



**MINUTES OF THE MEETING OF THE
LOCAL REVIEW BODY**

**THURSDAY 20 JULY 2023
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor J Findlay (Chair)
Councillor L Allan
Councillor A Forrest

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Ms J Squires, Planning Adviser to the LRB

Clerk:

Ms F Currie, Committees Officer

Apologies:

None

Declarations of Interest

None

Introductory Statement by the Legal Adviser

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning applications before it and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine an application today.

The Legal Adviser then invited nominations to chair the meeting. Councillors Allan and Forrest indicated that they would be content for Councillor Findlay to chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 22/01273/P: ERECTION OF FENCE (RETROSPECTIVE), VIEWFIELD, HUNTLAW ROAD, PENCAITLAND EH34 5AG

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the first case related to application no. 22/01273/P; a review of the decision to refuse retrospective planning permission for the erection of a fence at Viewfield, Huntlaw Road, Pencaitland. She provided details of the application and its site and surroundings.

The Planning Adviser reminded Members that the application must be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan at the time of the application consisted of the South East Scotland Strategic Development Plan (SESPlan) and the adopted East Lothian Local Development Plan (the LDP), with National Planning Framework 4 (NPF4) being a material consideration. The development plan now consisted of the LDP and NPF4, which came into force in February 2023.

She noted that no representations were made by the public on this application and that the Council's Road Services team were consulted and had no objections.

She then summarised the relevant planning policies, which were: LDP Policy RCA1 – Residential Character and Amenity; LDP Policy DP1 - Landscape Character and LDP Policy DP2 – Design (part 1) and (part 3).

In their report, the planning case officer had noted that the house and fence were visible from Huntlaw Road, and also Lempockwells Road, a route out of Pencaitland to the south. Due to its height, close boarded form, and roadside positioning the fencing was considered much more prominent and imposing in character than the enclosures of other front gardens in this part of Huntlaw Road. As a result, it was not considered to be appropriate to its setting and was out of keeping with the other boundary treatments, contrary to Policy DP2. It was further considered that the fencing would set a harmful precedent for allowing the addition of similar forms of fencing in this residential area.

The application was therefore refused for two reasons. The first being that the fence was not appropriate its setting and is harmful to the character and appearance of the area contrary to Policy DP2 of the LDP, and secondly would set a harmful precedent, also contrary to LDP Policy DP2.

The applicant, in their original application, stated that before erecting the fence they removed a substantial hedge. They had supplied photographs of the hedge, which showed it to be about the same height as the lighting column in front of the house. The applicant stated that they built the fence to protect their award winning dogs from theft, and to prevent them jumping out of the garden. The applicant stated that the fence gave their neighbours a better outlook and more light. The applicant noted that a laurel hedge and climbing plants had been planted.

The case officer had provided their views on the effect of the adoption of NPF4 subsequent to their determination of the application. They considered that Policy 16 Quality Places applied. The case officer considered the proposal would not comply with Policy 16g of NPF4, as it detrimentally affected the character of the house and the surrounding area.

The Planning Adviser agreed with the case officer in considering that the fence was contrary to LDP Policy DP2; as firstly it was not appropriate to its location due to its height and form; secondly its positioning due to how it sat behind the existing wall as there were then two separate boundary features of different appearance, and thirdly contrary to usual practice the fence posts were on the outer side of the fence which was unattractive and did not help to provide a sense of welcome, safety and security.

Policy DP1 Landscape character required development to be well integrated into its surroundings. As noted earlier, although there was a diversity of boundary treatments in the area, they were unified by their height of around 1m or lower. The Planning Adviser also agreed with the case officer that the fence was not appropriate to its location contrary to DP2; and that it was not consistent with NPF4 Policy 16g as the case officer had set out.

The Planning Adviser then considered the applicant's appeal submission which argued that the case officer did not take sufficient account of the planting of laurel and climbers. A photograph had been submitted showing laurel, which was evergreen and shade tolerant, planted between the wall and the hedge. While this could grow to cover the fence, the fence would be visible in the surrounding area throughout such a growth period. The available growing space between the fence and the edge of the footway was narrow and it could not be certain that the hedge would grow or survive. The hedge may never therefore obscure the fence. In those circumstances, if consent were granted, it would not be reasonable to seek removal of the fence.

However, should the Members be minded to allow this appeal, she recommended a condition requiring a landscaping plan to be submitted for approval by the planning authority within 2 months of consent being issued as planting may improve the appearance of the proposal.

As part of their submission, it was noted that the applicant had also stated that the fence was an improvement on the previous substantial hedge. As this hedge had now been removed, whether or not the fence was an improvement was not a material consideration. Similarly, the needs of the dogs was not a material consideration.

The Planning Officer concluded that she considered the proposal contrary to LDP Policies DP1 and DP2, and NPF4 Policy 16. Furthermore, she did not consider there were any material considerations which would indicate that planning permission should be determined other than in accordance with the development plan.

The Planning Adviser concluded her presentation by reminding Members that it was open to them to refuse the application for the same reasons as set out in the original

decision or for other reasons; to grant the application in whole or in part; or to grant the application with conditions.

The Planning Adviser responded to a question from the Chair. She confirmed that a condition could be added to planning permission, if granted, requiring a hedge or climbers to be planted and maintained to improve the appearance of the fence.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Forrest said that the site visit had been very helpful, as had the photographs provided. He was concerned that the fence extended beyond the end of the house, although he noted that it appeared well built and mainly took in the rear garden. He said he had seen fences elsewhere which fully encircled a house and garden resulting in the property looking like a fortress. He was of the view that to grant planning permission in this case would set an unhelpful precedent and he was therefore minded to refuse the application.

Councillor Allan felt that a case-by-case approach was appropriate here, although she understood the need for a uniform policy. She noted that the fence would be hidden by foliage after a short period of time and would not be out of place, as there were hedges of differing heights close by. While she acknowledged that, at present, the fence did have an impact, she felt it would blend in reasonably well when covered by foliage. She was minded to go against the decision of the case officer and to grant planning permission.

The Chair said he could understand why the case officer had reached their decision. However, he felt it was important to note that if the hedge was grown up it would cover the fence. It was also important to note that there had been no objections from neighbours. While he was minded to grant planning permission, he would like to make it a condition that the hedge was planted and grown up to at least the height of the fence. He sought further advice from the Planning Adviser on this point.

The Planning Adviser confirmed that it would be valid to add a condition asking the application to plant a hedge and seek to grow it to the height of the fence. Whether this planting would be successful was unknown. She added that it would not be appropriate to enforce removal of the fence, if the landscaping failed.

Councillor Allan confirmed that she would support the addition of a landscaping condition.

Councillor Forrest indicated that he opposed both the application and the suggested condition.

The members of the LRB confirmed their decision via roll call vote.

Decision

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission subject to the following condition:

1. No later than 2 months after the issue of this consent, a Landscaping Scheme shall be submitted to the Planning Authority for approval. The aim of this scheme will be to

obscure the fence from views from Huntlaw Road using suitable species of climbing plants and evergreen shrubs. The Landscaping Scheme must include full details of all shrub and climber species with siting and planting distances, and a maintenance plan. Thereafter the Landscaping Scheme shall be implemented unless otherwise agreed by the Planning Authority. Should the landscaping fail to achieve its aim of obscuring the fence within three years of the issue of this consent, or after this fail so that the aim is no longer achieved, within two months of a request by the planning authority, a revised Landscaping Scheme shall be submitted for approval of the planning authority and thereafter implemented.

The approved Landscaping Scheme shall thereafter be maintained as approved unless otherwise agreed by the Planning Authority.

Reason

To ensure establishment of landscaping to avoid adverse impact on the character and amenity of Huntlaw Road that would otherwise arise from the erection of the fence.

Meeting Note: There were three brief breaks in connection affecting officers and Members during Item 2.

2. PLANNING APPLICATION NO. 23/00081/P: ERECTION OF CAR WASH FACILITIES AND ASSOCIATED WORKS, LAND AT FORMER OAK TREE SERVICES, HADDINGTON, EAST LoTHIAN

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that this case related to application no. 23/00081/P; a review of the decision to refuse planning permission for the erection of car wash facilities and associated works on land at the former Oak Tree Services, Haddington. She provided details of the application and its proposed site and surroundings.

She reminded Members that planning applications should be determined in accordance with the development plan for the area unless material considerations indicated otherwise. The development plan for the area consisted of the East Lothian Local Development Plan and National Planning Framework 4.

She noted that two letters of representation were received to the planning application, one objection and one comment. Responses to the application were also received from the Council's Roads Services, Environmental Health, Landscape, and Flooding, as well as from Transport Scotland.

The Planning Adviser summarised these responses. Roads Services had not supported the proposal as they considered it would have a negative impact on road safety due to drivers from the west turning into the site and drivers queuing from the east. In addition, as the major part of the site was part of the adopted road network the applicant would require a Stopping Up Order which was unlikely to be supported by Roads Services due to the road safety concerns raised.

Environmental Health had raised concerns about emission of spray from the site. The Landscape Officer had sought protection for trees on site, avoidance of use of spiny hedging species and a condition to prevent advertising boards. They had also sought re-

location of the buildings noting that the retail park was designed to minimise visual impact on this view which the officer considered important.

The Planning Adviser then summarised the planning case officer's assessment of the application against planning policy. They had noted that the proposal was located in the countryside and was not of a type that was supported by Policy DC1 of the LDP as there was no operational requirement for a countryside location, nor NPF4 Policy 26 as it had not been shown there were no suitable alternative business or employment sites. They found some support for the proposal in NPF4 Policy 29 which sought to encourage rural economic activity. However, they did not find that it met that policy's requirements on design, as they considered the site was an attractive gateway into Haddington, and the proposal would detract from its character. They also considered it contrary to LDP Policies DP1 and DP2 on Landscape Character and design. Due to its effect on road safety, they considered it contrary to Policy T2 of the LDP.

The proposal was therefore refused for the reasons given in the Decision Notice, namely principle of the use, siting and design, and road safety.

The Planning Adviser then turned to the applicant's Review Statement in which they stated that this was an ideal location for this use as it was, in their view, a dilapidated brownfield site on the fringe of the recently completed Haddington Retail Park. The use would not conflict with any surrounding land use, nor were there any nearby houses. The business would benefit from customers to the retail park, hospital and others. The statement added that existing customers travelled from Haddington to Dunbar which was not very sustainable. Addressing the reasons for refusal, the applicant stated that no one would conclude that this site was located in the countryside. Policy DC1 and Policy 26 should be put to one side and the benefits of the proposal considered. The service was needed, would provide jobs and contribute to local living.

The applicant did not consider the site an attractive green gateway site into Haddington due to its characteristics. The retail park had already compromised the sense of arrival. The proposal was in keeping with the character of the area as it backed onto a filling station. The proposals would improve the existing site and its landscaping would aid its integration into the area.

The applicant considered that the site could be accessed safely, referring to their submitted Transport Statement. This stated that the road was not at capacity and the increase in volume of cars would be negligible. The location next to the roundabout was not considered problematic as traffic was slow and sightlines sufficient. Queuing traffic was unlikely as the site was long and people would not join the queue if the wait was that long. The applicant would agree to a road safety audit as a condition of permission to allay concerns and, if necessary, install mitigation. They considered that signage and land arrangements could be implemented to ensure this was enforced.

The applicant stated that there had been strong support in the area for this proposal, and provided an appendix of numerous comments made to an article in the East Lothian Courier on Facebook, mostly supportive. However, the Planning Adviser observed that these should not be afforded the same status as representations made to the planning application as there was no way to verify them.

The Planning Adviser agreed that the policies applied by the case officer were relevant. In addition, she considered that NPF4 Policies 1, 2, 3 and 14 should also have been considered and set out her reasoning for this. She noted that the applicant had not provided a systematic assessment of how the proposal was designed and sited to minimise lifecycle greenhouse gas emissions, nor how biodiversity had been enhanced.

It was therefore not clear that the requirements of this policy had been met. It was the Planning Service's current practice to address greenhouse gas emissions by use of a condition requiring a report and subsequent implementation. She considered that it would also be possible to secure biodiversity enhancements through a condition of any planning permission in this case.

The Planning Adviser considered the reasons given for refusal to be the determining issues with this application. As to the principle of the use, this use was not acceptable under DC1 or Policy 26, though Policy 29 gave some support. For the second reason for refusal, she agreed that the site was part of an important gateway into Haddington and that this proposal did not meet design policies, including NPF Policy 14. The Road Services officer did not support the application on road safety grounds, having considered the Transport Statement, and she would defer to their expertise in this matter.

As a sui generis use, the need for a serviced car wash in Haddington had not been considered through the development plan. This was therefore a material consideration. She do not consider that this outweighed the provisions of the development plan.

The Planning Adviser concluded her presentation by noting that the case officer had provided suggested conditions which should be applied should the Members wish to allow the appeal; and these conditions were, in her view, appropriate. In addition, she recommended a condition to secure biodiversity enhancement and the Council's standard condition on carbon emissions, as previously mentioned. She would also recommend a condition requiring a Road Safety Audit, as the applicant had offered.

The Planning Adviser responded to questions from Members. She advised that Road Services could not provide any mitigation measures for vehicles turning left out of the site or turning left into the site and queueing on the A199. Road Services had provided no comment on whether they could enforce a right hand turn into/out of the site. The Road Services officer had commented on driver decisions and conflict and had indicated that it would not be possible to design the entrance in a way to prevent drivers entering/exiting the 'wrong' way.

The Planning Adviser confirmed that, while site layout drawings had been submitted for the rear of the site, these were not available to view. She added that any enforcement issues would be for colleagues within Planning Enforcement to determine but, at present, there were no enforcement cases ongoing against the applicant. She agreed that it would be reasonable to add a condition on signage requesting that waiting drivers switch off their engines, and perhaps asking the operator to report on this aspect.

The Legal Adviser indicated that enforcing such a condition and the applicant's ability to monitor drivers and report back could be a challenge. He was also not convinced that signage would achieve what the Members intended.

The Chair asked about a condition asking for a structural survey in relation to the bund. In reply to further questions, the Planning Adviser said it had not been demonstrated through the application that the bund was capable of withstanding the operations and the Council's Flooding & Structures officer had not commented on this aspect. Planning permission should not be granted if Members were in any doubt about this. However, a condition could be added to planning permission asking for work to be done to ensure the stability of the bund. She indicated that whether any such work on the bund would require access from neighbouring land, and therefore permission from the landowner, would be a question for a civil engineer.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Forrest said the site visit had been very helpful. He did not think the site was wrong for the purpose (of a car wash) but he had concerns about how drivers would enter/exit the site. From a road safety point of view, he did not think the site was appropriate and for this reason he would be not be supporting application.

Councillor Allan said she was also concerned about road safety but felt that the design of the entrance/exit would address these problems. The proposal would provide a local service for people currently having to travel to Dunbar and would take some of the traffic away by keeping the service local. While she would be interested in the view of a civil engineer, she felt the issues could be resolved and she was minded to support the application.

The Chair said he did not consider the site to be a countryside location and he felt that the entrance into Haddington had already been spoiled. He acknowledged the concerns about road safety but noted that there were a number of places, such as the Jet station on the Haddington bypass, where the right turn into the site seems to work well. He felt that signage regarding switching off engines and a structural survey should be conditions of planning permission but he was minded to support the application.

The Legal Adviser reminded Members that the Planning Adviser had indicated that if they felt that a structural survey was required, they should not grant planning permission today but adjourn for this further information to be provided by the applicant. The Planning Adviser clarified that it would depend on whether Members felt that it would be possible to be done. If they were unsure if it was possible, they should adjourn. If they felt it would be possible but needed to know how it would be done, then they could grant planning permission subject to conditions.

The members of the LRB confirmed their decision on the application via roll call vote. The also considered the questions of conditions in some detail and agreed the addition of a number of conditions, with wording to be confirmed by the Planning Adviser, in consultation with the Legal Adviser.

Decision

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission subject to the following conditions:

- 1: Commencement
The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

Reason: Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

- 2: Glazed panels
Prior to any use being made of the of car wash facility hereby approved its north boundary shall be fully enclosed by glazed panels, other than for vehicle access and egress points. Details of the height, physical form and positioning of the glazed panels shall be submitted to and approved by the Planning Authority prior to their erection and the erected glazed

panels shall be in accordance with the details so approved. Thereafter the glazed panels shall remain in place unless otherwise approved by the Planning Authority.

Reason: To prevent spray from use of the proposed car wash facility entering the public road and footpath of the A199 Road in the interests of pedestrian and road safety.

3: Visibility splay

The proposed access shall be laid out in accordance with details approved in writing by the Planning Authority prior to any development commencing. A visibility splay of 4.5 metres by 90 metres shall be provided and maintained on the eastern side of the proposed access such that there shall be no obstruction to visibility above a height of 1.05 metres measured from the adjacent carriageway level within the area defined below:-

- a) A line 4.5 metres long measured along the access road from the nearside edge of the main road carriageway.
- b) A line 90 metres long measured along the nearside edge of the main road carriageway from the centre of the access road in both directions.
- c) A straight line joining the termination of the above two lines.

Visibility from a point 2.5 metres from the A199 at the site egress to the exit road centreline of the Oak Tree roundabout shall be maintained.

Reason: In the interests of road safety.

4: Road Safety Audit

The proposed access roads, footways, cycleways and any related external roadworks shall be subject to an independent Road Safety Audit within 1 year of operation commencing. The extent of the audit shall include the Oak Tree Roundabout given its proximity to the proposal site as the proposed access and egress will introduce interactions with and to it. This process must be completed through Stages 2, 3 & 4 (Detailed Design, Post Opening Audit and Post Opening Audit + 12 months). The audit process shall be undertaken in accordance with GG119 Road Safety Audits, or as amended by latest version. The scope and timing of matters to be considered within Road Safety Audit shall be agreed with the planning authority in advance and prior to undertaking the audit.

Reason: in the interests of road safety

5: Tree protection

The area of existing trees detailed on the 'Block Plan' drawing numbered AL(0)100 shall be retained on the site.

No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837_2012 "Trees in relation to design, demolition and construction" has been installed, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing must be fixed in to the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development. The position of this fencing shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees retained on and adjacent to the site, and approved in writing by the Planning Authority.

All weather notices should be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

- _ No vehicular or plant access
- _ No raising or lowering of the existing ground level
- _ No mechanical digging or scraping
- _ No storage of temporary buildings, plant, equipment, materials or soil
- _ No hand digging
- _ No lighting of fires

_ No handling discharge or spillage of any chemical substance, including cement washings

Planning of site operations should take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

Reason

To safeguard trees important to the wider amenity of the area

6: Scheme of Landscaping

Prior to the commencement of development a scheme of landscaping shall be submitted to and approved in writing by the Planning Authority which shall include full details of all new tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting within the application site. Thereafter the scheme of landscaping shall be carried out in accordance with that approved landscaping scheme unless otherwise agreed by the Planning Authority.

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 completion of the development or occupation of any house hereby approved, whichever is the sooner. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation.

Reason

To ensure establishment of a landscape scheme that improves the amenity and biodiversity of the area.

7: Biodiversity

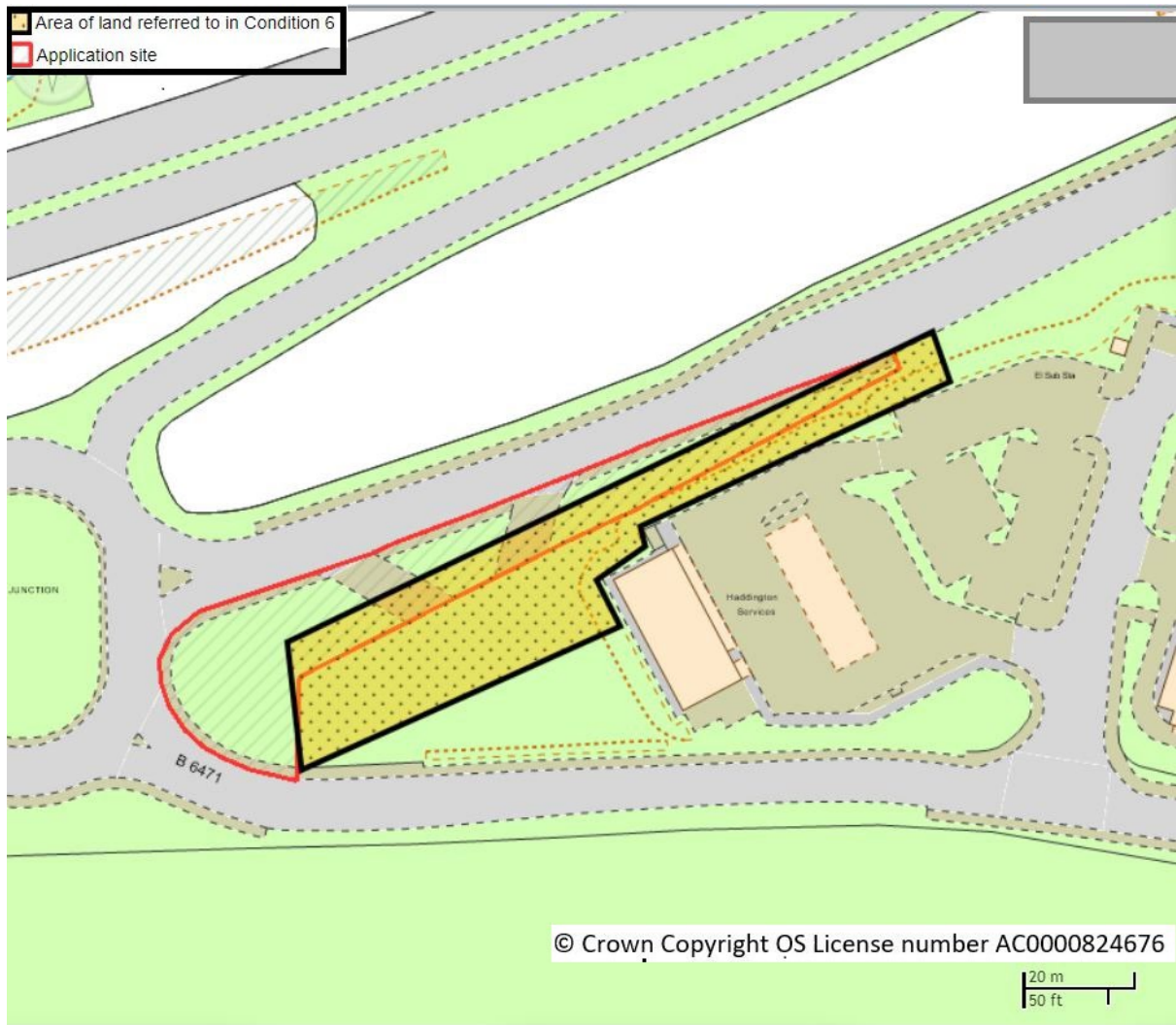
Prior to the commencement of development, the developer shall submit for approval in writing by the Planning Authority, details on the proposed Biodiversity Enhancement scheme for the site. Thereafter, no development shall take place except in strict accordance with the approved scheme.

Reason: to secure biodiversity enhancement in compliance with National Planning Framework 4 Policy 3.

8: Land stability

No development shall take place unless a report has been submitted to and approved by the planning authority to demonstrate that the formation and operation of the car wash will not compromise the stability of the land to the south of the site, marked in orange and dotted black on the plan below.

Reason: to ensure the development does not affect the stability of land to the south.



9: Climate

Prior to the commencement of development, a report on the actions to be taken to reduce the carbon emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable energy for all new buildings where feasible and appropriate in design terms. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

Reason: to minimise the environmental impact of the development

10: Signage

No development shall take place until a plan showing signage requesting car drivers to switch off their engines while waiting for the car wash has been submitted to an approved by the planning authority. This signage shall be installed prior to the opening of the proposal to customers, and thereafter maintained as approved, unless otherwise agreed by the planning authority.

Reason: to seek to avoid unnecessary energy use.

Signed

Councillor Jeremy Findlay
Chair of Local Review Body (Planning)