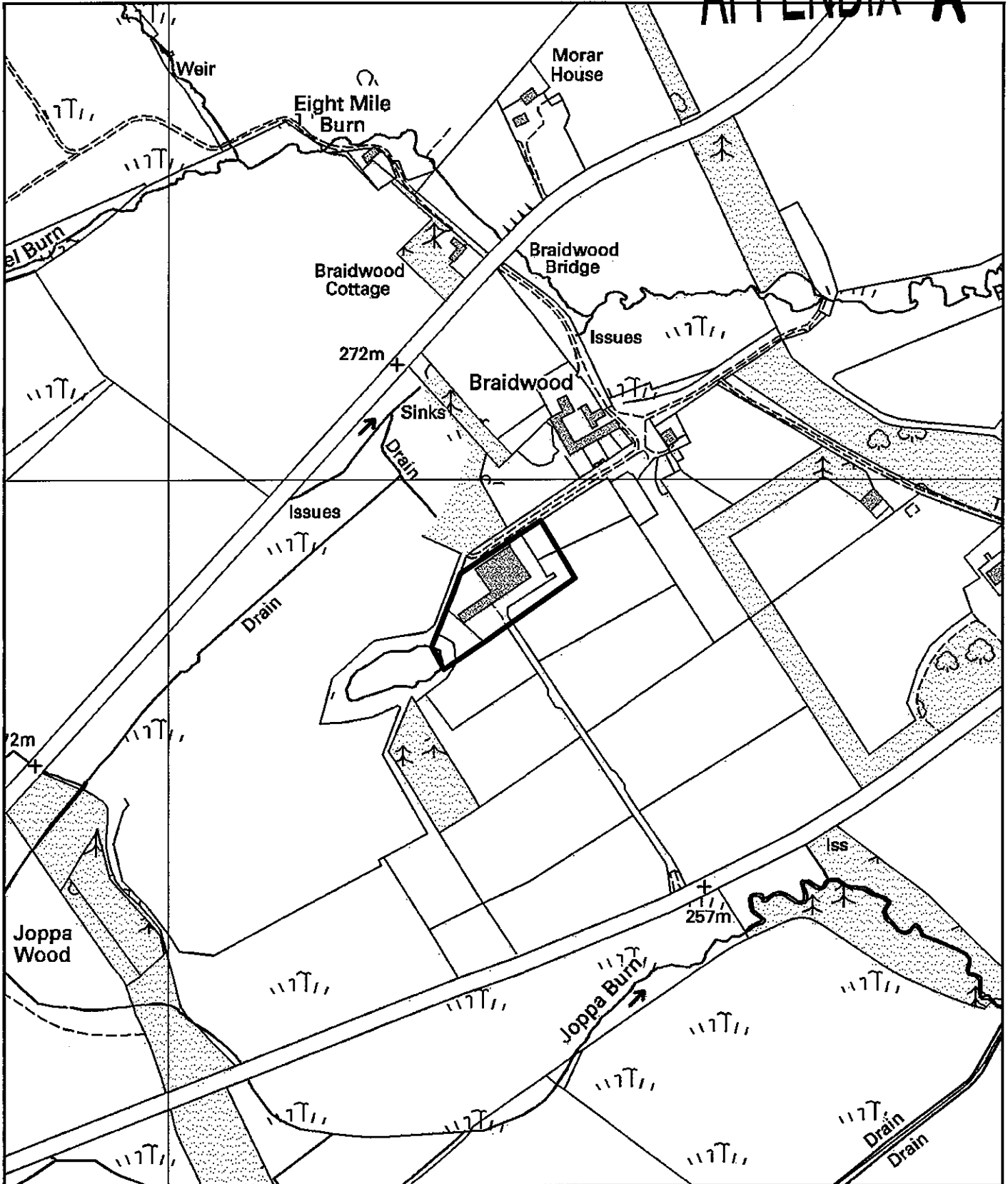


APPENDIX A



Ed, Comm & Econ
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3ZQ

Removal of planning condition 7 of planning permission
02/00864/FUL (Erection of detached dwelling) to remove
occupancy restriction at Braidlaw Farmhouse, Penicuik

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File No. 13/00348/DPP

Scale: 1:5,000



Midlothian Council Licence No. 100023416 (2013)

Midlothian

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 necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 000070301-001

The online ref number 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:

Rapeys LLP

Ref. Number:

First Name: *

Lisa

Last Name: *

Russell

Telephone Number: *

0131 221 5908

Extension Number:

Mobile Number:

Fax Number:

0131 221 5904

Email Address: *

llr@rapeys.co.uk

You must enter a Building Name or Number, or both: *

Building Name:

Caledonian Exchange

Building Number:

19

Address 1 (Street): *

Canning Street

Address 2:

Town/City: *

Edinburgh

Country: *

UK

Postcode: *

EH3 8EG

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

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title: *

Mr

You must enter a Building Name or Number, or both:*

Other Title:

Building Name:

Braidlaw Farmhouse

First Name: *

Ivar

Building Number:

Last Name: *

McLeish

Address 1 (Street): *

Silverburn

Company/Organisation:

Address 2:

Telephone Number:

Town/City: *

Penicuik

Extension Number:

Country: *

Scotland

Mobile Number:

Postcode: *

EH26 9LP

Fax Number:

Email Address:

Site Address Details

Planning Authority:

Midlothian Council

Full postal address of the site (including postcode where available):

Address 1:

BRAIDLAW FARMHOUSE

Address 5:

Address 2:

Town/City/Settlement:

PENICUIK

Address 3:

Post Code:

EH26 9LP

Address 4:

Please identify/describe the location of the site or sites.

Northing

658901

Easting

319310

Description of the Proposal

Please provide a description of the 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)

We seek a review by the Local Review Body of the decision made by Midlothian Council in refusing application reference 13/00348/DPP which sought the removal of planning condition 7 of planning permission 02/00864/FUL (Erection of detached dwelling) to remove the occupancy restriction at Braidlaw Farmhouse, Penicuik, EH26 9LP

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 of 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 see separate document.

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

☐ Yes ☒ No

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)

Planning Statement submitted with application reference 13/00348/DPP.
Copy of the decision notice refusing the application.
Copy of the decision notice and letter from Council allowing the removal of the S.75 agreement.
Copy of the officer's delegated report.
Grounds of the appeal.

Application Details

Please provide details of the application and decision.

What is the application reference number? *

13/00348/DPP

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

11/05/13

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

29/07/13

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: Lisa Russell

Declaration Date: 30/09/2013

Submission Date: 30/09/2013

Grounds of Appeal

Introduction

This request for a review by the Local Review Body relates to Midlothian Council's refusal of planning application 13/00348/PP for the removal of condition number 7 of planning permission 02/00864/FUL. Condition number 7 states:

"The new house shall be occupied only by a person employed or last employed full-time in the stud farm business on the site, or full time in agriculture, as defined in section 277 of the Town and Country Planning (Scotland) Act 1997, in the locality, together with the dependants of such a person residing with him or her, or by the widow or widower of such a person."

The application was submitted on 11/05/13 by Rapleys on behalf of Mr Ivar McLeish with a detailed planning statement confirming what was being applied for and the justification for requiring the removal of the condition. A copy of that Planning Statement is attached.

The application was one of two concurrent applications submitted for the property, to address the occupancy restrictions. The second application was for the removal of the occupancy condition in the S.75 and was approved. Furthermore, the Council has subsequently written in a letter dated 29/07/13 to advise that the Council are willing to agree to the complete removal of the S.75 attached to the property. This means that as well as the removal of the occupancy restriction, requiring a member of staff of the Stud farm to occupy the residential dwelling, that the Council are offering, without application, to allow the tie between the land and the residential dwellinghouse to be removed.

Decision Notice

The Council's decision regarding the refusal of the application for the removal of the condition was made on the 29/07/13 and gave three reasons for refusal:

1. It has not been demonstrated, to the satisfaction of the planning authority, that the applicant has investigated all options available to him in advance of breaking the link between the house and the land upon which it is sited. In the absence of this justification the planning authority have significant and serious concerns regarding the sustainability of the house in this sensitive landscape which is under increasing pressure from creeping suburbanisation and significant landscape degradation.
2. It is considered that the fundamental issue underpinning the requirement for the condition covering the occupancy restriction is the need to safeguard the character and appearance of the Midlothian Countryside. Removal of the condition covering the occupancy would set an undesirable precedent for similar future applications and could lead to an uncontrolled and sporadic approach to housing development within the sensitive Midlothian landscape.
3. For the above-mentioned reason the proposal is contrary to the aims of Policy ENV3 of the Edinburgh and Lothian Structure Plan and policies RP1 and DP1 of the adopted Midlothian Local Plan, which seek to protect the countryside and landscape from unsustainable development.

Reasons for Refusal

Reason for refusal 1 is not relevant to the determination of the application for the removal of the condition. The condition does not tie the house and the land, but a clause of the S.75 did include such a tie. The condition relates to the occupation of the new house by a person employed or last employed full time in the Stud farm business on the site, but alternatively allows occupation by someone employed or last employed in agriculture in the locality. There is no planning definition for locality but this is clearly different wording from that stated for the stud business farm, "on the site", and therefore "in the locality" must reasonably mean within the surrounding area, but not necessarily at the site. The dictionary definition states this as being "the neighbourhood or area". If the purpose of the condition was that the occupants must be employed on the site, then that should have been stated unambiguously. This is further confirmed in the officer's delegated report which states that "The planning condition allows the house to be occupied by anyone employed (full-time) or previously employed in the stud or any other agricultural activity in the locality".

Moreover, the officer has stated, quite unreasonably, in the reason for refusal that my client did not demonstrate that he has investigated all options available to him in advance of breaking the link between the house and the land upon which it is sited. However, my client did not apply to split the property from the land within their concurrent S.75 modification application; instead they sought only for removal of the S.75 occupancy restriction. Critically, it was the Council in their letter of 29/07/13 who volunteered that the tie between the land and property within the S.75 should be removed to allow flexibility and from this we must assume that the Council find the split acceptable. Furthermore, this matter relates to the S.75 application and not the application to remove an occupancy condition and appears to have been erroneously attached the decision against which this review is being progressed.

The reason for refusal 2 states that there is a "need to safeguard the character and appearance of the Midlothian Countryside" and that removal of the condition covering the occupancy would set an undesirable precedent for similar future applications and could lead to an uncontrolled and sporadic approach to housing development. Similarly, the reason for refusal 3 is directly related to reason 2. It states that "for the above-mentioned reason the proposal is contrary to Policy ENV3 of the Edinburgh and Lothian Structure Plan and policies RP1 and DP1 of the adopted Midlothian Local Plan, which seek to protect the countryside and landscape from unsustainable development."

We maintain that, as per the planning statement submitted with the application, the house is already in situ and previously, fully assessed, in terms of its character and appearance in the Midlothian Countryside, as part of the original application and deemed to be appropriate. If the determining officer had considered that, irrespective of the business case made, that the site was inappropriate or damaging to the Midlothian Countryside, then the application could have been refused, at that time, on those grounds. The removal of the condition would not impact on the character and appearance of the Midlothian Countryside, as any change has already been established when the house was built.

Meeting the requirements of Circular 4/98 'The use of Conditions in Planning Permissions'

The policies referred to in the reason for refusal, relate to new housing in the countryside. This appeal does not relate to new housing in the countryside, it relates to an existing house which was previously restricted through the use of an occupancy condition. Circumstances have changed requiring the removal of the occupancy condition and there is no policy contained in either the Edinburgh and Lothian Structure Plan or the Midlothian Local Plan which addresses the removal of occupancy conditions. The reference to these policies is not relevant to the determination of this review. Instead, there is a need to consider the proposal on the merits of the change of circumstances which were submitted to explain why the condition attached no longer complies with Circular 4/98 'the Use of Conditions in Planning Permissions' and in particular with paragraph 2 of this document which states that the power to add conditions on a grant of planning permission needs to be exercised in a manner which is fair, reasonable and practicable and should only be imposed where they are:-

- Necessary
- Relevant to planning
- Relevant to the development to be permitted
- Enforceable
- Precise
- Reasonable in all other respects.

Critically, the avoidance of onerous requirements is addressed in paragraph 35 which states, "even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds."

The condition restricting occupancy, not only limits the market and therefore the opportunity for the future sale of the property and land, but also even within that limited market significantly restricts mortgage opportunities for those wishing to purchase the property. Previously, before the economic crisis, a lower value would have secured a buyer. Mortgage availability, whilst limited for this market, was available. However, the condition causes particular difficulties in the current economic climate, troubled housing market and lack of mortgage availability, relying mainly on available cash buyers. It is for this reason that the Chief Planner wrote to Councils to clarify the Scottish Government's views on the use of conditions or planning obligations to restrict the occupancy of new rural housing, as discussed in detail in the Planning Statement.

There is a separate issue, the failure of the business and the ability of the current owners to continue to live in the property. Should Mrs McLeish take a job outwith the stud business then they would be in breach of the condition. With the limitations of the current housing market, this could result in their requirement to move from their home and being unable to secure a new occupant which is considered to be a "severe limitation on the freedom of an owner to dispose of his property" as stated in paragraph 35 of Circular 4/98 'the Use of Conditions in Planning Permissions'.

Sustainability

The officer discusses the issue of sustainability. If the current owners do not meet the condition, then they would no longer be entitled to occupy the premises, this could lead to the property becoming derelict which is even less sustainable than someone who is not employed in agriculture occupying the property.

In terms of sustainability, this relates to an existing property and not a dwellinghouse yet to be built. The existing policies protect against this proposal becoming a precedent for allowing unsustainable houses to be built without agricultural justification. Furthermore, with regard to similar applications for the removal of conditions, these must be assessed on the merits of the application before officers and the evidence presented demonstrating that the condition is no longer appropriate. In this case the failure of the business is evidence that the condition is no longer reasonable.

The suggestion by the officer that the business could, potentially, be run profitably by someone else is in itself unreasonable, the business has failed and is not a going-concern which could be run by an alternative person. The financial accounts demonstrate the significant losses by the current occupiers and show that they have previously tried to diversify the business. We also consider that it is unreasonable for the officers to state that there is a requirement for a family now suffering extreme financial hardship and having tried to sustain a business beyond that which most would be capable of doing, to look to progress an alternative business on the site when there is a need for them to work in alternative sectors to provide for their family. Whether or not the property could be run by someone else heavily depends on someone else being able to purchase the property and that is severely restricted by the condition. Critically, the removal of the condition does not prevent the land and property being occupied by an agricultural employee. Indeed, it offers the prospect that the property may in fact be capable of being sold and of someone else being able to run a suitable business here.

Other Material Planning Considerations

We do not consider that the officer gave appropriate weight to the other material planning considerations within the planning statement accompanying the application. That statement outlined recent appeal decisions by the DPEA regarding the use of policies relating to new development in the countryside to assess applications of this type (removal of occupancy restrictions) and appeals which refer to the changes to the Scottish Governments policy on rural housing - confirming that the use of occupancy conditions is rarely appropriate. Of the examples cited, the most relevant is the reporter's comments on the following appeal:

Appeal reference POA-200-2000 - The Hirsell, Craigmaddie Road, East Dunbartonshire

"I have taken into account the planning authority's concern that the removal of the occupancy and disposal restrictions would result in a dwelling that does not comply with the development plan and would set a precedent for general market houses in the countryside. I acknowledge that pressure for construction of such houses is particularly high in East Dunbartonshire. However, the development plan policy would remain in place and would provide a firm basis for the council to refuse applications for new houses that lacked a robust justification of agricultural, or other rural

enterprise, need. Every application has to be considered on its own merits, and I do not accept that allowing this appeal would create a precedent that the council would find it difficult to escape”.

The matters discussed by the reporter are significant and relevant to the determination of this review, as the reasons for refusal that are discussed by the reporter are the same as that stated by the officer in reasons 2 and 3 of the refusal notice. We agree with the view of the reporter in that Policies ENV3 of the Edinburgh and Lothian Structure Plan and policies RP1 and DP1 of the adopted Midlothian Local Plan are still in place. Therefore, a precedent would not be set, applications for housing in rural areas would still be assessed against prevailing policy and should there be a policy exception at the time of application, which allowed housing on the basis of agricultural justification, then the Council could resist applications without appropriate supporting evidence of such a requirement.

A further concern which has been raised by Planning Authorities has been that without occupancy restrictions, houses could be sold on and new applications for additional housing submitted. Should any new house within the Midlothian area be allowed base on agricultural justification and without attaching occupancy restrictions and was sold on, then, should the original business look to establish a further new house, this could be strongly resisted as there is evidence that the business did not require the original house as this was disposed of.

Finally, the officer states that the view of only one agent has been sought regarding the limitations the condition presents on the sale of the property. The number of views sought is irrelevant, the view was provided by a professionally qualified residential agent in a reputable firm and no counter or alternative view has been sought by the Council regarding mortgage lending for potential purchasers in a more stringent, restrictive market for mortgage finance. Comments from the officer about the Council’s knowledge about demand for equestrian premises of this type are equally unqualified.

Planning Report

Modification of a Planning Obligation and
Removal of Condition 7. to planning
application ref: 02/00864/FUL

On Behalf Of
Mr Ivar McLeish
Braidlaw Farm,
Penicuik,
EH26 9LP

May 2013



Our Ref: LLR/751/3/1

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3. The S.75 Obligations and Condition No.7
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8. Planning Issues
9. Conclusions

Appendices

1. Site Location Plan
2. Accounts
3. Letter from Financial Advisor
4. Email from Savills

1 INTRODUCTION

- 1.1 This planning report has been prepared on behalf of Mr Ivar McLeish in support of an application made under the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 (regulation 3). The application relates to obligations within a S.75 agreement made under the Town and Country Planning (Scotland) Act 1997 to planning application reference 02/00864/FUL. The application seeks to modify the S.75 to remove the occupancy restriction which limits the the occupancy of Braidlaw Farmhouse. It also supports a separate application for Full Planning Permission for the removal of condition number 7 of the same planning consent (02/00864/FUL).

2 BACKGROUND INFORMATION

- 2.1 The property subject to the planning obligation and condition is Braidlaw Farmhouse, know at the point of application as Lansik Stud, Braidwood. The property is located to the south-east of the A702. Approximately 1.5km south-west of Silverburn and 3km south-west of Penicuik. The buildings on site comprise a four bedroomed house attached to three garages and to a barn with stabling for 10 horses (including two large foaling boxes and one extended stallion box). Also attached is an Indoor riding facility for exercising/covering the mares.
- 2.2 The dwelling house and associated buildings are traditional in character and are well screened from the principal roads in the area, through existing mature planting. The land extends to approximately twenty eight acres of grazing land. A site location plan is attached as Appendix One.
- 2.3 An indoor riding facility has been on the site since 1998 and stables were built thereafter in 2001. Two previous applications were made in 1997 and 1998 respectively for the erection of a new house at Braidwood to offer owners 24 hours supervision for their horses whilst in our care. An absolute requirement when horses are foaling, and in association with an equestrian centre. Both were refused, the second was also dismissed at appeal. However, in 2002 Mr and Mrs McLeish submitted a third planning application, which was registered with Midlothian Council on the 9th December 2002. The negotiation of the application took place over the following 14 months, when, ultimately, the planning authority were satisfied that irrespective of previous refusals and appeal, an appropriate business case had been presented by Mr McLeish and his wife to support the erection of a dwelling house and associated stud buildings on the subject site. The application was considered to meet the requirement of the prevailing planning policies and was granted subject to a S.75 agreement and conditions on the 13th February 2004.

3 THE S.75 OBLIGATIONS AND CONDITION NO.7

- 3.1 There are two key obligations on the S.75 legal agreement which relate to the sale and occupation of the “planning unit” respectively. (The Planning Unit includes the house, buildings associated with the stud and the land, as identified in Appendix 1. The First Party refers to Midlothian Council or their successors and the Second Party refers to Mr Ivar and Mrs Julie McLeish). The planning obligations state:

-
- The planning permission subjects shall not be sold, assigned, disposed, leased, feued, or otherwise disposed of by the Second Party except as part of a disposal, sale, assignation, disposition, lease or feu of the planning unit and subject to the terms of this Agreement; and the planning unit shall not be sold, assigned, disposed, leased feued or otherwise disposed of by the Second Party except as part of a disposal, sale, assignations, disposition, lease or feu of the planning permission subjects and subject to the terms of this agreement.
 - The second party undertakes that the planning permission subjects shall be constructed in all terms of this Consent. The planning permission subjects once completed or brought into use shall be occupied by a person whose primary employment is in the stud business operated from the planning unit. For the avoidance of doubt, nothing in this clause shall prevent the Planning Unit being occupied by a spouse, widow, widower or dependant of a person whose primary employment is in the stud business operated from the Planning Unit. Moreover, nothing in this clause shall prevent more than one person whose primary employment is in the stud business operated from the Planning Unit from occupying the Planning Unit. These presents shall be enforceable at the instance of the first party or their successor not only against the Second Party but also against his successors in title to the Planning Unit and shall be validly referred to in all future transmissions of the Planning Unit.

3.2 Condition number 7, was also attached to the planning consent and states:

- The new house shall be occupied only by a person employed or last employed full-time in the stud farm business on the site, or full-time in agriculture, as defined by Section 277 of the Town and Country Planning (Scotland) Act 1997, in the locality, together with the dependants of such a person residing with him or by the widow or widower of such a person.
- Reason: To ensure the house complies with the Council's policy for the development of new housing in the countryside.

4 THE STUD BUSINESS

4.1 The property was completed and occupied by Mr and Mrs McLeish in June 2005 where they have continued to live as their family home for the last 8 years, as well as operating the business over this same period. Since occupying the property, Mrs McLeish has given birth to a daughter in March 2012 and currently has to work full time in the business to keep the business running whilst also taking care of their daughter, a situation which is becoming untenable as their daughter becomes increasingly mobile. In addition to Mr and Mrs McLeish, they employ one full time groom. In the past they employed two grooms, but cannot afford the second wage, as there is no profit from which to pay them. The retained groom is paid by Mr McLeish. Their son, who was also involved in the business has subsequently moved to live in England with his girlfriend (5 years ago) and does not intend to return to the business.

4.2 The business has been in operation for just over 12 years with the house on site for 8 however, in recent years has become financially unviable. The attached accounts as attached as Appendix 2

provide a detailed breakdown of profits and loss and demonstrate that the business has suffered significant losses in recent years, due to a number of factors which are discussed in greater detail below, but notably in the financial year ending March 2013 losses were £48,427.32, in March 2012 the losses were £28,079.41 and in 2011 were £28,822.18.

- 4.3 Mr McLeish has been unable to sustain these losses and has subsequently had to take additional employment reducing his working time to 3.5 days in the stud business and 3.5 days in an optical business.
- 4.4 Mr McLeish advises that there are a number of critical issues which has resulted in the failure of the business. The initial delay to secure planning permission for a house and business when Mr and Mrs McLeish first qualified as Artificial Inseminators (AI's) in 2002 (within the first 16 people qualified in the UK as AI's), allowed a number of competitors to develop and establish their businesses within the 3 year period, so that by the time the house was built and this aspect of the business operational, their competitors were in a good position in the market, making it difficult for them to attract business. Indeed, two of these compete in the same area, AI Services Scotland, Winchburgh and the Royal Dick Veterinary School, Roslin.
- 4.5 At the time of their qualification, they were led to believe that the Veterinary profession were to relax the rules on scanning to allow them to undertake this task, but this has not occurred and therefore there are additional costs required for the owners of the mares, to procure the services of a Vet to confirm when a mare is ready for insemination. Their competitors employ full time veterinary staff, reducing their overall costs to the mare owners, which they are unable to compete with.
- 4.6 As AI has developed, it is now possible to obtain semen from anywhere in the world from world-class stallions. Even though they purchased excellent stallions with impeccable bloodlines, they cannot compete with the semen now generally available on the market. A key part of the business is selling home-bred youngsters and to break even requires a sale price of £4,000. The last two which were sold only achieved £4,000 and £3,500 respectively, despite these sales occurring at the height of the market and prior to the recession. Currently the same standard of horses is selling at £1,500 which is loss-making, if they can be sold at all. They have marketed four/five horses at the end of 2012/2013, these all remain unsold even at a loss and despite the highest standards of bloodlines and well fancied lineage.
- 4.7 Operating costs have spiralled particularly fuel and feed, on average by 40% in the current economic climate
- 4.8 Sadly, the business has experienced significant set-backs due to the death and ill-health of their horses. Two stallions died at the age of four, the top broodmare broke her leg and could not be saved and a three year old died due to a tumour in the knee. A further trauma was suffered by a youngster in the field, which had to be sold as a companion for £500. Furthermore, three foals were aborted by nature at 9 months.
- 4.9 Mr and Mrs McLeish sought to diversify into self-drive Horsebox Hire and despite further investment of £13,000 have only had one hire of £200 after 10 months. They are limited in terms of further diversification, such as livery, as they are unable to sell horses to free up stables,
-

plus there are on-going issues with neighbouring land owners regarding access, despite intervention by the authorities they have experienced obstructions when hacking out including gates being padlocked and temporary fences erected. This would create serious operational issues for a riding school.

- 4.10 Whilst the stud business offered excellent prospects, in accordance with the independent business plan proposed for the Braidlaw, the effects of the economic downturn has resulted in numerous businesses of this type suffering. To make a success here Mr and Mrs McLeish would need to invest significant additional monies into the business. Having already suffered substantial losses, they are unable to obtain any additional finance. They have been pursuing various avenues to try to re-mortgage the property through their financial adviser, but have been unable to secure a letter from their financial advisor is attached in **Appendix 3**. There is a requirement to wind up the business, stop the losses and sell the property in order to re-coup the losses.
- 4.11 Mr McCleish has been advised by a number of, leading, rural estate agencies that the prospects for a sale, for a property of this scale, in the current economic climate is already extremely limited, however due to the obligations contained within the S.75 requiring the occupation of the property by someone employed within the stud business on site, it further limits the sale of the site, even to a suitable agricultural business. **Appendix 4** contains the most recent correspondence confirming this issue from Savills. The S.75 is so onerous that given the current restrictions on mortgage finance, that it is unlikely that a purchaser would be able to acquire a mortgage for the property which would either prevent the sale, or at least reduce the potential purchasers to 'cash only' buyers. This limited market may result in a significant period of time before anyone would purchase. It is a failing business with competitors in the area and is therefore not attractive as a going concern.
- 4.12 Mr and Mrs McLeish, if they remain in the property, will need to take alternative employment and therefore would be in breach of the Condition and S.75 regarding occupancy. If they choose to sell, it is likely that this will take a significant period of time due to the restrictions and would also be in breach during the period the property is marketed. Either option is constrained by the S.75 and Condition.
- 4.13 A similar facility, the Rowallan Activity Centre, one of the finest in the UK, is now in administration and has been on the market for 5 years. Originally marketed for £7.5 million, was advertised two weeks ago for £1.25 million by Smiths Gore. Smith's Gore is also marketing another property in Fife, the Howe Country Club, which has also gone into liquidation. Both were successful businesses which have gone bust in the current economic climate. Neither have as restrictive covenants as Braidlaw.

5 SCOTTISH PLANNING POLICY/GUIDANCE

CIRCULAR 3/2013

- 5.1 Planning obligations made under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) should only be sought where they meet all of the following tests:

-
- necessary to make the proposed development acceptable in planning terms (paragraph 15);
 - serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
 - relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)
 - fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)
 - be reasonable in all other respects (paragraphs 24-25)

5.2 Of the tests above, the following content of the circular is considered relevant: It advises in paragraph 15 that the need for an obligation rather than condition must be carefully considered and the guidance contained in Circular 4/98 should be followed. Furthermore, paragraph 15 advises that planning authorities should be clear that a planning obligation is only necessary where successors in title need to be bound by the required obligation, for example where phased contributions to infrastructure are required.

5.3 With regard to the test of reasonableness, Paragraph 24 advises that the planning authority should be sure that the obligation is so directly related to the regulation of the proposed development that it should not be permitted without it.

Obligations imposing restrictions on the use of land or buildings

5.4 *Paragraphs 49, 50 and 51 provide the updated position from Scottish Government regarding restrictions on occupancy (updating the letter from the Chief Planner on the matter in November 2011):*

“While the most common use of planning obligations is to ensure the provision of infrastructure to make a development acceptable in planning terms, there is a limited role for obligations in restricting the use of land or buildings. Such restrictions have historically been used particularly in respect of housing in rural areas. Imposing restrictions on use are rarely appropriate and so should generally be avoided. They can be intrusive, resource-intensive, difficult to monitor and enforce and can introduce unnecessary burdens or constraints. In determining an application, it may be appropriate for the planning authority to consider the need for the development in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification against the potential impacts, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use a planning obligation as a formal mechanism to restrict occupancy or use.”

5.5 Paragraphs 73 and 74 advise that any application for modification or discharge “should be considered against the policy tests set out in paragraphs 15-25. This is not to say that there should be a presumption against any application. The planning authority should take into account

any changes in circumstances; for example, it may be that external factors affecting the development mean that the obligation is no longer reasonable and that a modification to reflect the change in circumstances is appropriate”.

CIRCULAR 4/98

5.6 Paragraph 2 states that the power to add conditions on a grant of planning permission needs to be exercised in a manner which is fair, reasonable and practicable and should only be imposed where they are:-

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

5.7 Paragraph 11 of Annex 1 advises that Planning authorities should note that if a certain restriction is contrary to the advice contained in this Circular it is likely to be objectionable regardless of whether it is suggested that it should be implemented by a condition or an agreement and advises that conditions imposed on a grant of planning permission should not be duplicated in a planning agreement.

5.8 The avoidance of onerous requirements is addressed in paragraph 35 which states, “even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds”.

6 THE DEVELOPMENT PLAN

6.1 The current development plan is the Midlothian Local Plan 2008. Mr Duncan Robertson has advised of two policies against which the proposal would be determined, namely: RP1 ‘Protection of the Countryside’ but this policy only relates to ‘development’. The property has been built and the applications do not relate to a new house. Policy DP1 ‘Development in the Countryside’ also relates to new housing in the countryside which also does not relate to the applications. There is no policy which addresses a change of circumstance of existing businesses or addressing the removal of S.75 or conditions for houses already developed.

7 OTHER MATERIAL PLANNING CONSIDERATIONS

7.1 Section 25 of the Town and County Planning (Scotland) Act 1997 states that “where in making any determination under the planning act regard is to be had to the Development Plan, the determination shall be in accordance with the plan unless material considerations indicate otherwise”. In the circumstances of the application to modify the S.75 and for the removal of the condition, the undernoted appeal decisions are considered to be material planning

considerations. Although each application or appeal is determined on its individual merit, the appeals are the first which look to test the contents of Circular 3/2012 with regard applications for the discharge or modification of a planning application in terms of the use of occupancy restrictions.

- 7.2 Within the appeal decision notices there are a number of statements made by the reporter which are relevant to the determination of these applications, within appeal reference POA-110-2002 regarding Ardlair House, Aberdeenshire the following quotes are considered relevant:

"The Council contends that a similar application made today would not receive permission as there is no longer an agricultural justification. In my opinions whether or not the Council would approve the development today is not a determining factor in this appeal. I must determine the appeal in the context of planning permission having been granted and the house built."

"the removal of the planning obligation would not prevent the house being occupied by an agricultural worker"

"I have noted the Council's concern that there is a danger in removing the occupancy restrictions where there is no ongoing agricultural or other justification for a dwelling which was only granted on the basis of such justification. However, Scottish Government policy has clearly changed and planning obligations should no longer be necessary to restrict occupancy. In addition paragraph 74 of Circular 3/2012 states that any change in circumstance should be taken into account."

"The final test is reasonableness. I do not consider it reasonable to retain a restriction on the occupancy of a house in circumstances where there is a general presumption in up-to-date Scottish Government policy against imposing such restrictions".

- 7.3 Within appeal reference POA-200-2000 regarding The Hirsell, Craigmaddie Road, East Dunbartonshire, the following points are considered to be relevant:

"Paragraphs 49-51 of Circular 3/2012 concern obligations imposing restrictions on the use of land or buildings. This policy was foreshadowed in a letter issued to planning authorities by the Scottish Government's Chief Planner in November 2011. The circular states that imposing restrictions on use is rarely appropriate and so should generally be avoided. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use a planning obligation as a formal mechanism to restrict occupancy or use".

- 7.4 *"It appears to me that, in these changed circumstances, Clauses First and Second are no longer reasonable. To insist on compliance with them would be likely to prevent the appellant from relocating his farming business to a larger, economically viable unit, thereby putting the business in jeopardy; or to result in sale of the land to someone who is unable legally to occupy the house, because they have no need to accommodate a full-time agricultural worker. The house would then be at risk of falling into dereliction. I have no hesitation in saying that this would be a less satisfactory planning outcome than occupation by someone not engaged in agriculture. I therefore conclude that the clauses fail the test of reasonableness".*

"I have taken into account the planning authority's concern that the removal of the occupancy and disposal restrictions would result in a dwelling that does not comply with the development plan and would set a precedent for general market houses in the countryside. I acknowledge that pressure for construction of such houses is particularly high in East Dunbartonshire. However, the development plan policy would remain in place and would provide a firm basis for the council to refuse applications for new houses that lacked a robust justification of agricultural, or other rural enterprise, need. Every application has to be considered on its own merits, and I do not accept that allowing this appeal would create a precedent that the council would find it difficult to escape".

- 7.5 As there are no relevant development plan policies against which to determine the specifics of these applications, they determine to be assessed on their individual merit, on the basis of the change of circumstances namely, the failure of the stud business at the site.

8 PLANNING ISSUES

- 8.1 The business case presented with the original application demonstrated the need for the house. At the time of granting that consent, the occupancy restrictions imposed by the S.75 were appropriate and accepted as essential to comply with the prevailing policy. However, the use of both a planning condition and a legal agreement to control the same occupancy restriction is contrary to current Scottish Government advice. As outlined in Sections 5 and 7 of this report, there are only limited circumstances in which a Planning Agreement (now obligation) may be justified, and the planning authority should always consider whether the required restriction can be achieved by the use of a planning condition. The justification for this is because, historically, the use of conditions offered greater flexibility to address a change in circumstances to establish whether or not the condition continued to meet the relevant tests outlined in paragraph 5.6 of this report (as per Circular 4/1998). Whereas until recently there was no option to alter a S.75. It is therefore now unfortunate that my client is required to address both the S.75 and condition, but the principles of both are the same, in that the applications now made require consideration of whether the S.75 and conditions meet the relevant test for their continued application.
- 8.2 Since the application was made a number of circumstances have changed, the business has failed as detailed in Section 4 of this report and the Scottish Government has changed its position with regard to occupancy conditions as detailed in Section 5 and has become more supportive generally of housing in rural areas. As such, Mr and Mrs McLeish are no longer able to continue to operate the business. Mr McLeish has had to take alternative employment and as the business winds down, so will Mrs McLeish, thereby neither will be able to comply with the S.75. The exact wording of the S.75 is that the house "shall be occupied by a person whose primary employment is in the stud business operated from the planning unit. For the avoidance of doubt, nothing in this clause shall prevent the Planning Unit being occupied by a spouse, widow, widower or dependant". Furthermore, if approved today, as the Scottish Government Policy supersedes the adopted development, such a restriction would not be attached. It is therefore not necessary or reasonable in terms of the test within paragraphs 15-25 of Circular 3/2012.

- 8.3 The planning condition offers slightly more scope stating “the new house shall be occupied only by a person employed or last employed full-time in the stud farm business on the site, or full-time in agriculture, as defined by Section 277 of the Town and Country Planning (Scotland) Act 1997, in the locality, together with the dependants of such a person residing with him or by the widow or widower of such a person. However, whilst Circular 3/2012 has sought to incorporate the position of the Chief Planner regarding the inappropriateness of using planning obligations to restrict occupancy, the original letter has not been revoked and remains relevant to the determination of the application to remove the occupancy condition. The Chief Planners letter confirms:

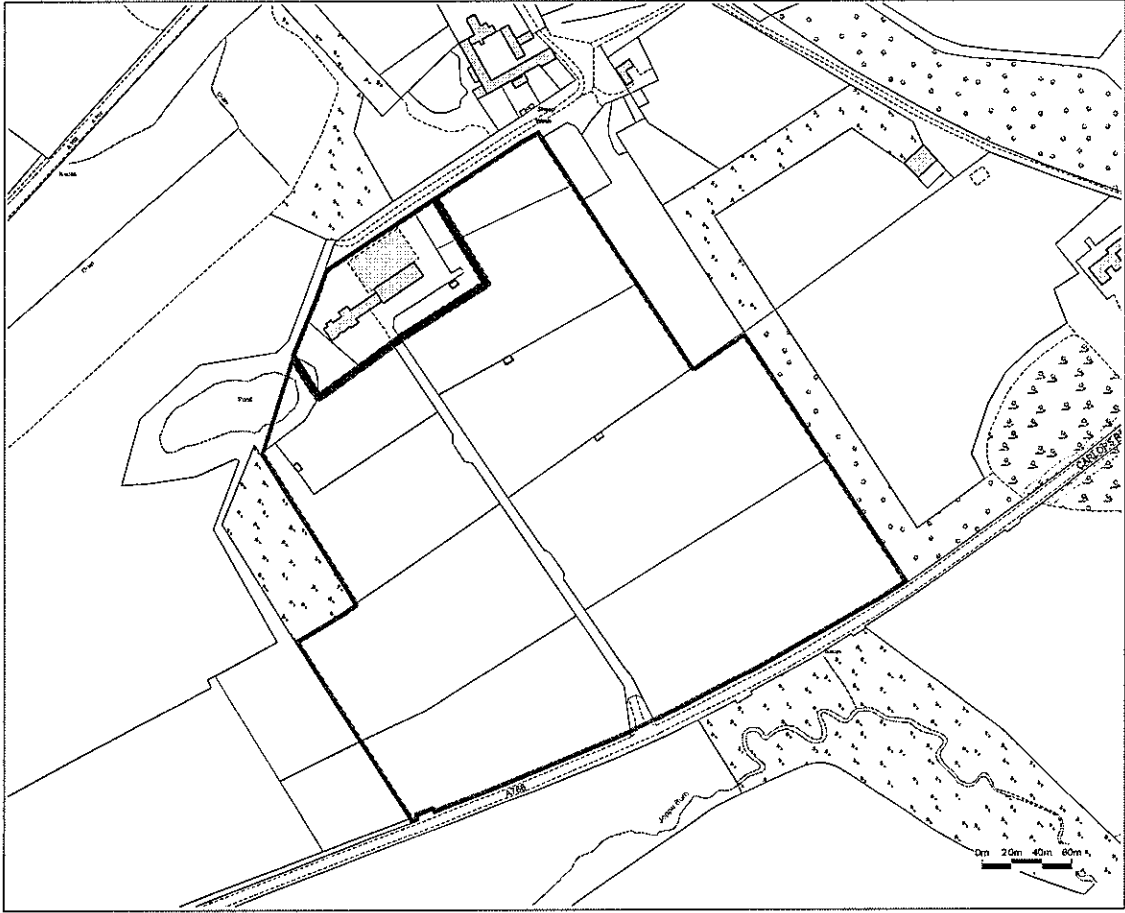
“I am writing to clarify the Scottish Government’s views on the use of conditions or planning obligations to restrict the occupancy of new rural housing. Occupancy restrictions are typically used in Scotland to limit the occupation of new housing in the countryside either to people whose main employment is with farming or other rural business that requires on-site residency..... A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction. Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move. While it may be possible to include provisions in the condition or obligation that attempt to address these issues, any use of occupancy restrictions introduces an additional level of complexity (and potentially expense) into the process of gaining consent for a new house. Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and enforce. The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.”

- 8.4 It further advises that the key considerations should be the need for a house in that location, especially where there is the potential for adverse impacts and should weigh the justification for the house against its impact, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. However, once satisfied that the case has been made, should not restrict occupancy either through S.75 or planning conditions. The house was considered with regard to amenity, transport and other planning considerations and deemed to be acceptable in all other respects. The house has been built and is now well integrated into the countryside.
- 8.5 As discussed in Section 5 Circular 4/1998, Conditions should not be included which are so onerous that they put severe limitations on the freedom of an owner to dispose of their property. In the current climate and as evidenced by the email in Appendix 4, the Condition is considered to be contrary to Circular 4/1998.
- 8.6 Mr and Mrs McLeish are satisfied that the land should still be tied to the property to ensure the best prospects of a future, alternative business, being able to set up, but the restrictions are causing significant difficulties for them, but equally will affect anyone looking for a mortgage to purchase the property. The restrictions are such that it is unlikely that a purchaser would buy a failing business with the restrictions so attached. It is unfortunate that whilst there was clear justification for a house when the application was made, there is no longer a business case, or indeed a going concern with regard to the business to maintain the occupancy restrictions.


9 CONCLUSIONS

- 9.1 It is submitted that due to the failure of the stud business and the need for it to be wound up and the property sold to make good the losses over the last few years of operation, that it is not possible for our client to meet the terms of the Section 75 of planning agreement (now obligation) or condition 7 of the planning consent.
- 9.2 Detailed information has been submitted which demonstrates that the business must cease operation. Mr McLeish and his family have tried to make every success of the business and have lived in the dwelling associated with the development for the last 8 years, making it their home. Clearly, it is of concern to Mr McLeish to address the requirements of the planning agreement and condition on the basis of changed circumstances.
- 9.3 It is respectfully requested that you agree to modify the agreement and approve the removal of the condition, based on the changed circumstances as these are no longer reasonable. Furthermore, due to the change in Scottish Government Policy, the use of any occupancy restriction is inappropriate. The building has been built, has been deemed acceptable in all other respects and if approved today should not be tied with occupancy restrictions. Accordingly, maintaining the restrictions on the basis of the changed circumstances is no longer necessary. In these terms the S.75 and condition which tie occupancy of the property do not meet the tests as outlined by Circular 3/2012 which supersedes the adopted development and we urge your support of the applications.

Appendix 1
Site Location Plan



SITE LOCATION PLAN
Braidlaw Farmhouse,
Silverburn,
PENICUIK, EH26 9LP



Scale @ A3 : **1:2500**

Plan No. : **751/3/1_1**

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Appendix 2
Accounts

BRAIDLAW STUD

Trading & Profit & Loss Account for Year Ended 31st March 2011

Income

Sales	0.00	
Horsebox Hire Rentals	200.00	
Training Fees	100.00	
Sundry	0.00	
Total		300.00

Cost of Sales

Opening Stock	39500.00	
Horses Purchased	6800.00	
Tack purchases	309.82	
Bedding	633.95	
Feed	1594.12	
Vet & Farrier Fees	2804.18	
Total	51642.07	
		5342.07
		(5042.07)
Closing Stock	46300.00	
Bank interest Net		0.11
Gross Profit/Loss		(5041.96)

Expenses

Wages –	11126.70	
Light & Heat	284.00	
Repairs & Maintenance	1478.45	
Stationary	53.38	
Servicing & Repairs	1589.69	
Fuel	391.84	
Advertising	138.00	
Accountancy Fees	158.63	
Stud Fees	1818.75	
Bank Charges	12.00	
Subscriptions	399.25	
Insurance	784.02	
Wormers	190.37	
Computer Hosting Fees	117.00	
Entries	408.00	
Training Fees	1693.00	
Fencing	707.50	
School Resurfacing Costs	1668.50	
Transport Costs	587.50	
Sundry	173.64	
Total	23780.22	
Net Loss for the YEAR		(28822.10)

BRAIDLAW STUD

Trading & Profit & Loss Account for Year Ended 31st March 2012

Income

Sales	1500.00
Sale of Renault Self Hire Horsebox	4995.00
Horsebox Hire Rentals	359.03
Training Fees	0.00
Sundry	93.55
Total	6947.58

Cost of Sales

Opening Stock	38000.00
Renault Horsebox Purchased	11000.00
Horses purchased	0.00
Tack purchases	432.09
Bedding	2187.00
Feed	1594.12
Vet & Farrier Fees	2804.18
Total	56017.39

7017.39

(69.81)

Closing Stock	55947.58	
Bank interest Net		0.04
Gross Profit/Loss		(69.77)

Expenses

Wages – casual	10920.32
Light & Heat	309.00
Repairs & Maintenance	1389.98
Stationary	32.05
Servicing & Repairs	6315.25
Fuel	1150.86
Advertising	428.97
Accountancy Fees	348.00
Stud Fees	1736.90
Bank Charges	153.85
Subscriptions	490.00
Insurance	1294.92
Fencing	1368.88
Wormers	230.37
Refund of H/Box Hire due to Breakdn	115.00
Muckheap removal charges	98.00

Sponsorship	30.00
Herbicide for spraying fields	70.80
Entertaining Clients	238.90
Expenses travelling to view- horses/horseboxes	538.28
Valuation Fees for Ins	378.00
Sundry	371.54
Total net Loss for the YEAR	28009.64

Equipment Purchased this Financial Year

Hay bailer for moving ½ ton bales of Haylage	1320.00
Muck collector for poo picking grazing	3894.00
Trailer (secondhand)	80.00
Sprayer & Boom for field Management	284.41
Camera for photographing stock for sale	322.95
Renault Horsebox for self drive hire	11000.00

Total	16901.36
-------	----------

Equipment Disposed of this Financial Year

Renault Horsebox	4995.00
------------------	---------

Total	4995.00
-------	---------

Appendix 3
Letter from Financial Advisor

BOB ESPIE Limited

FINANCIAL SERVICES

Telephone: 0131-665 4097
Facsimile: 0131-665 4095
email: bob@bobespie.co.uk

8 Bridge Street
Musselburgh
East Lothian
EH21 6AG

Mr Ivar J McLeish
Braidlaw Farmhouse
Silverburn
Midlothian
EH26 9LP

RSE/JSL/TP-70543

9th May 2013

Dear Ivar

RE-MORTGAGE

I refer to the above further to our on-going discussions in connection with several applications to re-mortgage your property.


As you know I have been unsuccessful in my attempts to secure a loan agreement from all the major lenders I have approached on your behalf, despite the high equity content and low loan to value requirement. The reason given by their underwriters is that the property falls outside each of their lending criteria due to the fact that your title includes not only your residential property but also in the region of 32 acres in total with attached stabling and riding centre.

What was evident from each of the lenders we consulted, was that if the title could be split between residential and non-residential, they would give due consideration to an application on the residential title in isolation.

I trust this explanation is satisfactory and regret we have been unable to progress matters further in obtaining a re-mortgage on your property.

Meanwhile let me assure you of my best attention at all times.

Yours sincerely


James S Lang
Dip PFS, Certs CII (MP & ER)
Investment Adviser



Director: Robert Scott Espie Cert PFS CeMAP
Service with Care

Registered office: Edinburgh office McKenzie & Co 12A Chester Street Edinburgh EH3 7RA Company Registration No SC 429652
Authorised and Regulated by the Financial Conduct Authority FCA No.592312

Appendix 4
Email from Savills

Lisa Russell

From: Ivar McLeish [REDACTED]
Sent: 09 May 2013 12:32
To: Lisa Russell
Subject: FW: s.75 Agreement.
Attachments: ATT00001.txt; ATT00002.htm

Hi Lisa,

The figure for losses is on pg2, £28079.41 March 2012.

Forwarded email from Savills & Financial advisor.

Ivar

=====

Message Received: May 09 2013, 09:11 AM

From: "Malcolm Leslie"

To: [REDACTED]

Cc:

Subject: s.75 Agreement.

Dear Mr McLeish

Following on from our meeting the other day at Braidwood Farmhouse, I now email to give you my thoughts on the potential diminution in value as a result of the s.75 Agreement.

My understanding is that the s.75 states that the person who occupies the house must be employed in the stud business and this must be their primary employment. Our experience of this suggests that values can be diminished by 20-40% where a tie of this nature is in place. The reality is that there are very few people who fulfil this description.

My advice to you would be to do all you can to get this condition relaxed prior to marketing. In what is a challenging market, you do not need to narrow the market further.

I trust these thoughts are useful but if you want to discuss further please do not hesitate to contact me.

Kind regards

Malcolm Leslie
Associate Director
Residential

Savills, Wemyss House, 8 Wemyss Place, Edinburgh, EH3 6DH



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

T: 0131-244 0770 F: 0131-244 7174
E: jim.mackinnon@scotland.gsi.gov.uk



Heads of Planning



4 November 2011

Dear Sir/Madam

OCCUPANCY RESTRICTIONS AND RURAL HOUSING

I am writing to clarify the Scottish Government's views on the use of conditions or planning obligations to restrict the occupancy of new rural housing.

Occupancy restrictions are typically used in Scotland to limit the occupancy of new houses in the countryside either to people whose main employment is with a farming or other rural business that requires on-site residency, or to people with a local connection. Sometimes new houses are tied to particular land holdings, preventing them being sold separately. Such restrictions have been applied either through planning conditions or Section 75 planning obligations.

A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction. Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move. While it may be possible to include provisions in the condition or obligation that attempt to address these issues, any use of occupancy restrictions introduces an additional level of complexity (and potentially expense) into the process of gaining consent for a new house. Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and enforce.

Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions.

The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.

B5142669
Victoria Quay, Edinburgh EH6 6QQ
www.scotland.gov.uk



In determining an application for a new house in the countryside, it may be appropriate for the planning authority to consider the need for a house in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification for the house against its impact, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy.

The Scottish Government believes that a vibrant populated countryside is a desirable objective and that new housing to realise this aim should be well sited and designed, and should not have adverse environmental effects that cannot be readily mitigated. In areas, including green belts, where, due to commuter or other pressure, there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there is a sound case for a more restrictive approach. In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.

Where sites are considered unsuitable for new housing, more acceptable locations will often exist elsewhere on the same landholding or nearby, and planning authorities can assist applicants by advising where these are.

Yours faithfully



JAMES G MACKINNON

Planning Permission

Town and Country Planning (Scotland) Act 1997



Reg. No. 13/00347/LA

Rapleys LLP
Caledonian Exchange
19A Canning Street
Edinburgh
EH3 8EG

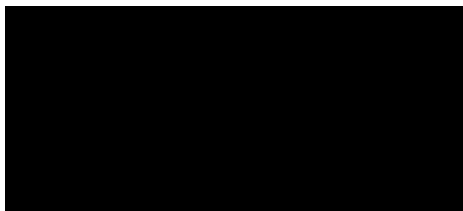
Midlothian Council, as Planning Authority, having considered the application by Mr Ivar McLeish, Braidlaw Farmhouse, Braidlaw Farmhouse, Silverburn, EH26 9LP, which was registered on 14 May 2013, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

Application to modify a planning obligation within a legal agreement (associated with planning permission 02/00864/FUL) at Braidlaw Farmhouse, Penicuik, EH26 9LP

This permission is granted for the following reason:

The modification of the legal agreement is acceptable as, by virtue of the occupancy of the house being restricted by an existing planning condition, it would not result in an adverse impact on the character or appearance of the countryside and would not undermine the successful implementation of policies RP1 and DP1 of the adopted Midlothian Local Plan.

Dated: 29/07/2013



.....

Peter Arnsdorf
Development Management Manager
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

PLEASE NOTE

This permission does not carry with it any necessary consent or approval to the proposed development which may be required under the Building (Scotland) Acts and Regulations or under any other Statutory Enactment.

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 require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Development Manager, Development Management Section, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN. A notice of review form is available from the same address and will also be made available online at www.midlothian.gov.uk

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 reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the 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.

Duration of Planning Permission and/or Listed Building Consent

The permission hereby approved lapses on the expiration of a period of either:

- a) three years from the date of this decision notice, if the permission is for **detailed planning permission (DPP)** or **listed building consent (LBC)** as specified in Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning etc (Scotland) Act 2006); or
- b) two years from the date of approval by the planning authority of the last application for matters specified in conditions to be approved if the permission is for **planning permission in principle (PPP)** as specified in Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning etc (Scotland) Act 2006). Applications for approval of matters specified in conditions shall be made to the planning authority within three years from the date of this permission.

Prior to any work taking place on site all pre commencement conditions attached to a grant of planning permission must be agreed in writing with the planning authority. Failure to do so could result in any development works taking place being unauthorised and undertaken at your own risk and expense.

The Felling of Trees

Where full planning permission authorises the felling of trees on a development site, no further consent is required under the Forestry Act 1967 (as amended). However, developers should note that any tree felling not expressly authorised by full planning permission, and not exempted, requires a felling licence granted under the Forestry Act 1967 (as amended).

Developers should note that any felling carried out without either a licence or other valid permission is an offence. This can mean, on conviction, a fine of up to £2,500 (level 4 on the standard scale) or twice the value of the trees, whichever is higher with the conviction being recorded.

Contact your local Forestry Commission Scotland Office if you are not certain whether exemptions apply. You can get an application form for a felling licence from the Forestry Commission website www.forestry.gov.uk or any Forestry Commission Scotland Office.

Prior to Commencement (Notice of Initiation of Development)

Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing. Failure to do so would be a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006). A copy of the Notice of Initiation of Development is available on the Council's web site www.midlothian.gov.uk

IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION

Making an application

Please note that when you submit a planning application, the information will appear on the Planning Register and the completed forms and any associated documentation will also be published on the Council's website.

Making comment on an application

Please note that any information, consultation response, objection or supporting letters submit in relation to a planning application, will be published on the Council's website.

The planning authority will redact personal information in accordance with its redaction policy and use its discretion to redact any comments or information it considers to be derogatory or offensive. However, it is important to note that the publishing of comments and views expressed in letters and reports submitted by applicants, consultees and representatives on the Council's website, does not mean that the planning authority agrees or endorses these views, or confirms any statements of fact to be correct.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference:

13/00347/LA
13/00348/DPP

Site Address:

Braidlaw Farmhouse, Penicuik
(formerly known as Lansik Stud, Silverburn)

Site Description:

The application site is located to the south of the A702, approximately 200metres to the south west of Braidwood House, and the former farm steading, which has been converted in to dwellinghouses (Braidwood Steading). The site contains two large attached buildings which are used as an indoor riding area and stabling for horses. Attached to these is a large two storey dwellinghouse, with the upper storey accommodated within the roofspace and served by dormer windows. Access to the house and buildings is along a private access road from the A766 to the south of the site.

Proposed Development:

13/00347/LA - Application to modify a planning obligation within a legal agreement (associated with planning permission 02/00864/FUL).

13/00348/DPP - Removal of planning condition 7 of planning permission 02/00864/FUL (Erection of detached dwelling) to remove occupancy restriction.

Proposed Development Details:

13/00347/LA – An earlier planning application, 02/00864/FUL, required the applicant to enter in to a s75 legal agreement in order to restrict the occupancy of the house and the ability to dispose of the house and business separately. The applicant now wishes to remove the s75 legal agreement.

13/00348/DPP – The decision notice for earlier application referred to above also contained a planning condition which restricted the occupancy of the approved house.

Details related to the cases are referred to, and expanded upon, in the sections below.

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

In 1989, planning permission was granted for the conversion of the former farm buildings at Braidwood Farm into five dwellinghouses. The applicant formerly owned both Braidwood House (the original farmhouse) and the former steading.

Early in 1996 he re-erected a large agricultural building which had previously been located much closer to the old farm steading, but had been dismantled under the requirements of the consent for the residential conversion.

In October 1996 planning permission was granted for the change of use of this building to an indoor equestrian facility for the private schooling and exercising of horses. In February 1997 planning permission was granted for the erection of a stable building attached to the southern side of the indoor school.

Both of these developments were intended primarily for the applicant's own horses. At the time he indicated that it was not his intention to run a riding school, although he might allow other people to use the facilities. Conditions were imposed on both consents to the effect that before the facilities could be used for horses other than the applicant's own a new access had to be created from the A766, to the south. These conditions were intended to avoid potential conflict with the other residents of the steading over the use of the communal driveway from the A702.

Two applications were made for the erection of a dwellinghouse at Braidwood, in 1997 and 1998. Both applications were refused permission, and an appeal against the second refusal was dismissed in December 2000. Both of these applications were for a house in association with an equestrian centre at the site, but the applicant would only commit himself to two days a week to the centre.

In 2002 a further application for the erection of a house on the site was submitted. The applicant had made a substantial investment in the business and a qualification for him and his wife in equine artificial insemination techniques. The supporting information demonstrated that a house was required and that the business would provide sufficient income to support the applicant and his family. The applicant had also scaled down his other work commitments to an average of one day per week. This commitment to the business and site at Braidwood allowed the planning authority to support the proposal. The applicant had suggested the imposition of a s75 legal agreement, and one was imposed restricting the occupation of the house to a person employed full-time in the equine stud business. The legal agreement also prevented the house being disposed of separately from the land and buildings associated with the stud. In addition a planning condition was imposed stating:

The new house shall be occupied only by a person employed or last employed full-time in the stud farm business on the site, or full-time in agriculture, as defined in section 277 of the Town and Country Planning (Scotland) Act 1997, in the locality, together with the dependants of such a person residing with him or her, or by the widow or widower of such a person.

Consultations:

None required.

Representations:

None received.

Relevant Planning Policies:**The Edinburgh and the Lothians Structure Plan 2015**

The first strategic aim of the structure plan states:

The overarching aim of this structure plan is to provide in full for the development needs of Edinburgh and the Lothians in accordance with the principle of sustainable development, whilst maintaining and enhancing the environmental heritage that underpins the area's quality of life.

With regards the integration of land uses and transport the structure plan's aims are to:

- *Locate new development so as to reduce the need to travel, particularly by private car;*
- *Reduce commuting to Edinburgh from the landward Council areas;*
- *Maximise accessibility for all in the community by foot, cycle and public transport;*
- *Identify new transport infrastructure required to support development strategy.*

The structure plan presumes against the development of housing on Greenfield land unless allocated through the local plan. Policy **ENV3** of the structure plan covers *Development in the Countryside*. This policy seeks to strike a balance between protecting the character of the countryside from development pressures while allowing some limited and appropriate development, and states:

Development in the countryside will be allowed where it has an operational requirement for such a location that cannot be met on a site within an urban area or land allocated for that purpose, and is compatible with the rural character of the area. Acceptable countryside development will include agriculture, horticulture, forestry and countryside recreation. The following types of development, where justified in local plans, may be allowed in support of rural diversification.

- *Tourism or other recreational uses;*
- *Development that re-uses appropriate redundant rural buildings that make a positive contribution to the landscape;*
- *Diversification of an appropriate scale and character on agricultural land, including lowland crafting, as a means of supporting and diversifying the rural economy, maintaining communities and services or effecting landscape improvement.*

A key message within the structure plan is that of *sustainable development*. The structure plan states:

The development plan strategy aims to reconcile economic and environmental objectives in achieving a sustainable pattern of development. The Lothian Councils will take the principles of sustainable development in to account as they implement the policies and proposals in this plan. In particular, they will be concerned that the key sustainable issues of density, design, the location of development and its relationship with transport facilities are explored fully in local plans and in the granting of planning permissions.

The above aims, strategies and policies are reflected in the relevant policies of the **2008 Midlothian Local Plan**, which include:

RP1 – Protection of the countryside – states that development in the countryside will only be permitted if it is required for the furtherance of a countryside activity or it accords with policy DP1.

RP6 – Areas of Great Landscape Value - seeks to protect the special scenic qualities and integrity of AGLVs.

DP1 – Development in the countryside – states that where new dwellings are proposed they will only be permitted in the countryside where they can be demonstrated to be required for the furtherance of an established countryside activity. Applicants are required to show that the need for the new house is permanent; cannot be met within an existing settlement; and that the occupier of the property will be employed full-time in the countryside activity being furthered by the provision of the new house.

The policy goes on to state:

In approving the new house, the Council will require that it, and any other houses within the control of the applicant related to the same countryside activity, will be subject of an occupancy condition and/or a legal agreement. It will generally be the case that a legal agreement will be required. This will relate to the employment of the occupiers of the house or houses, and tie the new dwelling to the landholding associated with the countryside activity in question.

Current **Scottish Government Policy** is contained within the **SPP**. The SPP supports the concept of *Sustainable Economic Growth*. The SPP states:

The character of rural areas and the challenges they face vary greatly across the country, from remote and sparsely populated regions to pressurised areas of countryside around town and cities.

Development plans should support more opportunities for small scale housing development in all rural areas, including new clusters and groups, extensions to existing clusters and groups, replacement housing, plots on which to build individually designed houses, holiday homes and new build or conversion housing which is linked to rural businesses or would support the formation of new businesses by providing funding.

In addition, there are two relevant circulars in respect to these planning applications, **4/1998 (The use of conditions in planning permissions)** and **03/2012 (Planning obligations and good neighbour agreements)**.

Circular 4/1998 sets out six tests which planning conditions must comply with:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

The circular states that *where appropriate, development plans should specify the policies which the authority propose to implement regularly by means of planning conditions.*

This circular also states:

In many parts of Scotland planning policies impose strict controls on new residential development in the open countryside. There may, however, be circumstances where permission is granted to allow a house to be built to accommodate a worker engaged in bona fide agricultural or forestry employment on a site where residential development would not normally be permitted. In these circumstances, it will often be necessary to impose an agricultural or forestry worker occupancy condition.

Planning authorities will wish to take care to frame agricultural occupancy conditions in such a way as to ensure that their purpose is clear. In particular, they will wish to ensure that the condition does not have the effect of preventing future occupation by retired agricultural workers or the dependants of the agricultural occupant.

Where an agricultural occupancy condition has been imposed, it will not be appropriate to remove it on a subsequent application unless it is shown that circumstances have materially changed and that the agricultural need which justified the approval of the house in the first instance no longer exists.

Circular 3/2012 is concerned with planning obligations (also known as section 75 legal agreements) and good neighbour agreements, of which the latter is not relevant in this case. Planning obligations have a limited, but useful, role to play in the development management process where they can be used to overcome obstacles to the grant of planning permission. Again, there tests which must be met when imposing a planning obligation:

- Necessary to make the proposed development acceptable in planning terms;
- Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- Fairly and reasonably relate in scale and kind to the proposed development; and

- Be reasonable in all other respects.

The necessity test states that planning conditions are generally preferable to a planning or legal obligation.

The circular states:

Imposing restrictions on use are rarely appropriate and so should generally be avoided. They can be intrusive, resource-intensive, difficult to monitor and enforce and can introduce unnecessary burdens or constraints. In determining an application, it may be appropriate for the planning authority to consider the need for the development in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification against potential impacts, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case.

Where the authority is satisfied that an adequate case has been made, it should not be necessary to use a planning obligation as a formal mechanism to restrict occupancy or use.

Further to the above policies, the **Chief Planner** wrote to all Councils in Scotland regarding *Occupancy Restrictions and Rural Housing*, in November 2011. Whilst this letter was not originally planning policy circular 03/2012 required it to be treated as such when it was issued. In any event it did indicate the Scottish Government's position regarding occupancy restrictions. He stated:

A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction. Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move.

Scottish Planning policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions.

The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.

In determining an application for a new house in the countryside, it may be appropriate for the planning authority to consider the need for a house in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification for the house against its impact, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy.

The Scottish Government believes that a vibrant populated countryside is a desirable objective and that new housing to realise this aim should be well sited and designed, and should not have adverse environmental effects that cannot be readily mitigated. In areas, including green belts, where, due to commuter or other pressure, there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there is a sound case for a more restrictive approach.

Planning Issues:

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

Applications were submitted in 1997 and 1998 for a new house at Braidwood. Both of these applications were refused permission, with the second also dismissed at appeal. Both applications were for a house in association with an equestrian centre. The applicant would only commit himself to devoting two days to the centre each week, and would not therefore be employed full time in the business.

Then, in 2004 the applicant's circumstances had changed to such an extent that the planning authority took a different view to the proposed dwellinghouse and decided to support it.

The applicant had submitted a supplementary report in support of the proposed development. The report stated that substantial investment in the business had been made and that the value of the livestock was considerable.

The applicant stated that the remoteness, operational scale of the stud and the financial value of the horses and equipment dictated that 24 hour supervision was required. In addition, the applicant argued that the provision of temporary accommodation for staff was only a short term solution and would not display the high quality of the business that the applicant was aiming towards.

The house was intended to enable the applicant and his partner, who had both qualified in equine artificial insemination techniques, to operate the stud business in a manner which provides a sufficient level of care, safety and security for the animals and equipment. The house was also to provide accommodation for additional employees.

A strong case for the house had been made. The business was demonstrated to be viable enough to support the family and house, the applicant was to be employed full time in a business that was appropriate for the countryside and where 24 hour supervision was required.

The planning authority judged that the proposed development allowed the furtherance of the countryside activity in a way that was sustainable and created additional employment in this rural area.

The new house was only granted planning permission on account of its link to the established business at the site. It is clear that, given the status of planning policies at the time, had the house not been linked to the stud business the planning application for the house would not have been granted.

Planning permission was conditional, in that a legal agreement was required to ensure that:

- The new house would not be sold, leased or otherwise disposed of separately from the land and buildings associated with the stud; and
- The new house would be occupied only by a person whose primary employment is in the stud business.

In addition to the legal agreement there is also a planning condition which states:

The new house shall be occupied only by a person employed or last employed full-time in the stud farm business on the site, or full-time in agriculture, as defined in section 277 of the Town and Country Planning (Scotland) Act 1997, in the locality, together with the dependants of such a person residing with him or her, or by the widow or widower of such a person.

Also, a planning condition was imposed which required a link building, between the new house and existing buildings on site, which ensured some connectivity between the house and business.

The reasons for these conditions were to ensure that the proposed dwellinghouse complied with the aims of the policies within the development plan at that time and that the ancillary accommodation, which was required for the furtherance of the business, was provided at an early stage.

The planning agreement and planning condition covering the occupancy of the house result in slightly different outcomes. The legal agreement requires that the house only be occupied by somebody who is employed solely in the stud business and that the house cannot be sold separately from the rest of the land associated to the stud. This legal agreement complies with the aims of policy DP1 of the local plan (both now and at the time of the planning decision). The planning condition allows the house to be occupied by anyone employed (full-time) or previously employed in the stud or any other agricultural activity in the locality.

The applicant has stated that the business has effectively failed. He can no longer continue with the business whilst suffering the current level of losses. He has returned to his opticians business while his wife takes care of their recently born baby and the business.

The applicant has submitted a detailed breakdown of his accounts for the last three financial years, each demonstrating that the business is operating at a loss. This has resulted in the applicant having to take additional employment elsewhere. The applicant states that the financial losses are due to a number of factors, including:

- A delay in obtaining planning permission for the house allowed competitors to establish and develop their business in advance of the applicant;

- There has been a change in the approach taken by the Veterinary profession, which has resulted in the applicant's qualification not being as necessary as he thought that it would be when establishing the business case for the original approval;
- There has been increasing competition from a global market;
- The economic crisis has resulted in drop in value of his stock;
- Operating costs have increased significantly, particularly in respects to fuel and feed;
- Unfortunate circumstances have prevailed, with the loss of a number of horses to death and injury; and
- A failed business diversification in to horse box hire.

The delay in approving the house was down to the fact that the case had not been justified, and was backed up by an appeal decision. In any event, this delay was to the approval of a house and not the development of the business. Therefore, this is not accepted as a reason for the business failing.

The applicant states that given the ongoing losses he is unable to obtain additional finance. He has submitted a statement from a mortgage broker which states that he has been able to secure a loan agreement for the applicant. The reason given is that the property falls outwith the lender's lending criteria due to the fact that the title includes the property along with 32 acres of land. He states that the title could be split between residential and non-residential the lenders could give consideration to the residential title only.

The applicant states that it is this restriction on lending that is preventing them considering further diversification opportunities.

Already, the applicant is in danger of being in breach of the legal agreement. Should the applicant's wife take a job out with the stud business they will no longer be occupying the house in compliance with the legal agreement.

Whilst the Council's planning policy requires the use of legal agreements to secure occupancy restrictions, the planning authority accepts that there has been a slight change in government policy and recommended procedure. In respects to procedure, whilst it was the practice of the planning authority to attach occupancy restrictions via legal agreements in the early 2000s, over recent years this practice has been phased out and the planning authority prefers to rely on planning conditions where occupancy is to be restricted. In advance of circular 3/2012 the planning authority had taken a view that planning agreements were costly and time consuming to prepare, resulting in inconvenience to applicants, and that they should only be used in exceptional circumstances.

There is a case for planning obligations where successors in title need to be bound by the required obligation. This is the case for this house, however it is debatable whether having a planning obligation and condition is necessary or complies with best practice. It is very rare for the planning authority to have covered the occupancy of the house by both planning agreement and planning condition.

Turning to the tests which should be applied to planning obligations, the use of a planning agreement **and** condition is neither necessary nor reasonable.

For the above reasons there is no reason to insist that the planning agreement is retained. Removing the agreement will bring this case in line with current planning authority working practice. Therefore, the application for the removal of the legal agreement should be supported with legal work on its removal being commenced.

Removing the planning agreement will allow the titles to be separated, as was requested by the applicant's mortgage broker and will hopefully result in the lenders giving consideration to lending on the residential property.

While the planning authority will support the removal of the planning agreement this does not infer that the same outcome for the application for the removal of the planning condition.

It is accepted that legal agreements should no longer be used to restrict occupancy, but the aim of policy DP1 of the local plan is not flawed. At its core is an aim to prevent the creeping suburbanisation of the countryside in this council area.

The whole of Midlothian, on account of its size and proximity and relationship with Edinburgh, is under considerable pressure for commuter homes. In response to this pressure the council has prepared several responses in a managed, plan-led, approach to housing in the countryside:

- A restriction on the type of housing allowed in the countryside; where they can be approved if linked to an appropriate countryside activity;
- By allocating large areas of land within and adjacent to built-up areas to accommodate large-scale house building; and
- By allocation sites for small-scale rural housing development (crofting) and acceptable individual houses.

Whilst the Scottish Planning Policy promotes a positive approach to rural housing, it also very much promotes a sustainable approach. The Council's policy advocates a sustainable approach. A new house in the countryside must be linked to an appropriate countryside activity. This ensures that people are living and working in the same area, therefore cutting down on unsustainable car journeys. It also means that the landscape being impacted upon is benefiting economically.

The land at Braidlaw is an entirely unsustainable site for a new house unless otherwise linked to a nearby business, which would cut down on commuting requirements. Retaining the occupancy restriction allows the house to be occupied by a person who will be employed in the local area and would support the local economy. It is not clear how it could be argued that it would be sustainable to remove the occupancy restriction.

Planning conditions must satisfy the tests within circular 4/1998. The circular states that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. The circular sets out six tests, namely that conditions should only be imposed where they are necessary, relevant

to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects.

The applicant presented a business case for the house. The Council accepted the need for the accommodation as part of the on-going furthering of a business appropriate to the countryside. The occupancy was therefore restricted, by condition, to occupancy in connection with the stud business or other agricultural activity in the area.

Turning first to whether the condition was necessary and relevant to planning policy on housing development in the countryside the council accepted the business case for the house on-site given the argument that it was required in connection with the supervision of valuable assets and the welfare of livestock. In addition, given the applicant was to be employed full-time on site it would be more sustainable to live on site. Also, the applicant was able to build a purpose-built house which could accommodate additional staff, further contributing to its sustainability credentials.

In approving the house, the council accepted that the development was essential for the furtherance of the business at Braidwood/Braidlaw. The key element in the decision to give planning permission, in compliance with development plan policy, was the business justification.

The lack of an occupancy condition in this case will result in a direct and significant impact on the sustainability of this development and will undermine the successful implementation of the council's countryside policies within the adopted local plan. The proximity of the site to Edinburgh would make the house and area subject to pressure for commuter housing, instead of serving the stud business or an alternative agricultural business.

Whilst each planning application must be considered on its own individual merits, the Council must reasonably consider the potential precedent a planning approval may set in certain circumstances. A core objective of the Council's countryside policy is to preserve the character and appearance of the countryside by limiting unjustified development. This objective is based on the view that an essential characteristic of the countryside is that it is undeveloped and that any additional development, no matter how sympathetic, represents an erosion of this basic character.

The remaining tests relate to whether the condition is relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

The condition is enforceable and precise.

The applicant has stated that mortgage finance is not forthcoming for this development whilst the occupancy restriction remains in place. The financing of the house is not strictly a planning consideration. In any event the applicant has only provided an opinion from one mortgage broker and an estate agent. As the house has been built the finance is not required in order to construct the house, but instead to remortgage. The agreement to separate the titles of the house and business already complies with the applicant's mortgage broker's request and, as he hopes, should free up some finance which will allow further diversification of the business.

The applicant has stated that the business has effectively failed. The planning authority accepts that this is the case for the stud business as is currently being operated by the applicant. This is not to say that the business could not be operated successfully by another person or business. The Council is continually approached by people wanting to operate equestrian and equine businesses, but with a linked house. Sometimes the council must turn these people down as their proposal does not involve an established business. At Braidlaw there is a group of buildings, land and a house that would suit another operator, provided it is marketed at its proper value.

However, the planning authority is conscience of the pressures on businesses in the current economic climate. For this reason, at pre-application stage, the planning authority provided the applicant with a series of options which should be investigated in advance of the applicant submitting a planning application for the complete removal of the condition.

The planning condition is open to accommodating changing circumstances, such as the stud business failing. Therefore, there is scope for the applicant to pursue an alternative agricultural business on the site without being in breach of the planning permission. In addition, the house can be occupied by somebody employed in agriculture *in the locality*.

Therefore, without requiring planning permission to remove the condition, the house can continue to be occupied by somebody (either the applicant or somebody else) either employed in agriculture taking place on the site or in the locality.

This flexibility demonstrates that the condition is reasonable with respects to the applicant's possible changing circumstances. The important factor is that the house is linked to an appropriate countryside activity in the area.

In addition, the planning authority advised, at pre-application stage, that, in the circumstances, it would consider an amendment to the planning condition which would provide a link to an alternative appropriate countryside business, such as a livery business or tourism business.

It appears as though the applicant has no intention of investigating any alternative options with regards retaining the link between the house and an appropriate countryside activity. The applicant's intention is to free the house of the restriction. This will result in the separate sale of the house and business/land.

The applicant has not demonstrated, to the satisfaction of the planning authority, that all available options have been thoroughly considered and investigated prior to the submission of this planning application. It would be reasonable to expect the applicant to investigate other available options prior to applying to delete the condition entirely.

Should the restriction be removed it will result in a house with significantly depleted amenity. The house is physically attached to buildings which currently form the stud business. Should the house be occupied independently from the stud business, or

other agricultural business, there would likely be a significant adverse impact on the amenity of the occupants of the house, or potentially even some burden on the operators of the agricultural operation.

Whilst the Chief Planner's letter of 2011 does state that Councils should be more accommodating with regards recognising the changing circumstances in the rural economy, he did not advise that all occupancy restrictions should be lifted. The advice suggests an appropriate and measured approach to the issue. The planning authority consider that it has been sensitive to the issues and recognises where it is appropriate to remove occupancy restrictions where they exist. The Chief Planner suggested that a more restrictive approach regarding occupancy arrangements would be justifiable in areas where there is considerable commuter pressure and that the establishment of houses in the countryside might be considered unsustainable. The planning authority considers that this is definitely the case in this part of Midlothian, where there has been significant pressure for houses with no justification or link to the countryside. If this application were to be approved, prospective applicants would consider that they would just have to wait a small amount of time in a house with an occupancy restriction prior to having it removed.

With respect to the appeal decisions submitted as supporting statements by the applicant, they relate to applications in other parts of the country. Whilst some of the issues raised by the Reporters are relevant to this application it is also the case that the issues are not directly comparable. It is considered that each application needs to be assessed on its merits and care needs to be taken in comparing two or three proposals where both the proposal itself and the policies against which it is assessed are not directly comparable. As such it is considered that the issues raised in the appeal decisions are not sufficiently compelling to merit setting aside the other key material considerations highlighted in this report.

In summary, the key factor in the determination of the application to remove the condition is that the applicant has not demonstrated that he has investigated all options available to him in advance of trying to break the link between the house and the land upon which it is sited. In the absence of this justification there are serious concerns regarding the sustainability of the house in this sensitive landscape which is under increasing pressure from creeping suburbanisation and significant landscape degradation. This position is supported by the development plan policies and is not contrary to the Chief Planner's advice or the relevant circulars.

Recommendation:

Grant planning permission for the removal of the legal agreement – 13/00347/DPP

Refuse planning permission for the removal of the planning condition --
13/00348/DPP

Edinburgh and the Lothians Structure Plan 2015

green belt economy land supply transport jobs housing



east lothian edinburgh mid lothian west lothian

2015

ENV 1 F: Environmental or Biodiversity Assessments

Development proposals that would affect any designated natural heritage site, protected priority habitat or species or other important non-statutory locations will require an appropriate level of environmental or biodiversity assessment. Where development is permitted, proposals must include measures for mitigation and, where appropriate, enhancement to reduce any adverse impact and/or to provide for sustainable habitat replacement.

ENV 1 G: Design of New Development

Local plans should include policies, and where appropriate proposals, to promote a high quality of design in all new development.

- 7.6 The Green Belt has been successful in limiting the expansion of the City, preserving its identity and landscape setting, and directing new development to urban areas in the City and landward towns. However, structure plans must review the appropriate balance between containment and growth to ensure this can be sustained on a long-term basis. While the policy remains valid, local plans should modify Green Belt boundaries where justified to accommodate the strategic land allocations defined in policies ECON2, ECON3 and HOU3. In identifying land releases, which should be limited in extent, emphasis should be given to locations where the impact on Green Belt objectives is least, and where robust, long-term boundaries can be secured. The principle of a continuous Green Belt should not be undermined. The City Bypass defines the edge of the built-up area to the west and south-west and forms a strong, defensible inner boundary to the Green Belt. The maintenance of this boundary forms an important part of the long-term Green Belt strategy. Local plans may specify and justify any exceptions to national planning policy, and this may in exceptional circumstances include sites for community facilities where a need has been identified.

ENV 2: Green Belt

A) A continuous Green Belt will be maintained around Edinburgh for the following main purposes:

- a to maintain the identity of the City by clearly establishing its physical boundaries and preventing coalescence;**
- b to provide countryside for recreation; and**
- c to maintain the landscape setting of the City.**

Local plans should define Green Belt boundaries to conform to these purposes and, where appropriate, to protect the setting of neighbouring towns.

B) There is a presumption against development or changes of use in the Green Belt unless necessary for the purposes of agriculture, horticulture, forestry, countryside recreation, other uses appropriate to the rural character of the area, or operations covered by paragraph 4.13 and policies ECON3 and ECON4. Local plans may specify and justify any exceptions to national planning policy.

- 7.7 The areas designated in local plans as countryside also require careful protection to focus development on the core development areas. The plan seeks to strike a balance between protecting the character of the countryside from development pressures while allowing some limited and appropriate development.

ENV 3: Development in the Countryside

Development in the countryside will be allowed where it has an operational requirement for such a location that cannot be met on a site within an urban area or land allocated for that purpose, and is compatible with the rural character of the area. Acceptable countryside development will include agriculture, horticulture,

forestry and countryside recreation. The following types of development, where justified in local plans, may be allowed in support of rural diversification.

- **Tourism or other recreational uses;**
- **Development that re-uses appropriate redundant rural buildings that make a positive contribution to the landscape;**
- **Diversification of an appropriate scale and character on agricultural land, including lowland crofting, as a means of supporting and diversifying the rural economy, maintaining communities and services or effecting landscape improvement.**

Local plans should require that such development:

- a is well-integrated into the rural landscape;**
- b reflects its character and quality of place; and**
- c does not result in a significant loss of prime quality agricultural land.**

Any additional infrastructure required as a result of such development must be either committed through the Action Plan or funded by the developer.

- 7.8 As part of the commitment made by Scottish Ministers in *NPPG14*, 'Scottish Natural Heritage' is currently reviewing guidance on regional and local landscape designations. Local plans will be expected to take account of this guidance once it is published.

ENV 4: Landscape

Local plans should take account of landscape designations in accordance with new guidance produced by Scottish Natural Heritage.

- 7.9 The importance of the Firth of Forth's coastline to the economic, social and environmental wellbeing of Lothian is recognised. National planning policy requires the identification of areas of developed and undeveloped coast. Broad areas of developed and undeveloped coast are defined on the key diagram. Provision should be made through local plans for development which requires a coastal location and which contributes to the local economy. Policies will also be included in local plans, to prevent unnecessary or unsympathetic development in accordance with national planning policy.
- 7.10 The Forth Estuary Forum Management Strategy promotes sustainable use of the Forth and, although non-statutory, the strategy should be assessed and, where appropriate, incorporated into future plans for the coastal area.

ENV 5: The Coast

Local plans should define the detailed boundaries of the developed and undeveloped coast. Development on the developed coast will be supported where it demonstrates a need for a coastal location, or contributes to the renewal and regeneration of an area. Development on the undeveloped coast will only be permitted where it demonstrates a need for a coastal location, that the benefits outweigh any detrimental environmental impact and that there is no alternative site.

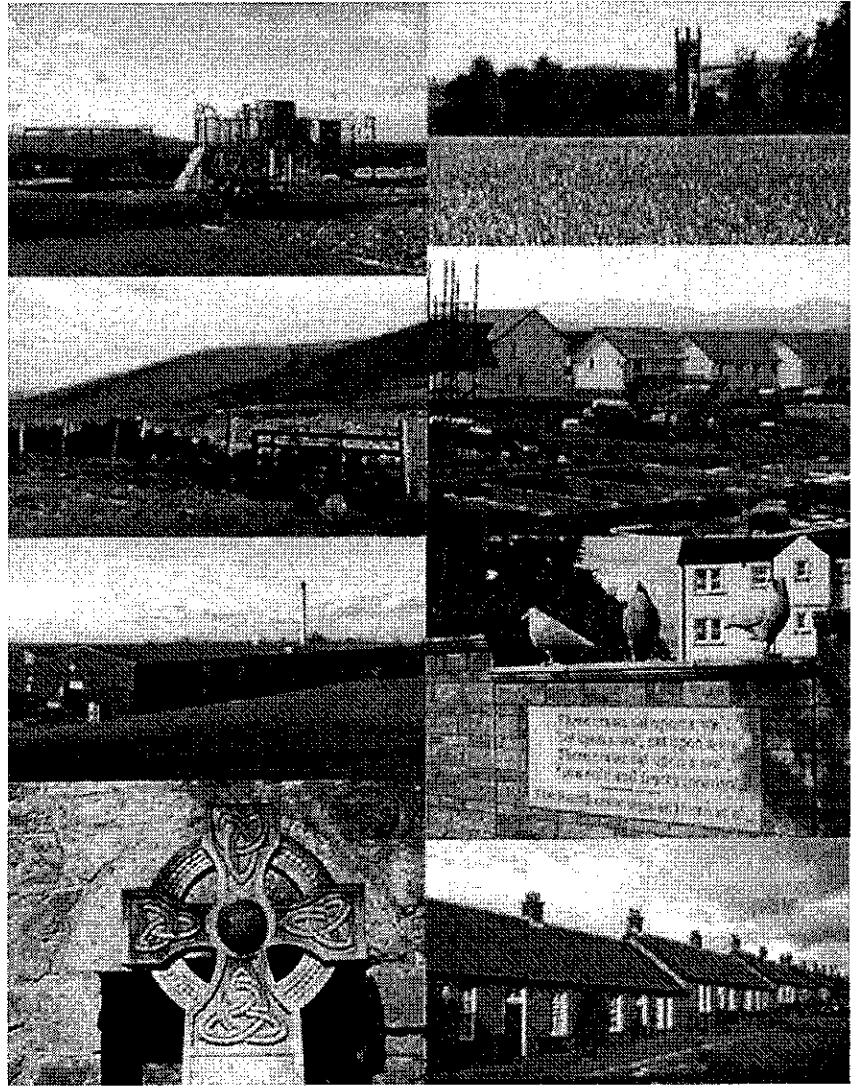
- 7.11 Government planning policy on renewable energy development is set out in *NPPG6 'Renewable Energy'*. It is based on the principle that it should be accommodated where the technology can operate efficiently and environmental impacts can be addressed satisfactorily. The guidance addresses development that might have an adverse impact upon international and national designations, the historic environment and local communities.

ENV 6: Renewable Energy

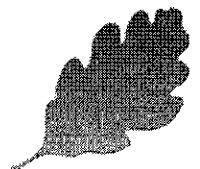
The development of renewable energy resources will be supported where this can be achieved in an environmentally acceptable manner. Local plans should set out

Midlothian

Midlothian Local Plan



Midlothian



Midlothian Local Plan

ADOPTED BY RESOLUTION OF
MIDLOTHIAN COUNCIL
ON 23 DECEMBER 2008

This Plan has been produced by the
Planning Unit Strategic Services

Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
Midlothian
EH22 3ZN

2.1 The Natural Heritage

Policy Title

RP1 PROTECTION OF THE COUNTRYSIDE

2.1.1 National Planning Policy National policy on development in the countryside is set out in SPP 3 *Planning for Housing* (now replaced by SPP3 *Planning for Homes* – refer to para. 3.2.6) and SPP 15 *Planning for Rural Development*. SPP 3 *Planning for Housing* stipulates that, in general, rural housing should be provided in accessible locations, within or adjacent to existing settlements. This promotes a more sustainable pattern of development, making efficient use of land and buildings, safeguarding environmental resources and offering opportunities to reduce travel. Traditionally, planning policies have sought to restrict new houses in the countryside, to maintain rural character and amenity and safeguard agricultural production. SPP 3 sets out the case for some small-scale housing in rural areas to assist in the regeneration of the rural economy where this can be justified through local plans.

2.1.2 SPP 15 *Planning for Rural Development* confirms that most development will continue to be met within or adjacent to existing settlements in the more accessible and densely populated areas. Once again, it suggests that there may be scope in rural areas for some small-scale housing development and for businesses to diversify where there is access to public transport and services, or where these may be provided at reasonable cost.

2.1.3 SPP 3 and SPP 15 highlight the need for high quality development that fits in the landscape and further guidance is provided in PAN 72 *Housing in the Countryside*. Advice on rural diversification is set out in PAN 73 *Rural Diversification* which addresses issues such as sustainable diversification, accessibility, infrastructure, scale and design, and the need to respond to individual circumstances.

2.1.4 Structure Plan Policy The Structure Plan strategy for countryside areas is to strike a balance between protecting the character of the countryside from development pressures whilst allowing some limited and appropriate development. Midlothian's countryside falls within the Areas of Restraint referred to in para.1.2.19. ELSP policy ENV3 allows for acceptable development in the countryside where it has an operational requirement for such a location that cannot be met on a site within an urban area or land allocated for that purpose, and is compatible with the rural character of the area. Acceptable countryside

development includes agriculture, horticulture, forestry and countryside recreation. Other types of development may be allowed including tourism and other recreational uses, the reuse of redundant rural buildings that make a positive contribution to the landscape, and agricultural diversification of an appropriate scale and character. Such developments must be justified in local plans and must:

- ❖ be well integrated into the rural landscape;
- ❖ reflect its character and quality of place; and
- ❖ not result in a significant loss of prime agricultural land.

Any additional infrastructure required as a result of such development must be either committed through the ELSP Action Plan or funded by the developer.

2.1.5 Local Plan Policy Local Plan policy for protecting Midlothian's countryside follows both national and Structure Plan guidance and makes provision for acceptable countryside development. It allows some scope for rural development opportunities related to specific countryside activities including farm diversification, tourism and waste disposal (where this is essential as a method of site restoration). Provision is made for appropriate development within the areas identified as non-conforming land uses in the Green Belt, where such development satisfies policy RP3, and for development in accordance with the detailed provisions for development in the countryside as set out in policy DP1.

2.1.6 In all such cases development must demonstrate the need for a countryside location; have due regard to scale, character, landscape fit, accessibility to public transport and services; and avoid the significant loss of prime quality agricultural land.

2.1.7 In certain locations some limited and controlled development related to low density housing, new or expanded businesses, the winning of mineral resources, renewable energy and tourist accommodation may be acceptable and specific provisions are set out in proposal ECON1 and policies HOU55, ECON7, ECON8, MIN1 and NRG1. In such circumstances, these policies take precedence over the provisions of policy RP1. For countryside areas that are also Green Belt, policy RP2 takes precedence. Additional limited development may be acceptable where it satisfies the particular provisions of policy DP1, for example, in respect of the reuse of redundant non-residential buildings in the countryside.

RP1 PROTECTION OF THE COUNTRYSIDE

Development in the countryside will only be permitted if:

- A.** it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation, tourism, or waste disposal (where this is shown to be essential as a method of site restoration); or
- B.** it is within a designated non-conforming use in the Green Belt; or
- C.** it accords with policy DP1.

All such development will need to:

- A.** demonstrate a requirement for a countryside location;
- B.** be of a scale and character appropriate to the rural area;
- C.** be well integrated into the rural landscape;
- D.** avoid a significant permanent loss of prime quality agricultural land; and
- E.** take account of accessibility to public transport and services (where appropriate).

In certain locations, new or expanded business development, low density rural housing, the winning of mineral resources or renewable energy developments may be appropriate (refer to proposal ECON1, policies ECON7, ECON8, HOUS5, MIN1 and NRG1).

Policy Titles

RP6 AREAS OF GREAT LANDSCAPE VALUE**RP7 LANDSCAPE CHARACTER**

2.1.29 National Planning Policy SDD Circular 2/1962 introduced the concept of Areas of Great Landscape Value (AGLVs), requiring local authorities to define their boundaries and to exercise careful control over development proposals in order to safeguard these areas. Particular reference was made to their importance as a tourist resource. In addition, Scottish Natural Heritage (SNH) and Historic Scotland have produced *Guidance on Local Landscape Designations* which promotes the adoption of an 'all-landscapes' approach, within which landscapes of particular value that warrant safeguarding are designated. NPPG 14 *Natural Heritage* requires that policies be included in local plans for the conservation and enhancement of landscape character. In addition, SNH has produced *The Lothians Landscape Character Assessment*, which provides valuable local guidance on the character of Midlothian's landscape and its capacity to accommodate new development. The Conservation (Natural Habitats and Conservation) Regulations 1994 also expect policies to encourage the management of features of the landscape, which are of importance for wild flora and fauna, by maintaining their function in assisting the migration, dispersal and genetic exchange of wild species.

2.1.30 Structure Plan Policy ELSP policy ENV1D continues to safeguard AGLVs or other local landscape designations from inappropriate development. The extent of the areas of landscape interest should

be defined in local plans, and policies included for their protection and enhancement. In addition, ELSP policy ENV4 requires local plans to take account of landscape designations in accordance with new guidance produced by SNH.

2.1.31 Local Plan Policy It is essential not only to maintain the distinctiveness of Midlothian's landscape character, and its diversity as a whole, but also to recognise that there is a need to give particular protection to certain areas considered to be of outstanding local landscape value and attractiveness. These are identified as AGLVs which are areas sensitive to any developments that could potentially damage their special scenic attraction. For example, the widespread planting of conifers would be considered inappropriate within AGLVs, especially in open moorland or in "wild" landscapes.

2.1.32 The Local Plan Proposals Map identifies the following areas as AGLVs:

- ❖ the rolling hill country of the Pentlands, Moorfoots and Lammermuirs;
- ❖ the incised river valleys of the North and South Esk and the Tyne;
- ❖ the estate landscapes of Penicuik, Arncliffe and Vogrie; and
- ❖ Gladhouse, Edgelaw, Glencorse, Rosebery, Loganlea and North Esk reservoirs.

2.1.33 In addition, many localities contain areas of a diverse yet distinctive landscape character which enhance the attractiveness of Midlothian as a whole. Policy RP7 aims to afford protection to these local landscape character areas and to provide support for landscape planning and management.

RP6 AREAS OF GREAT LANDSCAPE VALUE

Development will not be permitted where it may adversely affect the special scenic qualities and integrity of the Areas of Great Landscape Value (AGLVs).

The scale, siting, design, form, materials and impact on important landscape features are all aspects of a proposal that could have an adverse effect on the AGLV. These considerations will apply to developments to be located either within or affecting the setting of areas designated as AGLVs.

4.1 Development in the Countryside

DP1 DEVELOPMENT IN THE COUNTRYSIDE

1 New Housing

1.1 Single Houses (not related to Housing Groups/ Farm Steadings)

New houses will be permitted in the countryside only when they can be demonstrated to be required for the furtherance of an established countryside activity (see policy RP1 - Protection of the Countryside and policy RP2 - Protection of the Green Belt for definition of respective acceptable countryside activities). Applicants will be required to show that the need for the new dwelling is permanent; cannot be met within an existing settlement; and that the occupier of the property will be employed full-time in the countryside activity being furthered by the provision of the new house. The applicant will be expected to demonstrate the long-term need for the proposed house by submitting an independent report on the viability of the associated business and its operational requirements.

In approving the new house, the Council will require that it, and any other houses within the control of the applicant related to the same countryside activity, will be subject of an occupancy condition and/or a legal agreement. It will generally be the case that a legal agreement will be required. This will relate to the employment of the occupiers of the house or houses, and tie the new dwelling to the landholding associated with the countryside activity in question.

Any single new dwelling shall:

- a) fit in the landscape and be of a character appropriate to existing houses in the local area;
- b) be capable of being served by an adequate and appropriate access;
- c) be capable of being provided with drainage and a public water supply at reasonable cost, or an alternative acceptable private water supply, and avoiding unacceptable discharge to watercourses;
- d) be no larger in size than required to fulfil the purpose for which the development has been allowed; and
- e) incorporate sustainable building design.

1.2 Housing Groups

Where there are clearly identifiable groupings of 5 or more houses in close proximity, already located in the countryside and outwith village envelopes, it may be possible to supplement these with a limited number of additional dwellings subject to the following criteria:

- a) the location is outwith the Green Belt;
- b) the new units are restricted to a maximum of 1 new unit per 5 existing units within the Local Plan period;
- c) the location is close to local services (school, shops) and/or has access to a regular public transport service giving access to such facilities;
- d) the new units fit in the landscape and are of a character and scale appropriate to the existing units;
- e) the new units are capable of being served by an adequate and appropriate access;
- f) the new units are capable of being provided with drainage and a public water supply at reasonable cost, or an alternative acceptable private water supply, and avoid unacceptable discharge to watercourses;
- g) the new units incorporate sustainable building design;
- h) the new units enhance the landscape and appearance of the existing group of buildings; and
- i) the new units will not result in ribbon development and the plot size/width should be similar to other units within the group.

Housing groups to which this policy may apply must form a cohesive entity. The new unit should generally be located within gaps in the group.

Supplementary planning guidance will be prepared identifying house groups to which this section of DP1 should apply. The success or otherwise of the new policy will be reviewed before consideration is given to widening its application in future Local Plans, if appropriate.

1.3 Redundant Farm Steadings and Other Redundant Non-Residential Buildings in the Countryside

Where it can be demonstrated that farm steadings or other group/s of non-residential buildings have become redundant, support will be given to their conversion or, where justified and not in the Green Belt, redevelopment. Where buildings are capable of renovation and conversion, and are examples of traditional, architectural or historic interest, their demolition and redevelopment will be resisted. Premature demolition of such properties, in advance of approval for replacement buildings, will be likely to result in the Council considering the replacement buildings proposal in terms of policy DP1 Section 1.1. Any increase in the footprint of the existing buildings shall require to be justified as being necessary to the overall quality of the development. In the case of conversion, the proposal shall meet the following criteria:

- a) the building makes a significant and positive contribution to the landscape and its retention is considered to be beneficial to its surroundings;
- b) the building is capable of conversion without requiring any alterations to its external appearance or any extensions other than of a minor nature, and provided that any such alteration or extension does not detract from its character or attractiveness;
- c) the building is structurally sound, in a reasonable state of repair, and capable of conversion without substantial rebuilding;
- d) the building is capable of being served by an adequate and appropriate access;
- e) the building can be serviced at reasonable cost and there would be no unacceptable discharge to watercourses; and
- f) the conversion of the building to such use is, in the particular circumstances of the case, the most satisfactory means by which it may be retained.

In the case of redevelopment, the resulting buildings will:

- a) make a significant and positive contribution to the landscape;
- b) be of a character and scale appropriate to its immediate surroundings;
- c) be capable of being served by an adequate and appropriate access;
- d) be capable of being serviced at reasonable cost and there would be no unacceptable discharge to watercourses; and
- e) only exceptionally exceed 5 houses, unless the site is close to an existing settlement;

and, in both circumstances (conversion and redevelopment), criteria B, C and F of policy COMF4 will apply.

1.4 Rural Buildings of Value

There are a number of large rural non-residential buildings that are either listed or of other value to the local landscape and whose current use has or may become redundant. As a means of retaining or enhancing the building (and associated structures), and proposals being restricted to such properties lying outwith the Green Belt, there could be scope for some additional new development not normally supported in these locations if fully justified as necessary to enable the conversion/restoration.

The additional new development shall:

- a) only be that necessary to effect the conversion/ restoration and the new development is the only practical means by which the conversion/ restoration can be achieved;
- b) not detract from the character of the original building of value;
- c) be of a scale and design to complement the original building;
- d) be capable of being served by an adequate and appropriate access;
- e) take cognisance of proximity to public transport services and other community facilities in considering the number of new dwellings; and
- f) be capable of being serviced at reasonable cost and avoiding unacceptable discharge to watercourses.

Rosslynlee is a potential candidate for supporting such development. As a means to enable the conversion of the C(s) listed house, once it is no longer required for healthcare use, options will be considered for alternative use of the building along with some new development within the grounds that is required to support the agreed conversion. The site includes areas where redevelopment could be acceptable as a means to replace buildings that do not enhance the setting of the listed building. The site has a number of limitations, principally its remoteness from community facilities; lack of public transport provision; and substandard road access. Any conversion/partial redevelopment would have to be of a scale and design to address these issues appropriately. The Council will continue to work with interested parties to achieve an acceptable scheme for the Rosslynlee site.



In addition (and as an exception), to enable restoration/improvement to the fabric of Dalkeith Palace and/or the listed or other important structures within the grounds of Dalkeith Estate, consideration will be given to appropriate proposals within Dalkeith Estate that are complementary and associated with its current historic/tourist functions.

2 Design of New Housing

New houses and their curtilages will be designed to enhance the appearance of the countryside. The quality of design and construction must be of a high standard and will in most instances be traditional in nature. Innovative design will not be discouraged provided the character of the location is not detrimentally affected by the siting and appearance of the new dwelling. The use of high quality external finishing materials will be required. On open sites, or within areas of established sensitivity, such as Conservation Areas, Areas of Great Landscape Value or along the main tourist routes, new houses will be expected to make use of appropriate natural materials for roofs (such as slate and clay tiles) and wall finishes.

3 House Extensions

Extensions to existing dwellings which could be used to provide a second dwelling will only be allowed if subject to a legal agreement preventing future subdivision. (Refer also to detailed development policy DP6 - House Extensions.)

4 Replacement Houses

The demolition of an existing dwelling in the countryside and its replacement by a new house on the same site will be permitted where:

- a) the proposal relates to a complete dwelling (i.e. not the plot of a previous, now demolished, house); and
- b) it can be demonstrated that the existing dwelling is incapable of renovation or improvements to allow its continued habitation; and
- c) the size of the proposed dwelling is not significantly larger than the existing dwelling; and
- d) the appearance of the new dwelling is a significant improvement on the existing property and therefore enhances the environment of the area; and
- e) the existing dwelling is served by an adequate and appropriate access and is already serviced at reasonable cost with an acceptable discharge to local watercourses or to mains drainage; and
- f) sustainable building design is incorporated.

5 Appearance of All Buildings

All new buildings in the countryside will respect the character of existing buildings in terms of design, scale and materials used, blend with the landscape, conform with the countryside policies, and incorporate sustainable building design.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 13/00348/DPP

Rapleys LLP
Caledonian Exchange
19A Canning Street
Edinburgh
EH3 8EG

Midlothian Council, as Planning Authority, having considered the application by Mr Ivar McLeish, Braidlaw Farmhouse, Braidlaw Farm, Silverburn, EH26 9LP, which was registered on 13 May 2013 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Removal of planning condition 7 of planning permission 02/00864/FUL (Erection of detached dwelling) to remove occupancy restriction at Braidlaw Farmhouse, Penicuik, EH26 9LP

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

1. It has not been demonstrated, to the satisfaction of the planning authority, that the applicant has investigated all options available to him in advance of breaking the link between the house and the land upon which it is sited. In the absence of this justification the planning authority have significant and serious concerns regarding the sustainability of the house in this sensitive landscape which is under increasing pressure from creeping suburbanisation and significant landscape degradation.
2. It is considered that the fundamental issue underpinning the requirement for the condition covering the occupancy restriction is the need to safeguard the character and appearance of the Midlothian countryside. Removal of the condition covering the occupancy would set an undesirable precedent for similar future applications and could lead to an uncontrolled and sporadic approach to housing development within the sensitive Midlothian landscape.
3. For the above-mentioned reason the proposal is contrary to the aims of policy ENV3 of the Edinburgh and Lothians Structure Plan and policies RP1 and DP1 of the adopted Midlothian Local Plan, which seek to protect the countryside and landscape from unsustainable development.

Dated: 29/07/2013

.....
Peter Arnsdorf
Development Management Manager
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

PLEASE NOTE

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 require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Development Manager, Development Management Section, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith EH22 3ZN. A notice of review form is available from the same address and will also be made available online at www.midlothian.gov.uk

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 reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the 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.

Prior to Commencement (Notice of Initiation of Development)

Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing. Failure to do so would be a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006). A copy of the Notice of Initiation of Development is available on the Council's web site www.midlothian.gov.uk

IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION

Making an application

Please note that when you submit a planning application, the information will appear on the Planning Register and the completed forms and any associated documentation will also be published on the Council's website.

Making comment on an application

Please note that any information, consultation response, objection or supporting letters submitted in relation to a planning application, will be published on the Council's website.

The planning authority will redact personal information in accordance with its redaction policy and use its discretion to redact any comments or information it considers to be derogatory or offensive. However, it is important to note that the publishing of comments and views expressed in letters and reports submitted by applicants, consultees and representatives on the Council's website, does not mean that the planning authority agrees or endorses these views, or confirms any statements of fact to be correct.