

Report

Report to:	Planning Committee
Date of Meeting:	10 March 2020
Report by:	Executive Director (Community and Enterprise Resources)

Application no.	P/19/1546
Planning proposal:	Planning permission in principle for residential development (Section 42 application to amend planning conditions 1(e) and 3, relating to boundary planting, to amend planting details and devise a scheme for ongoing maintenance of boundary planting of planning permission Ref: CL/16/0356)

1 Summary application information

Application type:	Further application
Applicant:	Hargreaves Land Limited
Location:	Dalquhandy Opencast Coal Site Middlemuir Road Coalburn ML11 0NN

2 Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) Grant the further application (subject to conditions) based on conditions attached

2.2 Other actions/notes

- (1) The Planning Committee has delegated powers to determine this application.

3 Other information

- ♦ Applicant's Agent: Hargreaves Land Limited
- ♦ Council Area/Ward: 04 Clydesdale South
- ♦ Policy Reference(s): **South Lanarkshire Local Development Plan (adopted 2015)**
Policy 1: Spatial Strategy
Policy 2 - Climate Change
Policy 4 - Development management and placemaking
Policy 12 – Housing Land

**Supplementary Guidance 3: Development
Management, Placemaking and Design**
DM1 – Design

**Proposed South Lanarkshire Local
Development Plan 2 (2018)**

Policy 1 – Spatial Strategy

Policy 2 – Climate Change

Policy 5 - Development Management and
Placemaking

Policy 11 - Housing

♦ **Representation(s):**

▶	0	Objection Letters
▶	0	Support Letters
▶	0	Comment Letters

♦ **Consultation(s):**

Roads Development Management Team

Environmental Services

Coal Authority Planning Local Authority Liaison Department

SEPA Flooding

Roads Flood Risk Management

Planning Application Report

1 Application Site

- 1.1 The application site which extends to 7 ha in area is situated on the south western edge of Coalburn and is accessed from the main road through Coalburn via Middlemuir Road. The site was formerly occupied by the site offices for the former Dalquhandy opencast coal site which have now been demolished. The site is currently vacant and comprises large tracts of hardstanding areas and overgrown with grass and scrub. Topographically, the site rises relatively steeply in a north/south direction.
- 1.2 The site is bounded to the south and east by restored opencast workings (woodland, heath land and rough grazing), to the west by Middlemuir Road and beyond by settling ponds, a burn and reinstated open cast coal works and to the north by vacant industrial land.

2 Proposal(s)

- 2.1 The application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) and is an application for planning permission for the development of land but without compliance with a condition or conditions attached to a previous planning permission.
- 2.2 In this instance, the applicant wishes to vary parts (e) of condition 1 and condition 3 of planning permission Ref: CL/16/0356 (hereon referred to as the Original Permission) which granted planning permission in principle (PPP) for residential development in November 2016. To date there has been no commencement of development on site.
- 2.3 Condition 1(e) of planning permission CL/16/0356 states:

'Prior to the commencement of development on site, a further application(s) for the approval of any of the matters specified in this condition must be submitted to and approved by the Council as Planning Authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).'

These matters include:

(e) the landscaping proposals for the site, including details of existing trees and other planting to be retained together with proposals for new planting specifying number, size and species of all trees and shrubs, including, where appropriate, the planting of fruit/apple trees;'

- 2.4 The applicant has requested that condition 1(e) be amended to read:

'(e) the landscaping proposals for the site, including details of existing trees and other planting to be retained together with proposals for new planting specifying number, size and species of all trees and shrubs.'

- 2.5 In essence, the applicant requests that the reference to planting fruit/ apple trees is removed from any proposed planting scheme. The applicant states that fruit/ apple trees would not be suitable on brownfield land due to ground conditions.
- 2.6 Condition 3 of the Original Permission states:
- ‘That the further application required under Condition 1 above shall include structure planting with a minimum width of 15 metres around the site boundaries adjoining the restored open cast site.’*
- 2.7 The applicant has requested that condition 3 is amended to read:
- ‘Pursuant to condition 1(e), the proposed structural planting and landscaping belt shall measure not less than 15 metres in extent. The approved scheme of structural landscaping to form a tree and planting belt shall be carried out during the first planting season following implementation of the development and maintained thereafter for the lifetime of the development, unless variation to this condition is approved in writing by the Planning Authority.’
- 2.8 The applicant considers this amendment maintains the minimum 15 metre depth of planting required by the Original Permission and adds further instruction on the method and timing of planting that is not currently explicit in condition 3 of the Original Permission.
- 2.9 If successful, the effect of a Section 42 application to modify a planning condition or conditions is to grant a further planning permission for the whole development again but with the amended condition or conditions replacing those that were previously issued, or with conditions removed if required. All other conditions, if relevant, are also required to be attached to any new planning permission. If the proposed changes to the condition or conditions are deemed unacceptable, then Section 42 of the Act requires the application to be refused. Any refusal of an application under Section 42 of the Act does not have any effect on the original planning permission which remains intact.

3 Background

3.1 National Policy

- 3.1.1 Scottish Planning Policy (SPP) advises that developments for new residential units should be concentrated within existing settlements and also advises that development should preferably be through the reuse of redundant or vacant buildings or through the reuse of brownfield sites. Further, SPP advises, the planning system (including Development Plans) should enable the development of attractive, well designed, energy efficient, good quality housing that contributes to the creation of successful and sustainable places and allocate a generous supply of land to meet identified housing requirements across all tenures. The site is an allocated housing site within the South Lanarkshire Local Development Plan, as well as being vacant brownfield land, and, therefore, complies with SPP in relation to housing supply. It is considered that no further assessment against National Policy is required.

3.2 Development Plan Status

- 3.2.1 Under the terms of Section 25 of the Town and Country Planning (Scotland) Act 1997, all applications must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the approved Glasgow and the Clyde Valley Strategic Development Plan 2017 (GVCSDP), the adopted South Lanarkshire Local Development Plan 2015 (SLLDP) and associated Supplementary Guidance.
- 3.2.2 The proposed development requires to be considered against the Glasgow and Clyde Valley Strategic Development Plan 2017 (GCVSDP). This strategic plan sets a vision of making the Clydeplan region a resilient, sustainable, compact city region attracting and retaining investment and improving the quality of life for people and reducing inequalities through the creation of a place which maximises its economic, social and environmental assets and fulfils its potential by 2036. The GCVSDP acknowledges the role housing plays in the overall economic, social and environmental success of the city region and recognises that house building delivers wider benefits to society through employment creation and benefits to local community facilities.
- 3.2.3 The South Lanarkshire Local Development Plan (SLLDP) was adopted in 29 June 2015 and contains the following policies against which the proposal should be assessed:
- Policy 1: Spatial Strategy
 - Policy 2: Climate Change
 - Policy 4: Development management and placemaking
 - Policy 12 Housing Land
- 3.2.4 The following approved Supplementary Guidance documents support the policies in the SLLDP and also require assessment:
- Supplementary Guidance 3: Development Management, Placemaking and Design
- 3.2.5 On 29 May 2018, the Planning Committee approved the proposed South Lanarkshire Local Development Plan 2 (Volumes 1 and 2). The new plan builds on the policies and proposals contained in the currently adopted South Lanarkshire Local Development Plan. For the purposes of determining planning applications, the proposed South Lanarkshire Local Development Plan 2 is now a material consideration. In this instance, the following policies are relevant:
- Volume 1
- Policy 1: Spatial Strategy
 - Policy 2 Climate Change
 - Policy 5 Development Management and Placemaking
 - Policy 11 Housing
- 3.2.6 It should be noted that LDP2 is only referenced should there be a specific conflict between a proposed policy and a policy within the approved SLLDP 2015.
- 3.3 **Planning Background**
- 3.3.1 Outline Planning Permission CL/08/0313 was granted in September 2008 for residential development on the site. A Section 42 application was granted in

November 2013 to extend the time period for the commencement of development by a further 3 years. A further Section 42 was submitted (CL/16/0356) and approved in November 2016 to extend the period of commencement by a further 3 years.

3.3.2 The application is identified as a new housing site within the approved South Lanarkshire Local Development Plan 2015 (SLLDP) and this allocation is retained in the proposed LDP 2.

3.3.3 The proposals fall within the definition of a 'Major' development, given its scale and nature and normally statutory Pre-Application Consultation is required to be carried out before the application is submitted. The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 state that applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997 do not require this to be carried out.

4 Consultation(s)

4.1 **Roads and Transportation Services (Flood Prevention)** - no objection subject to replication of previous drainage conditions to comply with the Council's Design Criteria and to complete the necessary forms and provide required information prior to commencement on site.

Response: Noted. All previous conditions relating to drainage are replicated on the paper apart of the recommendation.

4.2 **Roads and Transportation Services (Traffic and Transportation)** – no objection subject to replication of the Roads conditions (relating to visibility splays) that were attached to the Original Permission and previous Section 42 applications.

Response: Noted. All previous transportation conditions are replicated on the paper apart of the recommendation.

4.3 **Environmental Services** – no objection or comments.

Response: Noted.

4.4 **The Coal Authority** – agree with the findings of the Coal Risk Assessment submitted as part of this application. Request a condition requiring a scheme of intrusive site investigation and remediation be imposed on any permission if granted.

Response: Noted. An appropriate planning condition forms part of the recommended conditions on the paper apart.

4.5 **SEPA** - no comments to make

Response: Noted.

5 Representation(s)

5.1 Neighbour notification was carried out on 24 October 2019. The proposal was also publicised as an application requiring advertisement for the non-notification of neighbours in the Lanark Gazette on 6 November 2019.

5.2 No representations have been made following this publicity.

6 Assessment and Conclusions

- 6.1 This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended). Section 42 of the Act states that:

'On such an application, the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted.'

This type of application, therefore, does not revisit the principle of development on the site but only considers the appropriateness of the conditions attached to the previous consent and whether it is acceptable to amend or delete as requested. Whilst, in essence, a Section 42 is an application to vary condition(s) on an existing permission, the process requires a new, stand alone planning permission to be issued for the original development but with a new suite of conditions, including all those still thought to be relevant as well as the varied condition(s). Should the proposed amendment to the condition(s) not be acceptable, a Section 42 application is to be refused but without affecting the status of the original permission.

- 6.2 In assessing whether any condition is still relevant there would be the requirement to consider certain aspects of the development. In this instance, the applicant has requested that conditions 1(e) and 3 are amended. However, it is noted that the nature of the legislation requires all conditions to be revisited as they may be linked or connected to these specific conditions. The main matters for consideration are, therefore, whether the proposed amendment to the conditions proposed would undermine the reasons for the original conditions or the Development Plan position; and if it is considered this Section 42 application does undermine either of these, whether there are material considerations which would outweigh this to allow permission to be granted.
- 6.3 Policy 1 of the SLLDP sets out the spatial strategy for the plan area which states the Plan encourages sustainable economic growth and regeneration by, among other things, supporting regeneration activities and delivering development proposals in the Plan. In this instance, the application site is allocated for housing within the SLLDP. It is noted that this allocation has been maintained within LDP2. It is, therefore, considered that a new permission for a residential development would be in line with the Spatial Strategy for the site and accord with Policy 12 on new housing.
- 6.4 Policy 2: Climate change, seeks to minimise and mitigate against the effects of climate change by a number of criteria. The criteria relevant to this proposal are (vii) having no significant adverse impacts on the water and soils environment, air quality, biodiversity (including Natura 2000 sites and protected species) and green networks. The proposals relate to an allocated housing site that benefits from planning permission. The proposals have been deemed to not have a negative impact upon the water environment, air quality or biodiversity. The proposals involve the reuse of vacant land which would include soil remediation. An additional condition ensuring remediation of previous underground coal workings would also further enhance the proposals' impact upon the site. With regard to the specifics of the planting scheme, the 15m requirement will be maintained while it is considered that a planting scheme that still contributes to biodiversity and carbon capture could be designed without the need for fruit/ apple trees and, therefore, this amendment would have no detrimental impact in relation to this policy. It is, therefore,

considered that the proposals meet the relevant criteria of the Development Plan in this instance.

- 6.5 Policy 4 'Development Management and Placemaking' states that development proposals should take account of and be integrated within the local context and built form. New development should also have no significant adverse impacts on the local community. This advice is supported within Development Management, Placemaking and Design Supplementary Guidance under Policy DM1 – Design. The application is for Planning Permission in Principle and, therefore, any design criteria would be required at the Matters Specified by Condition stage. The planting would help screen the development and integrate the site into the settlement and, therefore, it is considered that the proposals still accord with the criteria of the Development Plan in this instance.
- 6.6 In conclusion, it is considered that the proposed changes to the conditions are acceptable in that it does not reduce the requirement for planting and still allows diversity of species as part of any planting plan. The site is allocated for housing within the SLLDP and LDP2 and, therefore, a new permission in principle of residential development on the site does not undermine the strategy of the SLLDP or LDP2.

7 Reasons for Decision

- 7.1 The application site is designated as a housing site in the adopted South Lanarkshire Local Development Plan and therefore the proposal complies with Policy 12. In addition, the proposal would not have an adverse impact on residential or visual amenity and road safety nor raise any environmental or infrastructure issues, and as such it also complies with Policies 2 and 4 of the SLLDP and Supplementary Guidance on Development Management, Placemaking & Design and Sustainable Development and Climate Change as well as being in line with the proposed Local Development Plan 2.

Michael McGlynn
Executive Director (Community and Enterprise Resources)

Date: 20 February 2020

Previous references

- ◆ CL/08/0313
- ◆ CL/13/0334
- ◆ CL/16/0356

List of background papers

- ▶ Application form
- ▶ Application plans
- ▶ South Lanarkshire Local Development Plan 2015 (adopted)
- ▶ Proposed South Lanarkshire Development Plan 2
- ▶ Neighbour notification letter dated 24 October 2019

- ▶ Consultations

Roads Development Management Team	25.11.2019
Coal Authority Planning Local Authority Liaison Dept	17.12.2019
SEPA Flooding	28.10.2019
Roads Flood Risk Management	16.12.2019
Environmental Services	16.12.2019

Contact for further information

If you would like to inspect the background papers or want further information, please contact:-

James Wright, Planning Officer, Montrose House, 154 Montrose Crescent, Hamilton,
ML3 6LB

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Conditions and reasons

01. Prior to the commencement of development on site, a further application(s) for the approval of any of the matters specified in this condition must be submitted to and approved by the Council as Planning Authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).

These matters are as follows:

- (a) the layout of the site, including all roads, footways, parking areas and open spaces;
- (b) the siting, design and external appearance of all building(s) and any other structures, including plans and elevations showing their dimensions and type and colour of external materials;
- (c) detailed cross-sections of existing and proposed ground levels, details of underbuilding and finished floor levels in relation to a fixed datum, preferably ordnance datum.
- (d) the design and location of all boundary treatments including walls and fences;
- (e) the landscaping proposals for the site, including details of existing trees and other planting to be retained together with proposals for new planting specifying number, size and species of all trees and shrubs;
- (f) the means of drainage and sewage disposal and;
- (g) details of the phasing of development (covering all relevant aspects of development detailed in (a) above).

Reason: To comply with section 59 of the Town and Country Planning (Scotland) Act 1997 as amended.

02. That the further application(s) required under the terms of Condition 1 above, shall make reference to and incorporate the criteria specified within the approved South Lanarkshire Council 'Residential Development Guide' with specific reference to the provision of open space, play areas and landscaping.

Reason: In the interests of design and amenity.

03. That in relation to condition 1(e), the proposed structural planting and landscaping belt shall measure not less than 15 metres in extent. The approved scheme of structural landscaping to form a tree and planting belt shall be carried out during the first planting season following implementation of the development and maintained thereafter for the lifetime of the development, unless variation to this condition is approved in writing by the Planning Authority.

Reason: In order to define the terms of the consent.

04. That the further application required under Condition 1 above shall include provision of footpaths/cycle path links to Coalburn and the wider countryside.

Reason: In the interests of connectivity and access.

05. That the further application required under Condition 1 above shall include provision for
- (a) a visibility splay of 4.5 metre by 90 metres on both sides of the vehicular access onto Middlemuir Road, measured from the edge of the road channel;
 - (b) the existing road (Middlemuir Road) from the bridge to the proposed development shall be widened to 5.5 metres
 - (c) driveways of a minimum length of 12 metres if a garage is not provided and 6 metres long with a garage minimum carriageway widths at driveways to be 5.5 metres and ;
 - (d) 2 parking spaces for dwellings with 3 bedrooms or less and 3 spaces for dwellings with 4 bedrooms or more.

Reason: In the interests of Road Safety.

06. That the further application required under the terms of Condition 1 above, shall be accompanied by a Design Statement which shall set out the design principles, justify the design solution and show how the proposal responds to the wider context of the area as well as the characteristics of the site; specific reference shall be made landscape and open space provision.

Reason: In the interests of Design.

07. That the further application required under the terms of Condition 1 above, shall include a detailed scheme for surface water drainage. Surface water from the site shall be treated in accordance with the principles of the Sustainable Urban Drainage Systems Design Manual for Scotland and Northern Ireland and with the Council's Sustainable Drainage Design Criteria and requirements and shall be agreed in writing with the Council as Planning Authority in consultation with SEPA.

Reason: In the interests of drainage and water management.

08. That no existing drainage channels or culverts shall be altered without the prior approval of the Council as Planning Authority in consultation with SEPA.

Reason: In the interests of drainage and water management.

09. That the further application required under the terms of condition 1 above shall be accompanied by a Flood Risk Assessment, with reference made to CIRIA C624 and in accordance with the Reporting Requirements for Flood Risk Assessments issued by SEPA.

Reason: In the interests of Flood Risk.

10. That prior to commencement of any works on site, a comprehensive site investigation carried out to the appropriate Phase level, shall be submitted to and approved in writing by the Council as Planning Authority. The investigation shall be completed in accordance with the advice given in the following:
- (i) Planning Advice Note 33 (2000) and Part IIA of the Environmental Protection Act 1990 (as inserted by section 57 of the Environment Act 1995);
 - (ii) Contaminated Land Report 11 - 'Model Procedures for the Management of Land Contamination (CLR 11) - issued by DEFRA and the Environment Agency;

(iii) BS 10175:2001 - British Standards Institution 'The Investigation of Potentially Contaminated Sites - Code of Practice'.

Then, should the Phase 1 investigation indicate any potential pollution linkages, a Conceptual Site Model must be formulated and these linkages must be subjected to risk assessment. If a Phase 2 investigation is required, then a risk assessment of all relevant pollution linkages using site specific assessment criteria will require to be submitted.

Further, if the risk assessment identifies any unacceptable risks as defined under Part IIA of the Environmental Protection Act, a detailed remediation strategy will be submitted to and approved in writing by the Council as Planning Authority. No works other than investigative works shall be carried out on site prior to receipt of the Council's written approval of the remediation plan.

Reason: In the interests of contaminated land.

11. That remediation of the site shall be carried out in accordance with the approved remediation plan prior to the proposed development being brought into use. Any amendments to the approved remediation plan shall not be implemented unless approved in writing by the Council as Planning Authority.

On completion of the remediation works, the developer shall submit a completion report to the Council as Planning Authority, confirming that the works have been carried out in accordance with the approved remediation plan and that the works have successfully reduced these risks to acceptable levels.

Any previously unsuspected contamination which becomes evident during the development of the site shall be brought to the attention of the Council as Planning Authority within one week or earlier of it being identified. A more detailed site investigation to determine the extent and nature of the contaminant(s) and a site-specific risk assessment of any associated pollutant linkages, shall then require to be submitted to and approved in writing by the Council as Planning Authority.

Reason: In the interests of remediation.

12. That no permission is given to the indicative layouts detailed in the Design Statement (Munro Architects, April 2008) which was submitted with Planning Application CL/08/0313.

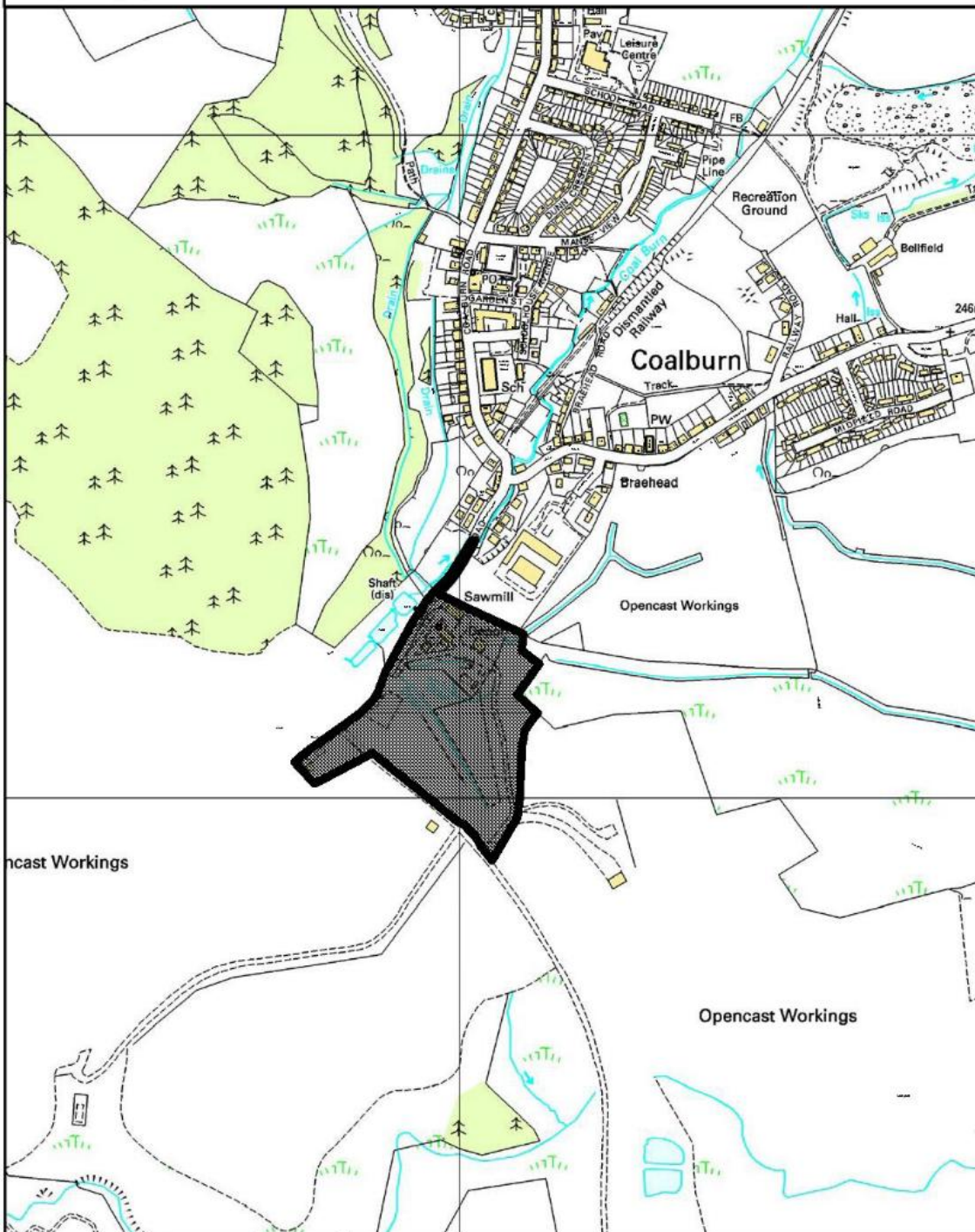
Reason: In order to define the terms of the consent.

13. That separate to, but not exclusive of the site investigation and remediation set out within conditions 10 and 11, before any work starts on site a scheme of intrusive site investigations, which are adequate to properly assess the ground conditions and the potential risks posed to the development by past shallow coal mining activity and off-site recorded mine entries, the results of which, including a scheme of remedial/ mitigatory works following these investigations shall be submitted for the written approval of the Planning Authority. Once approved all remedial and mitigatory works shall be implemented in full prior to the development commencing.

Reason: In the interests of structural stability relating to coal workings.

P/19/1546

Dalquhandy Opencast Coal Site, Middlemuir Road, Coalburn



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Scale:
1:8,000
Date:
17/02/2020



South Lanarkshire Council
Community and Enterprise Resources
Planning and Economic Development