed to existing communities, without changing their character or compromising their settings. The strategy of this local plan, one that is likely to be continued in subsequent plans, is to focus development in locations that do not compromise existing assets of value and where other benefits can be achieved. A proposed new settlement at Blindwells will play a major role in this



respect, while an expansion of Wallyford will also contribute towards the social and environmental regeneration of the village. Blindwells' capacity for further expansion beyond the year 2015 is recognised in the Edinburgh & The Lothians Structure Plan 2015. Any requirement for further significant growth in East Lothian beyond 2015 is unlikely to be accommodated within existing communities.

29. As already mentioned, the local plan requires replacement. This does not mean that the plan no longer has any merit. It appears to me that much of the strategy in paragraphs 1.25 and 1.26 of the plan accords with strategy in SESplan, and adds some weight to my conclusion that North Berwick is not identified as a location to which significant additional new housing is to be directed.

30. This conclusion does not necessarily mean that the appeal should be dismissed. As pointed out by the Appellant, SESplan strategy also addresses the need to ensure that there is an adequate supply of land for new housing, and consideration must be given to this.

#### *Land supply for new housing*

31. SESplan states that it is particularly important, in supporting economic growth and recovery, to ensure that sufficient land is allocated and available for housing development in the period up to 2024 (paragraph 22). The extent to which existing allocated and approved sites remain capable of delivering house completions by 2024 is to be re-assessed in local development plans. Where necessary, alternative sites are to be allocated, and a five years' effective housing land supply is to be maintained at all times to ensure that delivery is not unnecessarily constrained (paragraph 23).

32. SESplan says that there will continue to be major challenges to the delivery of housing and other elements of the plan both in the short term and the medium term, due to the limited resources available both for development and for the supporting infrastructure (paragraph 24). Paragraph 25 refers to the recession and difficulty in accessing finance. "Allocating sufficient land and maintaining a five years' effective housing land supply at all times will assist in increasing the delivery of new housing as soon as restrictions ease."

33. To provide a generous supply of land, supplementary guidance is to be prepared to confirm the scale of the housing requirements that are to be met within the area of each local development plan for the period up to 2019 and the period from 2019 to 2024. Priority is to be given to development of brownfield land and to land within the thirteen strategic development areas (paragraph 26). The Spatial Strategy steers housing growth to sustainable locations where there is infrastructure capacity or which minimise the requirement for additional investment (paragraph 27).

34. Paragraph 110 of SESplan says that environmental constraints and other restrictions on land availability within the boundary of the City of Edinburgh may mean that a significant proportion of the housing needs and demands arising in the city will have to be met outwith the city.



### *Addressing the shortfall*

43. The Appellant says that SESplan provides support for granting planning permission for sites such as the appeal site in the event of a shortfall in housing land supply - in this respect, policy 7 is the key policy.

44. In SESplan, policy 7 is headed “maintaining a five-year housing land supply” and reads as follows.

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.

45. I find that policy 7 has four criteria: need for extra land to maintain a five-year supply and the three listed criteria. If all the criteria are met, permission may be granted.

### *Policy 7 criterion - need for extra land*

46. I have already found that there is need to bring forward more land for new housing in East Lothian to achieve and maintain a five-year supply of such land. This fulfils the first criterion in policy 7.

### *Policy 7 criterion – in keeping*

47. The next criterion in SESplan policy 7 is that the development will be in keeping with the character of the settlement and local area.

48. Included in the Appellant’s submissions are a Landscape and Visual Impact Assessment, a Landscape Design Statement and a Design and Access Statement. The main elements of the landscape proposals are: retained and enhanced boundary edges; enlargement of the existing shelterbelt to the west of the site; an access hierarchy including a tree-lined primary route; a pond; and open space with play provision.

49. In the representations, grounds for objection include the following: the proposal amounts to ribbon development; the town’s unique atmosphere would be destroyed; the pleasing approach to the town would be ruined; and the undeveloped gap between the town and Dirleton would be eroded, leading to coalescence.

50. From my inspection, I find that, when approaching North Berwick on Dirleton Road (A198), the appeal site is screened by the tree belt to the west of the site. Closer to the site, screening is provided by the petrol station and the row of houses that are on the south side of the road. Construction of an access to the west of the petrol station would open up a view into the site, but only to a limited extent.

51. With the proposed augmentation of the existing tree belt, I find that the proposed development would have no more than a limited, and acceptable, effect on the character of North Berwick in terms of the appearance of the town as seen from Dirleton Road. I do not find that the proposal would amount to ribbon development, which is usually taken to mean a single row of houses alongside a road, each house having its own access direct to the road. I do not find that the town's atmosphere would be destroyed. The proposal would not involve buildings being erected nearer to Dirleton than the petrol station, which is the present outer limit to the built-up area on this side of the town. The proposal would not have any significant effect on the present separation between Dirleton and North Berwick.

52. Having viewed the site from North Berwick Law and from the minor road that is a continuation of Grange Road, I find that the visual effect of the proposed development from these locations would not be significant.

53. A design concept is illustrated in the Design and Access Statement. This includes reference to buildings being of two-storey height (page 34). From the statement, I find that the site is capable of being developed in a manner that would be in keeping with the character of existing residential areas in North Berwick.

54. I conclude that there is no reason why the proposed development should not be in keeping with the character of North Berwick and the local area.

*Policy 7 criterion – green belt*

55. The criterion regarding green belt objectives is not contravened because the site is not in a green belt area.

*Policy 7 criterion – additional infrastructure*

56. The final criterion is that any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

57. The Appellant envisages discharge of foul drainage to Scottish Water's sewerage system. Disposal of surface water would involve treatment and attenuation before discharge to a watercourse.

58. Objectors express concern that there is not enough foul drainage capacity for both the proposal and the new houses that are to be built on land that is already allocated for residential development. If the proposed development were to go ahead, massive capital expenditure would be needed to increase the capacity of the waste water treatment works.

59. An e-mail dated 27 March 2013 from Scottish Water confirms that funding is available for growth projects: “Scottish Water will find the best solution and fund that.” I find that capacity to treat foul drainage from the proposed development and from development on other sites allocated for residential development is not an impediment to approving the present proposal.
60. My attention has not been drawn to any difficulty with regard to water supply.
61. Regarding access, the Appellant commissioned a Transport Assessment. It finds that traffic likely to be generated by the proposed development can be satisfactorily accommodated on the local road network. The Council agrees with this.
62. Representations against the proposed development include the following points.
- Dirleton Road already suffers from congestion.
- Traffic and parking conditions in the town centre would be worsened.
- There would be more accidents on Dirleton Road.
- Access to the site should be by means of a roundabout because traffic exceeds the speed limit.
63. Road capacity is examined in the Transport Assessment. “On the A198, close to the site access, the recorded traffic flows were.....relatively low for the road type” (paragraph 3.5.4). From this and from my inspection of conditions on Dirleton Road and in the town centre, I find that the proposed development would be unlikely to cause unacceptable congestion on Dirleton Road. There would be increased flows of traffic in the town and increased demand for parking, but not to an extent that would justify refusal of permission.
64. The Transport Assessment examines accident records for Dirleton Road. It concludes that the existing accident rate is consistent with the local average for similar character roads. From this and from my inspection, I find that there is no unusual or special hazard for users of Dirleton Road. The proposed development would not result in an unacceptable increase in accidents.
65. The Transport Assessment says “A 40 mph speed limit applies on the A198 in the vicinity of the site; the 85<sup>th</sup> percentile two-way traffic speed on the A198 was recorded at 44.6 mph” (paragraph 3.5.4). I find that this tends to confirm objectors’ concern about traffic speed, and I agree that a roundabout would reduce traffic speed. However, submissions indicate that the junction arrangement envisaged by the Appellant would meet national standards for design of junctions and would be acceptable to the Council as road authority. In these circumstances, I find that adequate access to the site can be provided without need for a roundabout.
66. The appeal site is within the catchment areas of Law Primary School and North Berwick High School. The Council states that neither school has capacity to meet the

demand for extra places that could arise from the proposed development. The developer should make a financial contribution to the costs of additional school accommodation. The Appellant is willing to make a “reasonable financial contribution” towards additional facilities at the two schools. I find that availability of school places is not an impediment to approval of the proposed development.

67. East Lothian and Midlothian Community and Health Partnerships say that the proposed development would “put additional pressure on space in the existing health centre which will be difficult to accommodate in the existing building”. The Partnerships seek a capital contribution which would be used to increase and improve accommodation at North Berwick Health Centre. Representations against the proposed development include concern that health facilities are at capacity. It is the Council’s view that the Community Health Partnerships have failed to demonstrate the need for and quantum of any contributions to healthcare provision.

68. Advice regarding planning obligations is contained in Circular 3/2012: *Planning Obligations and Good Neighbour Agreements*. The circular (paragraphs 26 and 30) gives some emphasis to identifying infrastructure requirements in the development plan. In the present case, my attention has not been drawn to any development plan provision that identifies need for contributions to extension of North Berwick Health Centre.

69. I agree with the Council that the submission from the Community and Health Partnerships lacks necessary detail. In addition, I find the submission does not demonstrate that it is only by means of developer contributions that the capacity of the health centre can be increased. It does not demonstrate that there is no other recognised source of finance for meeting healthcare needs in a growing community.

70. I find that the cost of healthcare provision is not something to which the Appellant should be expected to contribute and that it does not give rise to conflict with the policy 7 infrastructure criterion.

#### *Policy 7 conclusion*

71. My conclusion is that the proposed development meets all of the criteria in policy 7 of SESplan. This means that permission for the proposed development may be granted, but it does not mean that permission must be granted. In deciding whether permission should be granted, all relevant provisions of the development plan and other material considerations must be taken into account.

#### *Other local plan policies*

72. Local plan policies not so far mentioned address a variety of matters, including integration into the landscape, minimising visual intrusion, having no significant adverse impact on nearby uses (policy DC1, part 5), need for transport assessment and travel plan (DP18), encouraging walking and cycling (DP20), provision of infrastructure and community facilities (INF3), open space (C1), play space (C2), affordable housing (H4), accessibility (T1), transport impact (T2) and archaeological interest (ENV7).

73. It is the Council's view, set out on pages 7 to 13 of the report dated 23 April 2013, that there is no inherent conflict between the proposed development and the policies listed above. This view is not shared by a number of those who have made representations against the development. Having given careful consideration to what is said by the objectors, I find that particular concerns could be adequately met by imposing conditions on any permission and by applying various of the policies when considering design details. I therefore agree with the Council that the proposed development is not necessarily in conflict with these local plan policies.

74. The Council does find conflict between the proposed development and the local plan policy for prime agricultural land. The Council's sixth reason for refusal of planning permission says that the proposed development would result in the loss of prime agricultural land and that this would be contrary to part 5 of local plan policy DC1 and contrary to *Scottish Planning Policy*. Loss of top-grade agricultural land is also a ground of objection in the representations.

75. The Appellant says that North Berwick is constrained on all sides by countryside. So far as the Appellant is aware, most, if not all, of this is prime agricultural land. If housing requirements are to be met in East Lothian, it is inevitable that prime agricultural land will have to be used. Provision of adequate housing is a key objective of strategic and national policy: protection of prime agricultural land is a lesser priority.

76. I note that the local plan policy says that proposed development must minimise the loss of prime agricultural land. This is not the same as saying that there must be no loss of prime land. Rather, if prime land has to be developed, the amount of such land taken out of agricultural use must be the least possible.

77. In the present case, the appeal site extends to some 10 hectares. It was originally envisaged that 140 houses would be built on the site. For legal reasons, it is now envisaged that 111 houses would be built. This suggests to me that 111 houses could be built on a site of less than 10 hectares, if the site were free of constraints. For this reason, I find that the proposed development does not minimise loss of prime agricultural land and so infringes local plan policy.

#### *Development plan conclusions*

78. I now draw together my findings and conclusions regarding the development plan.

79. The appeal proposal is contrary to the first paragraph of local plan policy DC1. The local plan requires review because of its age and because there is new strategic guidance in the form of SESplan. For these reasons, I attach only limited weight to the conflict with the first paragraph of policy DC1.

80. The proposal infringes local plan policy regarding prime agricultural land. I find that this is significant, especially as the policy accords with paragraph 97 of *Scottish Planning Policy*, which refers to minimising loss of prime agricultural land.

81. Two of the aims of SESplan are to meet housing need and demand in the most sustainable locations and to integrate land use and sustainable modes of transport. I find that the appeal site is not a sustainable location, in that housing development on it would increase the number of relatively lengthy daily journeys to and from work made by North Berwick residents.

82. SESplan defines thirteen strategic development areas. It is in these areas that further development is to be focused, thus helping to promote a sustainable growth pattern. This is set out in the spatial strategy (paragraph 18). Where possible, new housing development is to be focused on brownfield land and across the thirteen strategic development areas (paragraph 22). Local development plans are to direct further strategic development to the strategic development areas (policy 1A). North Berwick is not in a strategic development area. This is consistent with strategy presented in paragraphs 1.25 and 1.26 of the local plan. From all this, I find that the development plan gives strong emphasis to the promotion of development in the strategic development areas and that North Berwick is not identified as a location to which significant additional new housing (beyond that on the existing allocated sites) is to be directed.

83. In SESplan, the Spatial Strategy “steers housing growth to sustainable locations where there is infrastructure capacity or which minimise the requirement for additional investment” (paragraph 27). With regard to local infrastructure capacity, deficiencies have been identified, but these can be adequately addressed by a combination of financial contributions from the Appellant and investment by others. I find that this adds weight to the case for approval of the proposed development.

84. High priority is to be given to providing and maintaining a five years’ supply of effective housing land. For this purpose, there is a clear need to bring forward more land for new housing in East Lothian. SESplan policy 7 permits approval of new housing on greenfield land, provided certain criteria are met. The appeal proposal meets the criteria.

85. I find that spatial aspects of development plan policy are firmly against the proposed development, while the local infrastructure and housing land supply aspects lend considerable support to the proposed development. My conclusions are that, in the particular circumstances of the present appeal, the spatial aspects carry considerably more weight than the infrastructure and land supply aspects and that the proposed development is contrary to the development plan.

*Other material considerations - Effectiveness and local demand*

86. The Appellant states that development finance is available and that there is a high level of demand for houses in North Berwick. I find it likely that, if permission were given for the proposed development, the site would be “effective” and house construction would proceed in the near future.

87. At present, other land is available in North Berwick for new housing development. During my inspection, I observed that house-building was in progress on the sites at Lochbridge Road and at Gilsland. A site at Mains Farm is also allocated largely for new



housing. I find that the existence of these other sites provides some opportunity to meet the local demand for houses identified by the Appellant.

88. The potential effectiveness of the site lends support to the proposed development. This support is modified, but only to a limited extent, by the existence of the other housing sites.

*Await preparation of the local development plan*

89. Representations against the proposed development include the argument that it is premature in advance of preparation of the local development plan that is to replace East Lothian Local Plan 2008. The Appellant says that adoption of the new local plan will probably not be until 2016 at the earliest.

90. In view of the prior requirement to prepare essential supplementary guidance (SESplan, policy 5), I agree that adoption of a local development plan is some time away. This is unfortunate, but does not necessarily mean that housing development on the appeal site is simply being delayed: one of my findings is that allocating the appeal site for residential development is not an inevitable outcome of preparing the local development plan.

91. Among the representations, grounds for objection include the following.

If more housing is needed, it should be considered as part of a revised local plan.

Development at Ferrygate was considered during preparation of East Lothian Local Plan 2008 and was not seen as the best planning strategy in the light of distances from schools, leisure facilities, the town centre and other retail opportunities.

For safe access to schools, the appeal site is much less convenient than other sites.

There is logic in encouraging expansion of the town southwards and not along the coastal fringe.

92. The Appellant says that the proposed development would be a logical extension of the town. The site is well-contained in the landscape. It is well-located in terms of access to the local and strategic road network.

93. I do not find the site to be ideally located in relation to facilities in North Berwick. The Transport Assessment (paragraph 3.3.6) shows that Law Primary School is more than 20 minutes away for pedestrians walking reasonably briskly. From my inspection, I note that the route to the schools is fairly complicated and includes one quite steep section. The town centre is at a similar distance in terms of walking time. My own observation during inspection is that the walking route to the town centre is the footway beside the A198

carriageway which, with its length, closeness to passing vehicles and uphill gradient on the return journey, is not especially attractive to pedestrians. Two of the local supermarkets are on the side of the town furthest from the appeal site.

94. I do not seek to prejudge the outcome of preparation of the new local development plan. It is possible that, when all matters are considered, the appeal site might be allocated for new housing. The point that I make in the light of the preceding paragraph is that, if there is to be further land for new housing at North Berwick, the appeal site may or may not be the best location for it.

95. A further, related consideration arises from comments in two of the representations. The first comment is to the effect that the Appellant's proposal began as a development of over 400 houses. The second is that there should be access across the railway to provide easier access to retail, educational and recreational facilities.

96. I note from page 8 of the Design and Access Statement that, for the public involvement exercise, a site much larger than the appeal site was put forward. I also bear in mind that the Appellants no longer envisage construction of houses on land east of Gasworks Lane.

97. The considerations in the two preceding paragraphs suggest to me that there is the possibility that preparation of the new local development plan might result in the appeal site and other adjoining land being identified for development on a larger scale than is currently proposed in this appeal. If this were to happen, an overall planning framework and master plan should be prepared to ensure best use of this larger site, provision of necessary linkages to other parts of the town and so on. I find that proper planning of any such larger development could be prejudiced if the present proposal were approved and implemented.

98. My conclusion is that there is merit in the argument that the present proposal should not be approved in advance of preparation of the local development plan. However, preparation of the local development plan is, so far as I am aware, at a very early stage. For this reason I do not attach great weight to this conclusion.

#### *Effect on development of the allocated sites*

99. The Council's fifth reason for refusal of planning permission says that the Appellant's proposal would prejudice the development of allocated strategic housing sites, particularly Gilsland and Mains Farm at North Berwick. The Appellant says that there is no evidence to support this view. In response, the Council says that it was concerned that release of land in the same settlement could impact on the delivery of Mains Farm and Gilsland in a time of economic uncertainty for house-builders and house-buyers.

100. During my inspection, I saw that housing development on the Gilsland site was in progress. I note from paragraph 6 of the Rettie Housing Market Report that the Appellant's proposal is for houses that are smaller and cheaper than the houses that are being built at Gilsland and that the two developments would not be in competition with each other. The

Rettie Report expresses the opinion that all sites should sell relatively well. Buyers might benefit from some element of price competition.

101. Submissions do not draw to my attention what kinds of housing are to be built on the Mains Farm site. This information may not yet be available. From what information I do have, I find that the proposed development is unlikely to prejudice the ongoing development on the Gilsland site. There is no evidence to demonstrate that the proposed development would have any significantly adverse effect on development of the Mains Farm site. I conclude that the claim that development of allocated sites would be prejudiced has not been justified and carries no weight as a reason for refusal of permission.

### *Scottish Planning Policy*

102. The Appellant argues that *Scottish Planning Policy* gives support to the proposed development. The proposed development would contribute to the economic growth of East Lothian, it would achieve requirements relating to location and design, it would increase the supply of new homes, it would be integrated with public transport and active travel networks, it would be an efficient use of land and it would deliver the sorts of outcome that are sought.

103. I find that *Scottish Planning Policy* is reflected in the relevant provisions of SESplan, to which I have already given consideration. The requirement that there be a supply of effective land for at least five years (*Scottish Planning Policy*, paragraph 75) is particularly important. On the other hand, there are issues relating to location, both in a local context and in an East Lothian-wide context, that do not favour approval of the proposed development.

### *Reasons for refusal of planning permission*

104. Planning permission was refused for six reasons. Five of the reasons include references to Edinburgh and the Lothians Structure Plan 2015. I find that these references are no longer relevant because the structure plan has been superseded by SESplan. I have already addressed other, relevant references: local plan policy DC1, local plan objectives (or vision and strategy), prejudicing allocated sites and prime agricultural land.

### *Overall conclusion*

105. I have already concluded that that the proposed development is contrary to the development plan. Among the other material considerations, I find that the potential effectiveness of the appeal site adds weight to the case for approval but this is offset to some extent by the merit of the argument that approval should not precede preparation of the local development plan. I find that the material considerations as a whole do not justify approval of the proposed development in the face of the conflict with the development plan.

*R W Maslin*

Reporter

**Appendix 7**  
**Edmonstone Intention Notice (Ref: PPA-230-2087)**  
**issued on 21st March 2013**

## Appeal Decision Notice

T: 01324 696 400  
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Decision by Malcolm Mahony, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2087
- Site address: Edmonstone Estate, Old Dalkeith Rd, Edinburgh
- Appeal by Sheratan Ltd against the decision by the City of Edinburgh Council
- Application for planning permission 12/01624/FUL dated 9 May 2012 refused by notice dated 11 October 2012
- The development proposed: residential development with associated roads and landscaping
- Application drawings: 1, 2A, 3A, 4-8, 9B, 10B, 11B, 12-19, 20A, 22-28
- Date of site visit by Reporter: 19-20 February 2013

Date of appeal decision: 20 September 2013

### Decision

I allow the appeal and grant planning permission subject to the 9 conditions listed at the end of the decision notice. Attention is drawn to the 4 advisory notes at the end of the notice.

### Reasoning

1. On 21 March 2013, I issued a notice of intention to allow the appeal and grant planning permission, subject to 9 conditions set out at the end of that notice, following the signing and registering of an obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 between the appellants and the planning authority. The obligation was to cover: transport contributions, education contribution, affordable housing and an estate management strategy.
2. I have now received a copy of a section 75 agreement signed by the parties covering the above matters, together with a copy of an acknowledgement from the Keeper of the Registers of Scotland that the agreement has been received for registration. The planning authority has accepted that this is sufficient basis for me to issue a decision.
3. In the period since my notice of intention, SESplan (the strategic development plan for Edinburgh and South East Scotland) has been approved and now replaces the Edinburgh and Lothians Structure Plan 2015 as the strategic element of the development



plan. I accordingly invited comments from those parties who attended the hearing session on the relevance to the appeal proposal of this change in the development plan.

4. With their comments in mind, I find that:
- SESplan requires the preparation of supplementary guidance to break down the overall housing requirement by council area. The adoption of local development plans will have to await the conclusion of that work. This will delay provision of a statutory basis for additional housing land releases, although it does not, of course, prevent the planning authority from seeking to progress plan-led sites in advance of local development plan adoption.
  - In SESplan, the appeal location lies within a Strategic Development Area (a focus of housing growth) and Regional Core.
  - SESplan Policy 7 (Maintaining a five year housing land supply), as amended, allows for additional sites to be allocated or consented where there is a shortfall in the effective 5 year housing land supply, subject to 3 criteria. I am satisfied that those criteria are met in respect of the appeal proposal, including that it would not undermine green belt objectives. I see no need to wait for the supplementary guidance to be prepared and approved in order to establish an accurate requirement for Edinburgh when the broad picture regarding shortfall is uncontested.
  - SESplan Policy 12 (Green Belts) is similar to green belt policy in the superseded structure plan. In it, the possible need for local development plans to modify the green belt around Edinburgh to accommodate development, including in South East Edinburgh Strategic Development Area, is acknowledged.

I therefore consider that SESplan forms a policy context for the appeal proposal which allows for it to be treated as an exception in no more restrictive way than the superseded structure plan.

5. Together with its comments on SESplan, the planning authority has advised me of progress in the journey of the Proposed Edinburgh Local Plan towards adoption, details of its Action Programme, findings from the SESplan Report of Examination, and the commencement of construction at Greendykes. However, I am not persuaded that these matters are sufficient to change my decision.

6. Other than such updating matters, a number of comments were submitted by the parties which went beyond my further information request and are not necessary for my determination. I have taken no account of these.

7. Returning to the section 75 agreement, this covers the matters which I specified in paragraph 62 of my notice of intention (and which were drawn from the city council's schedule of requirements). The estate management strategy covers the 8 Acre Field and Walled Garden, the so called Former Hospital, the Policies and the Bio-Quarter. Although differently named, these refer to the areas mentioned in my intentions notice. The matters to be addressed by the strategy are as listed in my paragraph 62.

8. The city council has drawn my attention to Proposal of Application Notice by the appellants canvassing proposals, including for housing, on other parts of the estate. Their concern that this might prevent regeneration of the estate landscape would appear to be a

matter primarily within their control, any subsequent planning application being a separate matter to be dealt with in the light of their established policies and material considerations including, potentially, the conclusions in my intentions notice.

9. They also raise the possibility of that regeneration being delayed whilst the development proposal is dealt with. In the conclusions to my intentions notice, I listed 11 factors which represented compelling reasons sufficient to allow the proposal despite lack of conformity to the development plan and compromising the designed landscape at Edmonstone. One of these factors was that regeneration of the estate landscape would be likely to be brought forward at an earlier stage than otherwise. I note that the residential element in the Proposal of Application Notice covers the Policies and part of the Former Hospital. It would therefore appear that the Proposal of Application Notice would pose no obstacle to progressing the regeneration work timeously on the remainder of the estate, at minimum.

10. I also note:

- the obligation on the appellants in clause 5.6 of the submitted section 75 agreement to carry out all the works required under the estate management strategy within the Walled Garden; and
- the appellants' offer to extend that requirement to cover the Former Hospital site and the Bio-Quarter land through a revised section 75 agreement.

Whilst the latter is welcome, I must base my decision on the section 75 agreement as presently concluded.

11. Therefore, having re-assessed the position in the light of the current situation as described in the fore-going paragraphs, I remain satisfied that, for the reasons set out in my notice of intention, the proposal, subject to the planning agreement as concluded together with the 9 conditions listed below, should be allowed as a justifiable exception to the provisions of the development plan.

*Malcolm Mahony*  
Reporter

## Conditions

1. No work shall commence on site until:
  - a site survey (including intrusive investigation where necessary) has been carried out to establish either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is acceptable, or that remedial and/or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and
  - a report of that survey, including, where necessary, a detailed schedule of any remedial and/or protective measures, including their programming, has been submitted to and approved in writing by the planning authority.

Any required remedial and/or protective measures shall be implemented in accordance with the approved schedule, and documentary evidence to certify those works shall be provided to the satisfaction of the planning authority.

*Reason: to ensure the most efficient and effective rehabilitation of the site.*

2. No work shall commence on site until the developer has secured the implementation of a programme of archaeological work (historic building recording, conservation, interpretation, excavation, reporting and analysis, and publication) in accordance with a written scheme of investigation which has been submitted to and approved in writing by the planning authority.

*Reason: to safeguard the archaeological heritage.*

3. No work shall commence on site until a surface water management plan has been submitted to and approved in writing by the planning authority, in consultation with SEPA. The plan shall include:
  - details of surface water drainage including SUDS treatment and attenuation facilities and associated landscaping;
  - details of the surface water outfall and confirmation that any legal agreements necessary for its construction are in place;
  - confirmation that Scottish Water has given technical approval and will be adopting the surface water sewer system, including the outfall; and
  - proposals to manage runoff exceeding the capacity of the drainage system, ensuring that the development is not at risk of flooding and that flooding from this source is not made worse elsewhere.

The surface water arrangements shall then be implemented in accordance with the approved details.

*Reason: to ensure adequate protection of the water environment from surface water run off and to minimise the risk of flooding.*

4. No work shall commence on site until details of the street lighting as shown on the Streetlighting Strategy (drawing number 10028 (11) 0074) has been submitted to and agreed in writing by the planning authority. The lighting shall be designed in accordance with the recommendations in the Environmental Statement in relation to lighting type and spill, using BCT guidance "Bats and Lighting". Once approved, the lighting scheme shall be installed prior to occupation of the first residential unit on the site (unless otherwise agreed in writing with the planning authority).

*Reason: in the interests of traffic and pedestrian safety, visual amenity and protected species.*

5. No work shall commence on site until a detailed specification, including trade names and samples where appropriate, of all the proposed external materials has been submitted to and approved in writing by the planning authority.

*Reason: in the interest of visual amenity.*

6. The trees on the site which are to be protected (see Tree Protection Zone on drawing 10028 (11) 002) shall be protected during the construction period by the erection of fencing, in accordance with clause 2 of BS5837:2005 "Trees in Relation



to Construction” or similar, as approved in writing by the planning authority, at the limit of the canopy spread of the trees. No materials, equipment or buildings shall be stored or located within the protected area, nor shall there be any access through it. The fencing shall be maintained in a secure and upright condition during the construction period.

*Reason: to safeguard protected trees.*

7. At least two months before development starts on site, a full site specific Environmental Management Plan to inform the construction phase of the development shall be agreed with the planning authority in consultation with SEPA and Scottish Natural Heritage (SNH), as appropriate. All work shall be carried out in accordance with the approved Environmental Management Plan. The Plan shall incorporate the mitigation measures detailed in the Environmental Statement which accompanied the application as well as the following measures (advised by SNH):
- The tree containing a single bat shall be soft felled with an ecologist present to check for the presence of bats. If a bat is found, work shall cease and advice be sought from SNH.
  - Other trees to be felled that have roost potential for bats shall be rechecked for roosting bats prior to felling. If a bat is found, work shall cease and advice be sought from SNH.
  - The provision of bat boxes for additional and alternative roost habitat.
  - The badger sett on site and the nearby badger sett shall be monitored through sand traps or similar for at least 2 weeks. A report of findings shall be submitted to and agreed in writing by the planning authority. If there is evidence of recent activity in the area, work shall not commence on site without the approval of SNH.
  - Measures to safeguard otters shall include the provision of escape ramps from deep excavations and covering of exposed pipework.
  - Tree felling shall take place outwith the bird breeding season.
  - Where any woodland work is required during the bird breeding season, an ecologist shall check vegetation for nesting birds to determine whether work can proceed.

*Reason: to protect environmental interests.*

8. The residential development shall be completed in accordance with the requirements specified in the noise assessment contained in the Environmental Statement: Volume 1, Main Text, dated May 2012.

*Reason: to protect residents from external sources of noise.*

9. The approved landscaping scheme (see landscape layout drawing number 1825/04) shall be fully implemented within six months of the completion of the development, and thereafter shall be maintained by the applicants and/or their successors. Maintenance shall include the replacement of plant stock which fails to survive, for whatever reason, as often as is required to ensure the establishment of the approved landscaping scheme.

*Reason: to ensure that the approved landscaping works are properly established on site.*

## Advisory notes

- 1. The length of the permission.** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 2. Notice of the start of development.** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 3. Notice of the completion of the development.** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 4. Display of notice.** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.)

**Appendix 8**  
**Land east of Muir Road, Currie, Edinburgh appeal**  
**decision (19th June 2013) (Ref: PPA-230-2091)**

## Appeal Decision Notice

T: 01324 696 400  
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Decision by Iain Urquhart, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2091
- Site address: Land east of Muir Wood Road, Currie, Edinburgh, EH14 5HQ
- Appeal by Taylor Wimpey against the decision by City of Edinburgh Council
- Application for planning permission in principle 12/01968/PPP dated 6 June 2012 refused by notice dated 11 October 2012
- The development proposed: Residential Development
- Dates of hearing and site visit by Reporter: 23 and 24 April 2013

Date of appeal decision: 19 June 2013

### Decision

I dismiss the appeal and refuse planning permission in principle.

### Reasoning

1. The determining issues in this appeal are housing land supply and the need for new effective housing land in the local development plan area; the impact of the proposal on the green belt and landscape in this location between Currie and Juniper Green, and the effect of the proposal on road safety, having regard to the provisions of the development plan, and any other material considerations.

2. The appeal site is around 3.24 hectares and is currently in arable agricultural use. The site is located to the east of Currie and forms part of a larger agricultural field that separates Currie from the edge of Juniper Green. The appellants' proposal is for residential development. An indicative layout was submitted in support of the planning application showing a development of 90 houses. Vehicular access to the site would be taken from a new junction onto Muir Wood Road.

### Housing land supply and development plan spatial strategy

3. The approved Edinburgh and the Lothians Structure Plan (2015) and the adopted Rural West Edinburgh Local Plan are now in the process of being replaced. The structure plan is to be replaced by the South East Scotland Strategic Development Plan (SESplan). The report on the SESplan examination was published in April 2013 and contains a series



of conclusions and modifications which are now before Scottish Ministers for consideration. The examination reporters have found that SESplan's provisions for housing land are inadequate and not consistent with advice in Scottish Planning Policy (SPP). They recommend that a requirement for the preparation of supplementary guidance is introduced to SESplan to address the deficiencies. I consider that the reporters' conclusions and proposed modifications are material considerations in this appeal and should be accorded significant weight.

4. The council and the appellants agree that preparation and approval of supplementary guidance could take some time, perhaps up to 12 months. The primary purpose of supplementary guidance is to provide detailed information for local development plans (LDPs) as to how much of the SESplan-wide housing land requirement should be met in each of the 6 LDP areas that make up the SESplan housing market area. An essential component of supplementary guidance will be to establish how much of the housing needs and demand assessed as being generated within Edinburgh will require to be met by housing land allocations in each of the other 5 LDP areas.

5. In March 2013 the council approved the proposed Edinburgh Local Development Plan (ELDP) and it was published on 1 May 2013 for formal representations. Given their respective timings, the ELDP does not take account of the recommendations on SESplan.

6. Further detailed work will be required by SESplan authorities over the next 12 months to prepare supplementary guidance and to allocate housing land requirements across 6 LDP areas. I believe that it is possible that new housing sites will need to be identified in light of the outcomes from the supplementary guidance and it may be necessary to amend the proposed ELDP. The whole exercise of preparing supplementary guidance and reviewing or amending the proposed ELDP will delay the ELDP examination and adoption timetable. In my view, adoption of the proposed ELDP may not take place for another 2 years.

7. There is a significant shortfall in the effective housing supply in Edinburgh. The council acknowledges that there is a shortfall over the 3 year period 2012/13 to 2014/15 of over 6000 units. I do not consider that it is possible to establish an accurate 5 year effective land requirement for Edinburgh without the forthcoming SESplan supplementary guidance which will provide housing requirements for each council area.

8. Notwithstanding the absence of supplementary guidance and clarity on the ELDP housing land requirements, I think it is safe to anticipate a shortfall in the 5 year effective supply in Edinburgh in light of the current 3 year position and the SESplan-wide requirements for 74,835 new houses in the period 2009 to 2019. I consider that this will remain the position until such time as the SESplan supplementary guidance is approved and shows what proportion of Edinburgh's housing requirement is to be met from beyond the city's boundaries.

9. The SESplan figures are based on the approved Housing Needs and Demand Assessment (HNDA) and provide the most definitive evidence available of the current housing land supply position. The examination reporters also noted that a significant

proportion of committed housing developments across the SESplan area will not be delivered before 2024. I also accept the appellant's rough estimate that the SESplan shortfall is likely to be over 22,000 at 2017 based on the most recent published effective land supply figures for Lothians, Fife and Scottish Borders. In my view, all this evidence places further pressure on identifying additional land and maintaining a rolling 5 year effective land supply.

10. It appears to me that the council has no immediate remedy for delivering new sites to meet the shortfall in effective land. The council has not quantified what planning applications may come forward on proposed LDP sites in the short term, now that the plan has been published, or set out the likely programming of development sites and site outputs from any applications of this type.

11. I note the arguments and market evidence submitted by the Community Councils and local residents regarding the reduced need for new housing releases in light of the current economic climate and the generally depressed state of the housing market. However, this position runs counter to Scottish Government advice contained in SPP (paragraph 75) which states that a supply of effective land for at least 5 years should be maintained at all times to ensure a continuing generous supply of land for housing building. The recent economic downturn has impacted on the housing market, but ensuring sufficient housing land is available is an important part of supporting economic recovery. Therefore, I find there is a good case, in principle, for release of housing land that is proven to be effective, and that could make an early contribution to meeting the ongoing 5 year land supply deficit in Edinburgh and the wider housing market area.

12. Whilst I find a quantitative land supply argument for additional housing land releases in the ELDP area, I also have to consider the strong policy presumption for directing any new housing releases to Core Development Areas (CDAs) set out in the structure plan and to Strategic Development Areas (SDAs) defined in the emerging SESplan.

13. The appeal site is located within the greenbelt in both the structure plan and proposed SESplan. It is not identified as falling within either a CDA or an SDA. The examination reporters do not propose to modify the proposed SESplan spatial strategy policy 1A which identifies 13 SDAs. It is clear from the examination reporters' recommendations (Annex paragraph 8) that where additional housing land is required, sites should first be sought within the 13 SDAs to assist in implementing SESplan's locational strategy. SESplan states that SDA locations maximise the potential for development and meet sustainability and environmental objectives.

14. In the absence of spatial policy support, it seems to me that the appellant must rely on the provisions of SESplan policy 7, as recommended to be modified by the examination reporters. The reporters conclude that local planning authorities may consider it appropriate to support new housing development on greenfield land outwith the 13 identified SDAs, either when allocating land in LDPs, or in granting planning permission to maintain a 5 years' effective housing land supply. The reporters recommend that 3 criteria should be satisfied to trigger policy 7 support. I am content that criterion (c) relating to infrastructure could be satisfied.

15. Therefore, given my conclusions in paragraph 11 above, the crux of the matter is whether the site could be effective and produce early output, and whether the development meets policy 7 criteria (a) and (b). This, in turn, depends on whether the development would be in keeping with the character of the settlement and local area and would not undermine green belt objectives. I address these matters in the following paragraphs.

### **Site effectiveness and housing output**

16. The site is owned by the appellants, Taylor Wimpey, a national house building company. The site is not burdened by any agricultural tenancies or lets that would prevent early site entry and development. The appellants have not carried out any detailed site investigations but there is no local evidence that would suggest that ground or soil conditions would prove problematic. The usual utility and other infrastructure connections are available close to the site. The site can be accessed directly from Muir Wood Road. I consider traffic capacity issues on the adjoining local road network in paragraphs 32 to 35 below. Taylor Wimpey would not require deficit funding to carry out the development.

17. I am satisfied that the presence of pylons and overhead electricity transmission cables nearby would not have a fundamental impact on the ability of the site to be developed or on its potential housing capacity. The site layout and landscaping arrangements, including separation distances, would need to comply with appropriate radiation protection and safety requirements. These matters could be covered by conditions if planning permission were to be granted.

18. The appellants' drainage consultants have identified 3 possible routes for off-site discharge of surface water. The appellants have an agreement in principle with Baberton Golf Course to allow one option to be implemented which would involve an existing pipe/culvert through the course being upgraded and used for off-site discharge. Another option would involve laying surface water pipes in adjoining public highways for part of the off-site route. I am satisfied from evidence at the hearing and the site inspection that there is a potential technical solution to the issue of off-site surface water discharge. The council is also content that the issue could be covered by a condition if planning permission were to be granted.

19. Nevertheless, I consider that there is still some doubt as to the timetable for implementing any one of the 3 off-site options. Further survey, technical and feasibility assessments would be required to establish the flow capacity and condition of the existing pipe or culvert networks along these routes. Design and specification work and contract procurement would also be required once a preferred route was selected. Appropriate approvals from SEPA and the council would be required before work could commence on site. It may be a requirement for the appellant to seek Scottish Water's agreement to adopt any culverted watercourses to be used for off-site discharge. Agreements with all relevant landowners would also be required for alterations to pipes or culverts or for increases to water flows through their land. It is possible that this could involve, as yet, unidentified riparian owners.

20. During discussion at the hearing, the appellant offered an amendment to the timing of house completions in recognition of these issues. 30 houses would be completed in each of the 3 years, 2015, 2016 and 2017. However, I consider that this amendment may not go far enough. All the issues set out in paragraph 19 offer the prospect of delay particularly those matters involving regulatory approvals, adoption of pipe infrastructure and agreements with third parties. On this basis, there must be some uncertainty around the site's ability to deliver 30 house completions as early as 2015.

21. The appellants believe that there is local market demand for the type of good quality housing proposed for the appeal site. The pace of development will reflect market demand and site sales. I am a little cautious about the projections from Rettie that suggests that, on average, 2.5 house sales per month are achievable and could be maintained throughout the life of the development. I accept that there is a range of developer and government incentives to stimulate demand even in a relatively depressed housing market. However, I find the house sales projections are at the high end of comparable sites elsewhere in Edinburgh and surrounding area. In uncertain market conditions, I believe that it would be more prudent to set slightly lower sales targets, which, in turn, would extend the site outputs over a longer period.

22. Overall, I consider that the proposal meets the tests of effectiveness set out in Pan 2/2010: Affordable Housing and Housing Land Audits other than in relation to current planning status as the site does not have planning permission and is not allocated for development in the development plan. I am content that development could commence on the appeal site sometime during the next 5 years and so the site could become an effective addition to the land supply. However, I am less sure about the likely development timetable and timing of housing completions in light of my concerns about the timetable for identifying and agreeing a surface water drainage solution and the programming of house completions and sales. I consider that it would be more prudent for the appellants' site start and site completion dates to be pushed back. This is an important consideration and it casts some doubt on the site's ability to make an early contribution towards meeting the housing land shortfall in Edinburgh.

### **Impact on the green belt and local landscape**

23. The site lies within the greenbelt as shown on the approved Edinburgh and the Lothians Structure Plan (2015) and the adopted Rural West Edinburgh Local Plan. Both plans contain a general presumption against residential development within the greenbelt. The proposed ELDP retains the site within the green belt.

24. The appeal site, and the adjoining farmland owned by the appellants, separate Currie and Juniper Green with only a narrow ribbon of development along Lanark Road West forming a physical connection between the two communities.

25. The council's Edinburgh Greenbelt Study (2008) describes the site as part of Baberton Farmland landscape character area (LCA 31) where there is gently rolling open farmland with predominantly arable fields. I accept the study's conclusions that the area does not have strong scenic qualities although it forms part of an attractive semi-rural



outlook for surrounding houses. The existing greenbelt boundaries comprise an open fence along Muir Wood Road to the west, garden boundaries to the east and a tall belt of mixed woodland to the north along the edge of Baberton Golf Course. Despite the lack of strong boundaries to the west and east, I find that the appeal site and the adjoining agricultural land, including Baberton Golf Course, form part of a well defined greenbelt wedge pushing into the urban area from the western approaches to the city.

26. The appellants submitted a representation to the Main Issues Report (MIR) promoting the whole field in their ownership for residential development. They proposed that the new green belt boundary should run along the northern site edge beside Baberton Golf Course. I recognise that the tree lined edge of the golf course is a strong visual and land-use boundary. However, I am bound to consider only the proposal lodged in this appeal which seeks to establish a different greenbelt edge from that advanced in the MIR submission.

27. I find that the site and the immediate greenbelt area fit well with the stated purposes of green belts set out in SPP (paragraph 159). The area is visually well contained and it creates a sense of separation that helps establish the setting and suburban character of this part of Currie and Juniper Green. The appellants have not advanced any substantive evidence to support the argument that upholding the appeal and promoting coalescence would create a more sustainable settlement pattern. In any event, structure plan and emerging SESplan and ELDP spatial policies do not promote this strategy in this location.

28. I have particular concerns about the proposal's eastern boundary. I believe that it would not establish a logical new green belt edge. The proposed edge would not follow any landscape or landform feature but, instead, would be defined by a 'dog-leg' line of pylons to be supplemented by a narrow structure landscaping strip. The shape and form of the resulting housing development would look awkward. It would appear as an ad hoc suburban extension into a large open field and not part of a well-planned community extension with strong boundaries. This approach runs counter to the advice contained in SPP (paragraph 162) which states that greenbelt boundaries should be clearly identifiable on the ground, using strong visual or physical features such as rivers, tree belts, railways or main roads.

29. The remaining irregularly shaped field would have a much reduced role in separating, and providing a setting for, the two communities. Its open, pleasant landscape character would be greatly diminished. In addition, I cannot identify any open space or countryside access benefits which would arise as a result of the development and meet greenbelt objectives. A network of informal paths already exists around the site and these would remain.

30. I am satisfied that the proposal would not adversely affect wider views from more distant high points to the south. But, I find that the development would result in the piecemeal erosion of the green belt wedge in this part of west Edinburgh. The development would promote the coalescence of two communities and it would not be in keeping with the character of the local area. It would fail to establish new robust green belt and community boundaries. The smaller field that would remain would serve a very limited greenbelt

purpose. On this basis, I consider that the proposal is not consistent with structure plan policy ENV 2: Green Belt which seeks to maintain the city's landscape setting and retain its identity by clearly establishing physical boundaries and preventing coalescence. The proposal fails to meet policy 7 criteria (a) and (b) in the emerging SESplan, as recommended by the examination reporters. The development would also undermine the essential objectives of green belts as set out in SPP.

### **Access and road safety**

31. The proposed site access would be taken from Muir Wood Road which is within a 20mph zone. The road has housing development along its western side and I find that its existing width and alignment are satisfactory. I do not consider that the formation of a new access to serve up to 90 houses on the eastern side of the road would present any road safety problems for either vehicles or pedestrians. Forward visibility on Muir Wood Road is good. Vehicle speeds are relatively low and the road already has a number of traffic calming speed humps. I am satisfied that the junction geometry and visibility at the proposed access would be capable of complying with standard specifications for a residential location of this type.

32. The Community Council and local residents have expressed concern about the capacity of the junction at Muir Wood Road and Lanark Road West to safely accommodate the additional traffic that would be generated by the development. However, in the absence of any other technical assessment, I accept the appellants' transport statement figures that indicate the roads currently operate well below their theoretical capacity at peak times. I consider that the junction would operate satisfactorily with the additional traffic generated by the proposal. I find no evidence that there would be an adverse impact on any other roads or junctions in the vicinity.

33. The council's Head of Roads has offered no objections to the proposal but notes that the junction is under scrutiny as a result of Lanark Road West movements and increased vehicle movements due to developments in the area. I find no evidence to justify specific improvement or traffic management measures at the junction as consequence of the proposals. It would rest with the council to consider implementing appropriate measures at this location in the future if planning permission were to be granted and traffic circumstances were to change.

34. The council and appellants have agreed a developer contribution towards the council's Safer Routes to School programme and this would provide warning signage on various routes close to Nether Currie primary school. I am satisfied that this would address any local concerns about pedestrian safety. These obligations would be included in a Section 75 Agreement if planning permission were to be granted.

### **Other material considerations**

35. I am satisfied that there are no capacity issues in local primary or secondary schools that would limit development on the appeal site. The council and the appellants agree that provision of affordable housing could be covered by obligations to be included in a

Section 75 Agreement if planning permission were to be granted. There are no statutory environmental designations covering the site and there is no evidence of protected species inhabiting the site.

## Conclusions

36. There is an ongoing shortfall in the effective housing land supply in Edinburgh. The site would be able to provide a contribution towards the short term need for additional housing sites. The site is capable of being effective within 5 years. The delay in identifying housing land requirements for LDPs in the SESplan area and the likely timetable for preparing supplementary guidance and bringing forward the new ELDP are further pressures for releasing land now to remedy the ongoing land supply deficit.

37. On the other hand, the site sits in a sensitive location in the greenbelt, separating two communities, and sits outside an identified CDA or SDA where structure plan and emerging SESplan policies direct new housing developments. The size and timing of the site's potential housing output in the period up to 2017 is uncertain. The site fails to meet the requirements of policy 7 criteria (a) and (b) in the emerging SESplan which permits housing development outside SDAs to help maintain a 5 years' effective land supply, but only if local character and greenbelt considerations are satisfied. The proposed development would not create a new sustainable greenbelt boundary and it would encourage community coalescence.

38. I have taken account of all other information submitted in connection with the appeal. On balance, I do not consider that the site's potential to make a relatively modest contribution towards the short term housing land supply deficit in Edinburgh is sufficient to outweigh the significant structure plan and emerging SESplan and ELDP policy presumption against housing development in this location in the greenbelt. There is no other mitigating strategic or local policy justification for the development. Accordingly, I refuse planning permission in principle.

*Iain Urquhart*

Reporter

**Appendix 9**  
**Land south of Cockburn Crescent, Balerno,**  
**Edinburgh (25th March 2014) (Ref: (PPA-230-2112))**

## Appeal Decision Notice

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Decision by Michael J P Cunliffe, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2112
- Site address: Land south of Cockburn Crescent, Balerno
- Appeal by Barratt David Wilson Homes against the decision by the City of Edinburgh Council
- Application for planning permission in principle 13/02787/PPP dated 19 July 2013 refused by notice dated 21 November 2013
- The development proposed: Residential development with associated landscaping, footpaths and roads (in principle)
- Date of site visit by Reporter: 6 March 2014

Date of appeal decision: 25 March 2014

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### Decision

I dismiss the appeal and refuse planning permission in principle.

NOTE: For reasons that are not clear to me, the site address has been stated by the council and in correspondence as "Land 300 metres west of 200 Mansfield Road". The original planning application related to "Land south of Cockburn Crescent", which more accurately describes the location.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan, the main issues in this appeal are housing land supply, the impact of the proposal on the green belt and local landscape, and the effects on the character of Balerno and on road traffic.

#### *The site and the proposed development*

2. The site comprises 12.5 hectares of arable farmland on the southern edge of Balerno. It is bounded to the north by Cockburn Crescent, which has modern houses along its northern side facing southwards. To the east lies Mansfield Road, which has woodland along its eastern side with Harmony School beyond. There are two detached houses on Mansfield Road near the south-east corner of the site, and a bus terminus at the north-east



corner. Shelter belts of mature deciduous trees mark the southern and western edges of the site, and run down the middle at right angles to Cockburn Crescent, dividing the site into two fields. The land rises from 202 metres above Ordnance Datum in the south-east corner to 222 metres in the north-west. From Cockburn Crescent there is a view across the site to the Pentland Hills, though this is compromised by a line of electricity pylons running east-west between the site and the hills.

3. The proposal is for a development of about 280 residential units, mostly two-storey houses. One quarter of the units would be affordable housing. Indicative layouts show road access from two points on Cockburn Crescent, extensive landscaping, and SUDS ponds at the north-west and north-east corners.

### *The development plan*

4. The development plan comprises the SESplan strategic development plan approved by Scottish Ministers in June 2013 and the Rural West Edinburgh Local Plan adopted in June 2006. SESplan Policy 5 (Housing Land) identifies a requirement for sufficient housing land to be allocated so as to enable 107,545 houses to be built across the SESplan area in the period 2009 to 2029, of which 74,835 houses are required for the period 2009 to 2019. Supplementary guidance will be prepared to provide detailed further information for local development plans as to how much of that requirement should be met in each of the six council areas. The supplementary guidance will be based on an analysis of opportunities and of infrastructure and environmental capacities and constraints, and will be undertaken in consultation with the six constituent planning authorities.

5. SESplan Policy 6 (Housing Land Flexibility) requires each planning authority in the SESplan area to maintain a five years' effective housing land supply at all times. The scale of this supply shall derive from the housing requirements for each area identified through the supplementary guidance provided for by Policy 5. For this purpose planning authorities may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the local development plan.

6. SESplan 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 (SDAs) 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.

7. SESplan Policy 12 (Green Belts) requires local development plans to define and maintain green belts around Edinburgh and to the south west of Dunfermline to:

- a. Maintain the identity and character of Edinburgh and Dunfermline and their neighbouring towns, and prevent coalescence, unless otherwise justified by the local development plan settlement strategy;
- b. Direct planned growth to the most appropriate locations and support regeneration;
- c. Maintain the landscape setting of these settlements; and
- d. Provide opportunities for access to open space and the countryside.

Local development plans will define green belt boundaries to conform to these purposes, ensuring that the strategic growth requirements of the Strategic Development Plan can be accommodated. Local development plans should define the types of development appropriate within green belts.

8. The local plan currently in force was prepared within the strategy, now superseded, of the former structure plan. The council in March 2013 published a Proposed Local Development Plan, which is in the course of being revised to take account of changes to the final approved version of SESplan. This is expected to be published in May 2014.

9. In the meantime, the key policy in the existing local plan is Policy E5 - Development in Green Belt and Countryside Areas. This states that to protect the landscape quality, rural character and amenity of the green belt, development there will not be permitted except where necessary for the purposes of agriculture, including farm diversification, horticulture, forestry, countryside recreation or other uses appropriate to the rural character of the area, or where a countryside location is essential; or where acceptable under the policies covering uses of strategic economic importance; or where proposals are for minor extensions and alterations to existing buildings. The proposals map shows the appeal site as being within the green belt.

#### *Housing land supply*

10. The amount of housing land needed to meet Edinburgh's share of the requirement for the SESplan area will depend on the Supplementary Guidance (SG) which has not yet been finalised. Based on the draft SG (September 2013), land for 22,300 houses is required in Edinburgh for the period 2009-2019, with a further 7,210 for 2019-2024, giving a total of 29,510. The Housing Land Audit 2013, which has been agreed by Homes for Scotland, shows 5,642 completions in 2009-2013, and an annual average requirement of 2,170 over the period 2013-2024. This produces a 5 year requirement of 10,849. The effective land supply in 2013 was 7,722, representing 71.2 % of the requirement. If the target is to be met, land for a further 3,127 houses will need to become effective within the 5 year period.

11. The appellant presents a different calculation. The requirement for 2013-19 is stated as 16,658, implying an annual average of 2,776 and a 5 year requirement of 13,880. Set against this the 2013 effective land supply of 7,722 represents 55.6% of the requirement. By focusing on the shorter term (2013-19) the appellant produces an even greater shortfall than the council's calculation. However, it is not necessary for me to make a choice as to which figures should be preferred, as in both cases the available supply falls well short of the five year requirement and indicates an urgent need to allocate additional sites.

12. In the normal operation of a plan-led system, it is for the local development plan to allocate sufficient housing land to ensure that a generous supply is available to meet the five year requirement. However, the timing and outcome of the SESplan process have delayed the completion of the Edinburgh Local Development Plan and will require changes to the March 2013 version to take account of the increased housing land requirement. The magnitude of this has still to be confirmed by the finalised SG. However, it seems clear that additional greenfield land within the city will need to be released, since the capacity of brownfield sites and SDAs will be insufficient.

13. The draft SG recognises this need, and the accompanying Technical Note identifies two assessment areas that while not identified as SDAs, have the potential to accommodate development on a strategic scale. These are North West Edinburgh (Area 9) and South West Edinburgh (Area 11). An assessment of potential opportunities and constraints undertaken to inform the SG suggests that these areas could accommodate around 2,500 units if housing land is required outwith SDAs. The Technical Note does not say how the total figure is distributed between these two areas, or where within them the additional sites might be found.

14. Area 11, South West Edinburgh, lies between the Edinburgh - Glasgow railway line to the north and the Pentland Hills to the south. It therefore covers a large land area. The main settlements are Ratho, Juniper Green, Currie and Balerno. The overall assessment in the Technical Note is that this area has potential to accommodate development on a strategic scale. It has good regional accessibility to employment (5<sup>th</sup> overall in the SESplan region) but this is the lowest score of the areas around Edinburgh. Accessibility to retail and hospital facilities is relatively poor in comparison to other areas around Edinburgh. The area includes significant coverage of landscape designations and prime agricultural land. Development could also potentially have a detrimental impact on the green belt.

15. The appellant makes much of this identification in the Technical Note as providing justification for the proposed development. However, I do not regard it as being in any sense an allocation. Its mention in the Technical Note appears simply to demonstrate that it would be feasible, if required, to find additional sites for 2,500 houses in North West and South West Edinburgh. No attempt is made to allocate the figure between or within those two areas. The document sets out a number of constraints that apply to South West Edinburgh, including accessibility and landscape. It appears to me that these constraints apply particularly strongly to Balerno, which is (along with Ratho) the community furthest from central Edinburgh, is the furthest from the City Bypass, and is the closest to the Pentland Hills.



16. Even if it were accepted that some new housing development should take place at Balerno, it is by no means obvious that the appeal site should be preferred. The council has submitted a map showing sites that are the subject of representations in favour of housing development in relation to the 2013 Proposed Local Development Plan. In addition to the appellant's site, there are proposals by Rosebery Estates, CALA, Miller Homes and Gladman. Together, these would nearly double the size of the settlement and would raise major infrastructure issues. I consider it unlikely that all these proposals could go ahead, and it seems to me that choices will have to be made. I do not have sufficient information about the competing merits of these sites to make such choices, which in any case are more appropriately a matter for the local development plan.

17. SESplan Policy 7 allows for greenfield housing sites to be granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of three criteria. The first is that the development will be in keeping with the character of the settlement and local area. The character of Balerno is that of a small historic village which has been greatly expanded by modern housing, particularly to the south of the village core. The addition of a further 280 houses on the southern edge could be seen as simply continuing that pattern of development, and thus in keeping with the existing character. It could also be seen as a further erosion of village character, where the original settlement becomes increasingly isolated from its rural hinterland and marginalised within a large modern housing estate.

18. There is some validity in both these arguments, and I do not consider that the determination of a specific planning appeal is the correct forum for deciding which should prevail. The criterion in Policy 7 also requires the development to be in keeping with the character of the local area, which includes the countryside south of Balerno. I will consider that along with the proposal's consistency with green belt objectives in the next section. I acknowledge that the third criterion is satisfied in that the additional local infrastructure required as a result of the development would be funded by the developer, although I have a concern about traffic congestion on the A70 to which I will return.

#### *The green belt and local landscape*

19. The site lies within the green belt as defined in the adopted local plan. Policy E5 therefore applies. The proposed development is not of a kind permitted by the exceptions set out in the policy, so the proposal does not conform with the policy. The 2013 Proposed Local Development Plan continues the green belt designation, and its Policy Env 10 again presumes against development of the kind proposed. Under SESplan Policy 7 one of the qualifying criteria is that the development will not undermine green belt objectives. These are set out in Policy 12.

20. The first objective is to maintain the identity and character of Edinburgh and Dunfermline and their neighbouring towns, and prevent coalescence, unless otherwise justified by the local development plan settlement strategy. I do not consider that the appeal proposal would undermine the identity and character of Edinburgh, or that it would be a step towards coalescence of settlements. The development would therefore meet the first objective.

21. The second objective is to direct planned growth to the most appropriate locations and support regeneration. Since the appeal proposal does not conform to the existing development plan or the 2013 Proposed Local Development Plan, it does not constitute planned growth. Even if the revised plan allocates more greenfield housing land, as appears likely, it is (for the reasons discussed above) not obvious that Balerno is one of the most appropriate locations. Also, while I acknowledge that there is insufficient brownfield land to meet housing needs, a release of additional greenfield sites ahead of the Local Development Plan would be likely to ease the pressure for redevelopment of brownfield sites, and so would not support regeneration. The appeal proposal does not therefore meet the second objective.

22. The third objective is to maintain the landscape setting of settlements. The site lies within an identified candidate Special Landscape Area which provides an open foreground setting to the Pentland Hills. The proposed development would significantly change the rural setting of Balerno by moving the boundary closer to the hills and reducing the agricultural buffer between the built-up area and the wild character of the hills themselves. The hills are an important recreational asset and the core path along Mansfield Road is one of the main access routes for pedestrians and cyclists. The view south from this path would be significantly affected by substituting houses, however well landscaped, in place of open fields.

23. The appellant argues that Cockburn Crescent gives an inappropriately hard edge to Balerno, as viewed from the south, and that the proposal would soften the appearance of the settlement boundary. While there is some merit to that argument, it has to be balanced against the loss of open ground represented by shifting the boundary southward. The appellant also argues that the visual effect on residents of Cockburn Crescent would be neutral, by providing a sense of enclosure that is currently lacking. It is clear, however, that the residents do not see it that way and prefer the present open outlook. On balance, I agree with them that there would be an adverse visual effect. Overall, I consider that the landscape setting of Balerno would suffer a negative effect from the development, and that the third green belt objective would not be satisfied.

24. The fourth objective is to provide opportunities for access to open space and the countryside. The site at present constitutes open space, but since it is used for crop growing there is limited accessibility. A path runs up the middle between the two fields, and along the southern boundary. Depending on detailed design, it is possible that the proposal could provide new access to open space within and beyond the site, but overall I would rate the effect as neutral.

25. I consider that the overall effects of the proposed development would not be consistent with the green belt objectives as a whole. While the boundaries of the green belt are not immutable, and some release of land for housing development within the Edinburgh green belt seems unavoidable, I do not consider that a sufficient case has been made out for the development of the appeal site.

### *Road traffic*

26. The transport assessment submitted by the appellant shows that the additional traffic generated by the proposed development could be accommodated on the local road network. Improvements funded by the developer are proposed for the traffic lights at the junction between Bridge Road and the A70, and for yellow lining to control parking on part of Riccarton Mains Road. The main route from Balerno to Edinburgh is along the A70, which is a relatively narrow single-carriageway road passing through the communities of Currie and Juniper Green, where the effective width is further reduced by roadside parking. The road is subject to a 30 mph speed limit, but actual speeds particularly during peak periods tend to be well below the limit and several representations draw attention to the frequent tendency for traffic to grind to a halt. This was borne out on the way to my site visit, when a major holdup occurred between Juniper Green and Currie in the early afternoon.

27. The council has drawn attention to peak period overloading of the Gillespie traffic lights to the east of Juniper Green, where traffic bound to and from the City Bypass leaves or joins the A70. There is no ready solution to this problem. The bus service from Balerno (route 44) has to use the A70 and there are no bus lanes west of the Gillespie crossroads. Scheduled bus times from Cockburn Crescent are 38 minutes to Haymarket in the morning peak, and 56 minutes to Leopold Place at the east end of the city centre. Representations claim car journey times of up to 1 hour 15 minutes from Balerno to Haymarket. Journeys to and from Balerno are comparatively slow by Edinburgh standards. The main alternative route is along Riccarton Mains Road to join the A71 at Hermiston, but this too is subject to peak congestion.

28. The proposed development is estimated to add 9 per cent to morning peak eastbound traffic flows on the A70 east of the Riccarton Mains Road junction, though the proportionate increase would be less at points further east as more traffic joins the road from Currie and Juniper Green. Even so, I am concerned that this and the traffic generated by any other significant developments in Balerno would add to an already congested road and lead to even longer journey times for both car users and bus passengers.

### *Other matters*

29. Representations have claimed that the site is prime agricultural land. While it is productive arable land, it is classed as 4.2 and is not therefore considered of prime quality, so any presumption against its loss would not apply. Part of the site is prone to occasional flooding from a local burn, though measures to deal with this could be incorporated into the detailed design of site drainage and landscaping. The local medical practice has indicated that it is at or approaching capacity, and that any addition to Balerno's population would require additional staff and accommodation. This would be a matter for the health board to address.

30. There is some dispute between the council and the appellant about the speed with which houses could be delivered if planning permission in principle were granted. On the basis of the figures submitted, I consider that completion of 125 houses within 5 years

would be credible. This would make a useful contribution to addressing the shortfall, but needs to be seen in the context of the SESplan area as a whole. Even within Edinburgh, it would represent only 4 per cent of the 3,127 house shortfall indicated above. There may be sites within SDAs that could be brought forward as quickly, and on a larger scale.

31. While the Scottish Planning Policy (SPP) states that a supply of effective land for at least 5 years should be maintained at all times to ensure a continuing generous supply of land for house building (paragraph 75), it also states that investment in infrastructure may be required as a consequence of existing under provision and/or planned growth and that these issues should be addressed in development plans and not left to be resolved through the development management process (paragraph 16). It is clear that the planning authorities in the SESplan area are not currently fulfilling the first requirement, but it appears to me that the City of Edinburgh Council is acting to address the situation by bringing forward a revised Local Development Plan. The proposed plan is expected to be published in May 2014, and will be a material consideration in determining applications for additional residential development. I note that the appellant is in the process of submitting a new application for the eastern part of the appeal site.

### *Conclusion*

32. I have found that the appeal proposal is not in accordance with Policy E5 of the local plan, and that it does not satisfy the criteria in Policy 7 of SESplan. I do not consider that the urgency of addressing the housing shortfall is sufficient to justify approval in advance of the new Proposed Local Development Plan coming forward. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission in principle. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Michael J P Cunliffe*

Reporter

# West Lothian Local Development Plan MIR Representations regarding the MIR Appendices and Site EOI 0127

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## 1. Introduction

This technical note sets out a representation submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report. Specifically, this technical note responds to the Main Issues Report (MIR) Appendices, the identification and phasing of 'preferred', 'alternative' or 'not preferred' housing sites therein, and the status of candidate housing site EOI 0127.

The contact details for Hallam (i.e. Organisation) and AMEC (i.e. Agent on behalf of Hallam) are given below:

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### **AMEC Environment & Infrastructure UK Ltd [Agent]**

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## 2. 'Preferred' Sites Proposed Phasing

Appendix 3 to the Main Issues Report (MIR) lists a schedule of 'preferred' housing sites and identifies expected completions from these over five –phases: 2014-2019, 2019-2024, 2024-2029, 2029-2034, and 2034-2036. Taken together with column 2 of Appendix 4, which identifies "Potential LDP Allocations 2014 – 2024", it suggests that West Lothian Council propose to allocate a number of housing sites within their Local Development Plan (LDP) that are not expected to deliver any completions until 2020 or later. Under section 16 (1) (ii) of the Planning etc. (Scotland) Act 2006 West Lothian Council are required to prepare a new LDP at least every 5 years. In addition, the SPP at paragraph 33 confirms that a development plan is considered to be out of date where it is more than 5 years old. Thus it is clear that an LDP plan period should be 5 years long. Assuming that the first West Lothian LDP is adopted in late 2015, the first plan period should run from 2015-2020, after which a new LDP would be adopted and a new plan period (2021-2026) would commence.

Given that the first LDP plan period would only extend to 2020, any proposed allocations which are phased for release during any phase after 2020 would clearly not be within the 2015-2020 LDP plan period. The SPP at paragraph 119 makes clear that LDPs should intend to meet the housing requirement up to 10 years from the date of expected adoption, but that "*in allocating sites, planning authorities should be confident that land can be brought forward for development **within the plan period** and that the range of sites allocated will enable the housing supply target to be met*" (our emphasis). Therefore, it should be expected that all allocated sites are, or can be effective, within the first 5 years of an LDP plan period, in order to contribute to meeting the 10 year housing land requirement. However, by identifying 'preferred' sites which are phased for release post 2020 within the LDP, West Lothian's proposed phasing of housing land allocations as set out in MIR Appendix 3 is clearly contrary this national policy requirement.

## 3. Re-Allocation of Constrained Sites

By definition sites which are constrained or otherwise non-effective cannot contribute to the effective land supply and therefore cannot contribute to achieving the 2019 and 2024 SESplan effective housing land supply requirements. However, a review of the Settlement Statements detailed in Chapter 5 of the MIR and Appendix 3 to the MIR suggests that West Lothian Council propose to re-allocate a number of sites which are constrained (as identified in the Housing Land Audit 2013) but are currently allocated within the West Lothian Local Plan (2009), despite a lack of evidence that these constrained sites are likely to become effective within the LDP period.

Unless many of these constrained and non-effective sites from the established land supply ("the base supply") are replaced with new, demonstrably effective sites, and sufficient additional sites are also allocated to comply with the modified Supplementary Guidance additional allowance requirement, the emerging West Lothian LDP will clearly fail to meet the critical housing land supply and national planning policy requirements. To avoid this, it is recommended that West Lothian Council should undertake a comprehensive and transparent review of the effectiveness of all sites which are proposed to be carried over as housing allocations from the West Lothian

Local Plan (2009). Within this review the Council should consider greater de-allocation of constrained/non-effective sites than is proposed within the MIR, and these de-allocated sites should be replaced on a unit for unit basis with the allocation of new effective sites.

## 4. Adequacy of ‘Preferred’ and ‘Alternative’ Housing Sites

The MIR explains that West Lothian Council’s preferred housing land strategy is to retain support for significant delivery within the previously defined Community Development Areas (CDAs). To achieve the housing land supply requirements set out within the SESplan SDP Housing Land Supplementary Guidance document West Lothian Council also propose to allocate “*a small number of new housing sites that will complement the existing development strategy*” within the LDP. Therefore, West Lothian Council propose to ‘top up’ their established land supply with a small number of new sites in order to achieve the SESplan SDP and modified Supplementary Guidance housing land requirements.

The Settlement Statement section of the MIR (chapter 5) briefly reviews all currently allocated and candidate housing sites and it identifies West Lothian Council's preferred housing sites for inclusion in the LDP. A significant majority of these preferred sites are existing allocations which would be carried over from the adopted Local Plan, including a number of large sites which are acknowledged by West Lothian Council in their 2012 and 2013 Housing Land Audits to be constrained. 'Carried over' sites cannot contribute to the additional 2,130 units required under the SESplan Supplementary Guidance, and by definition all sites which are constrained cannot contribute to West Lothian's current effective land supply. In addition, proposed de-allocations represent a net reduction in the effective land supply.

The Settlement Statements detailed in section 5 of the MIR indicates that new housing sites which are afforded 'preferred' or 'alternative' status within the MIR have a total capacity of 3,839 units. At first glance this would appear to be in excess of the SESplan ‘additional allowance’ requirement (2,130 units by 2019) and in excess of the current shortfall in West Lothian’s total effective land supply (3,254 units, as calculated above). However, an analysis of MIR Appendix 3 indicates that approximately 2,029 units within new sites put forward through the ‘Call for sites’ consultation that have been afforded ‘preferred’ status in the MIR are not proposed to be released until after 2019. In addition the Settlement Statements detailed within the MIR indicate that existing housing allocations within the West Lothian Local Plan (2009) with capacity for approximately 707 units are proposed to be de-allocated through the West Lothian LDP.

Therefore, based on the ‘preferred’ and ‘alternative’ housing sites only 1,103 net additional units would contribute to the effective housing land supply up to 2019 through the West Lothian LDP (3,839 - 2,029 - 707=1,103). This is clearly insufficient to achieve the SESplan ‘additional allowance’ requirement for West Lothian of 2,130 net additional units. In addition, compared with the 3,254 units required to meet West Lothian's effective land supply shortfall (as calculated in the Housing Land Report which supports this representation), there would continue to be a shortfall in the total effective land supply of 1,444 units. This demonstrates that allocating only the sites within the MIR which are afforded ‘preferred’ or ‘alternative’ status

would not eliminate the current effective housing land supply shortfall by 2019. Therefore, there is a clear need to allocate additional effective housing sites within the LDP.

## 5. Consideration of candidate housing site EOI 0127

Hallam responded to West Lothian Council's 'Call for Sites' consultation in May 2011, putting forward their land interest west of Bathgate as a potential housing allocation. Hallam's landholding, located immediately west and east of the A801, was subsequently identified as site EOI 0127 ('the site') by West Lothian Council for the purposes of preparing the emerging West Lothian Local Development Plan (LDP).

The initial submission was accompanied by an indicative masterplan and a supporting statement prepared by Turley Associates, which demonstrated that the site:

- is an appropriate location where development can occur; and
- has the environmental, landscape and infrastructure capacity to accommodate viable and effective development.

Within the LDP MIR, site EOI 0127 is listed as a 'not preferred' site. However, it is submitted that the decision not to afford 'preferred' status to the site is flawed as it has been based on inaccurate site assessments. The specific issue of these site assessments is considered in detail within a separate representation regarding appendices 2A and 2B of the SEA report which supports the MIR. In summary:

- The site complies with the effectiveness criteria outlined in PAN 2/10, is free from significant development constraints, and accords with relevant sustainable development criteria. Therefore it can contribute to West Lothian's effective land supply in the short term;
- A masterplanned approach to development on the site would incorporate a detailed landscape strategy, a placemaking strategy, ecological protection measures and a flood risk assessment. This would enable any concerns relating to potential coalescence, habitat conservation, landscape impact, impacts on cultural heritage assets, and localised flood risk to be fully addressed. Hallam intent to submit an indicative detailed masterplan for the site at the LDP Proposed Plan stage and thereafter refine this in consultation with the Council and other stakeholders; and,
- In recognition of the existing education infrastructure capacity constraints in Bathgate and Armadale, the development of the site would incorporate a new non-denominational primary school. This new school would accommodate pupils generated from proposed residential development within EOI 012, but could also help to alleviate growing pressure on Windyknowe Primray School. In addition a new primary school on the site could potentially address current education infrastructure capacity issues in Armadale related to delays and uncertainty regarding the development of the proposed South Armadale primary school.



In addition to inaccuracies within the assessments undertaken for site EOI 0127, it is considered that the decision not to afford the site 'preferred' status fails to recognise the significant contribution which it could make towards achieving the 2019 and 2024 SESplan housing land requirements for West Lothian and ensuring that a five year effective land supply can be maintained at all times. This is of critical importance given that there are currently significant and quantifiable shortfalls in both West Lothian's five year and total effective land supplies.

For these reasons, it is respectfully submitted that the site assessments used to assess site EOI 0127 should be revised, and in parallel this site should be allocated for residential development in the emerging West Lothian LDP and included within West Lothian's effective land supply. This would be in accordance with SESplan Policy 7, which specifically allows greenfield housing development proposals to be allocated in LDPs or granted planning permission where there is evidence of a shortfall in a planning authority's five year effective housing land supply, subject to compliance with three sustainability criteria.

An assessment of the site against the SESplan Policy 7 sustainability criteria is detailed in Table 5.1.



**Table 5.1 Assessment of EOI 0127 against SESplan Policy 7 Sustainability Criteria**

Criteria	Assessment of Proposed Allocation	Conclusion
The development will be in keeping with the character of the settlement and the local area.	A masterplanned approach to development would ensure that the two areas of land which comprise site EOI 0127 reflects the characters of western Bathgate and Armadale respectively. The masterplan for each area would be underpinned by the sensitive consideration of all relevant landscape and townscape issues.	✓
The development is not in the Green Belt.	The site is not within a Green Belt. The site is within the Boghall House Special Area of Landscape Control, however the Local Landscape Designation Review undertaken to support the emerging West Lothian LDP recommends that this particular local landscape designation should not be carried forward to the LDP.	✓
Any additional infrastructure required as a result of the development is either committed or to be funded by the developer	<p>It is acknowledged that there are currently some education infrastructure constraints within Armadale and Bathgate; however, the Reporter's decision in the recent Land at Falside appeal case concluded that educational constraints relating to secondary school and denominational primary school provision serving western areas of Bathgate were not insurmountable. In relation to non-denominational primary school provision in western areas of Bathgate, Hallam propose to include a new non-denominational primary school within site EOI 0127, to accommodate pupils generated from proposed residential development within EOI 0127. This could help to alleviate growing pressure on Windyknowe Primary School and could potentially also address current education infrastructure capacity issues in Armadale related to delays and uncertainty regarding the development of the proposed South Armadale primary school.</p> <p>The indicative masterplan submitted as part of Hallam's 'Call for Sites' consultation response identified multiple potential vehicular and non-vehicular access points onto the existing local road network. No transport infrastructure constraints are anticipated in relation to this site.</p>	✓

As demonstrated within Table 5.1 the proposed allocation of the site would fully comply with all of the sustainability criteria listed in SESplan Policy 7. Therefore it is considered that SESplan Policy 7 directly supports the allocation of this site within the West Lothian LDP.

## **5.1 Assessment of the Effectiveness of Site EOI 0127**

The Scottish Government now specifically requires local authorities to ensure that sites allocated in LDPs are effective and can contribute completions during the development plan period. The guidelines for carrying out this assessment of individual sites are set out within PAN 2/2010: Affordable Housing and Housing Land Audits. It is of concern that the MIR appendices do not include any assessments regarding the effectiveness of any of the 'preferred' housing sites, as could have been expected. Table 5.2 provides an assessment of site EOI 0127 against each of the site effectiveness criteria detailed within PAN 2/10.



**Table 5.2 Assessment of site EOI 0127 against PAN 2/10 Effective Housing Land Criteria**

Criteria	Assessment of Proposed Allocation	Complies
<b>Ownership</b>		
The site is in the ownership or control of a party which can be expected to develop or release it for development. Where a site is in the ownership of a local authority or other public body, it should be included only where it is part of a programme of land disposal.	The site is within the control of Hallam Land Management. It is immediately available for development.	✓
<b>Physical</b>		
The site, or relevant part of it, is free from constraints related to slope, aspect, flood risk, ground stability or vehicular access which would preclude its development. Where there is a solid commitment to removing constraints in time to allow development in the period under consideration, or the market is strong enough to fund remedial work required, the site should be included in the effective land supply.	A review of the SEPA flood map indicates that the majority of the site is free from any flood risk, although there are isolated areas with medium and high likelihood of surface water flooding due to watercourses which drain through the site and topography. Detailed assessments would be undertaken in terms of infrastructure design, environmental and landscape capacities, ecological protection, localised flood risk and ground conditions at the detailed planning application stage. As these technical assessments and any required mitigation measures could be addressed through a planning application it would be inappropriate not to allocate the site within the LDP on the basis that these assessments have not yet been undertaken.	✓
<b>Contamination</b>		
Previous use has not resulted in contamination of the site or, if it has, commitments have been made which would allow it to be developed to provide marketable housing.	The site has not been previously developed, therefore there is not expected to be any ground source contamination on site. An intrusive investigation would be undertaken to confirm any mitigation measures required as part of a detailed planning application. As these investigations and any mitigation measures required (none are expected to be needed) can be addressed through a planning application it would be inappropriate not to allocate the site within the LDP on the basis that detailed ground investigations have not yet been undertaken.	✓



Criteria	Assessment of Proposed Allocation	Complies
<b>Deficit Funding</b>		
Any public funding required to make residential development economically viable is committed by the public bodies concerned.	Hallam is promoting development of this site for housing. The site would not require any deficit funding to facilitate housing development. Hallam is committed to providing up to 25% affordable housing in accordance with national policy requirements contained within the SPP.	✓
<b>Marketability</b>		
The site, or a relevant part of it, can be developed in the period under consideration.	It is envisaged that the site would be developed on a phased basis over a 10 year period. This regular contribution to West Lothian's annual effective housing land supply would greatly assist the Council in maintaining a 5 year effective land supply at all times, as required by Scottish Planning Policy.	✓
<b>Infrastructure</b>		
The site is either free of infrastructure, or any required infrastructure can be provided realistically by the developer or another party to allow development.	<p>The infrastructure upgrades required to facilitate the development of the site would, as a matter of necessity, be implemented as an integral part of the developments themselves. As such, infrastructure issues are not considered to present impediment to the development of the site.</p> <p>In relation to non-denominational primary school provision in western areas of Bathgate, Hallam propose to include a new non-denominational primary school within site EOI 0127, to accommodate pupils generated from proposed residential development within EOI 0127. This could help to alleviate growing pressure on Windyknowe Primary School and could potentially also address current education infrastructure capacity issues in Armadale related to delays and uncertainty regarding the development of the proposed South Armadale primary school.</p>	✓



Criteria	Assessment of Proposed Allocation	Complies
<i>Land Use</i>		
<p>Housing is the sole preferred use of the land in planning terms, or if housing is one of a range of possible uses, other factors such as ownership and marketability point to housing being a realistic option.</p>	<p>There is an ongoing demand for a full range of market housing in the locality, as well as affordable housing needs. In particular, there is considerable interest from house builders to develop in Bathgate and Armadale.</p> <p>Whilst the specific mix of house types to be developed on the site would not be confirmed until a detailed planning application is submitted, Hallam intends to promote the development of a wide range of housing on the site to create a socially inclusive community. Hallam is committed to providing up to 25% affordable housing in accordance with national policy requirements contained within the SPP.</p>	<p>✓</p>

Table 5.2 demonstrates that within the period of the West Lothian LDP under consideration, the site would be available for the construction of housing and can be made free of any potential site constraints. On this basis the site is considered to be effective. Taken together with the existing significant shortfall in West Lothian's five year and total effective land supplies it is therefore it is submitted that site should be allocated within the emerging West Lothian LDP and included within West Lothian's effective housing land supply.

## **5.2 Assessment of Site EOI 0127 against Sustainable Development Criteria**

Table 5.3 sets out an assessment of the proposed allocation of site EOI 0127 for residential development against the 13 sustainable development principles listed within the SPP at paragraph 29.



**Table 5.3 Assessment of site EOI 0127 against Scottish Planning Policy Sustainable Development Criteria (SPP paragraph 29)**

Sustainable Development Principle	Assessment of Proposed Allocation	Complies
Giving due weight to net economic benefit;	It is envisaged that residential development on this site would be taken forward through a phased approach over a 10 year period, which would provide significant local economic and employment benefits. Once occupied the proposed residential development would channel additional footfall through western areas of Bathgate and eastern areas of Armadale, helping to sustain existing community services/facilities and support the development of additional services.	✓
Responding to economic issues, challenges and opportunities, as outlined in local economic strategies;	The proposed housing allocation directly responds to the need to allocate significant additional effective housing land in West Lothian to achieve the 2019 and 2024 SESplan Housing Land Requirements detailed within the modified SESplan Housing Land Supplementary Guidance. In addition the proposed housing would help to sustain existing community services/facilities and support the development of additional services.	✓
Supporting good design and the six qualities of successful places;	<p>Distinctive: A masterplanned approach would be undertaken to ensure the creation of high quality living environment which responds to the overall landscape and townscape settings. The masterplan would fully take account of site topography, skylines and adjacent street forms.</p> <p>Safe and Pleasant: The layout of the proposed development would include active frontages and would be designed to enable natural surveillance.</p> <p>Welcoming: The site would be served by multiple vehicular and non-vehicular access points, each of which would act as gateway points. The internal street layout would seek to maximise legibility and navigation.</p> <p>Adaptable: The large size of this site would enable it to accommodate a range of building densities, tenures and typologies.</p> <p>Resource Efficient: Access to the site would be through junctions onto existing road infrastructure, including from Sibbalds Brae.</p> <p>Easy to Move Around and Beyond: A masterplanned approach to development would create a place based design for the site, which would enable the needs of people to be considered before the movement of motor vehicles. Opportunities exist to upgrade links to nearby Core Paths and National Cycle Paths as part of any development.</p> <p>Detailed design matters would be considered though a planning application and are not relevant for the consideration of this proposed allocation.</p>	✓
Making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;	The site can be accessed from the existing local road network and can be connected to existing water, electricity and sewage networks. The proposed housing allocation would include the development of a new non-denominational primary school within the site, which as well as accommodating pupils from the site could help to alleviate existing pressure on Windyknowe and Armadale Primary Schools.	✓





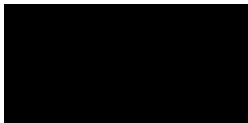
Supporting delivery of accessible housing, business, retailing and leisure development;	By definition the proposed housing allocation would support the delivery of housing, including a percentage of affordable housing, in an accessible location.	✓
Supporting delivery of infrastructure, for example transport, education, energy, digital and water;	Hallam propose to include a new non-denominational primary school within site EOI 0127, to accommodate pupils generated from proposed residential development within EOI 0127. This could help to alleviate growing pressure on Windyknowe Primray School and could potentially also address current education infrastructure capacity issues in Armadale related to delays and uncertainty regarding the development of the proposed South Armadale primary school.	✓
Supporting climate change mitigation and adaptation including taking account of flood risk;	Site assessments undertaken on behalf of Hallam indicate that there are no insurmountable physical constraints which would prevent development at this site.  A review of the SEPA flood map indicates that the majority of the site is free from any flood risk, although there are isolated areas with medium and high likelihood of surface water flooding due to watercourses which drain through the site and topography. Therefore a detailed flood risk assessment would be undertaken as part of a planning application for the site.	✓
Improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;	A masterplanned approach to development would include the provision of communal open space and a Designing Streets compliant street layout, thereby providing opportunities for social interaction and physical activity.	✓
Having regard to the principles for sustainable land use set out in the Land Use Strategy;	This proposed strategic housing site is located within the Armadale CDA, therefore the site is considered to be in an appropriate location for the proposed allocation.	✓
Protecting, enhancing and promoting access to cultural heritage, including the historic environment;	The historic landscape setting of the former Boghead House, located within the site boundary, would be afforded special consideration in the development of a masterplan for the site.	✓
Protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;	A masterplanned approach to development would be underpinned by a sensitive consideration of landscape and townscape issues. Development at this site would provide an opportunity to upgrade existing links to adjacent Core Paths and National Cycle Paths.	✓
Reducing waste, facilitating its management and promoting resource recovery; and	This sustainable development principle is not directly relevant to the proposed housing allocation. However, housing development on the site would include a commitment to use recycled construction aggregate where this is feasible	✓
Avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.	A masterplanned approach to development would fully consider the capacity of the site and the surrounding area to accommodate development at an appropriate density taking into account nearby existing development. A drainage impact assessment and an air quality assessment would be undertaken as part of a planning application for the site if required.	✓

As demonstrated within Table 5.3, the proposed allocation of the site is fully consistent with the sustainable development principles set out within the SPP at paragraph 29. On this basis it is considered that the proposed allocation benefits from the presumption in favour of development that contributes to sustainable development and therefore should be allocated within the emerging West Lothian LDP.

### 5.3 Conclusion

It is considered that the decision not to afford 'preferred status' within the West Lothian MIR to site EOI 0127 is flawed, as it appears to have been based on inaccurate site assessments. The decision also fails to recognise the significant contribution which the site could make towards both achieving the 2019 and 2024 SESplan housing land requirements. The assessments set out within this representation demonstrate that the proposed allocation of this site would accord with SESplan Policy 7 and would be fully consistent with all relevant site effectiveness and sustainable development criteria. Therefore it is considered that site EOI 0127 should benefit from the presumption in favour of development that contributes to sustainable development and consequently should be allocated for residential development within the emerging West Lothian Local Development Plan.

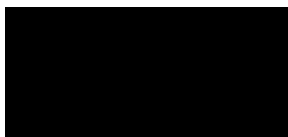
*Author:*




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 (14.10.2014)

*Reviewer:*



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 (15.10.2014)

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# Representation in respect of EOI 0127 Site Assessments (Appendices 2A and 2B to the West Lothian Local Development Plan MIR SEA Report)

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## 1. Introduction

1.1.1 This document sets out a detailed representation on behalf of Hallam Land Management Ltd regarding the qualitative and summary site assessments relating to proposed housing site EOI 0127 which have been undertaken by West Lothian Council ('the Council') during the preparation of the West Lothian Local Development Plan (LDP) Main Issues Report (MIR). These site assessments are included within appendices 2A and 2B of the Strategic Environmental Assessment (SEA) report which accompanies the West Lothian Local Development Plan MIR.

1.1.2 The response to the Council's site assessments and the revised site assessments set out below demonstrates that:

- The site complies with the effectiveness criteria outlined in PAN 2/10, is free from significant development constraints, and accords with relevant sustainable development criteria. Therefore it can contribute to West Lothian's effective land supply in the short term;
- A masterplanned approach to development on the site would incorporate a detailed landscape strategy, a placemaking strategy, ecological protection measures and a flood risk assessment. This would enable any concerns relating to potential coalescence, habitat conservation, landscape impact, impacts on cultural heritage assets, and localised flood risk to be fully addressed. Hallam intent to submit an indicative detailed masterplan for the site at the LDP Proposed Plan stage and thereafter refine this in consultation with the Council and other stakeholders; and,
- In recognition of the existing education infrastructure capacity constraints in Bathgate and Armadale, the development of the site would incorporate a new non-denominational primary school. This new school would accommodate pupils generated from proposed residential development within EOI 012, but could also help to alleviate growing pressure on Windyknowe Primary School. In addition a new primary school on the site could potentially address current education infrastructure capacity issues in Armadale related to delays and uncertainty regarding the development of the proposed South Armadale primary school.

## 1.2 Qualitative Site Assessment

### Methodological Issues

1.2.1 It is submitted that the qualitative assessments presented in Appendix 2A of the SEA report do not provide accurate, adequate, consistent or robust justifications for the decision designate sites as 'preferred', 'alternative' or not preferred within the MIR. In addition to a lack of any justification for the selected site assessment criteria and inaccuracies within the site assessment undertaken for proposed housing allocation EOI 0127 (see below), it is considered that neither the MIR nor its supporting documents adequately explain how the qualitative site assessment results have been objectively translated into decisions to afford candidate sites 'preferred', 'alternative' or 'not preferred' status within the MIR. Due to these deficiencies it is recommended that West Lothian Council should undertake a revised qualitative assessment for all candidate housing sites, which should utilise clearer assessment criteria and should be directly supported by a robust evidence base. These revised assessments should then be used transparently to inform the West Lothian LDP Proposed Plan proposed housing allocations.

### Response to EOI 0127 Qualitative Site Assessment

1.2.2 In relation to EOI 0127 it is considered that some of the Council's qualitative assessment findings are inaccurate. In addition some of the qualitative assessment findings are inconsistent with the EOI 0127 summary assessment findings presented in SEA appendix 2B. Particular issues and concerns relating to the Council's qualitative assessment undertaken for EOI 0127 are detailed in Table 1.1.

**Table 1.1 Response to EOI 0127 Qualitative Site Assessment**

<b>Proposed use - Housing</b> <b>WLLDP reference EOI-0127</b>	<b>WLC Site Assessment</b>	<b>AMEC Response</b>
<b>Condition &amp; Setting</b>	<b>General comments</b>	
Present Use Brownfield/greenfield/ruin/mixed	Greenfield	Inaccurate - Mixed - used for grazing, farm steadings and residential use
Slope and Shape	Largely rectangular, slopes throughout - some more defined than others	Agreed
Altitude and Exposure	Site generally sits level with surroundings	Topography falls from approx 160m AOD at west of site to below 135m AOD on east
Un-neighbourly/non conforming uses	None apparent	The site is not adjacent to any recognised "Bad Neighbour" developments
Relationship to Townscape	On settlement edge	Agreed – on western edge of Bathgate with Whiteside Industrial Estate to south of study area.
Landscape Fit – Intervisibility	Exposed site from A801	Inaccurate. A801 is at lower elevation

Proposed use - Housing WLLDP reference EOI-0127	WLC Site Assessment	AMEC Response
		with planted screening bunds to either side of the road.
Landscape Fit – Skyline	Extensive views over Bathgate to the north	Inaccurate. At the highest elevation to the west of the study area, views across Bathgate are heavily screened by intervening vegetation. From elsewhere in the site views are limited due to the nature of the topography.
Defined Boundary	East – field boundary and residential development at north east boundary; west – partly by the A801 and field boundaries; north - field boundaries, trees, travelling people's site at Sibbald's Brae and roadside frontage (A89) but undefined in places; south – railway line and CPP route	East – field boundary and residential development at north east boundary with fence line and right of way defining southeast boundary; West – partly by the A801 and associated planted screening bunds and field boundaries; North - field boundaries, mature tree belt, travelling people's site at Sibbald's Brae and roadside frontage (A89) but undefined in places; south – railway line and CPP route
On Site Constraints	Telecommunications mast within site. Overhead power lines through the site. Extensive site and not possible to survey the entire area	Inaccurate: the site was surveyed for the purposes of an Extended Phase 1 Habitats Survey in March 2013.
Ground Conditions/Natural Features	None apparent adverse ground conditions; natural features largely provided by mature deciduous woodland.	Extended Phase 1 Habitats Survey (March 2013): Natural features mainly provided by plantation woodland, scattered trees, scrub and minor watercourses.
Trees	Throughout the site and on the southern boundary	Extended Phase 1 Habitats Survey (March 2013): Site mainly farmland interspersed with plantation woodland, scattered trees and scrub.
Protected Species (biodiversity)	None apparent but likely	Extended Phase 1 Habitats Survey (March 2013): Site provides habitat for breeding birds (nests observed), badger, bats, and low suitability for otter, water vole, fish, aquatic invertebrates, amphibians and reptiles. Any required mitigation measures or isolated habitat protection areas could be considered through a planning application for the development of the site.
Green Network (CSGN)	N/A	N/A
Access/Parking/Roads	Core Path ref 22 lies to the south of the site. Core Path ref 22 lies to west and south of the site. Right of way along Whiteside Farm lane Access off A89/A801? Access off Hardhill Road and S bbald's Brae	Agreed, except National cycle route 75 is also present along railway line to south of site.
Watercourse within vicinity (potential)	None apparent but site waterlogged in	Inaccurate: minor unnamed tributary

<p><b>Proposed use - Housing</b></p> <p><b>WLLDP reference EOI-0127</b></p>	<p><b>WLC Site Assessment</b></p>	<p><b>AMEC Response</b></p>
<p>flood risk)</p>	<p>places</p>	<p>of the Bathgate Water runs approximately west-east across the site. There are also several drainage channels and issues arise in the woodland area in the northern part of the study area.</p>
<p>Other</p>	<p>Phase 1 Habitats Survey 1993 – grassland and marsh on southern edge of site with some woodland and scrub.</p> <p>WoSAS trigger map</p> <p>WLLP objection site</p> <p>Planning history for residential conversion</p> <p>Armadale secondary, Windyknowe, St Kentigern's and St Anthony's/St Mary's</p> <p>Scottish Gas pipeline consultation zones run north/south through the western part of the site</p> <p><b>PAC NOTICES AND PLANNING APPLICATIONS</b></p> <p>Part of this overall site in the north east corner (see site plans on files) has been subject to a PAN notice and subsequent application details of which are provided below:</p> <p>0683/PAC/12 - Proposal of application notice for a 6.7ha residential development (grid ref. 295915 668151) AT LAND WEST OF SIBBALDS</p> <p>BRAE, BATHGATE</p> <p>0203/P/13 - Planning permission in principle for a 6.7ha residential development with associated works (grid ref. 295877 668180) AT</p> <p>FALSIDE, SIBBALDS BRAE, BATHGATE – Refused 13/11/13 by WLC Planning Committee</p>	<p>Extended Phase 1 Habitats Survey (March 2013) is more up to date than the 21 year old report quoted. The site is mainly farmland (pasture and arable), interspersed with woodland, scattered trees, scrub, minor watercourses, farm buildings and cottages at Whiteside.</p> <p>It is acknowledged that there are currently some education infrastructure constraints within Armadale and Bathgate; however, the Reporter's decision in the recent Land at Falside appeal case concluded that educational constraints relating to secondary school and denominational primary school provision serving western areas of Bathgate were not insurmountable. In relation to non-denominational primary school provision in western areas of Bathgate, Hallam propose to include a new non-denominational primary school within site EOI 0127, to accommodate pupils generated from proposed residential development within EOI 0127. This could help to alleviate growing pressure on Windyknowe Primray School and could potentially also address current education infrastructure capacity issues in Armadale related to delays and uncertainty regarding the development of the proposed South Armadale primary school.</p> <p>The indicative masterplan submitted as part of Hallam's 'Call for Sites' consultation response identified multiple potential vehicular and non-vehicular access points onto the existing local road network. No transport infrastructure constraints are anticipated in relation to this site.</p>
<p>Conclusion/Summary:</p> <p>Site potential and impact on the community and/or settlement.</p>	<p>Extensive site on edge of settlement. Potential issues of coalescence with Armadale. The site forms an attractive area of countryside/green wedge on the western boundary of Bathgate and should be considered for retention as "green corridor" or equivalent.</p>	<p>The intensively managed farmland and grassland habitats within the survey area are typically botanically unremarkable and are considered to be of low nature conservation value. As part of a masterplanned residential development the site could be improved through habitat enhancement measures focussing on Local Biodiversity Action Plan habitats: woodland, watercourses with the potential to provide additional green corridor links and possible</p>

Proposed use - Housing WLLDP reference EOI-0127	WLC Site Assessment	AMEC Response
		green infrastructure links Non-native Rhododendron could be removed.

1.2.3 In view of the significant inaccuracies identified within the Council’s qualitative site assessment of EOI 0127 AMEC has undertaken a revised qualitative site assessment of EOI, as set out in Table 1.2.

**Table 1.2 Revised EOI 0127 Qualitative Assessment**

Proposed use - Housing - Site 1 (70ha) WLLDP reference EOI-0127	AMEC Site Assessment
Condition & Setting	General comments
Present Use Brownfield/greenfield/ruin/mixed	Majority of site is improved grassland fields – typically been altered over many years by tilling, drainage and fertilisation. The site is considered to be mixed and it is partially used for grazing but also includes some farm steadings and residential properties.
Slope and Shape	The study area is roughly rectangular. The landform is fine-grained and the topography is considered to be gently undulating.
Altitude and Exposure	The landform to the west of the study area is generally higher sloping down towards the east. The land rises in the south eastern corner where the hills of Reysie Law and Teepit Hill are located.
Un-neighbourly/non conforming uses	The site is not adjacent to any recognised “Bad Neighbour” developments.
Relationship to Townscape	The site is located on the western edge of Bathgate with Whiteside Industrial Estate to south of study area.
Landscape Fit – Intervisibility	The edges of new development at Armadale are only visible from the B708 (Sibbalds Brae) at the far north western corner of the eastern part of the study area; the landform drops away quickly, moving south away from the B708, and where the A801 ramps up to account for this, passing over the Airdrie to Bathgate railway line, the embankments screen all views to the west.  There is very little intervisibility between the east and west of the study area. The woodland running north to south east and the underlying topography restricts views out to the Armadale. Even at higher elevations, around the edges of the existing residential development at Falside, no views of Armadale were found.
Landscape Fit – Skyline	The edges of new development at Armadale are only visible from the B708 (Sibbalds Brae) at the far north western corner of the eastern part of the study area; the landform drops away quickly, moving south away from the B708, and where the A801 ramps up to account for this, passing over the Airdrie to Bathgate railway line, the embankments screen all views to the west.  There is very little intervisibility between the east and west of the study area. The woodland running north to south east and the underlying topography restricts views out to the Armadale. Even at higher elevations, around the edges of the existing residential development at Falside, no views of Armadale were found.  Views from are of highest elevation to west of study area, adjacent to the



<p><b>Proposed use - Housing - Site 1 (70ha)</b></p> <p><b>WLLDP reference EOI-0127</b></p>	<p><b>AMEC Site Assessment</b></p>
	<p>A801 have views across Bathgate which are heavily screened by intervening vegetation. From elsewhere in the site views are limited due to the nature of the topography.</p>
<p>Defined Boundary</p>	<p>East – field boundary and residential development at north east boundary with fence line and right of way defining southeast boundary;</p> <p>West – partly by the A801 and associated planted screening bunds and field boundaries;</p> <p>North - field boundaries, mature tree belt, travelling people's site at Sibbald's Brae and roadside frontage (A89) but undefined in places; south – railway line and CPP route</p>
<p>On Site Constraints</p>	<p>Ecology/ Biodiversity: There are no statutory designated sites for nature conservation within the study area or within 2km but there are areas of woodland listed on the Ancient Woodland Inventory as being continuously wooded since the 17th Century. These do not receive any statutory protection but would be protected and enhanced through development on the site wherever possible.</p> <p>Habitat constraints such as woodland and watercourses would be protected and enhanced where possible, through the use of a master planned approach to development on the site. As part of development on the site existing non-native Rhododendron would be removed/or fenced off to avoid accidental spread.</p> <p>There is some potential for localised development constraints relating to protected species - breeding birds, badger, bats, otter, water vole, fish, aquatic invertebrates, amphibians and reptiles, but further survey work would confirm this and allow opportunity to protect them and / or their habitat through the implementation of mitigation measures. Measures to enhance the site for protected species were included in Extended Phase 1 Habitats Survey (March 2013) and would be refined following further a site survey.</p>
<p>Ground Conditions/Natural Features</p>	<p>Ecology/ Biodiversity: Extended Phase 1 Habitats Survey (March 2013): Natural features are mainly provided by plantation woodland, scattered trees, scrub and minor watercourses.</p>
<p>Trees</p>	<p>Extended Phase 1 Habitats Survey (March 2013): Site mainly farmland interspersed with plantation woodland (coniferous, mixed, broadleaved), scattered trees and scrub.</p>
<p>Protected Species (biodiversity)</p>	<p>Potential habitat for protected species - breeding birds, badger, bats, otter, water vole, fish, aquatic invertebrates, amphibians and reptiles, but further survey work would confirm this and allow opportunity to protect them and / or their habitat through a masterplanned approach to development on the site. Measures to enhance site for protected species also included in Extended Phase 1 Habitats Survey (March 2013) and would be refined following further site survey.</p>
<p>Green Network (CSGN)</p>	<p>Not directly applicable. However, the development of the site would include public open space and sensitive treatment of existing watercourse margins. A masterplanned approach to development of the site could also provide improved access to adjacent Core Paths and cycle routes from western areas of Bathgate, Therefore it is considered that the proposed housing allocation and residential development could contribute to enhancing green infrastructure provision within West Lothian.</p>
<p>Access/Parking/Roads</p>	<p>Adopted Core Path 22, Right of way along Whiteside Farm lane and National cycle route 75 along railway line to the south are all within the immediate vicinity of the site. Masterplanned development of this site offers the potential to enhance non-vehicular linkages between these routes and western areas of Bathgate.</p>
<p>Watercourse within vicinity (potential)</p>	<p>Minor unnamed tributary of the Bathgate Water runs approximately west-east across the site and several drainage channels and issues rise in the woodland</p>

<p><b>Proposed use - Housing - Site 1 (70ha)</b></p> <p><b>WLLDP reference EOI-0127</b></p>	<p><b>AMEC Site Assessment</b></p>
<p>flood risk)</p>	<p>area in the northern part of the study area.</p> <p>A review of the SEPA flood map indicates that the majority of the site is free from flood risk, although there are isolated areas with medium and high likelihood of surface water flooding due to watercourses which drain through the site and topography. Detailed assessments would be undertaken in relation to infrastructure design, environmental and landscape capacities, ecological protection, localised flood risk and ground conditions at the detailed planning application stage.</p>
<p>Other</p>	<p>The Extended Phase 1 Habitats Survey (March 2013) undertaken for the Land at Falside planning application is more up to date than the twenty year old report quoted in the site assessment. The Site is mainly farmland (pasture and arable), interspersed with woodland, scattered trees, scrub, minor watercourses, farm buildings and cottages at Whiteside.</p> <p>It is acknowledged that there are currently some education infrastructure constraints within Armadale and Bathgate; however, the Reporter's decision in the recent Land at Falside appeal case concluded that educational constraints relating to secondary school and denominational primary school provision serving western areas of Bathgate were not insurmountable. In relation to non-denominational primary school provision in western areas of Bathgate, Hallam propose to include a new non-denominational primary school within site EOI 0127, to accommodate pupils generated from proposed residential development within EOI 0127. This could help to alleviate growing pressure on Windyknowe Primary School and could potentially also address current education infrastructure capacity issues in Armadale related to delays and uncertainty regarding the development of the proposed South Armadale primary school.</p> <p>The indicative masterplan submitted as part of Hallam's 'Call for Sites' consultation response identified multiple potential vehicular and non-vehicular access points onto the existing local road network. No transport infrastructure constraints are anticipated in relation to this site.</p>
<p>Conclusion/Summary: Site potential and impact on the community and/or settlement.</p>	<p>The intensively managed farmland and grassland habitats within the survey area are typically botanically unremarkable and are considered to be of low nature conservation value. As part of a masterplanned residential development the site could be improved through habitat enhancement measures focussing on Local Biodiversity Action Plan habitats: woodland, watercourses. Non-native Rhododendron could be removed.</p>

1.2.4 This revised site assessment demonstrates that the site (EOI 0127) complies with all of the qualitative site assessment criteria identified by West Lothian Council. Therefore it is submitted that the site should have been identified as a 'preferred' housing site within the West Lothian MIR and should be allocated as a housing site within the emerging West Lothian LDP.

### 1.3 Summary Site Assessment

#### Methodological Issues

1.3.1 It is unclear how the summary assessments detailed in appendix 2B of the SEA report have informed WLC's decision to designate sites as 'preferred', 'alternative' or not preferred, as neither the MIR nor the SEA report methodology section explains how the site assessment have informed the Council's preferred housing land strategy. In particular, the relationship between compliance with individual assessment criteria and the decision to award preferred, alternative or not preferred status to sites within the

MIR is unclear, as some sites are identified in MIR appendix 3 as 'preferred' despite not complying with all of the assessment criteria, whilst other sites are not preferred within MIR appendix 3 but do comply with a number of the summary assessment criteria.

- 1.3.2 It is submitted that the summary site assessments included in appendix 2B of the MIR SEA report do not provide a robust and reliable evidence base upon which to decide which of the candidate housing sites should be included as housing allocations within the forthcoming West Lothian LDP. Therefore it is recommended that West Lothian Council should urgently undertake a revised summary assessment for all candidate housing sites, which should utilise clearer assessment criteria and should be directly supported by a robust evidence base. These revised assessments should then be used to transparently inform the West Lothian LDP Proposed Plan proposed housing allocations.

### **Response to EOI 0127 Summary Site Assessment**

- 1.3.3 In relation to EOI 0127 it is considered that some of the Council's summary assessment findings are inaccurate or misleading. In addition some of the qualitative assessment findings are inconsistent with the EOI 0127 qualitative assessment findings presented in SEA appendix 2A. Therefore AMEC has undertaken a revised qualitative site assessment of EOI, as set out in Table 1.3.

**Table 1.3 Revised EOI 0127 Summary Assessment**

SEA Topic	Criteria	Revised Site Assessment – Does the site comply?	Justification
Air	Avoid AQMA areas/ avoid exacerbating air quality of AQMAs/ avoid areas which could become AQMAs?	Yes	The site is not within an existing AQMA or area likely to become an AQMA.
	Have good proximity to jobs/ services (enabling access within walking distance)?	Yes	Due to its location on the western edge of Bathgate, extending west towards the south east of Armadale, the site is within walking distance of jobs and services within both settlements.
	Have good access to existing or proposed public transport?	Yes	The B708 to the north of the site is an existing bus route between Bathgate and Armadale.
Biodiversity	Avoid adverse effect on integrity of designated international nature conservation sites?	Yes	No designated international nature conservation sites within the study area or within 2km.
	Avoid causing significant effect on designated national/ regional/ local biodiversity sites & ancient woodland / geodiversity sites?	Yes	No designated international or national nature conservation sites within 2km. Local wildlife sites at least 1km away – will not be affected. Ancient woodland will be retained / enhanced.
	Avoid adverse direct impact on species/ habitats/ or makes a positive contribution to the emerging green network?	Yes	Habitat constraints such as woodland and watercourses would be protected and enhanced where possible. Non-native Rhododendron would be removed/or fenced off to avoid accidental spread. Potential for constraints relating to protected species - breeding birds, badger, bats, otter, water vole, fish, aquatic invertebrates, amphibians and reptiles, but further survey work would confirm this and allow opportunity to protect them and / or their habitat. Measures to enhance site for protected species also included in Extended Phase 1 Habitats Survey (March 2013) and would be refined following further site survey.
Climate Factors	Occupy a relatively efficient location in terms of energy consumption	Yes	The site is located immediately west of Bathgate, so it is in close proximity to existing transport networks, schools, employment opportunities and residential areas. The A708 immediately north of the site is an existing bus route between Bathgate and Armadale.
	Occupy a location at risk of increased flooding or instability due to climate change?	No	A review of the SEPA flood map indicates that the majority of the site is free from flood risk, although there are isolated areas with medium and high likelihood of surface water flooding due to watercourses which drain through the site and topography. Detailed assessments would be undertaken in relation to infrastructure design, environmental and landscape capacities, ecological protection, localised flood risk and ground conditions at the detailed planning application stage.

SEA Topic	Criteria	Revised Site Assessment – Does the site comply?	Justification
<b>Cultural Heritage</b>	Avoid adverse (or create positive) effects on listed buildings and/ or its setting?	Yes	There are no listed buildings within the site or within sufficient proximity of the site for development to give rise to discernible adverse effects.
	Avoid adverse (or create positive) impact on scheduled monuments and /or its setting?	Yes	There are no scheduled monuments within the site or within sufficient proximity of the site for development to give rise to discernible adverse effects.
	Avoid adverse (or create positive) impact on locally important archaeological sites?	Yes	Known non-designated heritage assets within the site relate to the Boghead House policies and the past use of parts of the site for mining. Both of these aspects are of importance on a local level, but effects could be appropriately managed within the scope of detailed development and mitigation proposals. There is a potential that sensitive masterplanning could be used to enhance the value of the Boghead House policies area.  There is a potential for previously unrecorded heritage assets within the site boundary, but potential effects could be managed through appropriate investigation and design.
	Avoid adverse (or create positive) effects on a Gardens & Designed Landscape?	Yes	There are no designated GDLs within the site or within sufficient proximity of the site for development to give rise to discernible adverse effects.
	Avoid adverse effects (or create positive) on Conservation Areas &/or other areas of architectural, historic or townscape interest	Yes	There are no Conservation Areas within the site or within sufficient proximity of the site for development to give rise to discernible adverse effects.
<b>Landscape &amp; Townscape</b>	Avoid AGLVs / Areas of Special Landscape Control/ Areas of Special Control	See comment	The study area is partially within the Area of Special Landscape Control ( <i>Boghead House Policies</i> ). However, the 'West Lothian Local Landscape Designation Review' (June 2013) recommended that this area was not taken forward for consideration as a Special Landscape Area within the emerging LDP. As such it is considered that for the purposes of allocating land in the LDP the Boghead House Area of Special Landscape Control designations should not be afforded any weight.
	Avoid conspicuous locations that require extensive landscape treatment / structural landscaping	Yes	Site is screened by existing mature vegetation, screening bunds along the A801 and by topography.
	Avoid loss of/ adverse effects on public open space/ improve open space provision (quantity/ quality)?	Yes	An appropriate quantity, quality and variety of public open space would be created through a masterplanned development on the site. This would include the creation of links to nearby Core Paths and National Cycle Routes.
<b>Material</b>	Avoid loss of land important to avoidance of coalescence/ preservation of	Yes	The A801 acts as a 'hard' barrier which prevents continuous development between Armadale and Bathgate. As such the proposed allocation would not directly result in the coalescence of these two

SEA Topic	Criteria	Revised Site Assessment – Does the site comply?	Justification
<b>Assets</b>	settlement identity?		settlements. The identities of western Bathgate and eastern Armadale would be reflected in separate master plans which would be developed for the area of land south east of Armadale and the area west of Bathgate which comprise site EOI 0127. These masterplans would include provision for enhanced screening and structural landscaping along the boundaries with the A801 to ensure that coalescence between Bathgate and Armadale is avoided.
	Safeguard mineral resources from sterilisation (within Areas of Search)?	N/A	N/A
	Minimise use of “Greenfield” land?	No	The site is largely a greenfield site; however it includes multiple farm buildings and residential properties. The allocation of this site is sought in accordance with SESplan Policy 7, which specifically allows the allocation of greenfield sites for housing if there is a shortfall in a planning authority’s five year effective land supply. As detailed in the Housing Land Report which supports this representation there are clearly significant and quantifiable shortfalls in both West Lothian’s five year and total effective land supplies.
<b>Population &amp; Health</b>	Avoid co-location of sensitive development with industrial facilities/ economic allocations?	Yes	The site is not adjacent to any sensitive industrial facilities or economic allocations. However, the site is located in close proximity to employment opportunities within Bathgate and Armadale.
<b>Soil</b>	Avoid loss of prime quality agricultural land and peatland?	Yes	The site is not prime agricultural land or peatland.
<b>Water</b>	Maintain status of baseline water bodies?	Yes	The existing small watercourses within the site would be fully integrated into a masterplanned development, and appropriate construction mitigation measures including standoff distances would be implemented
	Minimise flood risk (on site or elsewhere)?	Yes	A review of the SEPA flood map indicates that the majority of the site is free from flood risk, although there are isolated areas with medium and high likelihood of surface water flooding due to watercourses which drain through the site and topography. Detailed assessments would be undertaken in relation to infrastructure design, environmental and landscape capacities, ecological protection, localised flood risk and ground conditions at the detailed planning application stage.

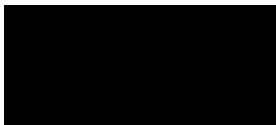
## 1.4 Conclusion

1.4.1 As set out within this representation, it is considered that the decision not to afford ‘preferred status’ within the West Lothian MIR to site EOI 0127 is flawed, as it appears to have been based on inaccurate site assessments. The decision also fails to

recognise the significant contribution which the site could make towards both achieving the 2019 and 2024 SESplan housing land requirements.

1.4.2 The revised qualitative and summary site assessments detailed in this representation demonstrate that the site (EOI 0127) complies with all of the site assessment criteria identified by West Lothian Council, except in relation to the use of greenfield land. However, the allocation of Site EOI 0127 is sought in accordance with SESplan Policy 7, which specifically allows the allocation of greenfield sites for housing if there is a shortfall in a planning authority's five year effective land supply, subject to compliance with three sustainability criteria. As detailed in the Housing Land Report which supports this representation there are clearly significant and quantifiable shortfalls in both West Lothian's five year and total effective land supplies. A separate representation submitted regarding the MIR appendices provides an assessment of the site against SESplan Policy 7 and demonstrates that the proposed allocation complies with the three sustainability related criteria within this policy. It is therefore considered that the proposed allocation of this site would accord with SESplan Policy 7 and would be fully consistent with all relevant site effectiveness and sustainable development criteria. As such site EOI 0127 should benefit from the presumption in favour of development that contributes to sustainable development and consequently should be allocated for residential development within the emerging West Lothian Local Development Plan.

*Author:*




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 (15.10.2014)

*Reviewer:*



.....

 (15.10.2014)

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# West Lothian Local Development Plan MIR Representations Questions 1, 3 and 4

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## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report. Specifically, this technical note responds to MIR questions 1, 3 and 4.

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## 2. Question 1

### 2.1 Do you agree with the vision for the LDP, or, are there other aspects that should be considered?

Yes, the proposed vision is agreed with. It is considered that the proposed vision for the LDP appropriately identifies the correct spatial development priorities for West Lothian and provides a coherent basis for the LDP. In particular, the reference to providing “*a greater choice of housing and an appropriate range of education, community, health, retail, recreation and leisure facilities*” is strongly supported, on the grounds that significant housebuilding and associated infrastructure provision is urgently required to address West Lothian’s current effective housing land shortfall and to support a growing population. In addition, the intended provision of “a greater choice of housing” accords with the Scottish Planning Policy at paragraph 110, which states that “*the planning system should...enable provision of a range of attractive, well-designed, energy efficient, good quality housing, contributing to the creation of successful and sustainable places*”. The importance of allocating land for a range and type of housing is also emphasised within the SPP at paragraph 119, which states that “*local development plans in city regions should allocate a range of sites which are effective or expected to become effective in the plan period...*” (our emphasis).

### 2.2 Do you have any additional comments?

To enhance the vision it is suggested that an additional sentence should be added to recognise the additional infrastructure provision which will be necessary to implement the “*greater choice of housing and an appropriate range of education, community, health, retail, recreation and leisure facilities and a network of green spaces to meet the needs of its growing population*” which the LDP vision seeks to achieve. Therefore, it is recommended that the additional sentence in bold below should be added to the vision:

***“By 2024 West Lothian’s population will have grown and improved employment position within a more diversified local economy will have been established. It will be better connected by road and public transport and will have a greater choice of housing and an appropriate range of education, community, health, retail, recreation and leisure facilities and a network of green spaces to meet the needs of its growing population. These improvements will be supported by additional infrastructure capacity, provided over the LDP plan period through a range of mechanisms. Development will take place in a sustainable way that protects and improves the area’s built and natural heritage assets, meets the challenges of climate change and renewable energy and helps regenerate deprived areas and improves the quality of life for people living in West Lothian”.***

### 3. Question 3

#### 3.1 Do you agree with the proposed 'Aims' of the LDP? If not, why not?

Yes, the proposed aims are agreed with. In particular, the aims stated on page 3 of the MIR relating to 'Main Issue 3: Housing Growth, Delivery and Sustainable Housing Locations Qualified Support' and 'Main Issue 4: Infrastructure Requirements and Delivery' are supported. It will be important to ensure that appropriate planning policies and sufficient land allocations are included within the LDP to ensure that these aims can be achieved in full.

To improve the clarity of the aims relating to Main Issue 3 and to ensure conformity with national planning policy it is recommended that the word "effective" should be inserted into the first aim as follows:

*"Provide a generous supply of **effective** housing land and provide for an effective five year housing land supply at all times".*

Author:



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 (10.10.2014)

Reviewer:



 (10.10.2014)

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# West Lothian Local Development MIR Representations regarding Questions 15 – 22 (Housing Land Supply)

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## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report. Specifically, this technical note responds to MIR questions 15, 16, 17, 18, 19, 20, 21 and 22, all of which relate to housing land supply and housing land strategy issues. All of these representations are supported by a Housing Land Report, which presents a detailed analysis of the adequacy of West Lothian's current effective housing land supply.

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## 2. Questions 15-17

For the reasons set out below it is submitted that both the ‘preferred’ and two ‘alternative’ housing growth strategies discussed in MIR questions 15, 16 and 17 are fundamentally flawed and would all require significant modifications. On this basis this representation refers primarily to the ‘preferred strategy’, however all of the points made apply equally to the ‘alternative’ strategy because the concerns raised relate to methodological issues and overall compliance with the SESplan SDP, rather than to differences between the ‘preferred and ‘alternative’ strategies. This representation is supported by a Housing Land Report, which presents a detailed analysis of the adequacy of West Lothian’s current effective housing land supply.

In summary, the ‘preferred’ strategy should be substantially modified to:

- accord with the modified SESplan SDP Housing Land Supplementary Guidance in relation to both the 2009-2019 and 2019-2024 SESplan housing land requirement for West Lothian;
- accord with the requirement set out in the Scottish Planning Policy at paragraph 116, which requires LDPs to increase SDP housing land targets by “*a margin of 10 to 20% to establish the housing land requirement, in order to ensure that a generous supply of land for housing is provided*”;
- identify the contribution which effective housing allocations from the adopted Local Plan could make to achieving the 2019 and 2024 housing land requirements (+10-20% generosity margins);
- identify the shortfall in the total effective housing land supply which must be eliminated through the allocation of additional effective housing land within the LDP; and,
- allocate sufficient additional effective housing land to cover the identified shortfall between the current effective housing land supply and the 2019 and 2024 housing land requirements (+10-20% generosity margin).

In the absence of these modifications the West Lothian LDP would not be in conformity with the SESplan Strategic Development Plan (SDP). It would also be inconsistent with national policy requirements regarding the allocation of sufficient effective housing land to meet housing land requirements and ensure that a five year effective land supply is maintained at all times.

### **SESplan Housing Land Supplementary Guidance**

The Scottish Planning Policy requires that SDPs identify the housing requirement in full by Plan phase and with reference to LDP area. Unfortunately, the SESplan Proposed Plan failed to comply properly with either of these requirements. Scottish Ministers corrected the first of these two failings by incorporating modifications into SESplan (approved June 2013) to identify the correct phasing of SESplan wide housing requirements. However, a lack of available information prevented these housing land requirements from being broken down into each Council area. This issue has been dealt with through the introduction of SESplan Policy 5, which requires the production of Supplementary Guidance to set out housing land requirements for each SESplan member authority.

After a period of consultation and ratification by each SESplan member authority, the SESplan Housing Land Supplementary Guidance was submitted to Scottish Ministers in May 2014 and was subsequently approved on 18<sup>th</sup> June 2014. In approving this Supplementary Guidance, the Scottish Ministers directed that before each of the SESplan member authorities adopt the Supplementary Guidance it must be modified to remove the 2<sup>nd</sup> sentence of paragraph 3.13 of the Guidance which read: “*Member authorities will base their calculation of the five year land supply on the period 2009-2024, taking into consideration housing completions*”.

This modification clarifies that a 5 year effective land supply needs to be maintained at all times, including the period up to 2019, as well as the period up to 2024. Therefore, the 5 year effective land supply needs to be calculated, not by averaging the requirement over the period 2009-2024, but throughout all periods including shorter periods such as pre-2019. Therefore, if emerging LDP’s within the SESplan region (including the emerging West Lothian LDP) cannot demonstrate a 5 year effective land supply at all times, including pre-2019, they will not be in conformity with the Strategic Development Plan.

After taking legal advice, the SESplan Joint Committee agreed to modify the Supplementary Guidance and as directed and adopt it as modified. The decision to adopt the modified SESplan Housing Land Supplementary Guidance requires to be ratified by all SESplan member authorities. In this regard the modified Supplementary Guidance was considered and approved at a meeting of West Lothian Council’s Council Executive on 16<sup>th</sup> September 2014.

### **MIR Housing Growth Strategy**

The MIR explains that to achieve the housing land supply requirements set out within the SESplan SDP Housing Land Supplementary Guidance document, West Lothian Council propose to allocate “*a small number of new housing sites that will complement the existing development strategy*” within the LDP. Therefore, in essence the MIR states that West Lothian Council propose to ‘top up’ their established land supply with a small number of new sites in order to achieve the SESplan SDP and modified Supplementary Guidance housing land requirements.

The MIR outlines three options for a housing growth strategy within the LDP:

- Scenario 1 – plan for a total of 24,977 houses which represents 2,130 units above the base supply. The MIR contends that this would meet SDP requirements in full.
- Scenario 2 – plan for a total of 25,447 houses which represents 2,600 houses above the base supply. The MIR states that this would provide greater flexibility than under scenario 1 and by implication would exceed SDP requirements.
- Scenario 3 - plan for a total of 26,347 houses which represents 3,500 houses above the base supply. The MIR states that this would provide greater flexibility than under scenarios 1 and 2, and by implication would further exceed SDP requirements.

The MIR at paragraph 3.58 recommends that scenario 3 should be used. However, it is of critical importance is that neither the MIR or its associated documents demonstrate how **any** of these three scenarios would achieve the SESplan effective housing land requirements over the periods 2009-2019 and 2019-2024, as all of the scenarios focus only on achieving or exceeding housing land requirements over the longer period 2009-2024. This is clearly contrary to the modified SESplan Supplementary Guidance, which requires 5 year effective housing land requirements to be calculated over the period 2009- 2019 and then over the period 2019-2024,

rather than over the longer period 2009-2024. As such it is imperative that the 'preferred' housing growth strategy is substantially modified to accord with the modifies SESplan Supplementary Guidance by demonstrating how housing land requirements for the periods 2009-2019 and 2019-2024 can be met through LDP housing allocations.

A further concern is that all 3 of the scenario outlines in the MIR include a reference to "*the base supply*" and imply that this base supply would provide 22,847 units. Similarly, a box on page 30 of the MIR which summarises the Council's proposed housing growth strategy refers to "*existing committed development*". The terms "*base supply*" and "*existing committed development*" are not defined in the MIR glossary, but it is assumed that they both incorrectly refer to the established housing land supply, as calculated in the West Lothian Housing Land Audit (22,533 units as per the HLA 2013). Given that all of the scenarios presented in the MIR rely on this established land supply but do not identify the current **effective** housing land supply, it is not possible to confirm that any of the three scenarios would deliver sufficient effective housing land to achieve the 2019 and 2024 SESplan housing land requirements. In particular, there is no evidence presented within the MIR or its appendices to demonstrate that the commitment in the 'preferred' strategy to allocate land for "*3,500 houses above existing committed development*" would be sufficient to achieve the 2019 and 2024 SESplan housing land requirements.

The MIR at paragraph 3.41 states that there is currently a "*substantial (and generous) supply of housing land in West Lothian*", however this is misleading as it refers to the total established land supply rather than to the effective housing land supply. Therefore the 'preferred' housing growth strategy should be modified to take into account the effective housing land supply rather than the established land supply, and consequently the LDP should allocate a significant amount of additional effective housing land in order to ensure that the 2019 and 2024 SESplan Housing Land Requirements

In addition, it is of concern that the MIR makes no reference to the need to allocate effective housing land to provide a generosity margin of 10-20% over and above the SESplan SDP housing land requirements. The MIR also does not demonstrate how a five year effective land supply can be maintained at all times, as required by the SPP at paragraph 119. The detailed analysis presented in the Housing Land Report which supports this representation confirms that:

- West Lothian's current 5 year effective land supply for the five year period 2014/15 – 2018/19 is 3,763 units. Therefore, compared with the current 5 year land supply requirement (8,600 units) there is currently a 56.2% shortfall in West Lothian's 5 year housing land supply. The analysis presented in the Housing Land Report also confirms that even allowing for an estimated 750 units per annum completions between 2020/21 – 2023/24 there would continue to be a significant shortfall in West Lothian's five year effective land supply in every five year period up to 2023/24.
- The West Lothian Housing Land Audit 2013 asserts that the "*total effective housing land supply*" is 14,470 units. Discounting the 8,551 expected completions which are earmarked for "post 2020" but which are not programmed for delivery in specific years (and therefore cannot be proven to be effective in a specific year) generates a maximum total effective land supply of 5,919 units which could conceivably contribute to meeting the 2019 SESplan housing land requirement for West Lothian (this assumes that the 2019 SESplan housing land requirement deadline is extended to 2019/20 rather than terminating in 2018/2019 as expected).



- Taking into account completions from 2009/10 to 31<sup>st</sup> March 2013 with the current total effective land supply of 5,919 units gives a net total of 8,166 units which are either completed or could be delivered from the effective land supply by 2020. Even if all 8,166 units are delivered by 2019 (i.e. assuming that all 2019/20 expected completions can be delivered early), against West Lothian's SESplan Housing Requirement for 2009-2019 (11,420 units) a shortfall of 3254 units (28.5%) in the total effective land supply would exist. Therefore there is clearly a significant and quantifiable shortfall in West Lothian's total effective land supply.

This evidence demonstrates that the LDP must include a significant amount of additional effective land allocations to ensure that a five year effective land supply can be maintained at all times and to ensure that the SESplan housing land requirements can be met. Therefore the proposal within the MIR to allocate "*a small number of new housing sites that will complement the existing development strategy*" clearly represents an inadequate response to the scale of the identified effective housing land shortfall in West Lothian, so a much greater number of new effective housing land sites should be allocated in the LDP.

### 3. Question 18

#### 3.1 Do you have another alternative strategy? What is it and how would you make it work?

As set out in the consolidated response to MIR questions 15-17, it is considered that a new or substantially modified housing growth strategy is required for the LDP. This strategy should:

- accord with the modified SESplan SDP Housing Land Supplementary Guidance in relation to both the 2009-2019 and 2019-2024 SESplan housing land requirement for West Lothian. Specifically, housing land requirements should relate to the required 2009-2019 and 2019-2024 periods rather than to an overall 2009-2024 period.
- accord with the requirement set out in the Scottish Planning Policy at paragraph 116 for LDPs to increase SDP housing land targets by "*a margin of 10 to 20% to establish the housing land requirement, in order to ensure that a generous supply of land for housing is provided*".
- identify the contribution which **effective** housing allocations from the adopted Local Plan could make to achieving the 2019 and 2024 housing land requirements (+10-20% generosity margins); and,
- identify the shortfall in the total **effective** housing land supply which must be eliminated through the allocation of significant additional effective housing land within the LDP.
- allocate sufficient additional effective housing land to cover the identified shortfall between the current effective housing land supply and the 2019 and 2024 housing land requirements (+10-20% generosity margin). The amount of effective housing

land which is required significantly exceeds the amount of new housing land identified as 'preferred' housing allocations within the MIR appendices.

## 4. Question 19

### 4.1 How can the council maintain an effective five year housing land supply given the current economic climate?

SESplan Policy 6 states that “*each planning authority in the SESplan area shall maintain a five years' effective housing land supply at all times*”. This policy accords with the SPP at paragraph 119, which states that “*local development plans should provide for a minimum of 5 years effective land supply at all times. In allocating sites, planning authorities should be confident that land can be brought forward for development within the plan period and that the range of sites allocated will enable the housing supply target to be met*”. Therefore a 5 year effective land supply is to be maintained under the current West Lothian Local Plan as well as under the West Lothian LDP once adopted.

It is acknowledged that the housebuilding industry has been significantly affected by adverse economic conditions in recent years; however it is also evident that there have been a marked improvements in house completions and sales over the last 18-24 months, assisted by several national policy initiatives. Therefore it is considered that the most appropriate mechanism to ensure that an effective five year housing land supply can be maintained is to allocate sufficient land within the LDP that is capable of accommodating an appropriate range of housing to exceed both the 2019 and 2024 SESplan housing land requirements. The total quantity of housing allocations within the LDP must also take into account the need to accommodate a 10-20% generosity margin over and above the SESplan housing land requirements.

To ensure that the required five year effective land supply is maintained at all times, the Chief Planner letter regarding housing land supply dated October 2010 stated that “*development plans should identify triggers for the release of...effective sites where a 5 year effective supply is not being maintained*”.

In view of the uncertainty regarding the achievability of SESplan housing land requirements through West Lothian Council's 'preferred' housing growth strategy (see separate representations regarding MIR questions 15-17 and the supporting Housing Land Report for full details), it is recommended that the LDP should be supported by statutory Supplementary Guidance which should set out mechanisms to ensure that a five year effective housing land supply can be maintained at all times. This Supplementary Guidance should include provision for additional housing sites to be brought forward during the LDP plan period if a shortfall in the 5 year effective land supply is identified through annual Housing Land Audits.

## 5. Question 20

### 5.1 Do you agree with the 'Preferred' option for the removal of existing housing allocations from the development plan? If not, why not?

This representation is supported by a Housing Land Report, which presents a detailed analysis of the adequacy of West Lothian's current 'effective' housing land supply. This includes a number of constrained housing sites which are proposed to be carried over to the LDP.

Qualified support is given to the Council's 'preferred' option of de-allocating some existing housing allocations through the LDP. It is considered that whilst the removal of some existing housing allocations would assist with the maintenance of a five year effective land supply, an insufficient number of constrained or otherwise non-effective current housing allocations (from the West Lothian Local Plan 2009) are proposed to be de-allocated through the LDP. Therefore a greater number of currently constrained Local Plan housing allocations should be de-allocated in the LDP. In accordance with the SESplan Housing Land Supplementary Guidance at paragraph 3.8, these de-allocated sites must be replaced on a unit for unit basis with new effective land allocations within the LDP.

The MIR at paragraph 3.73 states that "*all existing housing sites in the Housing Land Audit/WLLP have been reviewed in relation to their impact on school capacity and other infrastructure and environmental constraints*" and as a result of this a relatively small number of sites are proposed to be de-allocated. However, the MIR does identify the criteria which have been used to determine which sites should be de-allocated, and it also does not state that all Local Plan allocations have been reviewed to determine their current effectiveness in accordance with PAN 2/10, as could have been expected. Therefore whilst the MIR does identify a limited number of existing housing allocations for removal, it does not commit to de-allocating all or at least many constrained or non-effective sites through the LDP. This implies that the LDP, and therefore West Lothian's housing land supply, would continue to include a number of constrained or otherwise non-effective sites. The merit of this is unclear as these sites evidently cannot contribute to the five year effective land supply, so allocating them would necessitate the need for an even greater amount of overall housing land allocations within the LDP. Therefore it is recommended that during the preparation of the LDP Proposed Plan West Lothian Council should undertake a full review of the effectiveness of all Local Plan allocations and all new housing sites which are proposed to be allocated within the LDP. Any sites which are found to be non-effective should be replaced on a unit for unit basis with new effective housing sites.

## **6. Question 21**

### **6.1 Do you agree with the ‘Alternative’ option’ for the removal of existing housing allocations from the development plan? If not, why not?**

No, the ‘alternative’ option is not agreed with. By not de-allocating any constrained or otherwise non-effective sites through the LDP West Lothian’s housing land supply would continue to include a number of constrained or otherwise non-effective sites. The merit of retaining constrained sites within West Lothian’s housing land supply is unclear, as these sites evidently cannot contribute to the critical five year effective land supply. Therefore if constrained or otherwise non-effective sites are allocated within the LDP this would necessitate the need for an even greater amount of overall housing land allocations within the LDP, to ensure that a five year effective land supply is maintained at all times.

## **7. Question 22**

### **7.1 Do you have any other alternative options? What are they and how would you make them work?**

As set out in the response to MIR question 20 it is recommended that a much greater number of currently constrained Local Plan housing allocations should be de-allocated in the LDP, and that in accordance with the SESplan Housing Land Supplementary Guidance at paragraph 3.8, these de-allocated sites must be replaced on a unit for unit basis with new effective land allocations within the LDP. To facilitate this it is recommended that during the preparation of the LDP Proposed Plan West Lothian Council should undertake a full review of the effectiveness of all Local Plan allocations and all new housing sites which are proposed to be allocated within the LDP. The effectiveness criteria used to determine which Local Plan allocations should be de-allocated or carried over to the LDP should also be transparently set out in the LDP Proposed Plan, as this is currently lacking from the MIR.

In view of the uncertainty regarding the achievability of SESplan housing land requirements through West Lothian Council’s ‘preferred’ housing growth strategy (see separate representations regarding MIR questions 15-17), it is recommended that the LDP should include a commitment to review the existing Community Development Areas within two years of the LDP adoption date. If at this point any of the CDA housing allocations are found to be non-effective they should be removed from West Lothian’s “effective” land supply and replaced on a unit for unit basis with new, effective housing sites. In addition, it is recommended that the LDP should be supported by statutory Supplementary Guidance which should set out mechanisms to ensure that a five year effective housing land supply can be maintained at all times. This Supplementary Guidance should include provision for additional housing sites to be brought forward during the LDP plan period if a shortfall in the 5 year effective land supply is identified through annual Housing Land Audits.



This representation is supported by a Housing Land Report, which presents a detailed analysis of the adequacy of West Lothian's current 'effective' housing land supply.

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[Redacted] (10.10.2014)

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# West Lothian Local Development Plan MIR Representations regarding Questions 23 – 24 (Core Development Areas)

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## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report (MIR). Specifically, this technical note responds to MIR questions 23 and 24.

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## 2. Question 23

### 2.1 Do you agree with the 'Preferred' approach to the core development areas? If not, why not?

Yes, the 'preferred' approach of continuing to support the delivery of new housing within the defined Core Development Areas (CDAs) is supported. However, in view of the uncertainty regarding the achievability of SESplan housing land requirements through West Lothian Council's 'preferred' housing growth strategy (see separate representations regarding MIR questions 15-17 and the associated Housing Land Report), it is recommended that the LDP should include a commitment to review the existing Community Development Areas within two years of the LDP adoption date. If at this point any of the CDA housing allocations are found to be non-effective they should be removed from West Lothian's "effective" land supply and replaced on a unit for unit basis with new, effective housing sites. Through Supplementary Guidance the LDP should also set out mechanisms to ensure that a five year effective land supply can be maintained at all times.

Hallam welcomes the recognition in the MIR at paragraph 3.44 that accelerated development within the CDAs will be required in order to achieve the SESplan housing land targets and to ensure that the Local Development Plan (LDP) complies with national planning policy regarding housing land allocations. It is for this reason that Hallam have proposed site EOI 0127 as a candidate housing allocation within the Armadale CDA (see separate representation regarding the MIR appendices and the schedule of 'preferred' housing sites therein).

Hallam agrees with the view expressed in the MIR at paragraph 3.44 that accelerated development within the CDAs would require infrastructure provision issues to be addressed and that LDP housing allocations within the CDAs could support this through developer contributions. However, any requirement for developer contributions must satisfy the tests of proportionality, relevance and necessity set out in Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements.

It is considered that the statement within MIR at paragraph 3.76 states that further housing allocations within the Armadale CDA "*are constrained because of school capacity issues*" is overly simplistic. It is acknowledged that there are currently some education infrastructure constraints within Armadale and Bathgate; however, the Reporter's decision in the recent Land at Falside appeal case concluded that educational constraints relating to secondary school and denominational primary school provision serving western areas of Bathgate were not insurmountable. In relation to non-denominational primary school provision in western areas of Bathgate Hallam propose to include a new non-denominational primary school within site EOI 0127, in order to accommodate pupils generated from EOI 0127. This could also help to alleviate growing pressure on Windyknowe Primary School. Therefore whilst education capacity issues do exist within the Armadale CDA it is considered that the MIR does not adequately recognise the potential for these issues to be addressed.

### 3. Question 24

#### 3.1 Do you agree with the 'Alternative' approach to the core development areas? If not, why not?

No, the 'alternative' approach is not agreed with. Preventing further housing allocations or residential development within the CDAs would result in the need to allocate a significant amount of additional new effective housing land in less sustainable locations, which would conflict with the stated aims of the MIR and national policy in relation to sustainable development and environmental protection. In addition, a number of the Local Plan housing allocations within the CDAs are acknowledged to be constrained, so there would be little benefit in allocating these constrained sites but not considering other opportunities to allocate new, effective sites that are located within the CDAs in the LDP.

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[Redacted] (10.10.2014)

*Reviewer:*

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# West Lothian Local Development Plan MIR Representations regarding Questions 35 – 36 (Affordable Housing)

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## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report. Specifically, this technical note responds to MIR questions 35 and 36.

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## 2. Question 35

### 2.1 Do you agree with the ‘Preferred’ approach to affordable housing? If not, why not?

Yes, the ‘preferred’ approach to affordable housing is agreed with. The ‘preferred’ approach of setting out an affordable housing policy in Supplementary Guidance accords with the Scottish Planning Policy (SPP) at paragraph 131.

In reviewing the Council’s affordable housing policy regard should be had to the SESplan Strategic Development Plan, which at paragraph 117 identifies a “benchmark” figure of 25% affordable housing on individual sites. The Council’s affordable housing policy must also be consistent with the Scottish Planning Policy, which at paragraph 129 states that “the level of affordable housing required as a contribution within a market site should generally be no more than 25% of the total number of houses”.

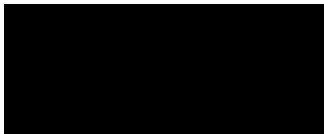
To maximise the delivery of affordable housing whilst not undermining the viability of delivering significant additional private housing (required to achieve the 2019 and 2024 SESplan housing land requirements), it is recommended that the Council’s new affordable housing policy should permit a range of mechanisms to be utilised in respect of affordable housing provision from private housing sites.

## 3. Question 36

### 3.1 Do you agree with the ‘Alternative’ approach to affordable housing? If not, why not?

No, the ‘alternative’ approach is not agreed with. It is considered necessary to review the Council’s affordable housing policy to ensure conformity with the SESplan SDP and national planning policy, including the National Planning Framework 3 and the Scottish Planning Policy (Scottish Government, 2014).

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 (10.10.2014)



*Reviewer:*



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# West Lothian MIR Representations regarding Questions 38 – 41 (Infrastructure Provision)

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## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report. Specifically, this technical note responds to MIR questions 38, 39, 40 and 41.

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## 2. Question 38

### 2.1 Do you agree with the ‘Preferred’ approach to infrastructure provision? If not, why not?

No, the ‘preferred’ approach is not agreed with, on the grounds that it will not be feasible to achieve the 2019 and 2024 SESplan housing land requirements for West Lothian within the context of existing infrastructure capacity constraints. Therefore it is submitted that significant additional new infrastructure is urgently required to alleviate existing infrastructure capacity issues and facilitate housing growth, particularly in respect of education infrastructure provision.

The Main Issues Report (MIR) does not set out a detailed strategy for addressing existing education constraints, other than suggesting that some catchment reviews could be brought forward. This is clearly an inadequate response to the scale of the existing education capacity issues. In addition, it is not clear from the MIR how additional new housing allocations within the Local Development Plan (LDP) will deliver the required education infrastructure across West Lothian. Therefore, it is submitted that the Council’s approach to education infrastructure provision requires significant modification. The correct approach should set out a coherent strategy for addressing both existing infrastructure constraints and providing the additional new infrastructure which will be required to support the achievement of the 2019 and 2024 SESplan housing land requirements for West Lothian. It is for this reason that Hallam have proposed site EOI 0127 as a candidate housing allocation within the Armadale Community Development Area (CDA) and have proposed to include a new non-denominational primary school within the site (see separate representation submitted regarding the CDAs and the schedule of ‘preferred’ housing sites listed in MIR appendix 3).

## 3. Question 39

### 3.1 Do you agree with the ‘Alternative’ approach to infrastructure provision? If not, why not?

No, the ‘alternative’ approach is not agreed with. Any decision not to promote growth would be contrary to the proposed vision, which envisages a growing population and “*an appropriate range of education, community, health, retail, recreation and leisure facilities*” to support this. In addition, it is considered that without significant new infrastructure provision it would not be feasible to achieve the 2019 and 2024 SESplan housing land requirements

The MIR notes on page 45 that this ‘alternative’ approach is “*unrealistic and contrary to national planning policy*”, so it is clear that it does not constitute a genuine policy alternative. As such the merit of including this ‘alternative’ approach within the LDP is unclear.

## **4. Question 40**

### **4.1 Do you have any other alternative approaches? What are they and how would you make them work?**

The correct approach to infrastructure provision in West Lothian should set out a coherent strategy for addressing both existing infrastructure constraints and providing the significant new additional infrastructure which will be required to achieve the 2019 and 2024 SESplan housing land requirements for West Lothian. There is a clear need for a number of school extensions in order to address existing education infrastructure constraints, and new schools will also be required to accommodate pupils generated from the significant new housing required to achieve the 2019 and 2024 SESplan housing land requirements.

## **5. Question 41**

### **5.1 How can the level of infrastructure required to support the scale of development proposed be delivered?**

Hallam agrees with the view expressed within the MIR that accelerated development within the CDAs would require infrastructure provision issues to be addressed and that LDP housing allocations within the CDAs could support this through developer contributions. This includes the proposed provision of a non-denominational primary school as part of candidate housing allocation EOI 0127. However, any requirement for developer contributions must satisfy the tests of proportionality, relevance and necessity set out in Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements. There should not be an expectation that developers will necessarily meet all or the majority of the costs associated with strategic infrastructure that is not solely required to make individual proposed developments acceptable in planning terms. Therefore the mechanisms which will be used to secure developer contributions from individual planning applications should be clearly set out in the LDP.

Given that developer contributions should only be secured where infrastructure improvements are required to make a proposed development acceptable in planning terms, there will be a need for West Lothian Council to fund significant infrastructure improvements from other sources. The broadest possible range of funding sources and mechanisms should be considered, including enhanced use of the West Lothian Infrastructure Fund, careful prioritisation of the Council's capital budgets and potential applications to the Scottish Government for Tax Incremental Funding (TIF) where circumstances allow.

*Author:*

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[Redacted] (10.10.2014)

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# West Lothian Local Development Plan MIR Representation regarding Question 42 (Transport)

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## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report (MIR). Specifically, this technical note responds to MIR question 42.

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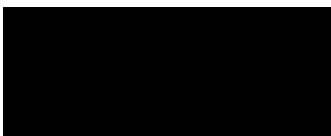
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## 2. Question 42

### 2.1 Do you agree with the 'Preferred' approach to promoting access to/from/within West Lothian? If not, why not?

Yes, Hallam supports the Council's preferred approach of addressing outstanding constraints in the strategic and local road network to accommodate economic and housing growth, whilst also promoting sustainable transport measures. It is agreed that the 'alternative' approach of shifting emphasis away from addressing road network issues to focus exclusively on sustainable transport measures would not be consistent with national planning policy and does not represent a reasonable alternative to the 'preferred' approach. To maximise the sustainability of the significant new housing development required to achieve the 2019 and 2024 SESplan housing land requirements for West Lothian it will be important that the land use and transport strategies encompassed within the West Lothian Local Development Plan (LDP) are developed and implemented in tandem. Consequently it is considered that the accessibility of proposed housing sites using a range of transport modes should be an important factor in allocating proposed housing sites within the LDP.

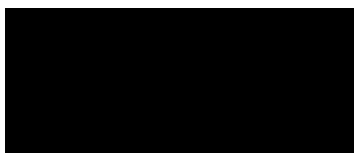
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 (14.10.2014)

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## 2. Question 48

### 2.1 Do you agree with the ‘Preferred’ approach to the natural environment in West Lothian? If not, why not?

The Council’s ‘preferred’ approach is partially supported. The proposal to direct proposed developments to appropriate brownfield sites where possible accords with national planning policy, however to ensure that the SESplan 2019 and 2024 housing land requirements for West Lothian are achieved it is important that development viability considerations are also taken into account when allocating land for housing. This is particularly critical given that multiple existing Local Plan housing allocations on brownfield land are acknowledged to be constrained, thus only allocating additional brownfield land within the Local Development Plan (LDP) is unlikely to generate sufficient effective housing land to meet both the SESplan 2019 and 2024 housing land requirements (+10-20% generosity margin).

The proposed approach of allowing new development on edge of settlement sites where are demonstrated to be sustainable is strongly supported, as it is considered that this is essential to provide sufficient effective housing land to achieve the 2019 and 2024 SESplan housing land requirements, whilst maximising environmental protection. In deciding whether to allocate edge-of-settlement sites within the LDP it is agreed that the Local Landscape Designations Review (LLDR) document should be a key material consideration. The recommendation within the LLDR report that some existing local landscape designations should not be carried over to the LDP as Special Landscape Areas is supported, and it is submitted that this should be an important factor when assessing potential development opportunities on edge of settlement sites.

The requirement within the ‘preferred’ approach to demonstrate that there are “no alternatives” to greenfield development in order to “meet strategic requirements” is not supported. It is considered that this requirement is unclear, as the MIR does not define what constitutes either a reasonable alternative or a strategic requirement in relation to greenfield land release and environmental protection. In addition, this approach would introduce a sequential test to the consideration of a wide range of development proposals, including but not limited to proposed residential development. A sequential approach can only be justified in very specific circumstances, of which general development on greenfield (but not Green Belt) land is clearly not one. The SPP states that circumstances where the use of a sequential approach is appropriate usually relate to the siting of retail and other high footfall developments to protect the vitality of town centres, not to all general development proposals on greenfield land. Therefore it is submitted that the introduction of a sequential approach to development proposals on greenfield sites would be contrary to the established planning principle that wherever possible planning applications should be determined on the basis of their individual merits. In addition, it is submitted that the introduction of a sequential test for development on greenfield sites would not be in accordance with SESplan Policy 7, which allows greenfield sites to be allocated for housing if there is demonstrated to be a shortfall in the five year effective housing supply and three specific sustainability criteria are satisfied. SESplan Policy 7 makes no reference to any need to undertake a sequential test for greenfield land release, therefore it is considered that the inclusion of such a test within the West Lothian LDP would be inappropriate.

### **3. Question 49**

#### **3.1 Do you agree with the ‘Alternative’ approach to the natural environment in West Lothian? If not, why not?**

Yes, the Council’s ‘alternative’ approach is broadly supported.

It is acknowledged that the LDP should promote the reuse of brownfield land in accordance with the SPP at paragraph 40. However, to ensure that a five year effective housing land supply is maintained at all times it is considered that a range of brownfield and greenfield sites should be allocated in the LDP. Regardless of their current brownfield or greenfield status, all proposed housing allocations should be assessed against the presumption in favour of development that contributes towards sustainable development within the SPP. For proposed housing allocations on greenfield sites, the

As worded in the MIR it is unclear whether the proposal to “allow parts of designated areas to be released” relates to existing landscape and natural heritage designations or whether it relates to the candidate Special Landscape Areas (SLAs) identified within the LLDR. Therefore this should be clarified alongside the detailed land allocations which will be included LDP Proposed Plan.

Given that the LLDR represents the most up to date assessment of landscape character, qualities and features within West Lothian it is considered that this document, including its recommendations to designate Special Landscape Areas but not to carry over some existing local designations into the LDP should be a key consideration when deciding whether to allocate individual sites within the LDP.

### **4. Question 50**

#### **4.1 Do you have an alternative approach? What is it and how would you make it work?**

Whilst acknowledging the importance of promoting development on brownfield land wherever possible, to ensure that sufficient effective land supplies are maintained at all times it is recommended that a range of brownfield and greenfield sites should be allocated within the LDP. Subject to an assessment of each proposed land allocation against relevant sustainable development principles, it is submitted that preference should be given to the allocation of proposed housing sites on the edge of settlements, as their proximity to local and strategic transport networks and to existing services is likely to result in these sites being environmentally sustainable, attractive and viable places to develop.

To accord with the SESplan SDP, SESplan Policy 7 must be a key consideration in deciding whether to allocate proposed greenfield housing sites within the LDP. In addition SESplan Policy 7 should be embedded into the LDP in relation to the determination of applications for

housing development on unallocated greenfield sites when annual housing land audits indicate that there is a shortfall in West Lothian's effective land supply.

As noted in response to question 48, the requirement within the 'preferred' approach to demonstrate that there are "no alternatives" to greenfield development to "meet strategic requirements" is unclear and would inappropriately introduce a sequential approach to general development proposals on greenfield sites. Therefore such an approach should not be included within the LDP.

## **5. Question 51**

### **5.1 Do you agree with the 'Preferred' approach to landscape designations in West Lothian? If not, why not?**

Yes, the 'preferred' approach of reducing the number of local landscape designations within West Lothian to reflect the findings of the Local Landscape Designation Review (LLDR) and accord with national planning policy is supported. All proposed local landscape designations should satisfy the criteria set out within the Scottish Planning Policy at paragraph 197. The recommendation within the LLDR not to carry forward the existing Boghead House Area of Special Landscape Control into a candidate Special Landscape Area is supported, on the grounds that this area is dominated in parts by electricity pylons and transport infrastructure (the A801 and the Bathgate-Airdrie railway) and does not represent a particularly valuable or distinctive landscape. It is considered that development within this area, such as proposed housing site EOI 0127, could be sensitively integrated into the landscape through the use of a careful masterplanned approach.

## **6. Question 52**

### **6.1 Do you agree with the 'Alternative' approach to landscape designations in West Lothian? If not, why not?**

No, the 'alternative' approach of continuing with all existing local landscape designations is not agreed with. It is considered that several of the existing local landscape designations, including the Boghead House Area of Special Landscape Control, no longer comply with the requirements for local landscape designations set out within the SPP at paragraph 197 and therefore should not be carried over to candidate Special Landscape Areas. In relation to the existing Boghead House Area of Special Landscape Control the LLDR does not identify sufficient evidence that landscape is particularly valuable or distinctive, therefore it is considered appropriate not to carry this designation over within the LDP.

## 6.2 Do you have any additional comments?

Given that the LLDR represents the most up to date assessment of landscape character, qualities and features within West Lothian it is considered that this document, including its recommendations to designate Special Landscape Areas but not to carry over some existing local designations into the LDP should be a key consideration when deciding whether to allocate individual housing sites such as site EOI 0127 within the LDP.

*Author:*

[Redacted]

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[Redacted] (14.10.2014)

*Reviewer:*

[Redacted]

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[Redacted] (14.10.2014)

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# West Lothian Local Development Plan MIR Representations regarding Question 54 (Development in the Countryside)

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## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report. Specifically, this technical note responds to MIR question 54.

The contact details for Hallam (i.e. Organisation) and AMEC (i.e. Agent on behalf of Hallam) are given below:

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## 2. Question 54

### 2.1 Is the ‘Preferred’ approach to housing development in the countryside appropriate? If not, why not?

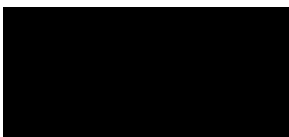
Yes, the ‘preferred’ approach to development in the countryside is broadly agreed with. However, to enhance the clarity of this policy position it is recommended that the term ‘development in the countryside’ should be defined within the Local Development Plan (LDP), as the scope of this term is currently unclear. The Main Issue Report (MIR) includes references to preventing sporadic and isolated rural housing developments, promoting lowland crofting and supporting rural economic activity. All of this suggests that the term is intended to relate to rural areas rather than to edge of settlement locations, but this should be made clearer in the LDP.

Any proposed ‘development in the countryside’ policy within the LDP should be consistent with the Scottish Planning Policy at paragraph 81, which states:

*“In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside...plans and decision-making should generally:...guide most new development to locations within **or adjacent to settlements**”* (our emphasis).

Therefore a ‘development in the countryside’ policy should be sufficiently flexible to allow edge of settlement development where proposals are demonstrated to be sustainable and in accordance with other relevant national and Development Plan policies. Proposed allocations should not be rejected from the LDP and proposed developments should not be refused only because they are located on the boundary of existing settlement envelopes. Furthermore, it should be understood that ‘development in the countryside’ policies are not Green Belt policies and should not be applied as such.

*Author:*




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 (14.10.2014)

*Reviewer:*



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 (14.10.2014)



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# West Lothian Local Development Plan MIR Representation regarding Question 70 (Open Space)

---

## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report. Specifically, this technical note responds to MIR question 70.

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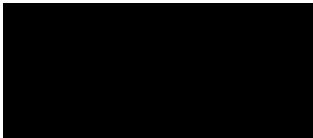
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## 2. Question 70

### 2.1 Do you have any views on what should be considered for the second Open Space Strategy for 2015/16? Why should these be considered?

In relation to standards for open space provision within residential developments, in line with the Scottish Planning Policy (SPP) at paragraph 225 proposed standards should facilitate appropriate provision, focus on connecting green infrastructure assets and encourage a design led approach through the use of masterplans. Where publicly accessible landscaping belts, footpaths or multi-user paths are incorporated into master planned developments these should be counted towards open space requirements.

*Author:*




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 (14.10.2014)

*Reviewer:*



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 (14.10.2014)

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# West Lothian Local Development Plan MIR Representation regarding Question 89 (Flood Risk)

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## 1. Introduction

This technical note sets out representations submitted by AMEC Environment & Infrastructure UK Ltd (AMEC) on behalf of Hallam Land Management (Hallam) regarding the West Lothian Local Development Plan Main Issues Report. Specifically, this technical note responds to MIR question 89.

The contact details for Hallam (i.e. Organisation) and AMEC (i.e. Agent on behalf of Hallam) are given below:

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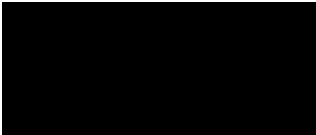
## 2. Question 89

### 2.1 Do you agree with the 'Preferred' approach to flood risk appropriate? If not, why not?

The 'preferred' approach is agreed with. However, where the SEPA flood map indicates that there is variable flood risk across large candidate land allocations, consideration should be given to allocating these sites within the Local Development Plan (LDP) but with requirements to avoid development or over-development in specific areas with a recognised increased flood risk. These areas could be usefully used for open space provision or landscaping, without preventing the allocation of or undermining the viability of entire proposed housing allocations.

Given that detailed flood risk assessments and any required mitigation measures for proposed development sites can be addressed through normal planning application process, it is considered inappropriate not to allocate individual sites within the LDP on the basis that detailed flood risk assessments have not yet been undertaken.

*Author:*




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 (14.10.2014)

*Reviewer:*

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 14.10.2014)

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