

Notice of Meeting and Agenda



Local Review Body

Venue: Council Chambers/Hybrid,
Midlothian House, Dalkeith, EH22 1DN

Date: Monday, 13 November 2023

Time: 13:00

Executive Director : Place

Contact:

Clerk Name: Democratic Services

Clerk Telephone:

Clerk Email: democratic.services@midlothian.gov.uk

Further Information:

This is a meeting which is open to members of the public.

Privacy notice: Please note that this meeting may be recorded. The recording may be publicly available following the meeting. If you would like to know how Midlothian Council collects, uses and shares your personal information, please visit our website: www.midlothian.gov.uk

1 Welcome, Introductions and Apologies

2 Order of Business

Including notice of new business submitted as urgent for consideration at the end of the meeting.

3 Declaration of Interest

Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

4 Minute of Previous Meeting

- | | | |
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| 4.1 | Minute of meeting of 25 September 2023 submitted for approval | 3 - 28 |
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5 Public Reports

- | | | |
|------------|---|---------|
| 5.1 | 23.00332.PPP - Land at Fallhills Howgate Penicuik LRB Report and Appendices | 29 - 50 |
|------------|---|---------|

6 Private Reports

No items for discussion

7 Date of Next Meeting

The next meeting will be held on Monday 11 December 2023 at 1.00pm.

Plans and papers relating to the applications on this agenda can also be viewed at <https://planning-applications.midlothian.gov.uk/OnlinePlanning>

Minute of Meeting

Local Review Body
Monday 25 September 2023



Local Review Body

Date	Time	Venue
Monday 25 September 2023	1.00pm	Council Chambers

Present:

Councillor Imrie (Chair)	Councillor Smail
Councillor Bowen	Councillor Cassidy
Councillor Drummond	Councillor McEwan
Councillor Milligan	
Councillor Virgo	

In Attendance:

Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
Derek Oliver	Chief Officer Place
Saty Kaur	Chief Officer Corporate Solutions (Acting)
Hannah Forbes	Assistant Democratic Services Officer
Lucy Roddie	Democratic Services Officer

1 Welcome, Introductions and Apologies

Apologies for absence were received from Councillor Alexander and Councillor McManus.

2 Order of Business

The order of business was as outlined in the agenda.

3 Declarations of interest

In relation to Item 5.2, Councillor Milligan declared that he had been approached by the applicant but had not expressed an interest.

In relation to Item 5.4, Councillor Milligan declared that he had been approached by the applicant but had not expressed an interest.

4 Minute of Previous Meeting

The Minute of the Meeting of 19 June 2023 was submitted and approved as correct record.

5 Reports

Notice of Reviews – Determination Reports by Chief Officer Place

Agenda No	Report Title	Presented by:
5.1	Land South West of 54 Dewartown, Gorebridge (23.00294.DPP) -	Peter Arnsdorf
Outline of report and summary of discussion		
<p>The purpose of this report was to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of two dwellinghouses and associated works at land south west of 54 Dewartown, Gorebridge.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report and advised that the review would proceed on the written submissions provided.</p> <p>Planning application 23/00294/DPP for the erection of two dwellinghouses and associated works at land south west of 54 Dewartown, Gorebridge was granted planning permission subject to conditions on 10 July 2023. Condition 3 on planning permission 23/00294/DPP subject to review is as follows:</p> <p>3. The use of render on the dormer cheeks and face is not approved: these elevations shall be clad in slate or another material to be agreed in writing by the planning authority.</p>		

The applicant is requesting that this condition is removed from the grant of planning permission and as a consequence the dormer cheeks will be a render finish rather than slate.

The Planning, Sustainable Growth and Investment Manager noted that elected members had attended a site visit on the morning of 25 September 2023.

The Local Review Body in discussing the requested removal of Condition 3 gave careful consideration to the impact on the appearance of the surrounding area, noting that the dormer cheeks on the rear elevation faced away from the main road and therefore would not be visually intrusive.

Councillor Smaill, seconded by Councillor Virgo moved to uphold the review request and to remove Condition 3 on planning permission 23/00294/DPP. This was unanimously agreed by the committee.

Decision

The Local Review Body agreed to uphold the review request and to remove Condition 3 on planning permission 23/00294/DPP for the erection of two dwellinghouses and associated works at land south west of 54 Dewartown, Gorebridge, subject to the conditions as detailed in the report.

Action

Planning, Sustainable Growth and Investment Manager to draft and issue the decision of the Local Review Body.

Agenda No	Report Title	Presented by:
5.2	Land 115m east of Highwood House, Barley Dean, Rosewell (23.00003.DPP)	Peter Arnsdorf
Outline of report and summary of discussion		
<p>The purpose of this report was to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of five dwellinghouses, garages and associated works at land 115m east of Highwood House, Barley Dean, Rosewell.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report and advised that the review would proceed on the written submissions provided.</p> <p>Planning application 23/00003/DPP for the erection of five dwellinghouses, garages and associated works at land 115m east of Highwood House, Barley Dean, Rosewell was refused planning permission on 6 July 2023.</p> <p>The Planning, Sustainable Growth and Investment Manager noted that elected members had attended a site visit on the morning of 25 September 2023.</p>		

The Planning, Sustainable Growth and Investment Manager noted that one additional objection had been received as part of the review process since the report had been published.

The Local Review Body in discussing the proposed development gave careful consideration to the impact on the appearance of the surrounding area, noting that the location of the development site was such that it would have limited visual impact. It was noted that the case officer's report referenced concern about the layout and design of the buildings, rather than the principle of development on the land.

Councillor Milligan, seconded by Councillor Cassidy moved to uphold the review request and grant planning permission. This was unanimously agreed by the committee.

Decision

The Local Review Body agreed to uphold the review request and to grant planning permission for the erection of five dwellinghouses, garages and associated works at land 115m east of Highwood House, Barley Dean, Rosewell, subject to the conditions as detailed in the report.

Action

Planning, Sustainable Growth and Investment Manager to draft and issue the decision of the Local Review Body.

Agenda No	Report Title	Presented by:
5.3	50 Dundas Street, Bonnyrigg (23.00117.DPP)	Peter Arnsdorf
Outline of report and summary of discussion		
<p>The purpose of this report was to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the formation of access at 50 Dundas Street, Bonnyrigg.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report and advised that the review would proceed on the written submissions provided.</p> <p>Planning application 23/00117/DPP for the formation of access at 50 Dundas Street, Bonnyrigg was refused planning permission on 6 June 2023.</p> <p>The Planning, Sustainable Growth and Investment Manager noted that elected members had attended a site visit on the morning of 25 September 2023.</p> <p>The Local Review Body in discussing the proposed development and the reasons for its refusal, gave careful consideration to the precedent set with a nearby property being granted the same permissions previously, and noted the requirement for consistent decision making. The Local Review Body noted the public advantage in approving the application to minimise congestion caused by street parking.</p>		

Councillor Smaill, seconded by Councillor Cassidy moved to uphold the review request and grant planning permission on the condition that the applicant ensures that vehicles do not overhang the pavement, the condition will transmit to any subsequent owner or tenant of the house, and neighbouring properties are informed.

Decision

The Local Review Body agreed to uphold the review request and grant planning permission for the formation of access at 50 Dundas Street, Bonnyrigg, subject to the conditions as set out in the report with an additional condition to be added regarding vehicle overhang and the requirement for neighbouring properties to be informed of the development.

Action

Planning, Sustainable Growth and Investment Manager to draft and issue the decision of the Local Review Body.

Agenda No	Report Title	Presented by:
5.4	Land north west of 4 Wadington Lane Lasswade (22.00811.DPP)	Peter Arnsdorf
Outline of report and summary of discussion		
<p>The purpose of this report was to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of dwellinghouse, formation of access and associated works at land north west of 4 Wadingburn Lane, Lasswade.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report and advised that the review would proceed on the written submissions provided.</p> <p>Planning application 22/00811/DPP for the erection of dwellinghouse, formation of access and associated works at land north west of 4 Wadingburn Lane, Lasswade was refused planning permission on 3 March 2023.</p> <p>The Planning, Sustainable Growth and Investment Manager noted that elected members had attended a site visit on the morning of 25 September 2023.</p> <p>The Local Review Body in discussing the proposed development and the reasons for its refusal, gave careful consideration to the precedent set by approval for the erection of similar new build properties nearby, and noted that the design meets with local approval from immediate neighbours. The Local Review Body further noted that the development would enhance the setting and contribute to the visual amenity of the area, with existing run-down buildings on site to be removed as part of the development.</p> <p>Councillor Milligan, seconded by Councillor Virgo moved to uphold the review request and grant planning permission. This was unanimously agreed by the committee.</p>		

Decision
The Local Review Body agreed to uphold the review request and to grant planning permission for the erection of dwellinghouse, formation of access and associated works at land north west of 4 Wadingburn Lane, Lasswade subject to the conditions as stated in the report.
Action
Planning, Sustainable Growth and Investment Manager to draft and issue the decision of the Local Review Body.

6. Private Reports

No private business was discussed.

7. Date of Next Meeting

The next meeting is scheduled for Monday 13 November 2023 at 13:00.

The meeting terminated at 13:31.

Grant of Planning Permission

Town and Country Planning (Scotland) Act 1997 as amended

Local Review Body: Review of Planning Application

Reg. No. 22/00811/DPP

Ferguson Planning Ltd
37 ONE
37 George Street
Edinburgh
EH2 2HN

Midlothian Council, as Planning Authority, having considered the review of the application by Mr Bernard Flanagan, 58 Carnethie Street, Rosewell, EH24 9AN, which was registered on 25 May 2023 in pursuance of their powers under the above Act, hereby **grant** permission to carry out the following proposed development:

Erection of dwellinghouse, formation of access, landscaping and associated works at land north west of 4, Wadingburn Lane, Lasswade, in accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	22049 - (2-)001 – 01 1:5000	21.11.22
Location Plan	22049 - PL(2-)002 – 01 1:1250	21.11.22
Site Plan	22049 - PL(2-)003 – 01 1:500	21.11.22
Site Plan	22049 - PL(2-)100 – 01 1:500	21.11.22
Proposed Floor Plan	22049 - PL(2-)101 – 01 1:100	21.11.22
Proposed Floor Plan	22049 - PL(2-)102 – 01 1:100	21.11.22
Roof Plan	22049 - PL(2-)103 – 01 1:100	21.11.22
Proposed Elevations	22049 - PL(2-)200 – 01 1:100	21.11.22
Proposed Elevations	22049 - PL(2-)200 – 01 1:100	21.11.22
Proposed Cross Section	22049 - PL(2-)300 – 02 1:250	21.11.22
Landscape Plan	22049 - PL(2-)104 – 01 1:500	21.11.22
Design and Access Statement		21.11.22
Tree Survey and Arboricultural Impact Assessment		21.11.22
Planning Statement		25.11.22
Ecology/Wildlife Report/Survey		09.01.23

Subject to the following conditions:

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. Development shall not begin on site until the following details have been submitted to and approved in writing by the planning authority:
 - a) Details and samples of all external finishing materials for the house;
 - b) Details of the materials of all external doors;
 - c) Details of the colour of all external doors;
 - d) Details of the proposed materials of the areas of hardstanding;
 - e) Details of the design, position, dimensions, materials and finish of all proposed walls, fences, gates or other means of enclosure;
 - f) Details of the proposed bin storage areas, including any related structures;
 - g) Details of the proposed ground air source heat pumps;
 - h) Details of the proposed solar panels;
 - i) Details of the proposed surface water management scheme; and
 - j) A landscape plan, including details of a scheme of landscaping for the site. Details shall include the position, number, size and species of all trees and shrubs proposed, as well as identifying all trees on site which are proposed to be removed and retained.

Thereafter, the development hereby approved shall accord with the details agreed in terms of this condition.

Reason: *These details were not submitted as part of the application: to ensure the houses are finished in high quality materials; to protect the visual amenity of the surrounding area; to ensure the houses are provided with adequate amenity; to help integrate the proposal into the surrounding area.*

3. Unless otherwise agreed in writing by the planning authority the area of hardstanding agreed in terms of condition 2d) shall be surfaced in a porous material.

Reason: *To ensure that the site is adequately drained in the interests of the amenity of the area.*

4. The existing trees on site shall not be pruned, thinned, lopped, topped or felled without the prior written approval of the planning authority.
5. Development shall not begin on site until an arboricultural method statement and tree protection plan have been submitted to and approved in writing by the planning authority. These shall include details of tree protection fencing and a construction detail for the access track, including cellweb or geocell to reduce compaction within the root protection areas of all trees to be retained

onsite. Any works within the tree protection zone of the trees to be retained shall be carried out with an above ground construction method.

6. The tree protection measures approved as per by condition 2j) above shall be in place before any work on the development is begun, including site clearance, and shall be retained until the development is completed. Within the area enclosed by the protection measures there shall be no excavation, no removal of soil, no placing of additional soil, no storage of any kind, disposal of any waste or fires lit. These works shall be carried out in accordance with BS5837:2012 Trees in Relation to Development.

Reason for conditions 4 - 6: *To ensure that the trees and landscaping to be retained are protected from damage during development; to protect the appearance of the surrounding rural area.*

7. The scheme of landscaping hereby approved in condition 2j) shall include details of replacement and reinforcement tree planting around the application site boundaries and marginal/emerging along the burn corridor.
8. The scheme of landscaping hereby approved in condition 2j) shall include details of a range of native species planting.

Reason for conditions 7 and 8: *To ensure that appropriate replacement planting is provided at the site, to maintain and enhance the character and appearance of the surrounding area and also perpetuate canopy cover; to optimise biodiversity and habitat value.*

9. The scheme of landscaping hereby approved in condition 2j) shall include a survey for Japanese knotweed in the land shown under the control of the applicant on drawing number 22049 – (2-)001 01. This shall also include a strategy to deal with any Japanese knotweed found.

Reason: *To ensure that any invasive species are treated appropriately and to protect the biodiversity of the surrounding area.*

10. The scheme of landscaping hereby approved in condition 2j) shall be carried out and completed within six months of the house either being completed or brought into use, whichever is the earlier date. Any trees removed, dying, severely damaged or becoming seriously diseased within five years of planting shall be replaced in the following planting season by trees of a size and species similar to those originally required.

Reason: *To ensure the landscaping is carried out and becomes successfully established.*

11. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
- ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
- iv. the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

12. On completion of the decontamination/ remediation works required in condition 11 and prior to the dwellinghouse being occupied on site, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied until this report has been approved by the planning authority.

Reason for conditions 11 and 12: To ensure that any contamination on the site/ground conditions is adequately identified and that appropriate decontamination measures/ground mitigation measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment; to ensure the remediation works are undertaken.

13. Development shall not begin until details, including a timetable of implementation, of superfast broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast broadband prior to the occupation of the dwellinghouse. The delivery of superfast broadband shall be implemented as per the approved details.

Reason: To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the Midlothian Local Development Plan.

14. Development shall not begin until details of the provision and use of electric vehicle charging point within the development have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing by the planning authority.

Reason: To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan.

15. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts and hedgehog highways throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan.*

16. The works hereby approved shall not be carried out during the months of March to August inclusive, unless approved in writing by the planning authority after a check for nesting birds is completed by a suitably competent person within 48 hours of works commencing and, in the event an active nest is found, an appropriate protection zone to the satisfaction of the planning authority is in place within which there can be no works until the related chicks have fledged.
17. The works hereby approved shall comply with the approved Protected Species Report dated 21 November 2022.

Reason for conditions 16 and 17: *To protect and enhance the local biodiversity of the site; there is potential for the disturbance of breeding birds at the site during bird breeding season.*

The Local Review Body (LRB) considered the review of the planning application at its meeting of 25 September 2023.

In reaching its decision the LRB gave consideration to the following development plan policy and material considerations:

National Planning Framework 4

1. Policy 1 Tackling the climate and nature crisis;
2. Policy 2 Climate mitigation and adaptation;
3. Policy 3 Biodiversity;
4. Policy 4 Natural Places;
5. Policy 5 Soils;
6. Policy 6 Forestry, woodland and trees;
7. Policy 8 Green belts;
8. Policy 9 Brownfield, vacant and derelict land and empty buildings;
9. Policy 11 Energy;
10. Policy 13 Sustainable transport;
11. Policy 14 Design, quality and place;
12. Policy 15 Local Living and 20 minute neighbourhoods;
13. Policy 16 Quality homes;
14. Policy 17 Rural homes;
15. Policy 20 Blue and green infrastructure;

16. Policy 22 Flood risk and water management;
17. Policy 23 Health and safety;
18. Policy 24 Digital infrastructure; and
19. Policy 29 Rural development.

Midlothian Local Development Plan Policies:

1. DEV5 Sustainability in new development;
2. DEV6 Layout and design of new development;
3. DEV7 Landscaping in new development;
4. TRAN5 Electric vehicle charging;
5. IT1 Digital infrastructure;
6. ENV1 Protection of the green belt;
7. ENV4 Prime agricultural land;
8. ENV7 Landscape character;
9. ENV11 Woodland, trees and hedges; and
10. ENV15 Species and habitat protection and enhancement.

Supplementary guidance for housing development in the countryside and green belt.

Material Considerations:

1. The individual circumstances of the site and the application.

In determining the review the LRB concluded:

The proposed single dwellinghouse by means of its scale, siting, design and materials will not be detrimental to the local landscape, residential amenity or the green belt and as such is considered acceptable as an exception to establish restrictive green belt policy as set out in Midlothian Local Development Plan 2017 and National Planning Framework 4.

Dated: 25/09/2023



Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager
Advisor to the Local Review Body
Place Directorate
Midlothian Council

On behalf of:
Councillor R Imrie
Chair of the Local Review Body
Midlothian Council

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions, or

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the town and Country Planning (Scotland) Act 1997

Advisory note:

If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager via peter.arnsdorf@midlothian.gov.uk



The Coal
Authority

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Email: planningconsultation@coal.gov.uk

Website: www.gov.uk/coalauthority

Development Low Risk Area – Standing Advice

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

Standing Advice valid from 1st January 2023 until 31st December 2024

Grant of Planning Permission

Town and Country Planning (Scotland) Act 1997 as amended

Local Review Body: Review of Planning Application Reg. No. 23/00117/DPP

Mr Robert Gyorgy
50 Dundas Street
Bonnyrigg
EH19 3AS

Midlothian Council, as Planning Authority, having considered the review of the application by Mr Robert Gyorgy, 50 Dundas Street, Bonnyrigg, EH19 3AS, which was registered on 21 June 2023 in pursuance of their powers under the above Act, hereby **grant** permission to carry out the following proposed development:

Formation of access to classified road at 50 Dundas Street, Bonnyrigg, EH19 3AS, in accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	Location Plan 1:1250	02.03.2023
Illustration/Photograph	Existing Elevations	02.03.2023
Illustration/Photograph	Proposed Elevations	02.03.2023

Subject to the following conditions:

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. Any gates to the vehicular access shall be so designed and installed as to only open inwards.

Reason: *To ensure gates do not open over the pavement; to ensure no hazard is caused to pedestrians using the footway.*

3. A minimum of the first 2 metres of the driveway as measured from the heel of the footpath shall be surfaced in non-loose material.

Reason: *In the interest of road safety and the free flow of traffic*

The Local Review Body (LRB) considered the review of the planning application at its meeting of 25 September 2023.

In reaching its decision the LRB gave consideration to the following development plan policy and material considerations:

National Planning Framework 4

1. Policy 1 Tackling the climate and nature crisis; and
2. Policy 14 Design, quality and place.

Midlothian Local Development Plan Policies:

1. DEV2 - Protecting amenity within the built-up area.

Material Considerations:

1. The individual circumstances of the site and the application.

In determining the review the LRB concluded:

The proposed access will enable a vehicle to be parked off the busy B704 (Dundas Street) to the advantage of highway safety and will also facilitate the safe use/charging of an electric vehicle in support of the Council's net zero ambitions. These benefits outweigh the below policy length of the proposed driveway, with any risk to highway safety caused by vehicles overhanging the pavement being addressed by the Council as the local highways authority.

Dated: 25/09/2023



Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager
Advisor to the Local Review Body
Place Directorate
Midlothian Council

On behalf of:
Councillor R Imrie
Chair of the Local Review Body
Midlothian Council

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions, or

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the town and Country Planning (Scotland) Act 1997

Advisory note:

Please note – no vehicle should be parked overhanging or blocking the highway (including the pavement). If a vehicle is identified as overhanging any part of the highway and causing an obstruction to other users the Council may consider taking enforcement action under its powers as the local highway authority.

If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager via peter.arnsdorf@midlothian.gov.uk



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Email: planningconsultation@coal.gov.uk

Website: www.gov.uk/coalauthority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity at the surface or shallow depth. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of new development taking place.

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Informative Note valid from 1st January 2023 until 31st December 2024

Uphold Review to Remove a Condition from a Grant of Planning Permission

Town and Country Planning (Scotland) Act 1997

Local Review Body: Review of Planning Application Reg. No. 23/00294/DPP

Mr William Sives
Rose Cottage
Tynehead
Pathead
EH37 5XS

Midlothian Council, as Planning Authority, having considered the review of the application by Mr William Sives, Rose Cottage, Tynehead, Pathead, EH37 5XS which was registered on 10 August 2023 in pursuance of their powers under the above Act, hereby **uphold your review to remove condition 3** from your permission to carry out the following proposed development approved 10 July 2023:

Erection of two dwellinghouses and associated works at land south west of 54, Dewartown, Gorebridge, in accordance with the application and the following plans:

<u>Drawing Description</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Site Plan	DPP100 A 1:1250 1:200	05.06.2023
Proposed Floor Plan	DPP101 1:50	11.05.2023
Proposed Elevations	DPP102 1:50	11.05.2023
Proposed Floor Plan	DPP103 1:50	11.05.2023
Proposed Elevations	DPP104 1:50	11.05.2023

In upholding your review to remove condition 3 from the grant of planning permission issued 10 July 2023 the Local Review Body have granted an amended planning permission subject to the following conditions:

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the planning authority:

- a) Details and samples of the proposed stone dressing and zinc seam materials;
- b) Details of any related structures at the bin storage areas;
- c) Details of the proposed hardstanding materials;
- d) Details of the proposed air source heat pumps;
- e) Details of the proposed electric vehicle charging points;
- f) Proposals for the treatment and disposal of foul and water surface drainage, including the location of any new equipment;
- g) A landscape plan, including details of a scheme of landscaping for the site. Details shall include the position, number, size and species of all trees and shrubs proposed, as well as identifying all trees on site which are proposed to be removed and retained;
- h) An amended site plan showing a 2 metre wide public footway across the whole site frontage at the east of the site; and
- i) Details of proposed streetlighting to the east of the houses hereby approved.

Reason: *These details were not submitted as part of the application: to protect the visual amenity of the surrounding rural area; to integrate the development into the area; in the interests of road safety.*

- 3. Before any house is occupied, the installation of the means of drainage treatment and disposal in terms of condition 2f) shall be completed to the satisfaction of the planning authority

Reason: *To ensure that the houses are provided with adequate drainage facilities prior to occupation.*

- 4. Before any house is occupied, the approved boundary treatment between the rear gardens of the houses shall be in place.

Reason: *To ensure the privacy of the future occupants.*

- 5. Within six months of the first house being completed or occupied, whichever is the earlier date, the landscape scheme approved under the terms of condition 2g) above shall be carried out; thereafter, any trees or shrubs removed, dying, becoming seriously diseased or being severely damaged shall be replaced during the next available planting season with others of a similar size and species.

Reason: *To protect and enhance the landscaping of the area; to ensure that planting on the site is carried out as early as possible, and has an adequate opportunity to become established.*

- 6. The amended site plan approved in terms of condition 2h) above shall include a road kerb at the new footway edge, any additional drainage required and a pedestrian drop kerb crossing point at the termination of the footway to allow pedestrians to cross the main road. These works shall be in place before the houses are occupied.

Reason: *In the interest of road safety; in order to ensure these works are in place before the houses are occupied.*

7. Within one month of the date of this permission, the existing redundant outbuildings on the land under the control of the applicant as shown on approved plan DPP100 A shall be demolished and all material removed from the site within four weeks of the buildings being demolished.

Reason: *The houses are only supported as these will result in the removal of the existing redundant outbuildings; in order to ensure the existing, unattractive, buildings are removed in the interest of the visual amenity of the area.*

8. Development shall not begin until details, including a timetable of implementation, of superfast broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast broadband prior to the occupation of each dwellinghouse. The delivery of superfast broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the Midlothian Local Development Plan.*

9. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts and hedgehog gaps shown on the fencing throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan.*

10. Notwithstanding the details on approved drawing number DPP104, the house hereby approved at Plot 2 shall not include any areas of facing brick (blue engineering brick).

Reason: *For the avoidance of doubt; these materials are not appropriate on this traditional house and appear to be a typo on the submitted plans.*

The Local Review Body (LRB) considered the review of the planning application at its meeting of 25 September 2023.

In reaching its decision the LRB gave consideration to the following development plan policies and material considerations:

National Planning Framework 4

1. Policy 1 Tackling the climate and nature crisis;
2. Policy 2 Climate mitigation and adaptation;
3. Policy 3 Biodiversity;
4. Policy 5 Soils;
5. Policy 6 Forestry, woodland and trees;
6. Policy 7 Historic assets and places;
7. Policy 9 Brownfield, vacant and derelict land and empty buildings;
8. Policy 11 Energy;
9. Policy 12 Zero waste;
10. Policy 13 Sustainable transport;
11. Policy 14 Design, quality and place;
12. Policy 15 Local Living and 20 minute neighbourhoods;
13. Policy 16 Quality homes;
14. Policy 17 Rural homes;
15. Policy 18 Infrastructure first;
16. Policy 19 Heating and cooling;
17. Policy 20 Blue and green infrastructure;
18. Policy 22 Flood risk and water management;
19. Policy 23 Health and safety; and
20. Policy 24 Digital infrastructure.

Midlothian Local Development Plan 2017 Policies:

1. DEV5 Sustainability in New Development;
2. DEV6 Layout and Design of New Development;
3. DEV7 Landscaping in New Development;
4. TRAN5 Electric Vehicle Charging;
5. IT1 Digital Infrastructure;
6. RD1 Development in the Countryside;
7. ENV4 Prime Agricultural Land;
8. ENV6 Special Landscape Areas;
9. ENV7 Landscape Character; and
10. ENV11 Woodland, Trees and Hedges

Material considerations:

1. The individual circumstances of the site and the application.

In determining the review the LRB concluded:

The original condition 3, which stated:

3. The use of render on the dormer cheeks and face is not approved: these elevations shall be clad in slate or another material to be agreed in writing by the planning authority.

Reason: *The use of render on the dormer cheeks and face would not*

integrate the dormers into the roofspace; in the interest of the visual amenity of the houses hereby approved.

was not necessary and that the proposed (as built in the case of plot 2) dormer cheeks on the two dwellinghouses could be render finished without detriment to the visual amenity of the local area. As such the stated condition is removed from the grant of planning permission.

Dated: 25/09/2023

A handwritten signature in black ink, appearing to read 'Peter Arnsdorf', with a large, stylized initial 'P'.

Peter Arnsdorf
Planning Manager (Advisor to the Local Review Body)
Place
Midlothian Council

On behalf of:
Councillor R Imrie
Chair of the Local Review Body
Midlothian Council

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions, or

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the town and Country Planning (Scotland) Act 1997.

Advisory note:

If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Planning Manager via peter.arnsdorf@midlothian.gov.uk



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Email: planningconsultation@coal.gov.uk

Website: www.gov.uk/coalauthority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity at the surface or shallow depth. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of new development taking place.

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Informative Note valid from 1st January 2023 until 31st December 2024

Notice of Review: Land at Fallhills, Howgate, Penicuik

Determination Report

Report by Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for planning permission in principle for the erection of dwellinghouse on land at Fallhills, Howgate, Penicuik.

2 Background

- 2.1 Planning application 23/00332/PPP for planning permission in principle for the erection of dwellinghouse on land at Fallhills, Howgate, Penicuik was refused planning permission on 24 July 2023; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C);
 - A copy of the decision notice, excluding the standard advisory notes, issued on 24 July 2023 (Appendix D); and
 - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk.

4 Procedures

- 4.1 In accordance with agreed procedures, the LRB:

- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
 - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there were two consultation responses and no representation received. As part of the review process the interested parties were notified of the review. No additional comments have been received. All comments can be viewed online on the electronic planning application case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. The development to which this permission relates shall commence no later than the expiration of five years beginning with the date of this permission.

Reason: To accord with the provisions of Section 59(2) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).

2. Development shall not begin until an application for the approval of matters specified in conditions for the following details has been submitted to and approved in writing by the planning authority:
- a) A detailed layout plan of the site, showing the siting of the proposed house, details of vehicular access, parking provision and manoeuvring within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures;
 - b) Existing and finished ground levels and floor levels for all buildings, open space and access roads in relation to a fixed datum;
 - c) Detailed plans, sections and elevations of the proposed house, indicating the colour and type of materials to be used on the external walls, roof and windows;
 - d) Details of all hard surfacing and kerbing;
 - e) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts;
 - f) Details of the provision of superfast broadband connections for the house;
 - g) Details of the provision of electric vehicle charging stations for the house;
 - h) Details of the proposed air source heat pump;
 - i) Proposals for the treatment and disposal of foul and surface water drainage from the proposed house. Unless otherwise approved in writing by the planning authority, the surface water drainage shall comply with the standards detailed in the SUDS Manual; and
 - j) Details of a scheme of existing and proposed landscaping at the site and a plan and planting schedule detailing the position, number, size and species of all trees and shrubs that are proposed to be planted; all trees on the site which are to be removed and retained; and details of the means of protection of all trees that are to be retained.

Reason: *Permission is granted in principle only. No details were approved with the application and detailed consideration is required for the siting, massing and design of the proposed dwellinghouse and site access arrangements; to ensure protected species are not adversely affected.*

3. The house approved in terms of conditions 2a) and 2c) shall be a maximum of two storeys high with the upper level of accommodation provided wholly within the roofspace.

Reason: *To be in keeping with the surrounding houses within the housing group; to protect the visual amenity of the surrounding rural area.*

4. The scheme of landscaping approved in accordance with condition 2j) shall include details of native tree and hedgerow planting along the site boundaries.

5. The scheme of landscaping approved in accordance with condition 2j) shall be carried out and completed within six months of the house either being completed or brought into use, whichever is the earlier date. Any trees removed, dying, severely damaged or becoming seriously diseased within five years of planting shall be replaced in the following planting season by trees of a size and species similar to those originally required.

Reason for conditions 4 and 5: *To ensure the landscaping is appropriate to the rural surroundings and integrates the development into the area; to ensure that the landscaping is carried out and becomes successfully established.*

6. Before the new house is occupied the installation of the means of drainage treatment and disposal approved in terms of condition 2i) above shall be completed to the satisfaction of the planning authority.

Reason: *To ensure that the house is provided with adequate drainage facilities prior to occupation.*

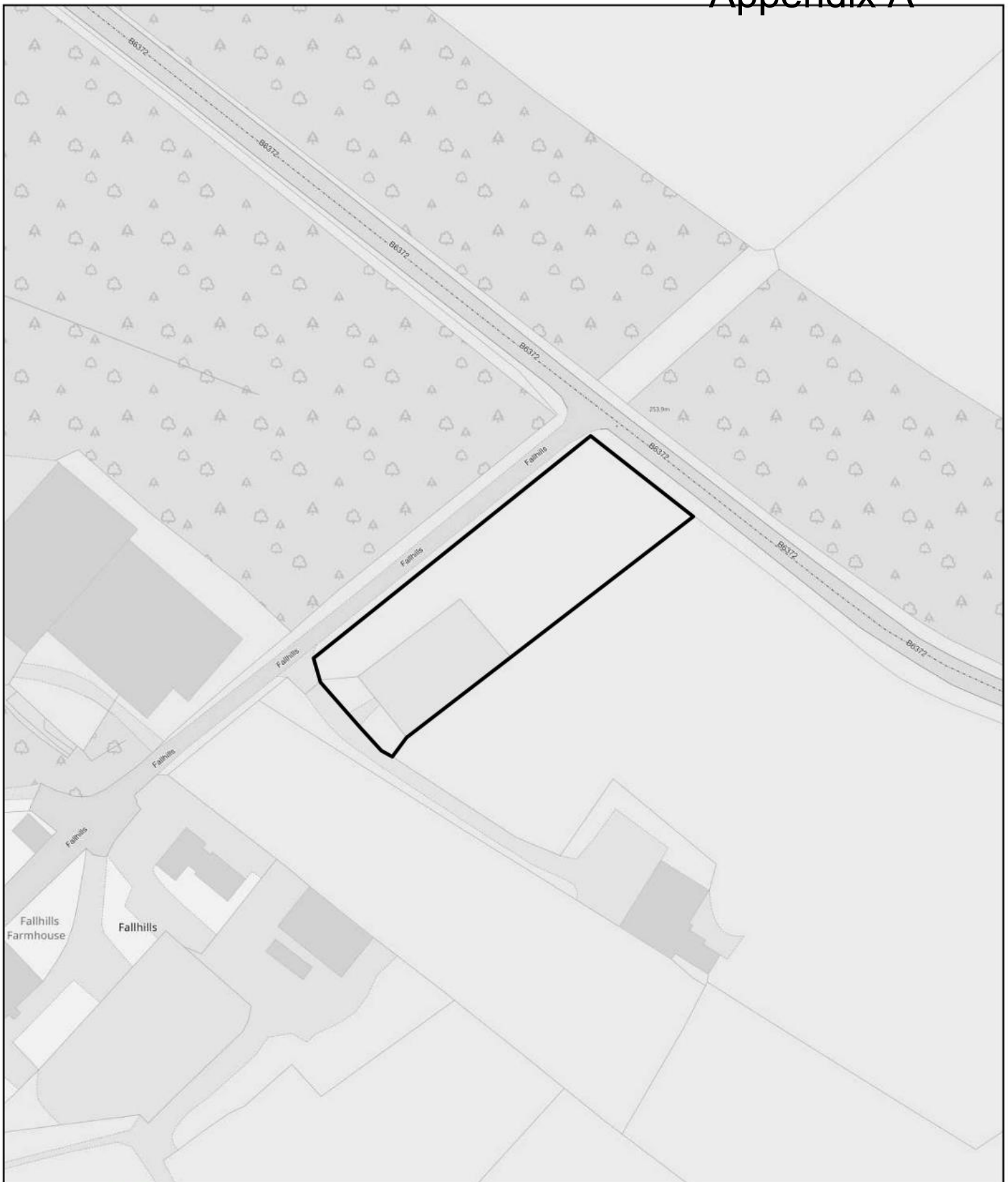
6 Recommendations

- 6.1 It is recommended that the LRB:
 - a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 3 November 2023
Report Contact: Mhairi-Anne Cowie, Planning Officer
Mhairi-Anne.Cowie@midlothian.gov.uk

Background Papers: Planning application 23/00332/PPP available for inspection online.



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

Application for planning permission in principle for erection of dwellinghouse

Land at Falahills, near Howgate

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File No: 23/00332/PPP

Scale: 1:1,250

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Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: planning-applications@midlothian.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100649016-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Ferguson Planning"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Kieran"/>	Building Name:	<input type="text" value="First Floor,"/>
Last Name: *	<input type="text" value="McFarlane"/>	Building Number:	<input type="text" value="38"/>
Telephone Number: *	<input type="text" value="01313858741"/>	Address 1 (Street): *	<input type="text" value="Thistle Street"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="UK"/>
		Postcode: *	<input type="text" value="EH2 1EN"/>
Email Address: *	<input type="text" value="kieran@fergusonplanning.co.uk"/>		

Is the applicant an individual or an organisation/corporate entity? *

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *
Other Title:	<input type="text"/>	Building Name: <input type="text" value="Brian McPhillips"/>
First Name: *	<input type="text" value="Brian"/>	Building Number: <input type="text" value="1"/>
Last Name: *	<input type="text" value="McPhillips"/>	Address 1 (Street): * <input type="text" value="Fallhills Court"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: * <input type="text" value="Howgate"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="EH26 8QE"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text"/>	

Site Address Details

Planning Authority:	<input type="text" value="Midlothian Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

<input type="text" value="Land At Fallhills, Penicuik"/>
--

Northings	<input type="text" value="658383"/>	Easting	<input type="text" value="325338"/>
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Application for planning permission in principle for erection of dwellinghouse

Type of Application

What type of application did you submit to the planning authority? *

- ☐ Application for planning permission (including householder application but excluding application to work minerals).
- ☒ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? *

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please refer to the submitted Local Review Statement which sets out the Appellants grounds for appeal.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

PPP Application Form, Local Review Statement, Supporting Planning Statement, Location Plan, Block Plan, Email from Planning Officer to Agent, Scottish Water Consultation Response, Design Statement on Climate Change and Nature Emergency, Report of Handling 23/00332/PPP and Decision Notice 23/00332/PPP

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

23/00332/PPP

What date was the application submitted to the planning authority? *

27/02/2023

What date was the decision issued by the planning authority? *

24/07/2023

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☐ Yes ☒ No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

☐ Yes ☒ No

Is it possible for the site to be accessed safely and without barriers to entry? *

☐ Yes ☒ No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? *

☐ Yes ☒ No

Have you provided the date and reference number of the application which is the subject of this review? *

☐ Yes ☒ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

☐ Yes ☒ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

☐ Yes ☒ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

☐ Yes ☒ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Kieran McFarlane

Declaration Date: 20/10/2023

PROPOSED APPLICATION FOR PLANNING IN PRINCIPLE TO LAND AT FALLHILLS 23.2.2023

The site is located within an external horse riding school area to the left of the access road leading to Falls Hill Court. The proposed house would form part of the grouping of the existing Falls Hill development.

The applicant sees the proposed house as a 3 bedroomed 1 and ½ storey house built of traditional materials. The area would be approximately 180m².

The ground floor will be designed in such a way as to allow elderly people to live on one floor only without having to negotiate stairs to access bedrooms.

The house will be insulated to the highest standards to provide an energy efficient home that will allow the applicant to retire to a comfortable environment.

The drainage would be via a septic tank located within the field to the north of the house.

There are no trees on the site and the site is relatively level so building a new house should be relatively straight forwards with minimum excavation and without interfering with the existing ecology.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 23/00332/PPP

Site Address: Land At Fallhills, Penicuik.

Site Description: The application site comprises an area of agricultural land measuring 1.5 hectares. Part of this is a riding area, with the remainder a field. The site is relatively level with a drop to the northwestern boundary. The land to the east slopes up, where there is a barn, and is under the control of the applicant. The closest house at Fallhills is 45 metres away. The site boundaries are relatively open, with natural stone walls to the road to the northwest and northeast. The levels in the surrounding area mean the site is not readily visible from the B6372, to the north, or Howgate, to the southwest.

Proposed Development: Application for planning permission in principle for erection of dwellinghouse.

Proposed Development Details: The application is for planning permission in principle, however the agent has submitted a site plan showing an indicative layout of a house, access and parking. The proposed development is set to the south of the site, in place of the riding area. The house will have private drainage arrangements, namely a septic tank with soakaway, and will connect to the public water supply.

A planning statement and sustainability statement have been submitted. The house will form part of the group of houses at Fallhills. The house is proposed to be a three bedroom one and a half storey building, externally finished with traditional materials. The applicant states that the house will be insulated to the highest standards, with an air source heat pump, triple glazed windows and an electric vehicle charging point. Drainage would be in the field to the north. The applicant states that the house will be constructed from sustainable materials, made in the adjacent barn to reduce transportation requirements. The applicant states that siting the house on the riding area will limit impact on ecology. Additional landscaping and biodiversity measures are proposed.

Background (Previous Applications, Supporting Documents, Development Briefs):

Application site

09/00272/OUT Outline application for erection of dwellinghouse. Withdrawn.

08/00644/OUT Erection of dwellinghouse. Withdrawn.

Land to immediate south

09/00283/OUT Outline application for the erection of dwellinghouse. Refused – the site did not form part of the housing group; not comply with policy.

08/00632/OUT Erection of dwellinghouse. Withdrawn.

Land to south (beyond above site)

11/00824/DPP Erection of dwellinghouse and formation of driveway. Consent with conditions.

11/00341/DPP Erection of stables building. Consent with conditions.

09/00302/OUT Outline application for the erection of dwellinghouse. Refused – the site did not form part of the housing group; not comply with policy. Allowed at LRB – in this case would be seen as part of the housing cluster. The LRB acknowledged that the proposal did not comply with the Housing Groups SPG as a previous house had been approved in the group. However, the proposal was considered on its individual merits without undermining adopted development plan policies and the SPG. Permission was granted but this decision can not be used to set a precedent against which future developments are assessed, because of the individual circumstances of this case.

Consultations:

The Council's **Senior Manager Neighbourhood Services (Roads)** has no objection.

Scottish Water has no objection. They state that there is no waste water infrastructure in the area and that they will not accept any surface water connections to the combined sewer.

Representations:

No representations have been received.

Relevant Planning Policies: The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017. The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

- Policy **1 Tackling the climate and nature crisis** sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis;
- Policy **2 Climate mitigation and adaptation** sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change;
- Policy **3 Biodiversity** sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks;
- Policy **5 Soils** sets out to protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development;
- Policy **11 Energy** sets out to encourage, promote and facilitate all forms of renewable energy development onshore and offshore. This includes energy generation, storage, new and replacement transmission and distribution infrastructure and emerging low-carbon and zero emissions technologies including hydrogen and carbon capture utilisation and storage (CCUS);

- Policy **12 Zero waste** sets out to encourage, promote and facilitate development that is consistent with the waste hierarchy;
- Policy **13 Sustainable transport** sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably;
- Policy **14 Design, quality and place** sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle;
- Policy **15 Local Living and 20 minute neighbourhoods** sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options;
- Policy **16 Quality homes** sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland;
- Policy **17 Rural homes** sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable rural homes in the right locations;
- Policy **19 Heating and cooling** seeks to encourage, promote and facilitate development that supports decarbonised solutions to heat and cooling demand and ensure adaptation to more extreme temperatures;
- Policy **20 Blue and green infrastructure** sets out to protect and enhance blue and green infrastructure and their networks.
- Policy **22 Flood risk and water management** sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding;
- Policy **23 Health and safety** sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing; and
- Policy **24 Digital infrastructure** sets out to encourage, promote and facilitate the roll-out of digital infrastructure across Scotland to unlock the potential of all our places and the economy.

The relevant policies of the **2017 Midlothian Local Development Plan** are;

DEV5 Sustainability in New Development sets out the requirements for development with regards to sustainability principles;

DEV6 Layout and Design of New Development requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet listed criteria;

DEV7 Landscaping in New Development requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the

scheme is to be informed by the results of an appropriately detailed landscape assessment;

TRAN5 Electric Vehicle Charging seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals;

IT1 Digital Infrastructure supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals;

RD1 Development in the Countryside states development in the countryside will only be permitted if: it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; it accords with other named policies; or it accords with the Council's Supplementary Guidance on Development in the Countryside and Green Belt. All such development will need to be: of a scale and character appropriate to the rural area and well integrated into the rural landscape; capable of being serviced with an adequate and appropriate access; capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, avoiding unacceptable discharge to watercourses; and accessible by public transport and services, within 1 mile of a bus route with a frequency of 1 bus per hour. In the case of businesses, these should not be primarily of a retail nature and do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic;

ENV7 Landscape Character states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.

Supplementary Guidance for Housing Development in the Countryside and Green Belt has been prepared to expand policy RD1 and the criteria to be met in such proposals. This provides some support the development of one house where there is a group of 5 or more existing dwellinghouses. A house may be permitted where there is small-scale infill within such groups. Houses should generally be located within any gaps in the group. Where there are no gaps, consideration will be given to locations adjoining the existing group, particularly where there is a site that adjoins the group on two sides. Where there are existing physical or visual barriers separating the site or where distance results in the site being remote from the host group, development will not be acceptable. Proposals in open fields adjoining a group, which have not physical features to provide containment will not be acceptable. Proposals which impact adversely on trees, hedgerow and boundary features, or are located on the opposite side of physical features which form strong boundaries for a group will not be acceptable. The design of any proposed dwelling is an important consideration. Development must be small-scale in relation to the existing group and respect the character, cohesiveness and amenity of the group being extended.

Planning Issues:

The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

The primary focus of the NPF4 planning policies seek for developments to be sustainable and give consideration to the global climate and nature crises.

In response to NPF4 the agent has stated:

- The heating source will be an air source heat pump and the proposed heating system is particularly effective with air source heat pumps;
- The house will be insulated to an extremely high standard above the minimum prescribed in the Technical Standards;
- Windows will be triple glazed again above the minimum prescribed in the Technical Standards;
- All materials are sustainable, with the majority of the house timber. The timber cladding being is manufactured and supplied by a local supplier. The wall cladding has a high recycled content and the gutters and downpipes are aluminium which can be recycled. Where possible, insulation will be manufactured from recycled newspaper. This will be combined with a layer of insulation board to bridge across the structural frame to prevent cold bridging;
- The applicant will make the kit for the house in an existing shed adjacent to the site limiting transportation requirements;
- The location of the house was carefully chosen on the riding arena as this will have very little adverse impact on nature. The ground is inert due to the surface and there is no landscaping apart from grass affected. The development would create an opportunity to provide a rich and diverse garden to encourage nature providing habitat for insects and birds;
- The proposal will include bee bricks, bat boxes, swift boxes, swallow cups and bird boxes; and
- An electric vehicle charging point is proposed.

The site is in a relatively remote countryside area. While the abovementioned details seek to address the climate crisis the application site is a fundamentally unsustainable location for a new house. The majority of trips to and from the site are likely to be done by private car, which is not in line with NPF4's focus on sustainability. The use of zero and low carbon technology, landscaping, compliance with Building Standards and ecology recommendations would all be expected as standard in proposals. These are not extra measures which help address the climate and nature crises.

The Planning Authority has restrictive planning policies with regards to new housing proposals within the countryside. These restrictions aim to prevent the creeping suburbanisation of the countryside which is under significant pressure due to the convenient commuting distance to Edinburgh. However there are enabling policies within the adopted Midlothian Local Development Plan and NPF4 which support residential developments within the countryside in some instances, subject to specific criteria. Policy RD1 of the MLDP, policy 17 of NPF4 and the related

supplementary guidance includes several sections where houses in the countryside could be acceptable in planning terms.

The proposed house is not required for the furtherance of an established countryside activity, nor is it a replacement house or for the conversion or redevelopment of existing redundant farm buildings or other non-residential buildings. The proposal is not an enabling development where it is clearly shown that this is the only means of preventing the loss of a heritage asset and securing its long term future. The site is not allocated for housing within the LDP nor is it brownfield land. This is not a single home for the retirement succession of a viable farm holding, nor is this the subdivision of an existing residential dwelling. The proposal does not reinstate a former dwelling house nor is it a one-for-one replacement of an existing permanent house.

Policy RD1 provides some support for houses in groups where 1 new dwelling is permitted during the plan period where there are 5 existing units. There are 9 houses within the group to the south of the site at Fallhills and therefore potential for one further house in the current MLDP period. Any new house must form part of the group and meet the criteria included in the SG for suitable plots within groups. The specific guidance for the housing group at Fallhills in the previous Supplementary Planning Guidance states the fields around the group are very open with no physical features to provide containment. Any house should preferably be located where there is existing screening and should not detract from the cohesive appearance of the steading. Any house should be located in close proximity to the converted steading, as this forms the nucleus of the group.

The site is not a gap site and does not adjoin the group. The site is detached from the houses that form the grouping, with the closest point between boundaries over 35 metres away, with at least 45 metres between houses. This is separated by a field. It is worth noting that this field was refused planning permission for a house under the housing group policy as this was considered too detached from the group. The current application site is still further from this group.

The fields around the application site are relatively open with no physical or visual feature to provide containment of the group. Although the land slopes up to the east, the site is highly visible from the B6372. This is exacerbated by recent tree clearing in the area.

While there are numerous ways in which a new house can satisfy planning policy in the countryside this proposal satisfies none of them. The proposal does not comply with the acceptable criteria in NPF4 policy 17 or MLDP RD1. The proposal is a completely unjustified attempt to build a new house in the Midlothian countryside.

Notwithstanding the lack of policy support, the details of the proposal need to be given some consideration.

The application site area is sufficiently large to be able to accommodate a dwellinghouse, garden ground, turning area and parking.

Landscaping the site to integrate any house into the area would be required, while taking into account any required sightlines given the site extends up to the B6372.

The site is served by an existing access.

Scottish Water did not raise any concerns over water supply. Should permission be granted a planning condition would be attached requiring further details of drainage and sewerage provision.

The application is for planning permission in principle and so no detailed plans of the proposed house are required or have been submitted. Should the current application be approved, a further application would be required detailing the design, materials and site layout. Due to the sensitive location within the countryside, it is important that any new house is in keeping with and does not detract from the character and appearance of the group and area. The other houses in the group are a range of single storey, two storey and converted steading buildings, some with accommodation in the roofspace. These are all of traditional design and scale. Any new house should reflect the character of the existing built environment in the area.

Recommendation: Refuse planning permission in principle.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 23/00332/PPP

Gray Macpherson Architects
106 Biggar Road
Edinburgh
EH10 7DU

Midlothian Council, as Planning Authority, having considered the application by Mr Brian McPhillips, 1 Fallhills Court, Howgate, EH26 8QE, which was registered on 25 May 2023 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Application for planning permission in principle for erection of dwellinghouse at Land At Fallhills, Penicuik

In accordance with the application and the following documents/drawings:

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	P00 1:1000	25.05.2023
Site Plan	P01 1:500	25.05.2023

The reasons for the Council's decision are set out below:

- On account of the physical separation between the application site and the housing group at Fallhills **and** due to the lack of physical boundaries to provide cohesiveness and containment it has not been demonstrated to the satisfaction of the Planning Authority that the proposed house genuinely relates to an existing housing group. In addition, the proposed development does not comply with any other criteria which support new housing in the countryside. Therefore, there is no justification for the development of a residential unit in this countryside location as it would be contrary to policy RD1 of the adopted Midlothian Local Development Plan 2018, the related supplementary planning guidance and Policy 17 of the National Planning Framework 4.*
- It has not been demonstrated to the satisfaction of the Planning Authority that the proposed development has been sited in a sustainable location. The proposed development fails to address the global climate crisis in this respect. Therefore the proposed development does not comply with the overarching aims of NPF4 and policy 1 of NPF4 specifically.*

Dated 24 / 7 / 2023



.....
Duncan Robertson
Lead Officer – Local Developments Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



The Coal
Authority

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison
Direct Telephone: 01623 637 119
Email: planningconsultation@coal.gov.uk
Website: www.gov.uk/coalauthority

Development Low Risk Area- STANDING ADVICE

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

Standing Advice valid from 1st January 2023 until 31st December 2024



NORTH



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REFUSED
22.00332.PPP
24.07.2023



Client: Mr Brian McPhillips

Job: Site at Falahills
EH26 8QE

Title: Location Plan

Scale: 1:1000 @ A1 / 1:200 @ A3

Date: 22.2.2023

Job No: 702

Dwg No: P00

Rev:

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architects LLP

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tel. 0131 445 2223

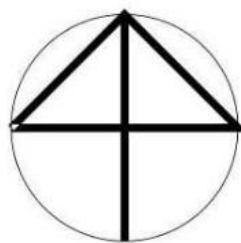
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NORTH



253.9m

Ward Bdy

Pond

Sheepfold

Falhhills
Farmhouse

Falhhills

Pond

5 5 10 20 40m

REFUSED
23.00332.PPP
24.07.2023

Client: Mr Brian McPhillips

Job: Site at Falhhills
EH26 8QE

Title: Block Plan

Scale: 1:500 @ A1

Date: 22.2.2023

Job No: 702

Dwg No: P01

Rev:

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