

Notice of Meeting and Agenda



Planning Committee

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

Date: Tuesday, 30 April 2024

Time: 13:00

Executive Director : Place

Contact:

Clerk Name: Democratic Services
Clerk Telephone:
Clerk Email: democratic.services@midlothian.gov.uk

Further Information:

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1 Welcome, Introductions and Apologies

2 Order of Business

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

3 Declaration of Interest

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

4 Minute of Previous Meeting

4.1 Minute of the Planning Committee of 12 March 2024 3 - 14

4.2 Action Log 15 - 16

5 Public Reports

5.1 Development Plan Scheme for Midlothian Number 16 (DPS16) 17 - 42

5.2 Short-term lets and the Planning System 43 - 48

5.3 Confirmation of a Tree Preservation Order for a group of trees at land north of the Old Golf House, Newbattle, Dalkeith 49 - 68

5.4 24/00119/PAC - Pre application consultation for a mixed-use development including Class 1A (shops, financial, professional and other services), Class 11 (assembly and leisure) and Class 4 (business); and associated infrastructure, car parking, servicing, access arrangements and landscaping at land 90m south west of Asda Petrol Filling Station, Loanhead 69 - 74

5.5 23/00791/DPP – Application for the erection of 12 flatted dwellings on land at Windsor Square, Penicuik 75 - 98

6 Private Reports

No items for discussion

7 Date of Next Meeting

The next meeting will be held on Tuesday, 4 June 2024 at 1pm.

Minute of Meeting

Planning Committee
Tuesday, 30 April 2024
Item 4.1



Planning Committee

Date	Time	Venue
Tuesday 12 March 2024	13:00	Council Chambers, Midlothian House/Hybrid

Present:

Councillor Alexander	Councillor McManus
Councillor Bowen	Councillor Milligan
Councillor Cassidy	Councillor Parry
Councillor Curran	Councillor Pottinger
Councillor Drummond	Councillor Russell
Councillor Imrie (Chair)	Councillor Scott
Councillor McCall	Councillor Virgo
Councillor McEwan	Councillor Winchester
Councillor McKenzie	

In Attendance:

Derek Oliver	Chief Officer Place
Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
Kevin Anderson	Executive Director Place
Lucy Roddie	Democratic Services Officer
Hannah Forbes	Assistant Democratic Services Officer

1. Apologies

Apologies were received from Councillor Smaill.

2. Order of Business

The Democratic Services Officer advised the Committee that Item 5.10 had been withdrawn.

3. Declarations of interest

Councillor Scott made a declaration of interest in relation to Item 5.6 and would leave the Chamber for the discussion.

4. Minutes of Previous Meetings

4.1 The minute of the meeting of 28 November 2023 was submitted and approved as a correct record. Moved by Councillor Parry, seconded by Councillor Cassidy.

4.2 The minute of the meeting of 23 January 2024 was submitted and approved as a correct record. Moved by Councillor Parry, seconded by Councillor Cassidy.

4.3 The Action Log was noted.

5. Reports

Agenda No	Report Title	Submitted by:
5.1	Dalkeith Regeneration Development Framework – Masterplan for Dalkeith Town Centre	Chief Officer Place
Outline of Report and Summary of Discussion		
<p>The Planning, Sustainable Growth and Investment Manager introduced the report. The purpose of the report is to seek agreement to the adoption of the Dalkeith Regeneration Development Framework as Planning Guidance</p> <p>The Committee is recommended to:</p> <ol style="list-style-type: none">1. Note the content of the report and agree to the adoption of the Dalkeith Regeneration Development Framework Planning Guidance (subject to the SEA process as per recommendation 2); and2. Instruct the Planning, Sustainable Growth and Investment Manager to undertake the required screening and notification/advertisement advising that the Dalkeith Regeneration Development Framework Planning Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment.		

Elected Members welcomed the progress being made on the Dalkeith Regeneration Development project.

The Committee unanimously agreed to the recommendations as set out in the report.

Decision

The Committee:

1. Noted the content of the report and agreed to the adoption of the Dalkeith Regeneration Development Framework Planning Guidance (subject to the SEA process as per recommendation 2); and
2. Instructed the Planning, Sustainable Growth and Investment Manager to undertake the required screening and notification/advertisement advising that the Dalkeith Regeneration Development Framework Planning Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment.

Action

Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.2	Listed building enforcement notice appeal decision (appeal dismissed) with regard the installation of windows and doors in the north facing elevation of South Church Hall, West Street, Penicuik	Chief Officer Place
Outline of Report and Summary of Discussion		
<p>The Planning, Sustainable Growth and Investment Manager introduced the report. The purpose of the report is to advise the Committee of a listed building enforcement notice appeal decision with regard the installation of windows and doors in the north facing elevation of South Church Hall, West Street, Penicuik.</p> <p>It is recommended that the Committee notes the enforcement notice appeal decision with regard the installation of windows and doors in the north facing elevation of South Church Hall, West Street, Penicuik.</p> <p>The Committee unanimously agreed to the recommendation as set out in the report.</p>		
Decision		
<p>The Committee noted the listed building enforcement notice appeal decision with regard the installation of windows and doors in the north facing elevation of South Church Hall, West Street, Penicuik.</p>		
Action		
<p>Planning, Sustainable Growth and Investment Manager</p>		

Agenda No	Report Title	Submitted by:
5.3	Certificate of lawful use development (CLUD) appeal decision (appeal dismissed) with regard the use of land for storage of goods and materials (excluding hazardous goods and materials) at land at the former filling station, Biggar Road, Hillend	Chief Officer Place
Outline of Report and Summary of Discussion		
<p>The Planning, Sustainable Growth and Investment Manager, introduced the report. The purpose of the report is to advise the Committee of a certificate of lawful use development (CLUD) appeal decision with regard the use of land for storage of goods and materials (excluding hazardous goods and materials) at land at the former filling station, Biggar Road, Hillend.</p> <p>It is recommended that the Committee notes the certificate of lawful use development appeal decision with regard the use of land for storage of goods and materials (excluding hazardous goods and materials) at land at the former filling station, Biggar Road, Hillend.</p> <p>The Committee unanimously agreed to the recommendation as set out in the report.</p>		
Decision		
The Committee noted the certificate of lawful use development appeal decision with regard the use of land for storage of goods and materials (excluding hazardous goods and materials) at land at the former filling station, Biggar Road, Hillend.		
Action		
The Planning, Sustainable Growth and Investment Manager		

Agenda No	Report Title	Submitted by:
5.4	24/00076/PAC - Pre application consultation for the erection of a high school, ASN (additional support needs) facility and community facilities, swimming pool, veterinary clinic and associated works at land to the east and west of Seafield Moor Road, Bilston	Chief Officer Place
Outline of Report and Summary of Discussion		
<p>The Planning, Sustainable Growth and Investment Manager introduced the report. The purpose of the report is to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre application consultation for the erection of a high school, ASN (additional support needs) facility and community facilities, swimming pool, veterinary clinic and associated works at land to the east and west of Seafield Moor Road, Bilston.</p>		

It is recommended that the Committee notes:

- a) the provisional planning position set out in the report;
- b) that any comments made by Members will form part of the minute of the Committee meeting; and
- c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

The Committee unanimously agreed to the recommendation as set out in the report.

Decision

The Committee noted:

- a) the provisional planning position set out in the report;
- b) that any comments made by Members will form part of the minute of the Committee meeting; and
- c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.5	Update report regarding the Torfichen Wind Farm, East of Gladhouse Reservoir	Chief Officer Place

Outline of Report and Summary of Discussion

The Planning, Sustainable Growth and Investment Manager introduced the report. The purpose of this report is to advise the Committee of progress to date in assessing the stated wind farm development comprising 18, 180m turbines and associated equipment and works at Torfichen Hill, Broad Law and Wull Muir on land to the east of Gladhouse Reservoir and southwest of Middleton, hereafter referred to as the Torfichen Wind Farm. The report outlines the proposal, the site and the procedures relevant to the determination of the application.

The recommendation is that the Committee:

- a) Note the update on the Torfichen Wind Farm application;
- b) Approve the attached interim response and instruct officers to issue it to the Scottish Government's Energy Consents Unit; and
- c) Note the intention to present a further report to the Committee on the Torfichen Wind Farm once a response has been received to the interim response.

Councillor Virgo made a declaration of transparency, advising of his connection to Scottish Water.

The Planning, Sustainable Growth and Investment Manager responded to questions from the Committee, confirming that the application was for the erection of turbines 180m in height and this is comparable to other wind farms across Scotland. In

response to concerns raised regarding the water quality at Gladhouse reservoir being affected by construction activity, the Planning, Sustainable Growth and Investment Manager commented that a range of bodies were giving scrutiny to the application. It was noted that a decision on the application will ultimately be taken by the Scottish Government's Energy Consent Unit and the Council is a consultee in this context. The Planning, Sustainable Growth and Investment Manager provided further detail on the interim response and advised that a request for additional information was a standard part of the planning process. The Planning, Sustainable Growth and Investment Manager advised the Committee that the final determination date of the application was to be confirmed.

The Committee unanimously agreed to the recommendation as set out in the report.

Decision

The Committee:

- a) Noted the update on the Torfichen Wind Farm application;
- b) Approved the attached interim response and instruct officers to issue it to the Scottish Government's Energy Consents Unit; and
- c) Noted the intention to present a further report to the Committee on the Torfichen Wind Farm once a response has been received to the interim response.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.6	23/00595/DPP – Procedural report relating to the formation of recycling facility and waste transfer station; and the continuation of landfill operations and associated works at Middleton Lower Quarry, Gorebridge	Chief Officer Place
Outline of Report and Summary of Discussion		
<p>Given her declaration of interest, Councillor Scott left the Chamber for the discussion.</p> <p>The Planning, Sustainable Growth and Investment Manager introduced the report. The purpose of this report is to advise the Committee of a planning application of a scale that defines it as a National Development for the formation of a recycling facility and waste transfer station; continuation of landfill operations and associated works at Middleton Lower Quarry, Gorebridge. This report outlines the development proposal and the procedures required in the assessment of a National Development.</p> <p>It is recommended that the Committee note the contents of the report and instruct officers to make the arrangements for a pre-determination hearing and a site visit.</p> <p>The Committee unanimously agreed to the recommendation as set out in the report.</p>		

Decision
The Committee noted the contents of the report and instructed officers to make the arrangements for a pre-determination hearing and a site visit.
Action
The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.7	23/00694/PPP – Application for planning permission in principle for residential development (indicative 78 units) and associated works at the Scotts Touring Caravans site, land north of Mayfield Industrial Estate, Mayfield, Dalkeith	Chief Officer Place

Outline of Report and Summary of Discussion
<p>Councillor Cassidy made a declaration of interest and left the Chamber for the discussion.</p> <p>The Planning, Sustainable Growth and Investment Manager introduced the report. The application is for planning permission in principle for a residential development and associated enabling works. The application site is the site of a former caravan sales, servicing and storage business situated on land to the north of Mayfield Industrial Estate, Mayfield Road (B6482), Mayfield, Dalkeith.</p> <p>The recommendation is to refuse planning permission.</p> <p>The Planning, Sustainable Growth and Investment Manager responded to questions from the Committee. Concerns were raised regarding increased traffic and it was noted that residents were already reporting issues in the vicinity. Concerns were raised in relation to the pressures a new development would add to secondary school provision and healthcare services. Some discussion took place regarding the site which sits adjacent to an industrial estate and petrol filling station. The Planning, Sustainable Growth and Investment Manager commented that there is precedent for residential development, with existing residential properties adjacent to the site.</p> <p>In responding to a question from an Elected Member, the Planning, Sustainable Growth and Investment Manager reported that there would be opportunity to give scrutiny to the proposed development, including matters of biodiversity, design and access, if the Committee were minded to approve the application.</p> <p>In responding to a question from an Elected Member, the Planning, Sustainable Growth and Investment Manager commented that the installation of SUDs would not address existing flooding activity, but would ensure that any existing flooding activity is not exacerbated by further development.</p> <p>In responding to a question from an Elected Member regarding sustainability, the Planning, Sustainable Growth and Investment Manager commented that new</p>

housing needs to comply with current building regulations and the proposed development would be required to meet the same standards as other residential properties coming forward.

It was noted that the Community Council for Mayfield and Easthouses had expressed their support for the development, and the need for housing in the area was acknowledged. The Planning, Sustainable Growth and Investment Manager commented that there would be opportunity to review the proposed development in greater detail especially in relation to matters of design, access and biodiversity if the Committee were minded to approve the application.

Councillor Bowen, seconded by Councillor Pottinger, moved to refuse planning permission.

Councillor McKenzie, seconded by Councillor McEwan, moved an amendment to the motion, namely, to grant planning permission.

On a vote being taken, 6 members of the Planning Committee voted for the amendment and 10 members of the Planning Committee voted for the motion. This then became the decision of the Committee.

Decision

The Planning Committee refused application 23/00694/PPP for planning permission in principle for residential development (indicative 78 units) and associated works at the Scotts Touring Caravans site, land north of Mayfield Industrial Estate, Mayfield, Dalkeith.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.8	23/00700/S42 – Section 42 application to amend condition 14 to enable the installation of an adoptable (by Scottish Water) sustainable urban drainage system (SUDS), rather than the SUDS approved as part of the original planning application at the former Rosslynlee Hospital, Roslin	Chief Officer Place
Outline of Report and Summary of Discussion		
<p>The Planning, Sustainable Growth and Investment Manager introduced the report.</p> <p>In December 2019 planning permission was granted for alterations and conversion of former hospital and existing buildings to form 72 dwellings; erection of 24 new dwellinghouses and associated works at the former Rosslynlee Hospital, Roslin. The current application to amend condition 14 enables the installation of an adoptable (by</p>		

Scottish Water) sustainable urban drainage system (SUDS), rather than the SUDS approved as part of the original planning application.

It is recommended that planning permission be granted.

The Committee unanimously agreed to the recommendation as set out in the report.

Decision

The Planning Committee approved application 23/00700/S42 to amend condition 14 to enable the installation of an adoptable (by Scottish Water) sustainable urban drainage system (SUDS), rather than the SUDS approved as part of the original planning application.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.9	22/00878/DPP – Change of use from scrap yard (sui generis) to waste transfer site (class 5 General Industry) and contractor's yard (sui generis); and associated groundworks and construction works (part retrospective) at the site of the former Ramsay Colliery in the centre of Loanhead (called in by Cllr Parry)	Chief Officer Place

Outline of Report and Summary of Discussion

The Planning, Sustainable Growth and Investment Manager introduced the report.

The application is for a change of use from scrap yard (sui generis) to waste transfer site (Class 5 General Industry) and contractors' yard (sui generis); and associated groundworks and construction works. The application is part retrospective. The application site is an open yard at the site of the former Ramsay Colliery in the centre of Loanhead.

It is recommended that planning permission be granted.

In considering the application, the Planning Committee noted that a considerable number of objections had been received in relation to parking, traffic and waste. It was commented that the impact on nearby businesses should be considered, with an existing lack of customer parking available and further development in the area likely to exacerbate this. The Planning, Sustainable Growth and Investment Manager reported that industrial activity on the site is longstanding. If the Committee were minded to approve the application, planning conditions could be imposed to control and regulate activity, and in assessing the application it was felt that a range of conditions would be sufficient to mitigate any potential impact on nearby businesses.

An elected member raised concerns in relation to pedestrian safety on Engine Road. It was noted that the pavements are in a bad state of repair and vehicles park on the pavements. The Planning, Sustainable Growth and Investment Manager reported that a condition could be attached imposing a safety audit is undertaken with the applicant required to pay for the implementation of any recommendations.

In responding to a question from an Elected Member, the Planning, Sustainable Growth and Investment Manager reported that it would be possible to make a recommendation that parking provision must be available on site.

In responding to a question from an Elected Member, the Planning, Sustainable Growth and Investment Manager reported that if the site were to revert back to previous use as a scrap yard, it is considered that the traffic volume would be comparable to current levels.

Councillor Parry, seconded by Councillor McManus, moved to refuse planning permission.

Decision

The Planning Committee refused planning permission for a change of use from scrap yard (sui generis) to waste transfer site (Class 5 General Industry) and contractors' yard (sui generis); and associated groundworks and construction works. This was unanimously agreed by the Committee.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.10	MLDP2 Update	Chief Officer Place
Outline of Report and Summary of Discussion		
Withdrawn		
Decision		
Action		

6. Private Reports

No items for discussion

7. Date of Next Meeting

The next meeting will be held on Tuesday 30 May at 1:00pm.

The meeting terminated at 14.21.

Planning Committee Action Log

No	Date of meeting	Item No and Title	Action	Action Owner	Expected completion date	Comments
1.	10/10/2023	Motion - Old Craighall Road	Report on protocols when dealing with road closures around new developments be presented to a future Planning Committee	Executive Director Place	TBC	



DEVELOPMENT PLAN SCHEME FOR MIDLOTHIAN - NUMBER 16

Report By Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 This report seeks approval for the Development Plan Scheme for Midlothian number 16 (DPS16).

2 BACKGROUND

- 2.1 Preparation of the Development Plan Scheme (DPS) is a statutory requirement. Each year local planning authorities are required to prepare, publish and submit a DPS to Scottish Ministers setting out their intentions with respect to reviewing the development plan for their area over the coming 12 months.

3 DEVELOPMENT PLAN SCHEME FOR MIDLOTHIAN

- 3.1 The DPS contains the programme for the production of Midlothian Local Development Plan no. 2 (MLDP2) and a Participation Statement indicating the nature, extent and timing of public consultation that will be undertaken as part of its (MLDP2's) production.
- 3.2 A new requirement of the PSA19 is to carry out formal consultation on Participation Statements. Accordingly, a public engagement exercise was carried out in March 2024 on a draft DPS16 and its Participation Statement. All Midlothian community councils and persons and organisations who have already registered an interest in MLDP2 were sent a consultation draft of DPS16. The draft was also publicised through the Council's website, Council social media and was also available in all Midlothian Council libraries. The engagement questions set out in the DPS16 will remain open throughout the year and any further comments received can be considered as part of the preparation of DPS17 in 2025.
- 3.3 The comments received, and the proposed responses in respect of each comment is attached to this report as Appendix A. A total of 23 individuals and organisations made comment. Some of the comments received sought the addition of particular groups to the Council's list of consultees for MLDP2 and in response the Council will seek to expand the range of organisations it engages with. Concern was also raised with regard the treatment of those communities which do not have/will

not have a Local Place Plan (LPP). An amendment to the draft DPS16 accompanying this report was made to reflect that point – in response it is important to note Midlothian Council has Planning and place-making responsibilities for the whole county, including those areas not covered by a LPP, and its responsibilities in this regard is not diminished by the absence of a LPP.

- 3.4 If Committee approves DPS16, the Council is required to publish it (including electronically), place it in Midlothian Council libraries and send it to Scottish Ministers (for information only, not for approval).
- 3.5 Key elements of the DPS16 programme and Participation Statement include:
- a revised timetable which reflects additional time taken to prepare the Evidence Report for MLDP2;
 - three important future engagement opportunities: the Call for Ideas in the Summer of 2024, engagement during the preparation of the MLDP2 Proposed Plan between November 2024 and July 2025, and a formal period to make representations when the MLDP2 Proposed Plan is published in July 2025; and
 - the timetabled adoption of MLDP2 in December 2026.
- 3.6 The system of development planning introduced by the PSA19 envisages local development plans being updated every 10 years and that they are adopted within five years of the approval of National Planning Framework no. 4 (NPF4) by the Scottish Government. NPF4 was approved by Scottish Ministers in February 2023 and therefore MLDP2 should be adopted no later than February 2028.
- 3.7 A copy of DPS16 as recommended for approval by the Committee is attached to this report.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee:
- (a) approves the Development Plan Scheme for Midlothian number 16 (appended to this report);
 - (b) instructs the Planning, Sustainable Growth and Investment Manager to arrange for publication of the Development Plan Scheme for Midlothian number 16 on the Council's website, have copies placed in all Midlothian public libraries and has a copy submitted to Scottish Ministers for their information;
 - (c) authorises the Planning, Sustainable Growth and Investment Manager to make any necessary non-material changes to documents prior to publishing.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 19 April 2024

Contact Person: Colin Davidson, Planning Officer
colin.davidson2@midlothian.gov.uk

Background Papers: a. Appendix A - Public Engagement Summary; and
b. the Development Plan Scheme for Midlothian
number 16

APPENDIX A

DPS16 Public Engagement Summary

A total of 23 individuals and organisations responded, raising multiple points which are summarised below.

Question: Do you have any views on our proposed timetable for MLDP2 (Midlothian Local Development Plan no. 2)?	
Summary of Consultation Point Raised	Midlothian Council Consideration of Matter Raised and Response
Concern from multiple respondents about the length of time the replacement plan is taking to prepare.	The timetable in DPS16 is challenging. It is a function of the different stages required under the Planning (Scotland) Act 2019 and also to allow reasonable time for engagement. NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.
Considers that the timescale is ambitious and that more time to allow for slippage should be built in (for example through Evidence Report being sent back at Gate Check by DPEA).	The timetable is challenging, but in the Council's view achievable, a future DPS may consider the timetable again in the case of any slippage. NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.
Considers that timetable should be structured to have input at the early stage when most effective.	Evidence Report preparation and engagement is an attempt to do this, so that this input is included in the evidence base at the earliest stage. NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.
Support for the Council approach in respect of outstanding Supplementary Guidance for adopted LDP.	Noted. NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.
A Green Belt review should be undertaken at the Evidence Report stage. Land not meeting green belt objectives should be released.	The Evidence Report will contain a chapter on Green Belt matters. The Council did not consider it appropriate or proportionate to undertake a full Green Belt review at Evidence Report stage. NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.

Resident's views seem to take second place to lobby groups and are only sought at late stage in timetable.	<p>The Council has sought resident's views at the start of the MLDP2 process (preparation of the Evidence Report). There will be further opportunities for residents to get involved.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Question: Do you have any views on our proposed Participation Statement in and engagement activities?	
Summary of Consultation Point Raised	Midlothian Council Consideration of Matter Raised and Response
Use of social media considered essential. Noted that some communities have multiple Facebook sites representing them.	<p>Noted. The Council will seek to use social media to reach different groups during preparation of MLDP2.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Specific mention made of role of Roslin Community Council and Roslin Development Trust in putting together definitive list of Facebook groups.	<p>When communicating with Community Councils, the Council will encourage them to forward material on to other community organisations that they are aware of to raise the profile of the engagement, but does not consider that a text change to this effect is required in the DPS.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Specific request to add Roslin Development Trust to list of consultees for engagement.	<p>Noted. The Council shall seek to add the Roslin Development Trust to its list of contacts. No textual change to DPS16 is considered necessary on this matter.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
In relation to Local Place Plans, noted that beyond Community Councils there are other constituted community development agencies in Midlothian with development plans of their own. Recommended that these groups are consulted and offered an opportunity to input into place plans and LDP.	<p>The Council will seek to identify and engage with other community groups in MLDP2 production. No textual change to DPS16 is considered necessary on this matter.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Seeks initial veto for community groups on any new sites for commercial or housing use, especially where there are concerns about existing infrastructure and services.	<p>The Council will weigh evidence in relation to allocating new sites, including community concerns and the condition of infrastructure and services, but has concerns that a</p>

	<p>community veto proposed could make delivery of the local housing land requirement and development strategy of MLDP2 difficult to achieve. The Proposed Plan will require to be approved by Midlothian Council.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
<p>Council should make early contact to get input from local community and interest groups, particularly those that use the path, tracks, countryside and green spaces (Spokes, Ramblers, Horse Riders Midlothian cited).</p>	<p>Noted. The Council shall seek to add the listed groups to its list of contacts, and other identified groups.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
<p>Use of plain English vital in documents.</p>	<p>Noted.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
<p>Important to hold in-person events in Evenings and weekends as well as mid-week so that those without full-time jobs can attend.</p>	<p>Noted. The Council will take this into account in undertaking engagement for MLDP2. The Council has held in person events as part of producing the Evidence Report for MLDP2.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
<p>Concerns about democratic deficit where there is not a Local Place Plan or in cases where community councils are less engaged than others, and how residents of these places will have their views considered prior to issuance of a draft LDP.</p>	<p>Noted. There will be opportunities for individuals and groups to make their views known at further stages throughout the MLDP2 production process (as there was for the Evidence Report). An LPP is a way for a community to articulate proposals for the development and use of land and for that to be taken into account in the preparation of a local development plan. The Council acknowledges the point made. The Council will be engaging with all community councils in MLDP2 production.</p> <p>A text change highlighting this matter is proposed for adding to DPS16.</p> <p>CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
<p>One respondent was not clear if developers and landowners were consulted in the process.</p>	<p>Representative bodies of developers and landowners were consulted on the draft DPS16 and engaged in the MLDP2 Evidence Report preparation. They will be</p>

	<p>engaged throughout the production of MLDP2.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
One respondent content with what is proposed as long as the Council listen and act on relevant ideas.	<p>Noted. The Council will collect views and ideas, and weigh evidence before preparing the MLDP2 Proposed Plan. There are likely to be some disputes arising through this process, which will be heard by independent Planning Reporters at an Examination of the MLDP2 Proposed Plan.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
One respondent considers that the Council should not make decisions on MLDP2 until the Local Access Forum is re-instated.	<p>Having an out-of-date development plan is not in the best interests of Midlothian, The Council considers that on balance it is better to proceed with replacement of the 2017 MLDP, irrespective of the status of the Local Access Forum.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Concerns about how to engage those people who do not access local community groups on social media.	<p>In addition to social media, the Council will use other methods of engagement, as set out in the Participation Statement, including in person events.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Concerns that while Participation Statement looks inclusive, not certain that local people's views will be considered when decisions are made.	<p>The Council will consider all views, but will have to weigh sometimes conflicting needs, so in some cases not every participant will get the outcome they sought. Disputes arising through the process can be heard by independent Scottish Government planning Reporters into a possible Examination into unresolved objections to the MLDP2 Proposed Plan.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Support for 'Call for Ideas' stage.	<p>Noted.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>

More detail would be welcomed regarding engagement of key stakeholders, particularly post Gate Check.	<p>The Council is developing its programme of activities for the next phase of the MLDP2 programme, the 'Call of Ideas', but is unable to give any further detail at this time.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Homes for Scotland considers that it should be identified as a defined home builder representative.	<p>Homes for Scotland role as representative of the builders of the majority of Scotland's new homes is noted.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Homes for Scotland consider that establishing a deliverable housing land pipeline as part of the MLDP2 Proposed Plan is critical to ensuring that the next local development plan is able to deliver the range and quantum of new homes required – wishes to assist the Council in allocating, and de-allocating (where appropriate) future housing sites.	<p>Noted.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Concern that individuals input is not limited into process, and that people not on a Community Council can still be heard. Important that residents have full input throughout the process and not a secondary one once shaped by 'lobby groups'.	<p>There will be opportunities for individuals to make their views known at further stages throughout the MLDP2 production process (as there was for the Evidence Report). Community engagement is not limited to those in community councils.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Question: Do you have any other views on draft Development Plan Scheme 16?	
Summary of Consultation Point Raised	Midlothian Council Consideration of Matter Raised and Response
Considers that engagement with relevant regional enterprise agencies (Scottish Enterprise and adjacent South of Scotland Enterprise) should take place to ensure coordination with regional economic strategies and to enable provision of cross boundary and regionally significant infrastructure (such as transport energy/distribution networks). Considers that there is cross over and of interests between these enterprise agencies in terms of city and region deals (ESES city deal and Borderland IGD) with relevance to the LDP.	<p>Scottish Enterprise is a consultee and been engaged by the Council during MLDP2 Evidence Report production. The Council has not sought engagement with South of Scotland Enterprise, but will seek to add this organisation to the contact list in case there are cross-boundary issues of concern. Scottish Enterprise are the agency with responsibility for covering the Midlothian area.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>

Widespread consultation necessary to have honest planning system in Midlothian.	<p>Council is seeking a wide consultation across Midlothian through MLDP2 production.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Considers that planning service has very fixed views on what is and is not allowed, concern that local input may not be taken into account.	<p>MLDP2 is an opportunity to change planning policy (within confines of national planning regulations and NPF4). Local input will help to shape MLDP2.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Local views should be given precedence over the planning laws currently in place. Considers that planning system/Midlothian struggling to keep pace with changes.	<p>Planning law is determined nationally, but MLDP2 is an opportunity to change and influence how planning policy operates in Midlothian.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Homes for Scotland consider establishing a Site Assessment Methodology will require engagement with them and their members. Consider it vital that every site that is allocated, is delivered within the MLDP2 plan period. Failing to ensure a robust assessment methodology to measure these prospective sites will weaken MLDP2's capacity to deliver the new homes required.	<p>Noted. Dialogue has taken place on the Site Selection Methodology with Housing stakeholders, including with Homes for Scotland amongst others. The Site Selection Methodology will be submitted as part of the Evidence Report to Gate Check to Scottish Ministers for consideration by an appointed Scottish Government planning Reporter.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Homes for Scotland consider adapting the Housing Need and Demand Assessment (HNDA) figure into a Local Housing Land Requirement (LHLR) figure will require significant ongoing engagement with them and their membership. Considers there must be open and transparent dialogue on setting the LHLR, including which other factors should be considered in order that the LHLR exceeds the Minimum All-Tenure Housing Land Requirement (MATHLR) identified in NPF4 for Midlothian.	<p>Noted. Dialogue has taken place on a Midlothian's LHLR with Housing stakeholders, including with Homes for Scotland amongst others. The approach to setting the LHLR will be summarised in the Evidence Report submitted for Gate Check. The indicative LHLR for Midlothian will be determined by Midlothian Council at its 25 June 2024 full Council meeting, and subject to Gate Check thereafter.</p> <p>NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.</p>
Homes for Scotland considers the current HNDA process and toolkit are fundamentally flawed and underestimate the true need and demand for housing.	<p>The comments on the HNDA are noted. These will be matters to be considered further at Gate Check by the Scottish Government Reporter.</p>

Consider that the use of past trends carries the risk of subsuming negative trends. Need to include primary research to identify actual household groups in need and analysis of existing housing stock in terms of its energy efficiency and quality. The HNDA should also undertake research on affordability pressures, ambitions for demographic change, and economic growth. Homes for Scotland would support any primary research that a planning authority may wish to undertake and would expect significant weight be given to any external primary research that is carried out.	NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.
Considers there is no local functioning Access Officer to ensure equal treatment for all interest groups in preparing development plans for the countryside.	The Council has a Land and Countryside service, and internal consultation on relevant parts of the Evidence Report has taken place. Suggestions for additional countryside or outdoor recreation orientated groups to be added to the consultation lists are considered above. NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.
Be clear and use maps when providing information about site options.	The Council expects MLDP2 (including the Proposed Plan and other materials on the spatial strategy) to be map based. NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.
Listen to locals don't just undertake consultation as a tick box exercise.	The Council will assess all of the responses professionally, weigh evidence, and come to conclusions – it will not treat consultation as a tick box exercise. NO CHANGE TO CONSULTATION DRAFT DPS16 PROPOSED.
DPS16 Engagement Process	
Summary of Consultation Point Raised	Midlothian Council Consideration of Matter Raised
Some concern expressed that the DPS16 consultation itself was not circulated widely enough, one respondent considering that every household in Midlothian should have been contacted.	Consultation on the DPS before it is adopted is a new initiative and extends the degree of engagement offered (the engagement remains open all year for further comments to be lodged, which can be taken into account in a future DPS. The DPS is not the plan itself, and the Council

	considers that its approach has been proportionate.
Other points raised not directly related to DPS16	
Summary of Consultation Point Raised	Midlothian Council Consideration of Matter Raised
Considers that planning should take more positive view on allowing spaces for jobs and business. Concern that new housing looks very similar with very few employment opportunities.	Noted. This will be a matter for MLDP2, similar views have been raised in the Evidence Report engagement.
Wishes to point out socio-economic benefits of home building.	Noted.
Several respondents refer to the strains caused by new house building, with reference to capacity of roads, the health system and schools.	Noted. This will be a matter for MLDP2, similar views have been raised in the Evidence Report engagement.
Concern at house builders completing obligations on new sites.	Noted, but this is not a DPS16 matter.
Desire for housebuilders to provide range of house types of properties, allowing people to downsize and remain in their own homes longer.	Noted. This will be a matter for MLDP2, similar views have been raised in the Evidence Report engagement.
Concern at future of Beeslack High School buildings and site when new high school opens, particularly for residents who live on grounds. Noted that site is conservation land and was originally gifted by owners of Aaron House for education, sport and leisure purposes.	Noted. This will be a matter for MLDP2. New style local development plans will be much more 'place focussed' documents and the future of the existing Beeslack campus will be considered through MLDP2.
Infrastructure should be in place before building commences.	Noted. This will be a matter for MLDP2, similar views have been raised in the Evidence Report engagement.
Better bus links needed, more infrastructure and schools provision particularly for new houses.	Noted. This will be a matter for MLDP2, similar views have been raised in the Evidence Report engagement.
Brownfield sites should be considered before building on greenbelt.	Noted. This will be a matter for MLDP2. The proposed housing site selection methodology considers brownfield/greenfield through its assessment criteria.
The greenbelt and woodlands help combat climate change and are necessary for wildlife.	Noted, green belt and woodland are both matters addressed in the Evidence Report

	and will be considered further in MLDP2 spatial strategy.
Council should incentivise developments for brownfield and conversion that provide social, affordable and mid-market housing, not large unaffordable properties on greenfield sites. The way out of the housing crisis is to increase supply whilst mitigating harm.	Noted. These will be matters for MLDP2, similar views have been raised in the Evidence Report engagement.
Concern that there are no concrete plans for a High School at Gorebridge, and at transport links to current provision.	The need for the Gorebridge High School will be considered further in MLDP2, this will depend, among other things, on the level of committed development, the outcome of the sites review, and the quantity and location of new housing required to support a new high school.
Wishes Council to fix the roads.	Noted, but not a matter for DPS16.
Consider that residents should have more say in the planning proposals before communities coalesce into each other.	Noted. Coalescence will be a matter to be considered in MLDP2.
Concern at sewage treatment for the new estates at Hopefield and Cockpen.	Noted. Water and sewage infrastructure will be a matter to be considered in MLDP2.
Considers residents of Midlothian are considered as secondary to the needs of Edinburgh City Council and the desire to develop Midlothian into a dormitory town. Services are being cut despite increasing population. The countryside is disappearing and building is being allowed on prime agricultural land with wildlife habitats being destroyed or adversely affected.	Noted. These will be matters for MLDP2, similar views have been raised in the Evidence Report engagement.
Scottish Coalmining Preservation Society wish to progress proposals relating to the National Mining Museum, wider environs and opencast coal extraction.	Noted, the MLDP2 preparation process includes a Call for Ideas stage where new proposals can be put to the Council.



Development Plan Scheme 16

April 2024

Midlothian Local Development Plan 2



Contents

What is a Development Plan Scheme?	1
What is the Midlothian Development Plan?	1
Changes in Timetable Since DPS15.....	1
Midlothian Local Development Plan 2 Timetable.....	2
What is involved at each stage of preparation?	4
What has happened with MLDP2 over the last year?	5
Programme for Impact Assessments to Support Preparation of MLDP2.....	5
Local Place Plans	6
Participation Statement.....	7
Have Your Say	10
Contact Us.....	10



Development Plan Scheme 16

What is a Development Plan Scheme?

1. This is the Development Plan Scheme Number 16 (DPS16) for Midlothian. The DPS sets out Midlothian Council's programme for preparing the next Midlothian Local Development Plan (MLDP2). The DPS also includes a Participation Statement, which outlines future engagement on MLDP2.
2. The Development Plan Scheme was subject to engagement before it was approved by Midlothian Council. The Council still wishes to receive further comments and views on the DPS, including the Participation Statement and planned engagement activities. See the 'HAVE YOUR SAY' section on page 10 for further information on how to get involved. Comments received will be considered during MLDP2 preparation in the coming year and, where relevant, in production of DPS17 in 2025.

What is the Midlothian Development Plan?

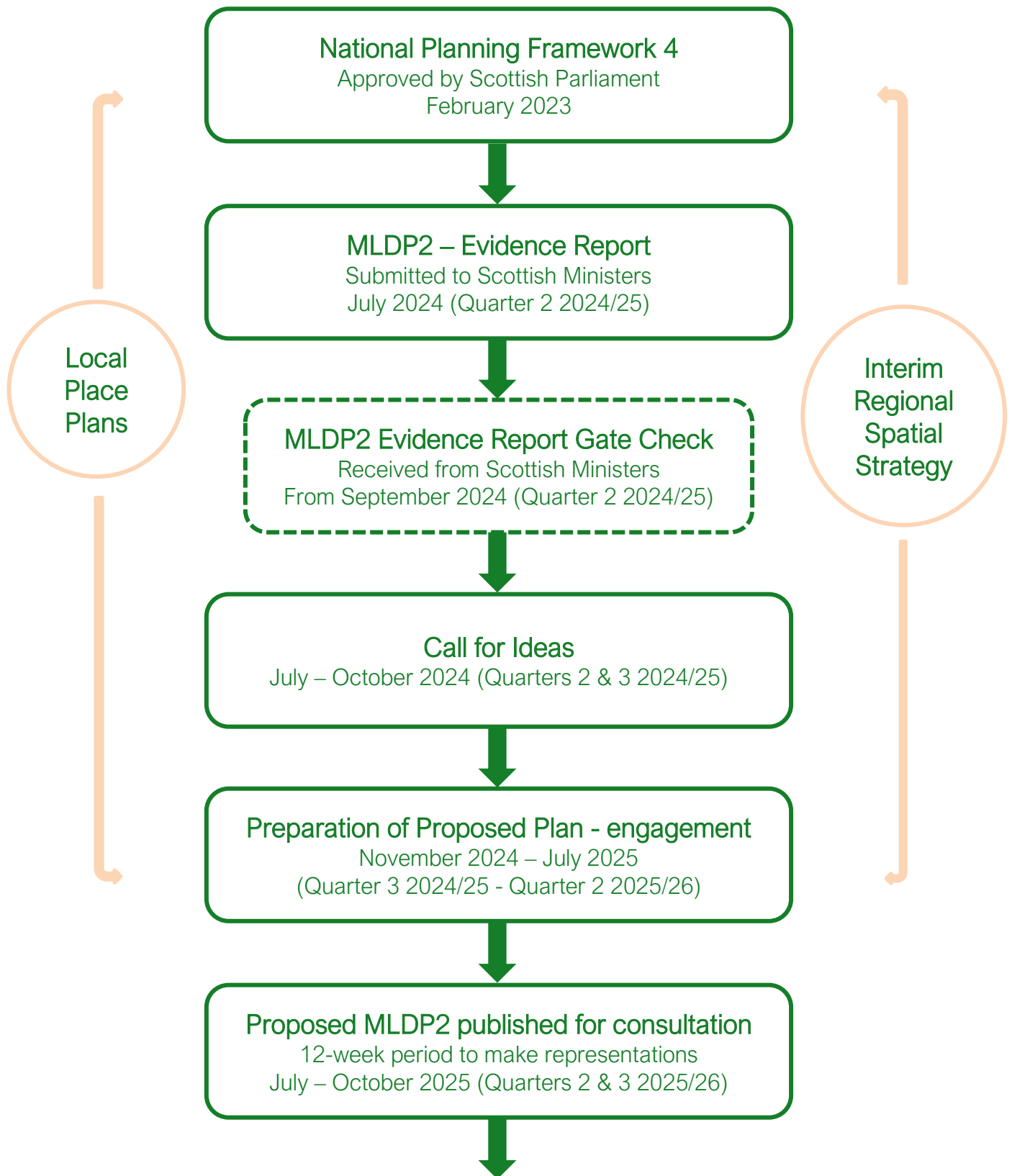
3. The approved development plan for Midlothian is the [National Planning Framework for Scotland 4 \(NPF4\)](#) and the [Midlothian Local Development Plan 2017 \(MLDP 2017\)](#). Copies of MLDP 2017 can also be viewed at any Midlothian Council Library. Development Plans allocate land for development, contain policies for assessing applications for planning permission and guide the future development of the area.
4. Approved Supplementary Guidance forms part of the Local Development Plan and is available to view [here](#). Midlothian Council does not intend bringing forward further Supplementary Guidance to help inform implementation of MLDP 2017. The Council will reflect on how the existing guidance will be taken forward through MLDP2.

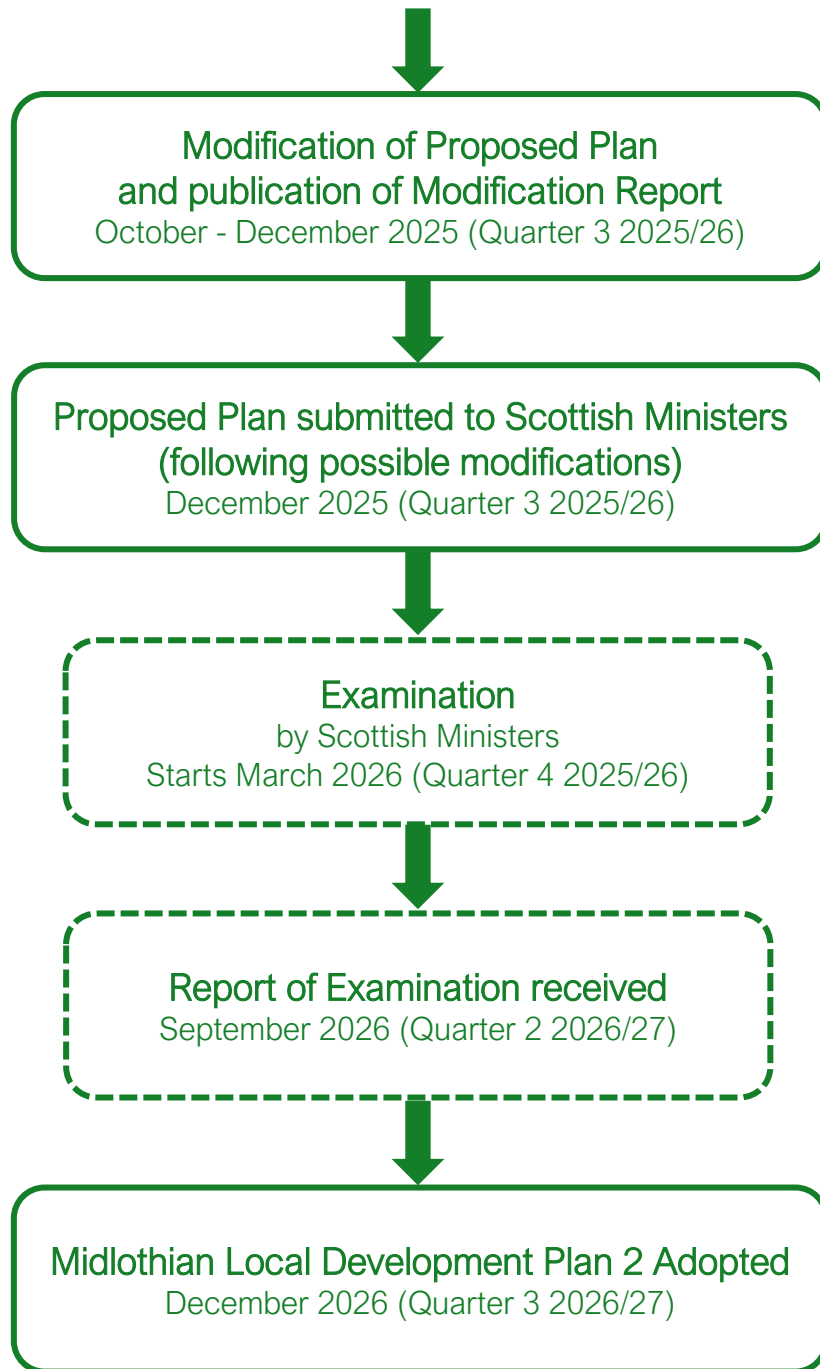
Changes in Timetable Since DPS15

5. The date for submission of the Evidence Report for "Gate Check" has been put back from January 2024 (the date identified in DPS15) to July 2024. This is because it has taken the Council longer than envisaged to engage with interested parties and gather, weigh and present evidence. The Gate Check process is undertaken by the Scottish Government Planning and Environmental Appeals Division (DPEA). The process is intended to check if a planning authority, Midlothian Council in this instance, has collected sufficient information on which to base preparation of its next local development plan.
6. The target date for completion of the Evidence Report following the Gate Check process has been put back to September 2024. DPS16 also identifies time for a 'Call for Ideas' exercise and further engagement as part of preparation of MLDP2. The publication of the Proposed Plan for public consultation has been put back 4 months to July 2025, with a 12-week period until the start of October 2025 to make representations. It is still intended to adopt MLDP2 in December 2026.



Midlothian Local Development Plan 2 Timetable





What is involved at each stage of preparation?

7. Evidence Report Preparation: The purpose of this stage is to gather the evidence required to prepare the plan. In preparing the Evidence Report, Midlothian Council has sought views from the public, Community Councils, children and young people, disabled people, and gypsies & travellers and other stakeholders. Site specific matters should not be included. Although the focus is on evidence, the Evidence Report is required to make an important decision for MLDP2, by setting out the Local Housing Land Requirement (LHLR) for the area. Work has been done to help identify an LHLR for MLDP2.
8. Evidence Report Gate Check: The purpose of the Gate Check is to consider and determine whether the Council has collected sufficient evidence and information to prepare MLDP2. The Gate Check is carried out by appointed Reporter(s) from the Scottish Government's Planning and Environmental Appeals Division (DPEA). It will focus on areas where Evidence is disputed.
9. Call for Ideas: The Council will carry out a 'Call for Ideas' open to everyone to propose ideas for any aspect of the plan, including potential development sites. To ensure that the MLDP is adopted as programmed it is proposed to commence the 'Call for Ideas' while the Gate Check is underway.
10. Proposed Plan Preparation: The Proposed Plan will include a development strategy, planning policies, and identify allocations of land for development. It will differ in content and style from the adopted MLDP 2017. Reforms to the Planning system mean that MLDP2 should not replicate policies in NPF4 and focus more on local circumstances where appropriate. Supplementary Guidance can no longer be produced. Therefore, decisions will be required on what goes in MLDP2 itself, and what might go into planning guidance. MLDP2 will be a more visual and map-based document and contain greater information on what is likely to happen at particular sites and localities.
11. To prepare the Proposed Plan, information from the Evidence Report, Local Place Plans and the Call for Ideas will be used. The Council will use these to develop a spatial strategy and set out some key policy approaches. There will be further engagement on the spatial strategy and other emerging elements of the Proposed Plan, in advance of its publication for representations. This is detailed further in the Participation Statement.
12. Proposed Plan Publication: Approval will be sought from the full Council, to publish the Proposed Plan and to commence a 12-week period to lodge representations on the document. This is identified in the timetable of this DPS16. The Council will undertake wide publicity for this publication as well as notifying persons who have indicated an interest in the MLDP.
13. Potential Modification of Proposed Plan: On consideration of received representations, the Council may decide that there is a case for modifying the Proposed Plan. In this case a Modification Report will be prepared setting out modifications made and the reasons for making them.
14. Submission of Proposed Plan to Scottish Ministers: Where there are representations not resolved, the Council will request that the Ministers appoint a person to examine the Proposed Plan and these unresolved representations.
15. Examination: The Examination is the opportunity for independent consideration (by a Scottish Government appointed DPEA Reporter) of any issues raised during the formal consultation on the Proposed Plan that have not been resolved through modifications. The format of the Examination is unknown. It may vary to that which was in place for MLDP 2017, which included a hearing session



on one topic, with other matters considered through written submissions. As well as considering the contents of the Proposed Plan, the Reporters will consider whether the requirements of the Participation Statement have been met.

16. Adoption of MLDP2: On receiving the Examination Report, the planning authority are to make modifications to the Proposed Plan as recommended by the appointed Scottish Government Reporter(s). There are limited grounds for declining to make a modification. A report on the modifications will be prepared and advertised, and Scottish Ministers informed.

What has happened with MLDP2 over the last year?

17. Midlothian Council has been preparing its Evidence Report. Engagement was carried out in Summer and Autumn 2023 with Midlothian's communities and with stakeholders in specific subject areas to collect relevant information. Subject to approval at the meeting of Midlothian Council on 25 June 2024, the Evidence Report will be submitted to the DPEA at the Scottish Government for Gate Check.
18. Midlothian Council has established a list of individuals seeking self-build housing. This is housing where a person commissions or is personally involved in the design and construction of a dwelling that is intended to be the individual's main residence.
19. The Self-Build Housing Register may be found on the Council's website and accessed through the following link.
https://www.midlothian.gov.uk/info/205/planning_policy/775/self-build_housing_register
20. Following the issue in March 2023 of an invitation to known community bodies to prepare Local Place Plans (LPP), Midlothian Council has assisted bodies in their production of the documents. This has been done through provision of an LPP 'starter pack' setting out information on LPPs, answering queries and requests, and attending meetings with community bodies on LPPs.

Programme for Impact Assessments to Support Preparation of MLDP2

21. A number of different assessments must be undertaken to support the preparation of MLDP2. These are:
- Strategic Environmental Assessment.
 - Habitats Regulations Appraisal.
 - Equalities Impact Assessment.
 - Public Sector Equality Duty Assessment; and
 - Fairer Scotland Duty Assessment.
22. The Strategic Environmental Assessment (or SEA) of MLDP2 will look at policies or programmes and will seek to identify whether or not the policy or programme is likely to have significant environmental effects. The aim of the SEA process is to help avoid significant negative effects and maximise beneficial effects of the MLDP2.
23. A SEA scoping report and baseline environmental information will accompany the Evidence Report. The Scoping Report has been prepared in conjunction with the relevant Statutory Authorities, the SEA Gateway (SEPA, NatureScot and Historic Environment Scotland).



24. An Environmental Report (ER) will be prepared at MLDP2 Proposed Plan stage to review the policies and allocations of the Proposed Plan (including an assessment of reasonable alternatives to any proposed policies and allocations in the Proposed Plan). The ER will be published alongside the Proposed Plan for consultation. If the Council decide to make modifications to the Proposed Plan, the ER will be reviewed to assess the impact of the changes on the environment. The ER will be submitted to the DPEA alongside other relevant documents for any Examination into unresolved objections to the Proposed Plan. If modifications to the Proposed Plan are required, the ER will be revised.
25. A Habitats Regulations Assessment will be carried out at Proposed Plan stage once any development site allocations and policies are identified. This will involve screening to determine whether the Proposed Plan is likely to have significant effects on the defined habitat sites (i.e. identified protected European nature conservation sites). Where the potential for such effects cannot be excluded, an appropriate assessment of the implications will be carried out. This assessment will be revised if required depending on the nature of any modifications made to the plan.
26. The Equalities Impact Assessment, Public Sector Equality Duty Assessment and Fairer Scotland Duty Assessment will be considered by Midlothian Council under an approach known as Integrated Impact Assessment.
27. Scoping for the Integrated Impact Assessment (IIA) has taken place at Evidence Report stage. The assessment will be undertaken at the MLDP2 Proposed Plan stage when policies and allocations are known. The IIA will be revised to take into account any changes resulting from modifications to the Proposed Plan before and after the Examination of the Proposed Plan.

Local Place Plans

28. In March 2023, Midlothian Council issued an invitation to known Midlothian community bodies to prepare Local Place Plans. The Council has received eight draft LPPs. They are all from Midlothian community councils and are listed below:
- Bonnyrigg and District Community Council
 - Damhead and District Community Council
 - Eskbank and Newbattle Community Council
 - Gorebridge Community Council
 - Mayfield and Easthouses Community Council
 - Newtongrange Community Council
 - Rosewell and District Community Council
 - Roslin and Bilston Community Council
29. These LPPs have been very helpful for informing production of the Evidence Report. The Council has timetabled taking LPPs to the 30 April 2024 Planning Committee with, where appropriate, recommendations for registering LPPs. The Council shall engage closely with Community Councils, and will seek to ensure that communities that do not have an LPP are fully engaged in the process.

Participation Statement

30. A Participation Statement sets out how, when and with whom the Council will consult and engage on when preparing its Development Plan. Prior to adoption of MLDP2, at the Examination stage of plan production, Reporters from the DPEA, appointed by Scottish Ministers, will review the Council's engagement activities to see that they match what the Council said it would do in the Participation Statement.
31. Engagement is at its most effective at the early stages of plan preparation. Within the framework of the new planning system, the Council will seek to maintain open channels of communication so that a wide range of ideas on policy can be exchanged in advance of publication of the Proposed Plan. Interested parties are and will continue to be encouraged to register an interest with the Council so they can be updated as the plan is developed.
32. As DPS16 was being prepared, the Council was finalising its Evidence Report for DPEA Gate Check. The next steps of MLDP2 preparation and how engagement will occur are listed below and further details are provided in the table.
- DPEA Gate Check of Midlothian Council Evidence Report.
 - Call for Ideas.
 - Engagement for preparation of Proposed Plan.
 - Publication of Proposed Plan.
 - Modification of Proposed Plan (if required).
 - Examination into unresolved objections (if required); and
 - Adoption of MLDP2 by Midlothian Council.

Table 1

Activity	What engagement activities do we plan?	Timescale
DPEA Gate Check of Midlothian Council Evidence Report	This is not a time of engagement, unless the appointed Scottish Government Reporter(s) requests the Council submits further information that would require the Council to contact other parties. The engagement would be targeted and not open to all parties.	July - September 2024 (Quarter 2 2024/2025)
Call for Ideas	We will prepare information to help stimulate ideas. Invitations to contribute will be sent to all registered interested parties. The Call for Ideas will be placed on the Council's website, in Council libraries and publicised through Council social media. The Planning Service will seek to identify other parties who may wish to contribute and extend invitations to contribute to them.	July - October 2024 (Quarters 2 and 3 2024/2025)



Engagement for preparation of Proposed Plan	<p>Using the Evidence Report, Local Place Plans and information from the Call for Ideas, the Planning Service will prepare a spatial strategy and other early outlines of its Proposed Plan. This may also include reasonable alternatives as the content of the plan will still be emerging at this stage.</p> <p>Notification of the engagement activities will be sent to all registered interested parties.</p> <p>Engagement will occur with Children and Young People. The Planning Service will notify schools, youth Councils and youth parliament representatives and seek access to schools, colleges and youth clubs to discuss the emerging proposals in the Proposed Plan.</p> <p>The Planning Service will hold engagement events in the main communities in Midlothian.</p> <p>The Planning Service will seek to engage with identified communities of interest (for example the business community) and those identified in Planning legislation.</p> <p>The Planning Service will seek to engage with Midlothian Community Councils on the emerging Proposed Plan</p>	November 2024 - July 2025 (Quarters 3 and 4 2024/25, 1 and 2 2025/26)
Publication of Proposed Plan	<p>This will be a minimum 12-week period in which to lodge formal representations on the published Proposed Plan.</p> <p>This will be an opportunity to respond formally to the content of the Proposed Plan and the Strategic Environmental Assessment (SEA) Environmental Report.</p> <p>The Proposed Plan will be published on the Council's website, placed in Council libraries, the Council's main office, and publicised through Council social media channels. An advertisement will be placed in the local paper, the Midlothian Advertiser.</p> <p>Notification will be sent to registered interested parties, all Midlothian Community Councils and to Scottish Government identified Key Agencies, Scottish Ministers, adjoining planning authorities to the plan area, and the Green Action Trust.</p>	July - October 2025 (Quarter 2 and 3 2025/26)

	<p>The Planning Service will notify neighbours that may be significantly affected by development allocation proposals.</p> <p>The Planning Service will notify children and young people and representative organisations.</p> <p>The Planning Service will also seek to notify further and higher education establishments, parents and carers, and families with young children; disabled persons; and Gypsies & Travellers.</p>	
Modification of Proposed Plan (if required)	<p>Following the 12-week consultation period on the Proposed Plan, the Planning Service may modify the plan. This would be done through a Modification Report.</p> <p>There may be some degree of direct liaison with respondents to identify satisfactory changes and modifications that could be made to resolve their objections to the Proposed Plan. The Council will consider the degree of further engagement required depending on the scale of any modifications.</p> <p>If modifications are made, a Modification Report will be published setting out the modifications and the reasons for making them. There is no opportunity for engagement comment on the Modification Report once it is produced.</p>	December 2025 (Quarter 3 2025/26)
Examination into unresolved objections to Proposed Plan	<p>The form of the Examination will be led by the appointed DPEA Reporter but may include a hearing session. The Planning Service will advertise the Examination in a local newspaper, the Midlothian Advertiser, in Council libraries, and notification will be sent to registered interested parties who made representations to the Proposed Plan.</p> <p>The Reporter will publish an Examination Report, including recommendations for modifications to the proposed Local Development Plan. This will inform those who have made representations of how these have been addressed at Examination and about the recommended further modifications to the Proposed Plan.</p> <p>A Modification Report will be issued by the Council to inform communities and interested parties of the modifications made in response</p>	Commencing March 2026 (Quarter 4 2025/26)

	to representations made on the Proposed Plan, or a Direction from Scottish Ministers on the content of the Proposed Plan.	
Adoption of MLDP2	<p>The Planning Service will publish MLDP2 and associated documents, and place them on the Council's website, at libraries and at the Council's main office.</p> <p>It will be publicised through all Council social media channels and through an advertisement in the local paper, the Midlothian Advertiser.</p>	December 2026 (Quarter 3 2026/27)

Have Your Say

33. Midlothian Council wishes to receive your comments and views on DPS16.

- A. Do you have any views on our proposed timetable for MLDP2?
- B. Do you have any views on our proposed Participation Statement and engagement activities?
- C. Do you have any other views on Development Plan Scheme 16?

Comments can be submitted to the Council to be taken into account in the next DPS in 2025 - DPS17. This can be done:

Online by completing our survey <https://midlothiancouncil.citizenspace.com/>

By email to ldp@midlothian.gov.uk

Or by writing to Midlothian Council, Planning Sustainable Growth and Investment Service, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3AA.

Contact Us

34. If you have any questions about the Local Development Plan or this Development Plan Scheme, please get in touch.

by email to ldp@midlothian.gov.uk

or by writing to Midlothian Council, Planning Sustainable Growth and Investment Service, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3AA.

Please provide us with an email contact address if you wish to be informed of future events and progress with Midlothian Local Development Plan 2.



COMMUNICATING CLEARLY

We are happy to translate on request and provide information and publications in other formats, including Braille, tape or large print.

اگر آپ ہم سے درخواست کریں، تو ہم آپ کو معلومات اور شائع شدہ مواد کی کاپیاں، بشمول بڑے حروف، بریل اور ٹیپ کی شکل میں فراہم کر سکتے ہیں۔

Zapewnimy tłumaczenie na żądanie oraz dostarczymy informacje i publikacje w innych formatach, w tym Braillem, na kasiecie magnetofonowej lub dużym drukiem.

ਅਸੀਂ ਮੰਗ ਕਰਨ ਤੇ ਖੁਸ਼ੀ ਨਾਲ ਅਨੁਵਾਦ ਅਤੇ ਜਾਣਕਾਰੀ ਤੇ ਹੋਰ ਰੂਪ ਵਿੱਚ ਪ੍ਰਕਾਸ਼ਨ ਪ੍ਰਦਾਨ ਕਰਾਂਗੇ, ਜਿਨ੍ਹਾਂ ਵਿੱਚ ਬਰੇਲ, ਟੇਪ ਜਾਂ ਵੱਡੀ ਛਪਾਈ ਸ਼ਾਮਲ ਹਨ।

Körler için kabartma yazılar, kaset ve büyük nüshalar da dahil olmak üzere, istenilen bilgileri sağlamak ve tercüme etmekten memnuniyet duyuyoruz.

اگر آپ چاہیں تو ہم خوشی سے آپ کو درخواست کردہ معلومات اور شائع شدہ مواد دیگر شکلوں میں مثلاً بریل (تاج الفراء کے لیے) بڑے حروف کی کاپیاں (میں) ٹیپ پر یا بڑے حروف کی کاپیاں میں فراہم کر سکتے ہیں۔



SHORT-TERM LETS AND THE PLANNING SYSTEM

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform the Committee of the role the Planning System has in regulating, or not, short-term lets. The report was requested by the Council's Local Review Body (LRB) at its meeting of 25 March 2024.

2 BACKGROUND

- 2.1 A short-term let is a form of temporary transitional accommodation, usually used for tourist or business visitors, it is not interpreted as being a more permanent form of accommodation or someone's primary residency. It is unusual for short-term lets to be built new and as a consequence they often result from a change of use from a dwellinghouse or flat. This change *may* trigger the need for planning permission.
- 2.2 The Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 and Planning (Scotland) Act 2019, hereafter referred to as the Act, defines the meaning of development as ... the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land ... (subject to further clarifications and exemptions). The significance of this is that changing the use of a dwellinghouse or flat to a short-term let is considered development triggering the need for planning permission if it constitutes a *material change in the use of any buildings or other land* - this is not a straightforward judgment and is based on a fact and degree assessment of the specific circumstances related to the individual case. In considering such a case officers will weigh up matters such as: the occupation patterns of the property; the occupation impact on neighbours and the local area in terms of traffic movements and disturbance; and physical changes to the property.
- 2.3 The assessment is a matter of professional judgement and would more specifically consider: the type of property; the characteristics of the area it is located in; the number of bedrooms; the maximum number of guests it could accommodate at any one time; parking provision arrangements (if any); self-check in time facility (e.g. 24/7 or late at night); potential noise disturbance and increased comings and goings. If these environmental effects would be considered to be in excess of those that would ordinarily be generated by the sole use of that type/size of property as a dwellinghouse, that change of use

would be material in planning terms and would require planning permission from the Council.

- 2.4 In making that judgement, planning officers also take a precautionary approach. That means the need for planning permission from the Council, or otherwise, is based both on the information initially supplied and any additional information that is considered necessary and requested. The advice provided is also without prejudice - in instances where a planning application is not required, it is made clear that should any details change or complaints be received, the planning position will be re-visited. That approach therefore provides additional planning controls and also raises a risk of enforcement action being taken.
- 2.5 Section 26B of the Act and the Short-Term Lets Control Area Regulations came into force on 1 April 2021. The Control Area Regulations were amended by The Town and Country Planning (Short-Term Let Control Areas) (Scotland) Amendment Regulations 2022. These regulations gave Councils the power, if they wished to exercise them, to establish Control Areas, which in planning terms determines all changes of use to a short-term let are material changes of use requiring planning permission - effectively removing the need to decide if the change of use is material. Such Control Areas were conceived by the Scottish Government to assist Councils in the regulation of such uses where they are collectively causing changes in the character of a particular area, part of a town centre or street. The Council as the local planning authority does not have any evidence of there being an over provision of Short-Term Lets within any of our town centres. Nor is there any evidence of any clusters of Short-Term lets concentrated elsewhere within Midlothian. As such, there is no current need to designate and implement any Short-Term let Control Areas within Midlothian. However, that position will be kept under review. That being in contrast to, for example, parts of Edinburgh and Glasgow where there are a very large number of concentrated Short-Term lets. That situation has led to considerable noise and disturbance issues for local residents. It has also had negative effects on the provision of properties available for sale and for long term rent. In that type of situation, the implementation of Short-Term let Control Areas would be appropriate. As such, each change of use consideration within Midlothian is treated on its own merits.
- 2.6 Additional guidance on short-term lets is provided in the Scottish Governments Circular 1/2023: Short-Term Lets and Planning.

3 WHAT IS A SHORT-TERM LET

- 3.1 Consideration of whether the change of use is material in any particular case may include, but is not restricted to, matters such as the impact on immediate neighbours, the wider local amenity and local infrastructure of the proposed use in the proposed location.
- 3.2 Section 26B of the Act, and the Control Area Regulations define a short term let for the purposes of the control areas (which by default can also be used to

assist in the judgement of whether a change of use has taken place outwith a control area):

Section 26B(3) excludes:

- private residential tenancies under section 1 of the Private Housing (Tenancies) Scotland Act 2016; and
- tenancies of a dwellinghouse or part of it where all or part of the dwelling house is the only or principal home of the landlord or occupier

Regulation 2 of the Control Area Regulations defines a short-term let as provided where all of the following criteria are met:

- a) sleeping accommodation is provided in the course of business to one or more persons for one or more nights for commercial consideration,
- b) no person to whom sleeping accommodation is provided in the course of business is **an immediate family member** of the person by whom the accommodation is being provided,
 - a) the accommodation is not provided under an **excluded tenancy** (see below)
- c) the accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household,
- d) the accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties, and
- e) the accommodation is not **excluded accommodation** (see below)

An **immediate family member** includes parents, grandparents, children, grandchildren and siblings on both sides of a relationship of marriage, civil partnership or where the couple live together as if they were married. This definition also treats children with one parent in common as siblings and stepchildren as children.

Excluded tenancy means a tenancy which is –

- a 1991 Act tenancy
- a modern limited duration tenancy
- a short limited duration tenancy
- a student residential tenancy
- a tenancy of a croft
- a tenancy of a holding outwith the crofting counties to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies.

Excluded accommodation means a dwellinghouse which is, or is part of—

- residential accommodation where personal care is provided to residents,
- a hospital or nursing home,
- a residential school, college or training centre,
- secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-

- term holding centre, secure hospital, secure local authority accommodation or accommodation used as military barracks),
- a refuge,
- student accommodation,
- premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005(7) has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act.”.

- 3.3 In determining if a material change of use has occurred the leading court judgement comes from the court case of *Moore v SSCLG* [2012], confirming that whether the use of a dwelling house for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, with the answer depending upon the particular characteristics of the use as holiday accommodation. There should never be an assumption that the use of a dwellinghouse as holiday accommodation will always amount to a material change of use or that use of a dwellinghouse. Or, that commercial lettings can never amount to a change of use. In *Moore*, the court held that an inspector (English equivalent of a Reporter) had not fallen into the error of assuming that any use for holiday letting amounted to a material change of use and had carefully examined the characteristics of the lettings of a large house rented out through a company for short-term holiday lets and concluded that, as a matter of fact and degree, they were a material change of use from the permitted use as a dwellinghouse. The inspector had noted that “there are a number of distinct differences between the current use and use of the appeal property as a family dwellinghouse. Notably, the pattern of arrivals and departures, with associated traffic movements; the unlikelihood of occupation by family or household groups; the numbers of people constituting the visiting groups on many occasions; the likely frequency of party type activities, and the potential lack of consideration for neighbours”. The court judgment stated that on the facts of the case, the inspector had reached the correct conclusion and as a matter of common sense, this particular use for holiday lettings was very far removed from the permitted use as a dwelling house and a material change of use had taken place.

4 LICENSING

- 4.1 In addition to the requirements of the Planning System short-term lets are also regulated by license. From the 1 October 2023, all short-term lets require a licence to operate. The Short Term Let scheme was introduced by The Civic Government (Scotland) Act 1982 (Licensing of Short term Lets) Order 2022 and the associated Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms.
- 4.2 A licence can be granted for up to three years after which it requires renewal. Before accepting bookings, new operators should obtain a licence. They must display a public site notice for 21 days from the date of application and submit the below supporting documentation to the Council for consideration:

- A floor plan;
- A fire safety risk assessment;
- An electrical installation condition report;
- A portable appliance testing report;
- A gas safety certificate;
- A legionella risk assessment; and
- Building and public liability insurance

4.3 The applicant must ensure to comply with all licence conditions throughout the licence period. Midlothian Council apply the standard national conditions (relating to safety requirements, the provision of services and regulation compliance) plus an additional one requiring the prevention and resolution of antisocial behaviour.

4.4 In many cases the need to secure a license for an existing short-term let is triggering the need to apply for planning permission retrospectively on the basis that applicants are being advised of the potential requirement for planning permission.

5 ASSESSMENT OF A PLANNING APPLICATION

5.1 Under Scottish planning legislation (the Act), planning applications are determined in accordance with the development plan (National Planning Framework 4 (NPF4) and Midlothian Local Development Plan (MLDP)), unless there are material considerations that justify a departure from the development plan. Where a change of use from a dwellinghouse or flat to a short-term let is considered material, a planning application will be required.

5.2 What is and is not a material planning consideration is not set out in legislation, although there is guidance in Circular 3/2013 Development Management Procedures and clarification on specific matters can be taken from relevant court hearings and appeal decisions. This means that what constitutes a material planning consideration is a question of what is relevant to the consideration of a particular case. Each planning application is considered on a case-by-case basis; decisions made in other cases are not automatically relevant to consideration of any particular case. Only those material planning considerations that apply to that particular application can be considered in determining whether it is approved or not.

5.3 NPF4 forms part of the statutory development plan against which planning applications are determined. Policy 30 on Tourism sets out at paragraph (e) that development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in: (i) an unacceptable impact on local amenity or the character of a neighbourhood or area; or (ii) the loss of residential accommodation where such loss is not outweighed by demonstrable local benefits.

- 5.4 The MLDP does not have a bespoke policy covering short-term lets and as such planning applications are assessed against general amenity-based policies with the emphasis being on the protection of local amenity.
- 5.5 The Council's LRB at its meeting of February 2024 determined to grant planning permission for a change of use from dwellinghouse (class 9) to short-term let (sui generis) at 27 Eskview Grove, Dalkeith and at its meeting of March 2024 determined to grant planning permission for a change of use from long term let (class 9) to short-term let (sui generis) at 8 Springfield Place Roslin. The decisions were based on the proposition that the use does not have a detrimental impact on local amenity and contributes to local tourist and business needs. Furthermore, the LRB intermated that the Council should consider managing any detrimental impact on amenity via the licensing regime rather than the planning application process and as such the policy should be one of a presumption in favour of the development. In response planning officers will take a position that reflects the presumption in favour of short-term lets unless there is substantial evidence to support a refusal of such applications on the basis of detrimental impact on amenity.

6 RECOMMENDATION

- 6.1 The Committee is recommended to note the contents of the report.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 19 April 2023
Contact Person: Peter Arnsdorf
peter.arnsdorf@midlothian.gov.uk

Background Papers:

1. Scottish Governments Circular 1/2023: Short-Term Lets and Planning.
2. Circular 3/2013 Development Management Procedures.
3. The Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 and Planning (Scotland) Act 2019
4. The Town and Country Planning (Short-Term Let Control Areas) (Scotland) Regulations 2021 and The Town and Country Planning (Short-Term Let Control Areas) (Scotland) Amendment Regulations 2022.
5. National Planning Framework 4.
6. Midlothian Local Development Plan.
7. The Civic Government (Scotland) Act 1982 (Licensing of Short term Lets) Order 2022 and the associated Supplementary Guidance for Licensing Authorities, Letting Agencies and Platforms.



TREE PRESERVATION ORDER (2 of 2024) REGARDING LAND NORTH OF THE OLD GOLF HOUSE, NEWBATTLE, DALKEITH

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's approval to confirm a Tree Preservation Order (TPO) 2 of 2024 issued on 18 January 2024 regarding one group of trees (G1) at land north of the Old Golf House, Newbattle, Dalkeith.

2 LOCATION AND SITE DESCRIPTION

- 2.1 The group of trees, G1, is located on land north of Old Golf House, Newbattle, Dalkeith and south of houses on the southern side of Newbattle Abbey Crescent. The land lies west of, and adjacent to, Newbattle Road (B703) and approximately 100 metres from the entrance to Newbattle Abbey. The site is within the Newbattle Conservation Area, is part of the Newbattle Abbey site as listed in the Inventory of Gardens and Designed Landscapes and is within the Newbattle Strategic Greenspace Safeguard.
- 2.2 The group of trees comprises a small strip of semi mature broadleaf woodland (Oak, Lime, Sycamore, Beech, Ash, Wych Elm, Laurel) that widens out at its eastern end to form a triangular piece of land. The site is bound to the south by a linear group of dwellings, namely Old Golf House, which lies immediately adjacent the site, The Mill and Barondale House. Barondale Cottages are also in the same cluster of dwellinghouses. The River South Esk is located approximately 75 metres to the south of the site, separated by the aforementioned dwellings. To the north the site is bound by an access track with with contemporary properties (constructed in the second half of the 20th century) at Newbattle Abbey Crescent beyond.
- 2.3 The tree group is clearly visible from Newbattle Road (B703), from users of core path 4-47/1 and from the dwellings adjacent to the site, including The Stables and Riverside Cottage (both listed buildings) on the east side of Newbattle Road.

3 BACKGROUND

- 3.1 At its meeting in November 2023 the Committee considered a report regarding the wilful destruction of trees within the Newbattle Conservation

Area and the non-compliance with a planning contravention notice issued in relation to land adjacent to Old Golf House, Eskbank, Dalkeith and the Committee determined to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action pursuant to Sections 126 and 172 of the Town and Country Planning (Scotland) Act 1997 as amended. This action is ongoing (A copy of the November Committee report is attached as Appendix A for quick reference).

- 3.2 In December 2023 Council officers were advised that holes had been drilled into a number of trees and weedkiller poured into the holes. On inspection of the site, 10mm drilled holes were found towards the base of the stem of a number of trees, at least 12 trees, and a 5-litre pressure spray bottle with spray lance containing pink liquid was found on the site.
- 3.3 On Monday 8 January 2024 the Council received a tree condition survey and covering letter regarding the site, which proposed works to trees including felling and pruning of trees for reasons of health and safety or structural reasons, and the removal of ivy attached to trees to allow for further inspection. A subsequent work to tree application (24/00050/WTT) was registered by the Council on 12 January 2024 – this application set out an intention to carry out felling and pruning works on site. The Council considered that the proposed works are likely to be detrimental to the landscape amenity of the Newbattle Conservation Area, the Newbattle Abbey Gardens and Designed Landscape and the setting and amenity of adjacent dwellings, without recourse to secure replacement planting. As a consequence, an emergency TPO was issued to take effect on 18 January 2024 – on this basis any support for a work to tree application can secure replacement planting.
- 3.4 The site of the TPO is not the subject of a planning application.
- 3.5 The TPO came into effect on 18 January 2024 and continues in force for six months (until 18 July 2024) or until the Order is ‘confirmed’, which is the process of making the TPO permanent (until it is removed).
- 3.6 Following the service of the TPO the landowners were given the opportunity to make representation. Furthermore, in accordance with the Regulations, a notice was published in the Midlothian Advertiser and on the Council’s website and the Eskbank and Newbattle Community Council and Scottish Forestry were also notified of the decision to issue the TPO and invited to make a representation.
- 3.7 The Council also notified the following neighbours of the TPO:
 - 1-2 Barondale Cottages;
 - 1-5 The Stables;
 - Barondale House;
 - Old Golf House;
 - The Mill; and
 - 1-3 and 13-19 Newbattle Abbey Crescent.

- 3.8 Newbattle Abbey was also notified due to the location of the site within the Newbattle Abbey Gardens and Designed Landscapes listing.
- 3.9 Interested parties were given until 29 February 2024 to make representations. Legislation requires that a period of at least 28 days is made available for representation to be submitted to the Council following a decision to make a Tree Preservation Order. One representation from an interested party was received.

4 PROCEDURES

- 4.1 The provision for issuing a Tree Preservation Order is set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010. A planning authority may make a TPO if it appears to them to be “expedient in the interest of amenity and/or that the trees, groups of trees or woodlands are of cultural or historic significance” (Scottish Government Planning Circular 1/2011: Tree Preservation Orders).
- 4.2 Following the service of a TPO the owner of the land and other interested parties have the opportunity to make representation. However, there is no right of appeal against a TPO.
- 4.3 The TPO shall be in effect for six months, during which time representations from the owner of the land and other interested parties will be considered. If the local planning authority wishes the TPO to stay in effect beyond the six months, it must ‘*confirm*’ the order.

5 PLANNING ISSUES

- 5.1 The emergency TPO was made to protect local amenity and the character of the area. The trees within Group 1 are predominantly semi-mature and are important for the following reasons:
- The trees contribute to the character, amenity, and landscape setting of Newbattle Abbey including the listed buildings and the associated landscape which is included on the Inventory of Gardens and Designed Landscapes;
 - The trees contribute to the character and amenity of the Newbattle Conservation Area;
 - The trees contribute to the character and amenity of the River South Esk riparian woodland corridor, which is important for its biodiversity value and as a green network connection; and
 - The trees provide separation between older buildings on the bank of the River South Esk, including Old Golf House and the more contemporary residential properties of the Newbattle Abbey Crescent development.

- 5.2 The confirming of the TPO will be an important tool in perpetuating tree canopy cover in the area in order to help address the climate emergency, protecting the trees for their amenity and place functions/value, and preserving local biodiversity and habitat connectivity.

6 REPRESENTATIONS

- 6.1 The Council received one representation supporting the issuing of the TPO which is in broadly in support of the making of the TPO but raises concern about the condition of some trees within the TPO group. The response also requested that a certain tree would be excluded from the TPO.

- 6.2: Response 1:

“Whilst I am generally in favour of the trees being protected, I am concerned with the condition of some of the trees.... The tree in question, which appears in particularly poor condition, although it is not the only one, is tree number 0689. Can I ask if this has been structurally surveyed ...and I would question if this tree should be protected at all. Can you please advise if this tree can be excluded from the TPO, or any of the other trees which are in poor condition.”

- 6.3 This representation is generally in support of the making of the TPO but raises concern over the condition of some of the trees. The additional information received via work to tree application 24/00050/WTT was produced by a qualified arboricultural consultant and the findings have therefore been accepted on this basis. This application requested permission to remove a number of trees on health and safety grounds. However, the tree raised in Response 1 was not one of the trees that was proposed for felling.
- 6.4 A response from the Council was sent in reply to Response 1 asking for confirmation if they were requesting that tree 0689 (the number is a reference to a particular tree located on site as set out in the tree survey) be excluded from the TPO, but no reply was received (note – the TPO is a Group TPO so an individual tree cannot be excluded).
- 6.5 The above representation is noted but should not prevent the confirmation of the TPO. It is considered that the tree safety concerns raised in the tree survey report submitted with the work to tree application (ref. 24/00050/WTT) has been resolved by the granting of tree works to enable appropriate woodland management and by securing replacement planting. The remaining trees would retain TPO protection should the Committee confirm the TPO, this in turn would ensure that the trees are protected and can continue to contribute to: local tree canopy cover; the landscape setting and amenity of Newbattle, local biodiversity; and climate change mitigation.

7 RECOMMENDATION

7.1 It is recommended that Committee:

- a) Confirm the Tree Preservation Order (2 of 2024) for one group of trees (G1) at land north of Old Golf House, Newbattle, Dalkeith; and
- b) Instruct the Planning, Sustainable Growth and Investment Service Manager to carry out the necessary procedures, following confirmation and endorsement of a tree preservation order, which are required by the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010.

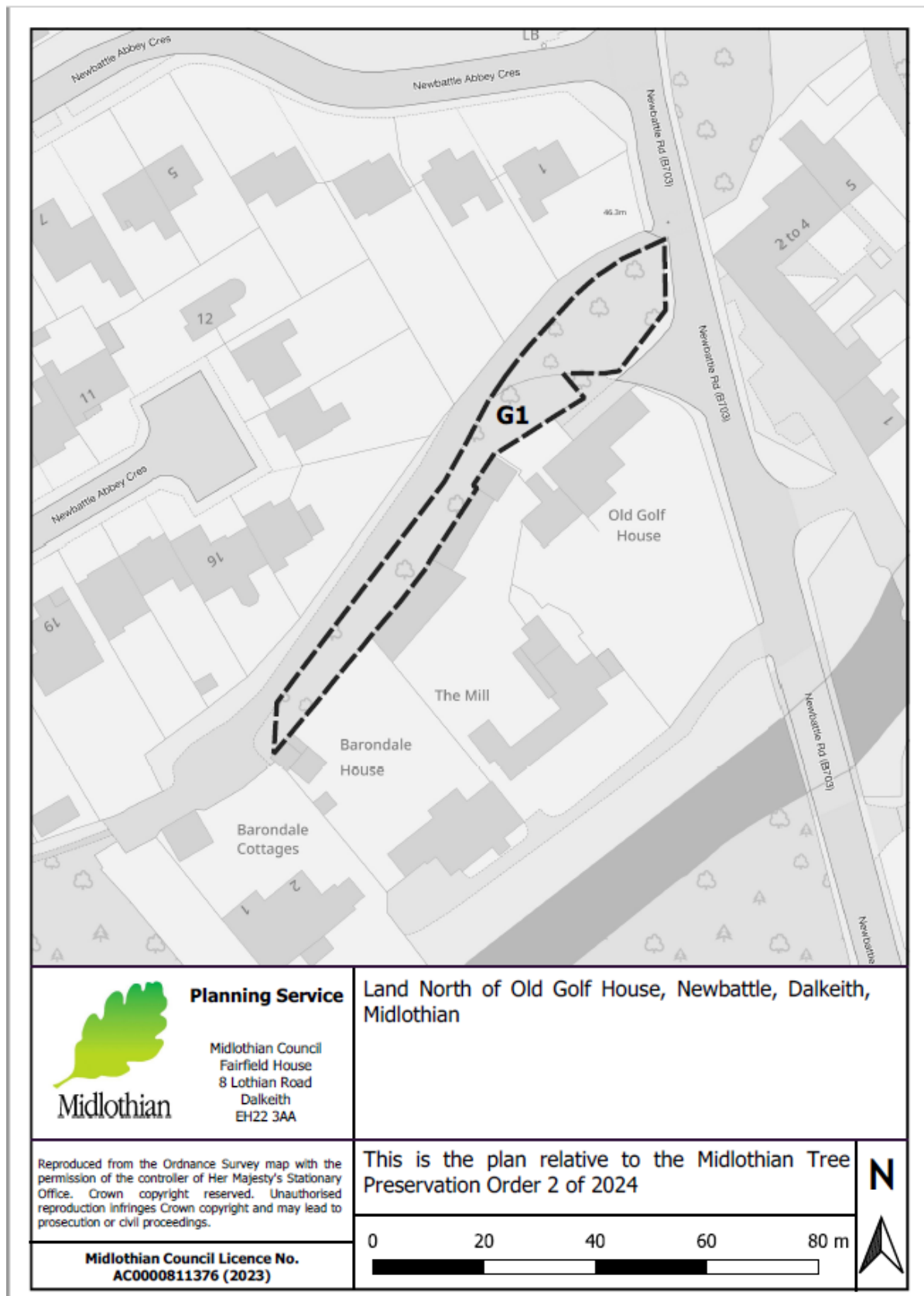
Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 19 April 2024
Contact Person: Grant Ballantine
grant.ballantine@midlothian.gov.uk
Background Papers: November 2023 Committee Report (Appendix A)
Site Location Plan and Site Photographs (attached)

LOCATION PLAN

MIDLOTHIAN COUNCIL TREE PRESERVATION ORDER 2 of 2024

Land North of Old Golf House, Newbattle



SITE PHOTOS

MIDLOTHIAN COUNCIL TREE PRESERVATION ORDER 2 OF 2024

Land North of Old Golf House

Photo 1

Location: Land north of Old Golf House, Newbattle Road, Dalkeith EH22 3LX
55.880391, -3.071200 What3Words: ///flanked.anode.offstage

Date and time: 13:53, 06/06/22

Description: View from within north-eastern part of site looking Southwest. Showing felled and partially felled trees and remaining trees within site.



Photo 2

Location: Land north of Old Golf House, Newbattle Road, Dalkeith EH22 3LX
55.880391, -3.071200 What3Words: ///flanked.anode.offstage

Date and time: 13:53, 06/06/22

Description: Stacked timber and remaining trees along northern site boundary as viewed from access track to north of site:



Photo 3

Location: Land north of Old Golf House, Newbattle Road, Dalkeith EH22 3LX

55.880391, -3.071200 What3Words: ///flanked.anode.offstage

Date and time: 13:52, 06/06/22

Description: Partially felled tree left as a monolith after sectional felling ceased and tree surgeons left the site abruptly. Photo shows unpruned trees in the background.



Photo 4

Location: Land north of Old Golf House, Newbattle Road, Dalkeith EH22 3LX

55.880391, -3.071200 What3Words: ///flanked.anode.offstage

Date and time: 18/12/23

Description: View from within site looking east towards Newbattle Road showing remaining trees on eastern part of site.



Photo 5

Location: Land north of Old Golf House, Newbattle Road, Dalkeith EH22 3LX

55.880391, -3.071200 What3Words: ///flanked.anode.offstage

Date and time: 18/12/23

Description: View from within site looking west showing some of remaining trees on western part of the site and Heras fencing stacked on site



Photo 6

Location: Land north of Old Golf House, Newbattle Road, Dalkeith EH22 3LX

55.879685, -3.072241 What3Words: ///registers.mammoths.slim

Date and time: 18/12/23

Description: View from access track by site's southwestern end, looking northeast into the site and along the adjacent access track, showing untouched trees on southwestern part of the site



Photo 7

Location: Land north of Old Golf House, Newbattle Road, Dalkeith EH22 3LX

55.879685, -3.072241 What3Words: ///registers.mammoths.slim

Date and time: 18/12/23

Description: View from access track adjacent to site, looking along site's northern edge





WILFUL DESTRUCTION OF TREES WITHIN THE ESKBANK AND IRONMILLS CONSERVATION AREA AND NON-COMPLIANCE WITH A PLANNING CONTRAVENTION NOTICE REGARDING LAND ADJACENT TO OLD GOLF HOUSE, ESKBANK, DALKEITH

Report by Chief Officer Place

1 REPORT SUMMARY AND RECOMMENDATION

- 1.1 This report relates to the wilful destruction of trees within the Eskbank and Ironmills Conservation Area and the non-compliance with a planning contravention notice issued in relation to land adjacent to Old Golf House, Eskbank, Dalkeith.**
- 1.2 This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action against those parties who have carried out the wilful destruction of trees within the Eskbank and Ironmills Conservation Area pursuant to Section 172 of the Town and Country Planning (Scotland) Act 1997 as amended, and have not complied with a planning contravention notice, pursuant to Section 126 of the Town and Country Planning (Scotland) Act 1997 as amended, hereafter referred to as the Act. The maximum penalty on successful prosecution is a fine of up to £20,000 with regard the destruction of trees in a conservation area and £5,000 per offence with regard non-compliance with a planning contravention notice.**

2 BACKGROUND

- 2.1 The site the subject of this report is an area of woodland on land adjacent to Old Golf House, Eskbank, Dalkeith – the land fronts onto Newbattle Road. The land is separated from housing at Newbattle Abby Crescent by a narrow un-adopted lane which provides access to a small number of houses. The land is adjoined by the Old Golf House, The Mill, Barondale House and Barondale Cottages. However, the land is not in the same ownership of any of these properties. Opposite the site on the other side on Newbattle Road are further residential properties. The land is located within the Eskbank and Ironmills Conservation Area.**

- 2.2 On the 25 September 2023 the Council received reports of a potential breach of planning control taking place on the said land – following a site inspection on the same day it was identified that engineering works (excavations and other earthworks) were taking place using mechanical equipment. Those parties undertaking the said works were advised that there was a breach of planning control and works should cease - the works constitute an engineering operation and any works to the trees constituted an offence as they are in a conservation area. The parties undertaking the works declined to cease work.
- 2.3 On 27 September 2023 (11:00) the Council served a Temporary Stop Notice (TSN) pursuant to S144A of the Act as amended. The notice was posted at the site (in two locations) by Sheriff Officers acting on behalf of the Council and also served on the persons identified to be the landowners as a result of detailed title search. Officers were also in attendance at the site and observed the notice being displayed. At that time it appeared that there had been limited further engineering work beyond that which had been observed on the 25 September 2023 and no specific works to trees had taken place. The TSN required the cessation of the engineering works.
- 2.4 On returning to the site later on the 27 September 2023 (14:00) following complaints from local residents, officers identified large piles of branches lying in the adjoining road after works to trees had taken place - Officers of Police Scotland were also on site in response to concerns raised from local residents. In the company of the Police Officers two persons were interviewed under caution by Planning Officers on suspicion of an offence being committed pursuant to S172 of the Act (unauthorised works to trees in a conservation area). It was also identified that the two copies of the TSN posted at different places on the site at 11:00 that day had been removed by persons unknown (although it should be noted that the act of serving the notice in the first place brought its provisions into effect and the removals did not obviate that).
- 2.5 On 28 September 2023 Sheriff Officers served the TSN on the home addresses of the two persons interviewed under caution the previous day. The TSN was also reposted at the site. In addition, given the engineering operations that were judged to have taken place, Planning Contravention Notices (a formal request for information) were also served on the two persons interviewed under caution.
- 2.6 The works to the trees were subsequently assessed by the Council's Landscape officers who confirmed two healthy trees had been felled.
- 2.7 A TSN has effect for 28 days from the date it is served – in this case the TSN was complied with and no further engineering works were undertaken once the TSN was issued.

- 2.8 The unauthorised engineering works were subsequently modified as not to cause harm and as such it is not expedient to instigate any further action.

3 THE LEGISLATIVE POSITION

Trees in Conservation Areas

- 3.1 Trees in conservation areas which are under the protection of a Tree Preservation Order (TPO) are also subject to controls under the TPO regulations – the trees subject to the works set out in this report are not covered by a TPO but are in a conservation area.
- 3.2 The Act makes special provision for trees in conservation areas which are not the subject of a TPO (as in this case). Under Section 172 of the Act anyone proposing to cut down or carry out work to a tree in a conservation area is required to give the planning authority six weeks prior notice. The purpose of this requirement is to give the planning authority an opportunity to consider whether a TPO should be made in respect of the tree/s. Any notified works must be carried out within two years from the date of the notice. It is an offence not to comply with these requirements.
- 3.3 Some of the works were in relation to shrubs and bushes which do not fall within the scope of the Act. However, 1 Witch Elm tree and 1 Ash tree, both with diameter in excess of 75 mm were felled. No notification to undertake such work as required by the Act was given to the Council and none of the exemptions (health and safety justifications) that exist in relation to conservation area trees are applicable in this case. Therefore an offence was committed.
- 3.4 A person/s found guilty of an offence in this regard are liable to a fine up to £20,000.

Planning Contravention Notice

- 3.5 Planning authorities may serve a Planning Contravention Notice (PCN) on anyone who is the owner or occupier of land subject to a planning investigation into an alleged breach of planning control, or is a person with any other interest in the land, or a person who is using or carrying out operations on the land. Planning authorities may therefore serve several notices on different persons in respect of the same suspected breach of planning control.
- 3.6 There is no requirement for the planning authority to obtain clear evidence of a breach of control before issuing a PCN. It is sufficient for the planning authority to suspect that a breach may have occurred, for example, because they have received a complaint from a neighbour of the site regarding an alleged unlawful activity.

- 3.7 Serving a PCN does not constitute 'taking enforcement action' for the purposes of section 123 of the Act. It is an offence not to comply with any requirement in the notice – which is a request for information (not to cease or carry out works). It is an entirely discretionary procedure; there is no requirement to serve a notice before taking formal enforcement action, nor does the serving, or not (as the case may be), of a notice affect any other power exercisable in respect of any breach of planning control.
- 3.8 Failure to comply with a notice within 21 days of it being served is an offence which may be charged by reference to any day or longer period of time. Those found guilty of such an offence will be liable on summary conviction to a fine not exceeding level 3 (£5,000) on the standard scale. An offender may also be convicted of subsequent offences by reference to any period of time (e.g. each additional day) following a preceding conviction for such an offence (section 126 of the Act).
- 3.9 Section 125 of the Act provides that the notice may require the person on whom it is served, so far as s/he is able—
- (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;
 - (b) to state when any use, operations or activities began;
 - (c) to give the name and postal address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;
 - (d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operation; and
 - (e) to state the nature of his interest (if any) in the land and the name and postal address of any other person known to him to have an interest in the land.
- 3.10 As noted above, notwithstanding the specific offence in relation to the wilful felling and damage to trees, Planning Officers identified that a breach of planning control appeared to have occurred with regard unauthorised engineering operations taking place on 25 September 2023 and furthermore the same persons involved in the authorised tree works were the persons involved in those engineering operations. Therefore, as noted above, planning contravention notices were served on 28 September 2023 on the persons apprehended at the site on 27 September 2023.
- 3.11 No response has been received to the notices within the prescribed 21 day period and therefore offences have been committed.
- 3.12 In Scotland the Crown Office and Procurator Fiscal Service (COPFS) are responsible for making decisions about prosecutorial actions. In the

majority of instances cases are referred to COPFS by Police Scotland. In addition other bodies known as Specialist Reporting Agencies (SRA's) who are the responsible regulatory organisation for particular legislative areas will also refer cases. This includes the Health and Safety Executive, the Scottish Environmental Protection Agency and local authorities in relation to planning and other matters.

4 OTHER CONSIDERATIONS

- 4.1 The Scottish Government Policy on planning enforcement is contained in Circular 10/2009: Planning Enforcement. It includes the following guidance that is particularly relevant to the consideration of this case:

“Effective enforcement plays a significant part in protecting the rural and urban environment. In responding to complaints against unauthorised development, enforcement action maintains the integrity of the development control system. The range of enforcement powers allows the enforcement response to be more appropriate, speedier and more successful.”

5. CONCLUSION

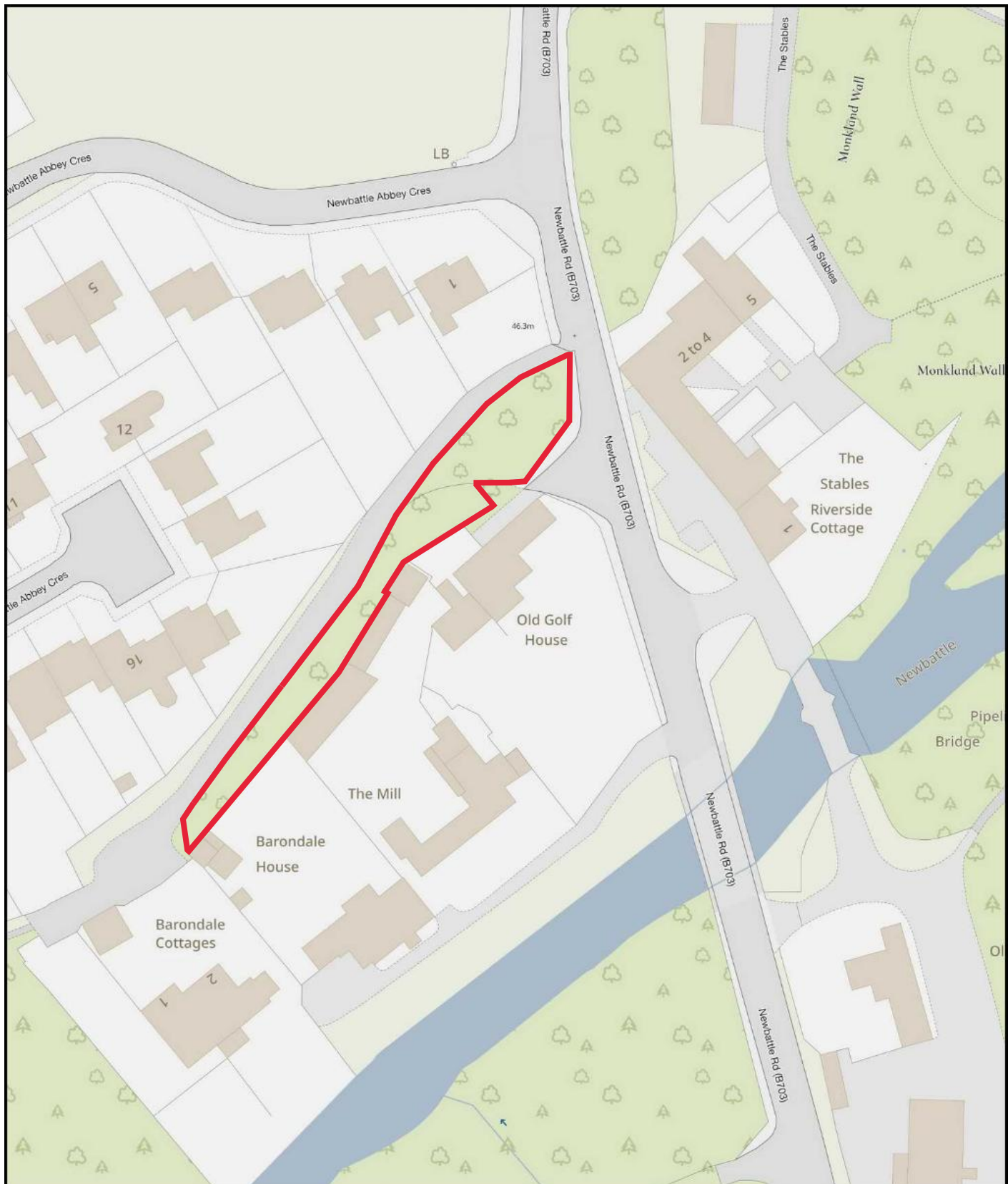
- 5.1 It is for COPFS to make the final decision with regard prosecutorial action against the wilful felling and damage to trees protected by reason of being located within a conservation area and in relation to non-compliance with a planning contravention notice. Two persons were caught in the act of wilfully felling trees in a conservation area - this was an offence. Furthermore, those persons having been served with a planning contravention notice, on the basis of unauthorised engineering operations taking place have not responded to the said notices, which is also an offence.
- 5.2 Therefore, having regard to the guidance provided by Scottish Ministers in Circular 10/2009, the serious nature of the breach of planning control and the Council's responsibility to uphold confidence and integrity in the planning system and the rule of law, it is considered to be in the public interest for the Council to refer this case to COPFS.

6 RECOMMENDATION

- 6.1 It is recommended that the Committee determine to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action pursuant to Sections 126 and 172 of the Town and Country Planning (Scotland) Act 1997 as amended.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 17 November 2023
Contact Person: Matthew Atkins, Lead Officer Planning Obligations
matthew.atkins@midlothian.gov.uk



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Land Adjacent to Old Golf House, Newbattle Road, Eskbank,
Dalkeith, Midlothian, EH22 3LX

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File No.

Scale: 1:1,000





PRE - APPLICATION REPORT REGARDING A MIXED-USE DEVELOPMENT INCLUDING CLASS 1A (SHOPS, FINANCIAL, PROFESSIONAL AND OTHER SERVICES), CLASS 11 (ASSEMBLY AND LEISURE) AND CLASS 4 (BUSINESS); AND ASSOCIATED INFRASTRUCTURE, CAR PARKING, SERVICING, ACCESS ARRANGEMENTS AND LANDSCAPING AT LAND 90M SOUTH WEST OF ASDA PETROL FILLING STATION, LOANHEAD (24/00119/PAC)

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre application consultation for a mixed-use development including Class 1A (shops, financial, professional and other services), Class 11 (assembly and leisure) and Class 4 (business); and associated infrastructure, car parking, servicing, access arrangements and landscaping at land 90m south west of Asda Petrol Filling Station, Loanhead.
- 1.2 The pre application consultation is reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.

2 BACKGROUND

- 2.1 Guidance on the role of Councillors in the pre-application process, published by the Commissioner for Ethical Standards in Public Life in Scotland, was reported to the Committee at its meeting of 30 August 2022. The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 A Proposal of Application Notice (PAN) detailing the pre application consultation for a mixed use development including Class 1A (shops, financial, professional and other services), Class 11 (assembly and leisure) and Class 4 (business); and associated infrastructure, car parking, servicing, access arrangements and landscaping at land 90m south west of Asda Petrol Filling Station, Loanhead was submitted on 19 February 2024.

- 2.3 As part of the pre-application consultation process, two public events were undertaken/scheduled at Loanhead Leisure Centre. The first event took place on 25 March 2024 and the second is scheduled for 22 April 2024. The applicant has also created a dedicated website for the PAN process.
- 2.4 An applicant must wait 12 weeks from the date of submission of a PAN before submitting a planning application. The earliest date that the planning application for this proposal could be submitted is 14 May 2024. The subsequent planning application must be accompanied by a Pre-Application Consultation Report detailing the consultation undertaken, a summary of written responses and views expressed at the public events, and an explanation of how the applicant took account of the views expressed and an explanation of how members of the public were given feedback on the applicant's consideration of their views.
- 2.5 Copies of the pre application notice have been sent by the applicant to the local elected members in ward 4 (Midlothian West) and the Loanhead and District, Roslin and Bilston and Damhead and District Community Councils.

3 PLANNING CONSIDERATIONS

- 3.1 In assessing any subsequent planning application the main planning issue to be considered in determining the application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise. The views of consultees and representors will be material considerations in the assessment of an application for the proposed development.
- 3.2 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017 (MLDP). Section 24(3) of the Town and Country Planning (Scotland) Act 1997 states that where there is an incompatibility between the provisions of the National Planning Framework and the provisions of a local development plan whichever of them is the later in date is to prevail. At present this means that where there is an incompatibility NPF4 takes precedence, this will change when a new local development plan is adopted.
- 3.3 The site measures 3.77 hectares and is situated at the western side of Loanhead. The site comprises open ground and a tarred roadway. The northern part of the site was used as a site compound during the construction of the neighbouring Asda supermarket. To the north east the site is bounded by the Asda petrol filling station. To the north west the site is bounded by the A701, with Pentland Park residential mobile home site on the opposite side of the road. The site is bounded to the south by the Western Nissan car dealership and by Nivensknowe Road. To the east the site bounds a private house with 5 self-catering apartments (Aaron Glen) and Pentland Industrial Estate. There is vehicular access to the site from the north, via the access road to the Asda car park, and the south, from Nivensknowe Road.

3.4 The relevant policies of the National Planning Framework 4 (NPF4) are:

- Policy 1 Tackling the climate and nature crises
- Policy 2 Climate mitigation and adaptation
- Policy 3 Biodiversity
- Policy 5 Soils
- Policy 6 Forestry, woodland and trees
- Policy 7 Historic Assets and Places
- Policy 12 Zero Waste
- Policy 13 Sustainable Transport
- Policy 14 Design, quality and place
- Policy 15 Local living and 20 minute neighbourhoods
- Policy 18 Infrastructure first
- Policy 19 Heat and cooling
- Policy 20 Blue and green infrastructure
- Policy 22 Flood risk and water management
- Policy 23 Health and Safety
- Policy 26 Business and Industry
- Policy 27 City, town, local and commercial centres
- Policy 28 Retail
- Policy 30 Tourism

3.5 The MLDP identifies the majority of the site, approximately 2.5 hectares, as forming part of the Straiton Commercial Hub. The remainder of the site comprises a 26m wide strip of land running the length of the of the eastern side of the site, this land is not within the Straiton Commercial Hub but is identified a being within the built-up area of Loanhead. The strip of ground along the eastern side of the site was formerly an open cutting housing water supply infrastructure. The cutting was infilled in the early 2010s. An application for the proposed development will be assessed against the following MLDP policies:

- STRAT1 – Committed development;
- DEV2 – Protecting Amenity within the Built-Up Area;
- DEV5 – Sustainability in New Development;
- DEV6 – Layout and Design of New Development;
- DEV7 – Landscaping in New Development;
- ECON4 – Economic Development outwith Established Business and Industrial Sites;
- TRAN1 – Sustainable Travel;
- TRAN2 – Transport Network Interventions;
- TRAN5 – Electric Vehicle Charging;
- VIS1 – Tourist Attractions;
- ENV9 – Flooding;
- ENV10 – Water Environment;
- ENV11 – Woodland, Trees and Hedges;
- ENV15 – Species and Habitat Protection and Enhancement;
- ENV16 – Vacant, Derelict and Contaminated Land
- ENV17 – Air Quality;
- ENV18 – Noise;

- ENV25 – Site Assessment, Evaluation and Recording;
- NRG5 Heat Supply Sources and Development with High Heat Demand
- NRG6 – Community Heating;
- WAST5 Waste Minimisation and Recycling in New Developments
- IMP1 – New Development;
- IMP2 – Essential Infrastructure Required to Enable New Development to Take Place; and
- IMP3 – Water and Drainage.

3.6 The principle of Class 1A and Class 11 development on the majority of the site is supported in principle subject to the detail of any planning application. On the remaining portion of the site, whilst there is support for development compatible with the character of the built-up area there is not specific support for Class 1A or Class 11 development. The possibility of support for Class 4 development will depend on the scale of the Class 4 development. Other considerations in the assessment of any application will include the development's impact on biodiversity, trees, residential amenity, ground contamination and road safety. The views of consultees and representors will be material considerations in the assessment of an application for the proposed development.

4 PROCEDURES

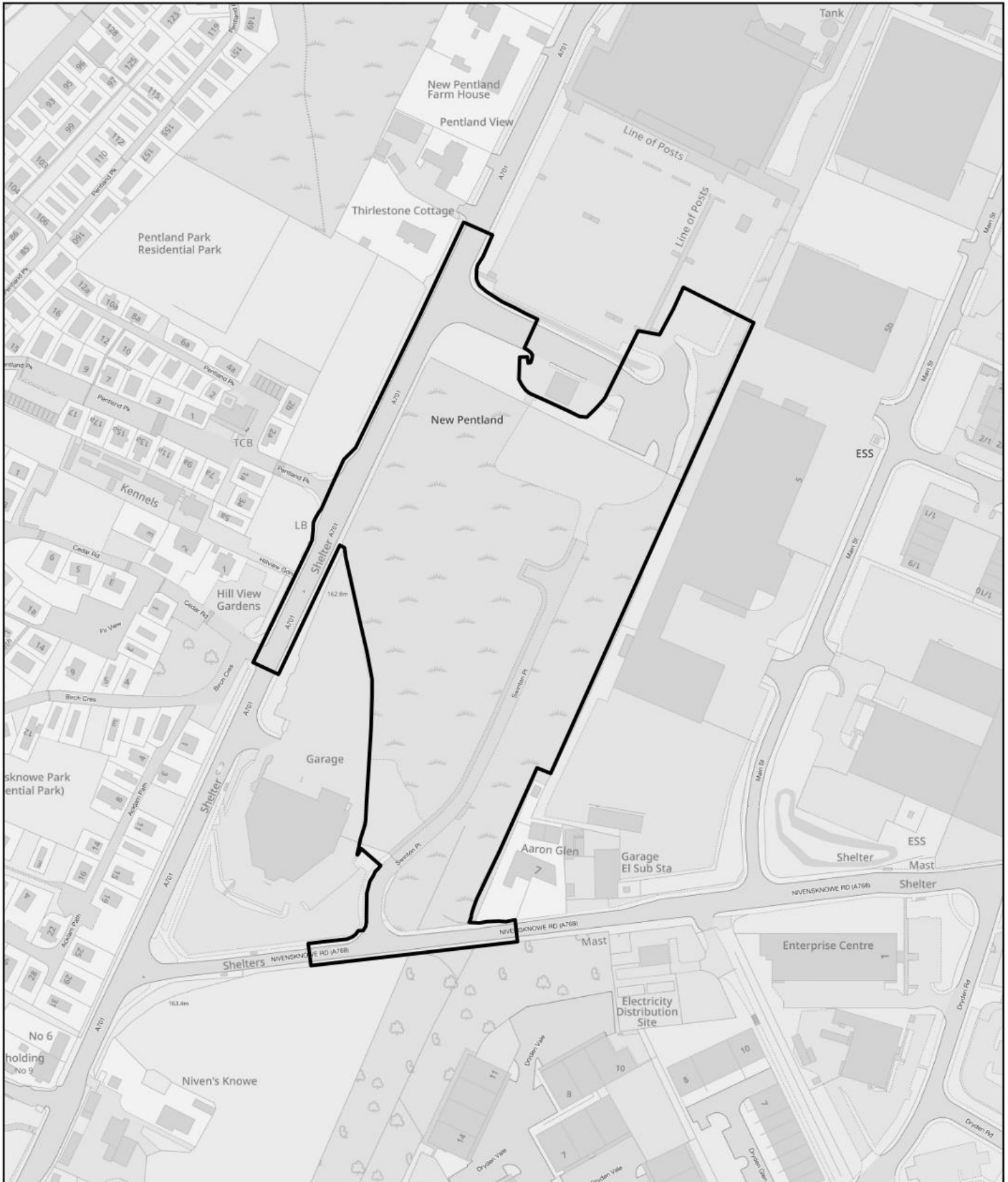
- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.
- 4.3 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures advises that Councillors be expected to approach their decision-making with an open mind in that they must have regard to all material considerations and be prepared to change their views that they are minded towards if persuaded that they should.

5 RECOMMENDATION

- 5.1 It is recommended that the Committee notes:
- a) the provisional planning position set out in this report;
 - b) that any comments made by Members will form part of the minute of the Committee meeting; and
 - c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 19 April 2024
Application No: 24/00076/PAC
Applicant: CDA on behalf of Lansdowne Investments Limited
Agent: None
Validation Date: 19 February 2024
Contact Person: Graeme King
Email: graeme.king@midlothian.gov.uk
Attached Plan: Location plan



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

Proposal of application notice for a mixed use development including class 1A, class 11, and class 4; and associated infrastructure.

Land 90m South West of Asda Petrol Filling Station Loanhead.

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Scale: 1:2,500

Page 74 of 98

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APPLICATION FOR PLANNING PERMISSION 23/00791/DPP FOR THE ERECTION OF 12 FLATTED DWELLINGS; FORMATION OF CAR PARKING; AND ASSOCIATED WORKS AT LAND AT WINDSOR SQUARE, PENICUIK

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of 12 flatted dwellings on land at Windsor Square, Penicuik. There have been nine representations from five different households and consultation responses from Scottish Water and the Council's Senior Manager Protective Services.**
- 1.2 The relevant development plan policies are policies 1, 2, 3, 6, 9, 13, 14, 15, 16, 18, 21, 22 and 23 of the National Planning Framework 4 (NPF4) and policies STRAT2, DEV2, DEV5, DEV6, DEV7, DEV8, TRAN5, IT1, ENV9, ENV10, ENV11, ENV16, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to grant planning permission subject to conditions and the applicant entering into a modified planning obligation to secure contributions towards necessary infrastructure.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises two parcels of land within an established residential area in Penicuik: an area of cleared ground that formerly accommodated a care home and a two storey house, and; an area of grassed public amenity space. The former care home was a modern single storey building with a footprint of 377 sqm. The house was a modern two-storey house which was originally used as accommodation for the caretaker associated with the care home and was laterally let as social housing. The care home and house were owned and operated by Ark Housing Association.**
- 2.2 The second parcel of land is an area of grassed amenity space measuring 1160sqm. The space is predominantly open with the exception of three small groupings of trees and hedges. The amenity space slopes uphill slightly from north to south and noticeably downhill from west to east. The eastern edge of the amenity space is approximately 2m lower than the western edge. The amenity space was for many years owned by the Council. Ark Housing Association purchased the land in May 2021.**

- 2.3 The immediate surroundings are entirely residential. The buildings are all modern two storey houses; mostly terraced with some semi-detached. The road layout at Windsor Square follows a one-way system round the square, with traffic moving in a clockwise direction. The street has on-street parking on both sides, with parking spaces marked out on the street on the inner edge of the curve.

3 PROPOSAL

- 3.1 It is proposed to erect 12 flats (10 two bed flats and two one bed flats) in three blocks of four flats. Two of the blocks will contain solely two bed flats and the buildings will be 18m wide, 8.5m deep, 5.4m tall to the eaves and 7.8m tall to the ridge of the roof. The remaining block will contain both one bed and two bed flats and that building will be 16m wide, 8.5m deep, 5.4m tall to the eaves and 7.8m tall to the ridge of the roof.
- 3.2 The walls of the buildings will be finished with white render and brown coloured fibre cement feature panels; the roofs will be finished with flat profile grey concrete roof tiles; and the windows will be dark grey uPVC units. Access to the upper flats will be via single storey porches on the front elevation of the blocks. Two of the blocks will be erected on land currently occupied by the curtilage of the former buildings; the third block will be situated at the northern side of the site on land that is currently open space. An area of open space measuring 644sqm will be retained at the eastern side of the site and an area of open space measuring 125sqm will be created at the western edge of the site. Parking will be via end on parking spaces in front of the buildings.
- 3.3 The 12 flats are to be affordable housing units provided by a Registered Social Landlord (RSL), Ark Housing Association. The units form part of the Council's Strategic Housing Investment Plan (SHIP).

Construction Methodology

- 3.4 The buildings will be constructed using a modular construction process. The ground floor of each building will comprise eight modules and the upper floor will comprise six modules. The modules are constructed off-site in a factory and are delivered to the site with internal partitions in place and the internal fit, including plumbing, electrics and decoration, completed. The modules are craned into place and the external finishes are completed on site. Modular construction systems provide improved build quality and reduced build times. The off-site construction also allows for improved manufacturing tolerances resulting in increased air tightness, which provides sustainability improvements.
- 3.5 The main modules are 6.8m in length and vary in width between 2.3m and 3.3m, and in height between 2.6m and 3.5m. The modules are delivered to site on articulated lorries and craned into position by a mobile crane. The modules will be delivered to site on a Tuesday and a Thursday, each block will require two delivery days to complete the module delivery process. Partial road closures will be required for the delivery of the modules and for sewer works.

- 3.6 The road closures will be achieved via the relevant consents from the Roads Authority and via localised traffic management. Road closures do not require planning permission. Construction of the blocks is scheduled to require 11 weeks of on-site works as opposed to 17 weeks that would be required for a typical timber kit construction process. It should be noted that the timber kit construction method that is widely used in Scotland also requires delivery of large, prefabricated timber structures to sites. Articulated lorries and mobile cranes are widely used in conventional timber kit construction methods.

4 BACKGROUND

- 4.1 Planning permission 572/86 was granted for the extension of the existing care home building to provide four extra bedrooms and the erection of a warden's house at 76 Windsor Square, Penicuik.
- 4.2 Planning permission 697/90 was granted for the construction of a vehicular access at 76 Windsor Square, Penicuik.
- 4.3 Planning application 18/00730/DPP for the erection of 20 flatted dwellings; formation of access roads and car parking; and associated works at land at Windsor Square, Penicuik was refused in January 2019. The reasons for refusal were as follows:
1. *The development would result in the loss of an area of open space that makes a positive contribution to the character and amenity of the surrounding area. The loss of the open space is contrary to policies STRAT2 and DEV2 of the Midlothian Local Development Plan 2017.*
 2. *The size, layout and allocation of private open space for the flats will provide an inadequate level of amenity for residents. The provision of private open space is contrary to policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017*
 3. *The scale, proportions and design of the buildings are out of character with the surrounding area. The proposal is therefore contrary to policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017.*
 4. *The development would result in a reduction in width of the existing road at Windsor Square. The impact on the width of the road is a material consideration in the assessment of the planning application.*
 5. *The development would create additional demand for parking while reducing the existing one-street parking capacity. The impact on parking is a material consideration in the assessment of the planning application.*
 6. *The development includes a formal pedestrian footway with a sub-standard width. Pedestrian safety is a material consideration in the assessment of the planning application.*
- 4.4 Planning permission 19/00510/DPP for the erection of 12 flatted dwellings; formation of access roads and car parking; and associated works at land at Windsor Square, Penicuik was approved by the Committee at their meeting on 27 September 2020. Following the

registration of a legal agreement, to secure developer contributions, the consent was issued in June 2021.

- 4.5 A Prior Notification of the demolition of the dwellinghouse at 74 Windsor Square was submitted in January 2021. The demolition of the care home was permitted development and did not require Prior Notification. The buildings were demolished in September 2021.
- 4.6 The application has been called to Committee for determination by Councillor McCall. The reason for the call-in is to allow the Committee to examine the changes on the application in more detail.

5 CONSULTATIONS

- 5.1 **Scottish Water** does not object to the application. The water supply will be fed from Rosebery Water Treatment Works - there is currently sufficient capacity. The foul water drainage will be dealt with by Penicuik Waste Water Treatment Works. Scottish Water is unable to confirm current capacity at the Waste Water Treatment Works and consequently it is recommended that the applicant submit a Pre-Development Enquiry Form to Scottish Water to allow for assessment of capacity. It is not possible to reserve capacity for future developments – this will be subject to a separate regulatory process between the applicant and Scottish Water.
- 5.2 For reasons of sustainability and to protect Scottish Water customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into the combined sewer system. There may be limited exceptional circumstances where Scottish Water allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical and technical challenges.
- 5.3 In order to avoid costs and delays where a surface water discharge to the combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. The evidence will be assessed in a robust manner and any decision will reflect the best option from environmental and customer perspectives.
- 5.4 The **Council's Education Executive Business Manager** offered no comment on the proposal.
- 5.5 The **Council's Senior Manager Neighbourhood Services (Roads)** offered no comment on the proposal.
- 5.6 The **Council's Senior Manager Protective Services** does not object to the application subject to conditions being attached to any grant of planning permission to secure site investigations and mitigation measures to address any land contamination; noise levels for air source heat pumps; and a Construction Environment Management Plan.

- 5.7 **Penicuik and District Community Council** offered no comment on the proposal.

6 REPRESENTATIONS

- 6.1 There have been nine representations, from five different households, objecting to the application all of which can be viewed in full on the online planning application case file. A summary of the objections are as follows:
- Flats are out of character with the existing housing in the area;
 - Existing problems with surface water drainage will be exacerbated by the proposed development;
 - The green space is a valuable play space for local children and its loss will have a detrimental impact on the local community;
 - The construction process will restrict access for road users and will restrict parking provision;
 - The development will create an increased demand for parking;
 - Parking is already difficult in the area;
 - The proposal will result in the felling of trees that were previously going to be retained;
 - The proposal will provide less open space than the existing consent.
 - The previous grant of planning permission resulted in four parking spaces being removed (the scheme actually resulted in the displacement of five spaces), the current application results in six spaces being removed. The square cannot afford the loss of parking spaces; and
 - Safety of children and vulnerable adults whilst trying to access their own homes.

7 PLANNING POLICY

- 7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.
- 7.2 The following policies are relevant to the proposal:
- National Planning Framework 4 (NPF4)
- 7.3 Policy **1 Tackling the climate and nature crisis**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.
- 7.4 Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.
- 7.5 Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 7.6 Policy **6 Forestry, woodland and trees**; sets out to protect and expand forests, woodland and trees.

- 7.7 Policy **9 Brownfield, vacant and derelict land and empty buildings**; sets out to encourage, promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings, and to help reduce the need for greenfield development.
- 7.8 Policy **13 Sustainable Transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.9 Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 7.10 Policy **15 Local Living and 20 minute neighbourhoods**; sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.
- 7.11 Policy **16 Quality homes**; sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.
- 7.12 Policy **18 Infrastructure first**; sets out to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.
- 7.13 Policy **21 Play, recreation and sport**; sets out to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.
- 7.14 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.
- 7.15 Policy **23 Health and Safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.

Other National Policy

- 7.16 The **Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

Midlothian Local Development Plan 2017

- 7.17 Policy **STRAT2: Windfall Housing Sites** permits housing on non-allocated sites within the built-up area provided: it does not lead to loss or damage of valuable open space; does not conflict with the established land use of the area; has regard to the character of the area in terms of scale, form, design and materials and accords with relevant policies and proposals.
- 7.18 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.19 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.20 Policy **DEV6 Layout and Design of New Development** requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet listed criteria.
- 7.21 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.22 Policy **DEV8: Open Spaces** states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. Development will not be permitted in these areas that would:
- A. Result in a permanent loss of the open space; and/or
 - B. Adversely affect the accessibility of the open space; and/or
 - C. Diminish the quality, amenity or biodiversity of the open space; and/or
 - D. Otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.
- 7.23 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.24 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.25 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

- 7.26 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.27 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.28 Policy **ENV16: Vacant, Derelict and Contaminated Land** supports the redevelopment of vacant and derelict land for uses compatible with their location. Developments will be required to demonstrate that the site is suitable for the proposed new use in terms of the risk posed by contamination and instability from historic uses.
- 7.29 Policy **IMP1: New Development** This policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.
- 7.30 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.31 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

8 PLANNING ISSUES

- 8.1 The main issue to be determined is whether the proposal accords with the development plan unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development

- 8.2 As is noted above the development plan comprises National Planning Framework 4 (NPF4) and the Midlothian Local Development Plan 2017

(MLDP). Section 24(3) of the Town and Country Planning (Scotland) Act 1997 states that where there is an incompatibility between the provisions of the National Planning Framework and the provisions of a local development plan whichever of them is the later in date is to prevail. At present NPF4 is the more recent document and therefore it prevails where there is an incompatibility between NPF4 and the MLDP.

- 8.3 The application site is located within the built-up area of Penicuik where there is a presumption in favour of appropriate development. However, the site is not identified as an allocated housing site in the MLDP and as such the application is being considered as a windfall housing proposal. The relevant policies in relation to windfall housing are policies 16(f) of NPF4 and STRAT2 of the MLDP.

- 8.4 NPF4 Policy 16(f) states:

Development proposals for new homes on land not allocated for housing in the LDP will only be supported in limited circumstances where:

- i. the proposal is supported by an agreed timescale for build-out; and*
- ii. the proposal is otherwise consistent with the plan spatial strategy and other relevant policies including local living and 20 minute neighbourhoods;*
- iii. and either:*
 - delivery of sites is happening earlier than identified in the deliverable housing land pipeline. This will be determined by reference to two consecutive years of the Housing Land Audit evidencing substantial delivery earlier than pipeline timescales and that general trend being sustained; or*
 - the proposal is consistent with policy on rural homes; or*
 - the proposal is for smaller scale* opportunities within an existing settlement boundary; or*
 - the proposal is for the delivery of less than 50 affordable homes as part of a local authority supported affordable housing plan.*

*in the absence of any interpretation of 'smaller scale opportunities' Midlothian's Planning Service is taking the position that smaller residential developments are 10 or less units – this is subject to ongoing review based on appeal decisions across Scotland, but is based on a reasoned judgement regarding the impacts of different scales of development.

- 8.5 MLDP Policy STRAT2 states:

Within the built-up areas, housing development on non-allocated sites, including the reuse of buildings and redevelopment of brownfield land, will be permitted provided that:

- A. It does not lead to the or damage of valuable public or private open space;*

- B. *It does not conflict with the established use of the area;*
- C. *It has regard to the character of the area in terms of scale, form, design and materials;*
- D. *It meets traffic and parking requirements; and*
- E. *It accords with other relevant policies and proposals, including policies IMP1, IMP2, DEV3, DEV5 – DEV10.*

- 8.6 NPF4 Policy 16(f)'s reference to the deliverable housing land pipeline is a key difference from policy STRAT2 of the MLDP which makes no reference to housing land supply. Policy 16(f) is a more onerous approach to windfall housing than that set out in the MLDP and represents a clear incompatibility between the provisions of NPF4 and the MLDP.
- 8.7 A recent Scottish Ministers appeal decision at Mossend, West Lothian (PPA-400-2147) makes clear that Policy 16(f) is intended to be engaged from the date of NPF4's publication and that if the housing land pipeline has yet to be identified then *"the exception permitting development on unallocated sites in the circumstances set out in the first bullet of branch (f)(iii) is not engaged"*. The deliverable housing land pipeline in Midlothian will be identified once Midlothian Local Development Plan No2 (MLDP2) has established Local Housing Land Requirements (LHLR). Until a pipeline has been established there is *"a policy restriction on housing development on unallocated sites"* such as the application site. The appellant in the Mossend decision has appealed the decision (on procedural grounds) to the Court of Session. The hearing for the appeal took place on 24 January 2024, however at present no decision has been issued on the appeal.
- 8.8 As is noted in paragraph 8.4 above, at present Midlothian's Planning Service is taking the position that smaller scale development opportunities are those of 10 or less units, and therefore the proposed 12 units do not meet with the planning authority's interpretation of smaller scale development opportunities. Notwithstanding this position, it must be acknowledged that the scale of development is significantly below that of a major development and that in the absence of guidance from the Scottish Government there is scope for flexibility in the interpretation of smaller scale opportunities.
- 8.9 The extant 12 unit scheme (reference 19/00510/DPP) is referred to in Midlothian Council's Strategic Housing Investment Plan 2024/25-2028/29 (SHIP), however the SHIP identifies the scheme as being funded via the Scottish Government's Charitable Bond programme. As the scheme is not a local authority supported development it does not comply with the relevant bullet point exception within Policy 16(f). Notwithstanding this fact, it is clear that the scheme is an affordable housing development that has previously been granted planning permission and that the Council, in its roles as Housing Authority, is welcoming of.
- 8.10 The planning history of a site is a material consideration in the assessment of any planning application. The principle of housing development of the proposed scale has been established via the granting of planning permission 19/00510/DPP, which is still extant, and given the size of the current development and its status as affordable housing there are sufficient material considerations to

warrant support of the principle of the proposed development at this location.

- 8.11 The application site is situated within a residential area and as such the site is not inherently unsuitable for residential development and the consultations carried out have not highlighted any overriding reasons as to why the site could not be redeveloped for residential purposes. Generally, it is considered that a residential use of the site is compatible with the character of the area. The principal planning issues relate to the assessment of the appropriateness of the scale, mass and proportions of the development, the design, material finish, layout, amenity space, access and parking and impact on local amenity.

Loss of Open Space

- 8.12 MLDP policy DEV8 (Open Spaces) states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. These spaces are generally public parks; civic spaces; recreation areas; and natural and semi-natural areas within built-up areas. The open space at Windsor Square is not one of the spaces identified on the Proposals Map as being protected under policy DEV8. Whilst the open space is not protected by policy DEV8 this is a reflection of its size rather than an assessment of its quality and amenity value to local residents.
- 8.13 The shape of the space, the fact that it is predominantly grassed and the excellent passive surveillance afforded by its central location within a group of houses all mean that the space is highly effective as a safe informal play space for children. While there are other larger open spaces and formal play areas in the wider surrounding area they are not as easy for younger unaccompanied children to access due to their distance from Windsor Square and the nature of the roads that must be crossed to access the areas. Many of the representations received have highlighted the benefits of the space and its importance to the local residents.
- 8.14 An earlier scheme for the site was for 20 flats and would have resulted in the complete loss of the open space. The loss of the space was one of the reasons for refusal of application 18/00730/DPP. The extant proposal (reference 19/00510/DPP) reduced the number of flats by eight and which allow for the retention of the majority of the open space. An area of 721sqm was to be retained, that represents 62% of the existing area. The current proposal will see a reduction in the size of the main space to 644sqm, however due to changes in garden layouts an additional public open space of 125sqm will be created at the western side of the site. In total the proposed layout provides 769sqm of public open space, which represents an increase of 8% on the previously approved scheme.
- 8.15 The spaces that will be provided will be of usable size and will continue to benefit from excellent passive surveillance. The main space will continue to be centrally located and this will allow it to be a valuable community space which helps to define Windsor Square's character as a "square" centred on a shared space. Whilst the proposal will result in a reduction of open space when compared to the

existing situation, this must be balanced against the provision of 12 modern social housing flats and the redevelopment of a vacant brownfield site. On balance the loss of a portion of the open space will not have a significant enough impact on the character and amenity of the local area to warrant refusal of the application.

Design, Layout and Finish Materials

- 8.16 The three blocks of flats will all be two storey buildings with conventional pitched roofs – this reflects the character of the existing dwellinghouses in Windsor Square. The buildings are conventionally proportioned and detailed and are in keeping with the character of the surrounding area. Whilst the designs and finish materials do not match those of the majority of the buildings at Windsor Square, it is common for urban streets to include a variety of designs and finishes reflecting different phases of development; the former care home building and caretaker's house were examples of this.
- 8.17 The form of the buildings is similar to the previous scheme with access to the upper floor via projecting porches on the front elevations. The use of white render as the main finish material of the walls is common to both schemes. The proposed scheme creates more variety to the principal elevations via the use of fibre cement panels as a detail feature. The previous scheme used red concrete pantiles as the roofing material, the proposed scheme uses flat profiled grey concrete roof tiles.
- 8.18 The proposed buildings are of similar dimensions to the previously consented scheme. The buildings in the current proposal are either 16m or 18m wide, the buildings in the previous scheme were 17.5m wide. The proposed buildings are 8.5m deep, as compared to the 8.8m of the previous scheme. The proposed buildings are 5.4m tall to the eaves and 7.8m tall to the ridge of the roof, the figures for the previous scheme are 5.5m and 8.8m.
- 8.19 Windsor Square, at present, does not have any flats, however the mixing of two storey houses and flats is a common feature of streets throughout Midlothian and beyond. The proposed development would constitute 23.5% of the housing units at Windsor Square and would not represent a significant change in character.
- 8.20 The blocks will have a strong relationship with the streetscape and this will maintain the existing streetscape character of the houses within the central portion of Windsor Square. The scale and location of the buildings will ensure that there will be no significant loss of daylight, sunlight or privacy when compared to the existing situation.

Drainage

- 8.21 The Scottish Water consultation response confirmed that it has no objection to the proposal. The response also confirms that there is sufficient capacity at Rosebery Water Treatment Works (this part of the response relates to the provision of water to the site). It is also confirmed that Scottish Water is unable to confirm current capacity at the Penicuik Waste Water Treatment Works (i.e. foul water waste); it is

recommended that the applicant submit a Pre-Development Enquiry Form to Scottish Water to allow for assessment of capacity. Finally, the response also confirms that Scottish Water will not accept connection of surface water drainage into their combined sewer system, except for limited exceptional circumstances on brownfield sites.

- 8.22 These are all common consultation responses from Scottish Water and do not indicate any fundamental issues with the application site. It is Scottish Water's standard approach to provide a no objection response for planning consultations and advise that the applicant should submit a Pre-Development Enquiry (PDE) to Scottish Water.
- 8.23 Engineers acting for the applicant calculated the surface water run-off that the previously consented development would generate and the capacity of the attenuation that would be required to ensure that discharge rates comply with Scottish Water standards. Provisional agreement was reached with Scottish Water for the relocation of the existing surface water drain that passes through the area of green space and for connection of the surface water drainage from the site into the Scottish Water network.
- 8.24 Enabling works to facilitate connections to utilities infrastructure (such as the relocation of the surface water drain) are a common part of the development process; usually details are provided at a post decision phase as part of the information submitted to discharge conditions and to secure a building warrant. Finalised details of the drainage scheme can be secured via condition.

Parking and Access

- 8.25 The proposed layout provides 12 allocated spaces in front of the flats and eight visitor parking spaces adjacent to the blocks. The provision is exactly the same as the previously consented scheme. The parking provision comfortably exceeds, by 67%, the Council's current parking standards for social housing which requires one space per flat. The additional parking will provide visitor parking comparable with private housing and will also provide an additional two spaces to compensate for a loss of two on street parking spaces. As is standard practice within Midlothian, finalised details of surfacing materials and lighting provision will be secured via condition and through the roads construction consent process (RCC).

Biodiversity

- 8.26 The Council screens all planning applications against a range of biodiversity constraints such as nature conservation sites, areas of ancient woodland and areas with recorded sitings of protected species. If the screening process identifies constraints within an application site the Council may ask an applicant to submit reports demonstrating that the constraints have been considered and, if necessary, mitigation measures prepared. Appropriate mitigation measures will then be secured by condition if planning permission is granted. The biodiversity screening process did not identify any biodiversity constraints that apply to this application site. A condition can be used

to secure appropriate measures to conserve, restore and enhance biodiversity.

Landscaping

- 8.27 Currently there are three trees and some areas of shrubs within the open space. There are two trees and various hedges/shrubs on the care home site. The trees will be felled to accommodate the development. As is standard practice a landscaping plan will be secured by condition; compensatory planting will be secured as part of the landscaping plan. The previous scheme also proposed that the trees and shrubs would be removed. The scale of the areas of trees and shrubs do not constitute areas of woodland that would require consideration under Policy 6 of NPF4.

Developer Contributions

- 8.28 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:
1. Necessary to make the proposed development acceptable in planning terms (paragraph 15);
 2. Serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 3. 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);
 4. Fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23);
 5. Be reasonable in all other respects.
- 8.29 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements (a form of planning obligation) are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.30 The previous development of which the principal element was the provision of 12 flatted dwellings was assessed in relation to the above guidance and it was considered that a planning obligation was required in respect of the following matters:
- The proposed development in conjunction with housing identified in the MLDP give rise to a need for additional primary school capacity in the Penicuik area. A proportionate contribution was sought;
 - The proposed development in conjunction with housing identified in the MLDP give rise to a need for additional secondary school capacity in the Penicuik area. A proportionate contribution was sought; and
 - The MLDP identifies the provision of the A701 Relief Road as being key to accommodating development within this transport

corridor. A proportionate contribution was sought.

- 8.31 A legal agreement, to secure the developer contributions detailed above, was registered in June 2021. If the Committee is minded to grant planning permission for the current proposal the legal agreement would need to be modified, to include the reference details of the current application, prior to the issuing of the planning permission.

9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The proposed development will be in keeping with the scale and character of the surrounding area; will provide adequate open space and parking provision; and will not have a significant detrimental impact on the residential amenity of the area. The site is within the built-up area of Penicuik where there is a presumption in favour of appropriate development. Furthermore, the proposed development complies with the relevant policies of National Planning Framework 4 and of the Midlothian Local Development Plan 2017.

- 9.2 Subject to:

- i) The modification of the legal agreement to include details of the current application.

The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused for non-compliance with MLDP policies IMP1 and IMP2.

and

- ii) the following conditions:

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

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

2. The development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:
- i. the nature, extent and types of contamination on the site;
 - ii. measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii. measures to deal with contamination encountered during

- iv. construction work; and
 - iv. the condition of the site on completion of the specified decontamination measures.
3. On completion of any required decontamination/ remediation works, referred to in Condition 2, and prior to any dwelling on the site being occupied, a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No dwelling on the site shall be occupied unless or until the planning authority have approved the required validation.

Reason for conditions 2 and 3: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

4. Development shall not begin until a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i existing and finished ground levels and floor levels for all buildings, roads, parking areas and paths in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii proposed new planting including trees, shrubs, hedging and grassed areas;
 - iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the development being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August); unless a suitably qualified ecologist has carried out a walkover survey of the felling/removal area in the 48 hours prior to the commencement of felling/removal, and confirmed in writing that no breeding birds will be affected;
 - vii proposed car park configuration and surfacing;
 - viii details of the location, design, height and specification of proposed street lighting within the development;
 - ix proposed footpaths; and
 - x proposed cycle parking facilities.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (3vi). Thereafter any trees or shrubs removed, dying, becoming seriously

diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting.*

5. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *In the interest of protecting the character and appearance of the area.*

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

Reason: *To ensure the development makes provision for sustainable transport measures.*

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

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

8. Development shall not begin until details of a scheme to deal with surface water drainage has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure that the development is provided with adequate surface water drainage.*

9. Development shall not begin until details of a scheme to conserve, restore and enhance biodiversity throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing by the planning authority.

Reason: *To protect biodiversity, reverse biodiversity loss, deliver positive effects from the development and strengthen nature networks.*

10. Development shall not begin until details, including a timetable of implementation, of “Percent for Art” have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing by the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting.*

11. No development shall begin in any part of the site until the following additional procedures have been completed:

- a) The developer has submitted to the planning authority details of the measures it proposes to ensure that all the flats/dwellings built on the site are occupied in perpetuity only as affordable housing as defined in the Midlothian Local Development Plan 2017;
- b) The planning authority has approved the measures, submitted to discharge requirement 11 a) above, in writing; and
- c) The developer has provided documentary evidence to the planning authority that the measures that the planning authority has approved are in place and the planning authority has confirmed in writing that the provision that has been made is satisfactory.

Reason: *The application has been assessed on the basis that the development provides affordable housing and this condition is essential in order to ensure that the flats/dwellinghouses remain available for occupation by people on modest incomes to meet locally the identified needs of people who cannot afford to buy or rent housing generally available on the open market.*

12. Development shall not begin until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
 - i. details of a construction access;
 - ii. signage for construction traffic, pedestrians and other users of the site;
 - iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
 - iv. details of piling methods (if employed);
 - v. details of any earthworks;
 - vi. control of emissions strategy;
 - vii. a dust management plan strategy;
 - viii. waste management and disposal of material strategy;
 - ix. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;

- x. prevention of mud/debris being deposited on the public highway;
- xi. material and hazardous material storage and removal;
- xii. controls on construction, engineering and any other operations (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays);
- xiii. details of the location and content of any soil or rubble stockpiles; the dimensions of each stockpile; the expected after-use for each stockpile; and
- xiv. details of measures to control surface water run-off from the site during construction.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date:	19 April 2024
Application No:	23/00791/DPP
Applicant:	Ark Housing Association, The Priory, Canaan Lane, Edinburgh
Agent:	Andy Corrigan, Connect Modular, Block 2 Caponacre Industrial Estate, Cumnock
Validation Date:	17 January 2024
Contact Person:	Graeme King, Planning Officer
Email:	graeme.king@midlothian.gov.uk
Background Papers:	17/00740/DPP; 19/00510/DPP
Attached Plans:	Location plan, indicative site layout and elevation plans.



**Planning Service
Place Directorate**

Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith, EH22 3AA

Erection of 12 flatted dwellings; formation of car parking; and associated works. Land At Windsor Square Penicuik

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File No. 23/00791/DPP

Page 94 of 98
Scale 1:800



FACADE SPECIFICATION

ITEM 1 The roof structure consists of 20 & 35 Deg pitched roof with Flat profile interlocking roof tiles (Colour Anthracite).

ITEM 2 The windows and Door to consist of PVCu, Dark Grey Ral 7016 external finish with a universal white coloured internal finish. The windows are of various opening styles, all of which conform to the current British Standard recommendations. The frame is 62mm multi-chambered profile fitted with a 28mm double glazed units with Silver spacer bar. Toughened glass where required. Silver lockable handle with a child proof catch.

ITEM 3 Base Course to be Dark Grey facing brick to match flashing.

ITEM 4 Main Elevation to be White Render.

ITEM 5 All rainwater goods and S.V.P. terminators to be black PVCu.

ITEM 6 Soffits and fascias finished with white PVCu.

ITEM 8 Contrast Elevations to be **Clay**
Brown C03 Cedar cladding.

[illegible]

Block 2, Caponaire Industrial Estate, Cumnock KA18 1SH
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e: enquiries@theweehousecompany.co.uk

www.theweekhousecompany.co.uk

Residential Development
Windsor Square, Penicuik

ARK HA

SITE PLAN

Scale	Drawn By	Checked
1:200	A.G.C.	
Date	Drawing No	
Jul 23	AHA_OS_01 A2 @1-200	

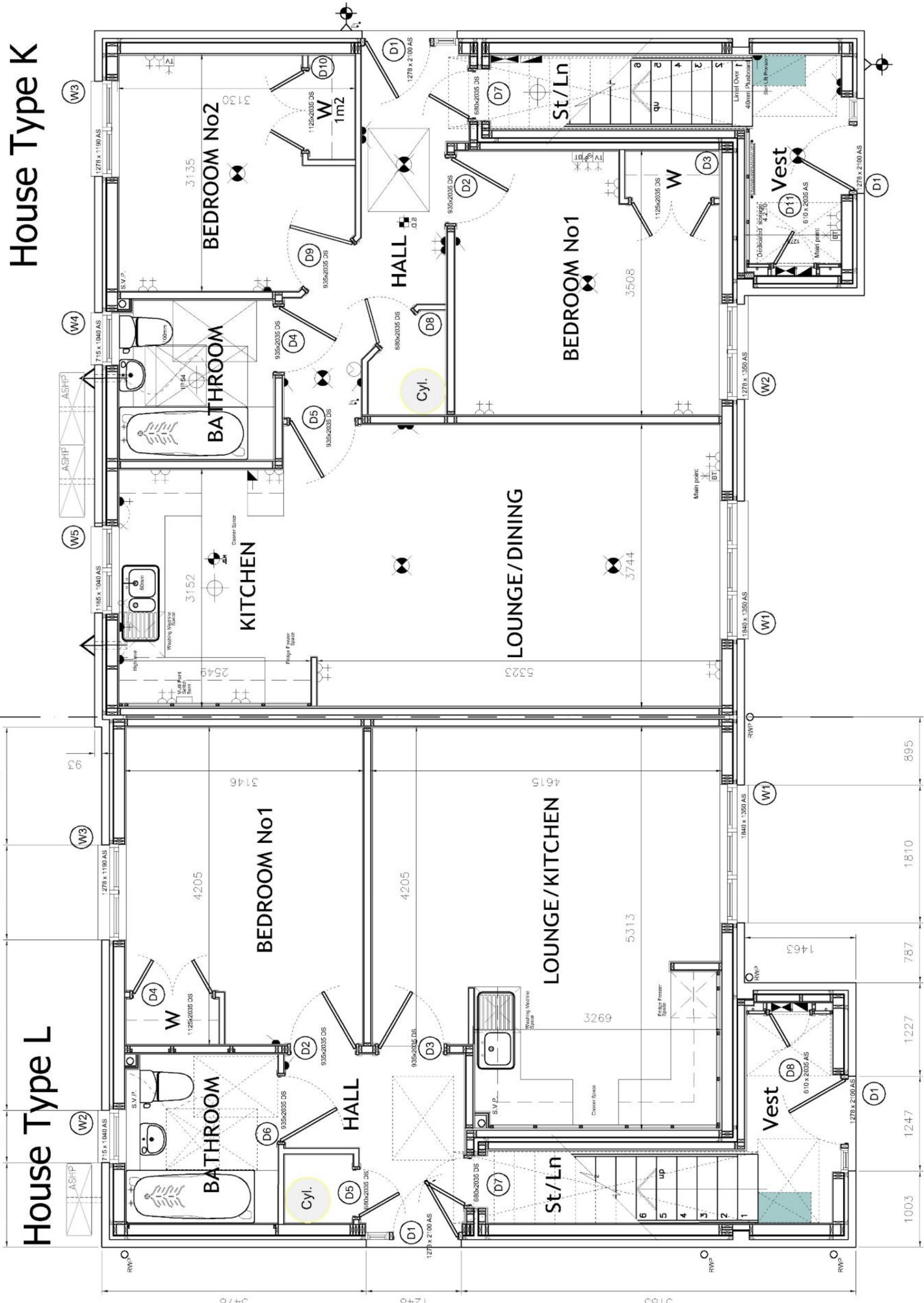


HA UNITS								
HOUSE TYPE L 1 BED 2 PERSON Cot/Flat								2
HOUSE TYPE K 2 BED 3 PERSON Dis Cot/Flat								10
TOTAL HA UNITS								12

CAR PARKING PROVISION		12No
1 & 2 BED FLATS	1 SPACES PER FLAT	12No
VISITORS PARKING REPLACEMENT PARKING	0.3 SPACES PER UNIT	3No 5No
Total		20No

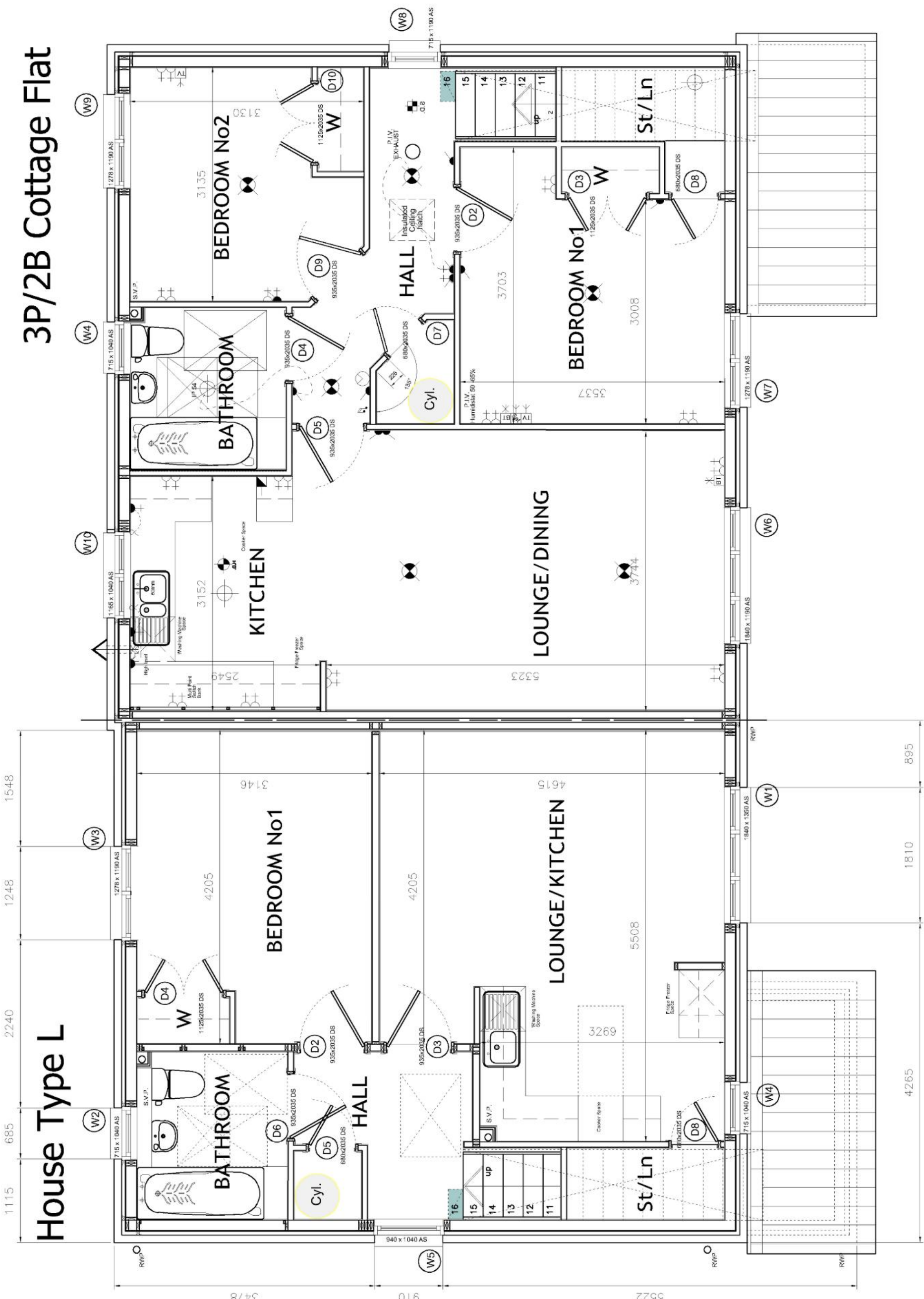
SITE LAYOUT PLAN 1:200

Metres @ 1:200



GROUND FLOOR PLAN
2P/1B Cottage Flat
49.4 m2 (532 sft)

GROUND FLOOR PLAN
66.5 m2 (716 sft)



1ST FLOOR PLAN
54.8 m2 (590 sft)

FIRST FLOOR PLAN
72.3 m2 (779 sft)

REVISIONS

Rev.	Date	Detail



Block 2, Caponaire Industrial Estate, Curmeck KA18 1JSH
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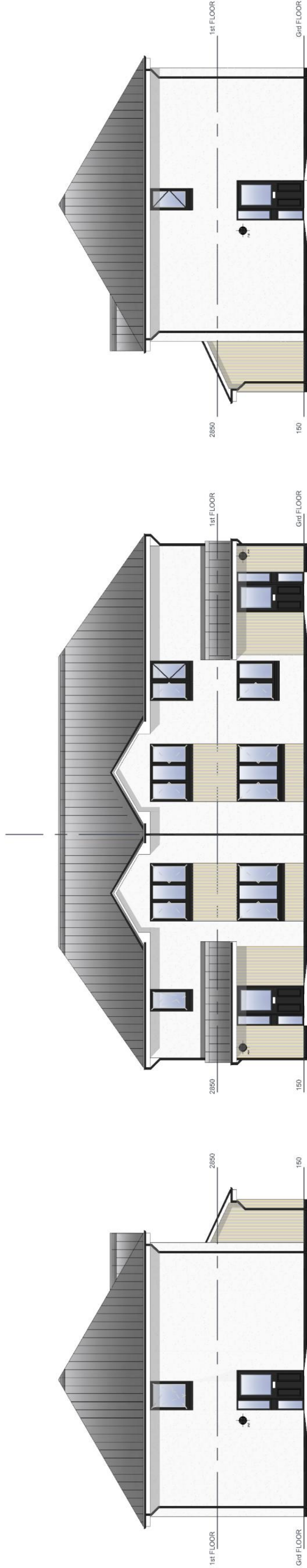
Project

AKA
Windsor Square, Penicuik

Drawing

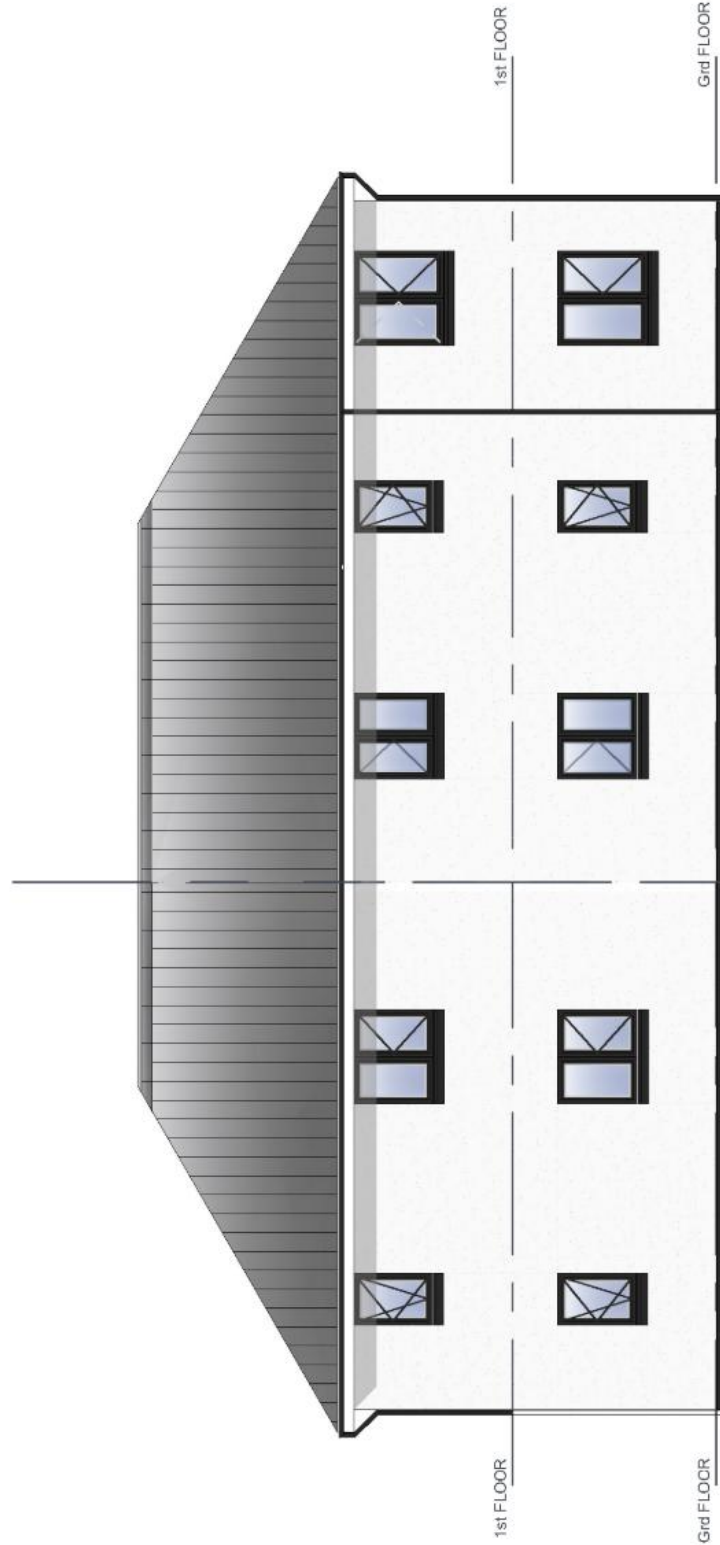
AKA Block No 1

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Date	Drawing No	
Jun 23	BLK1_GA_02	



FRONT ELEVATION

SIDE ELEVATION

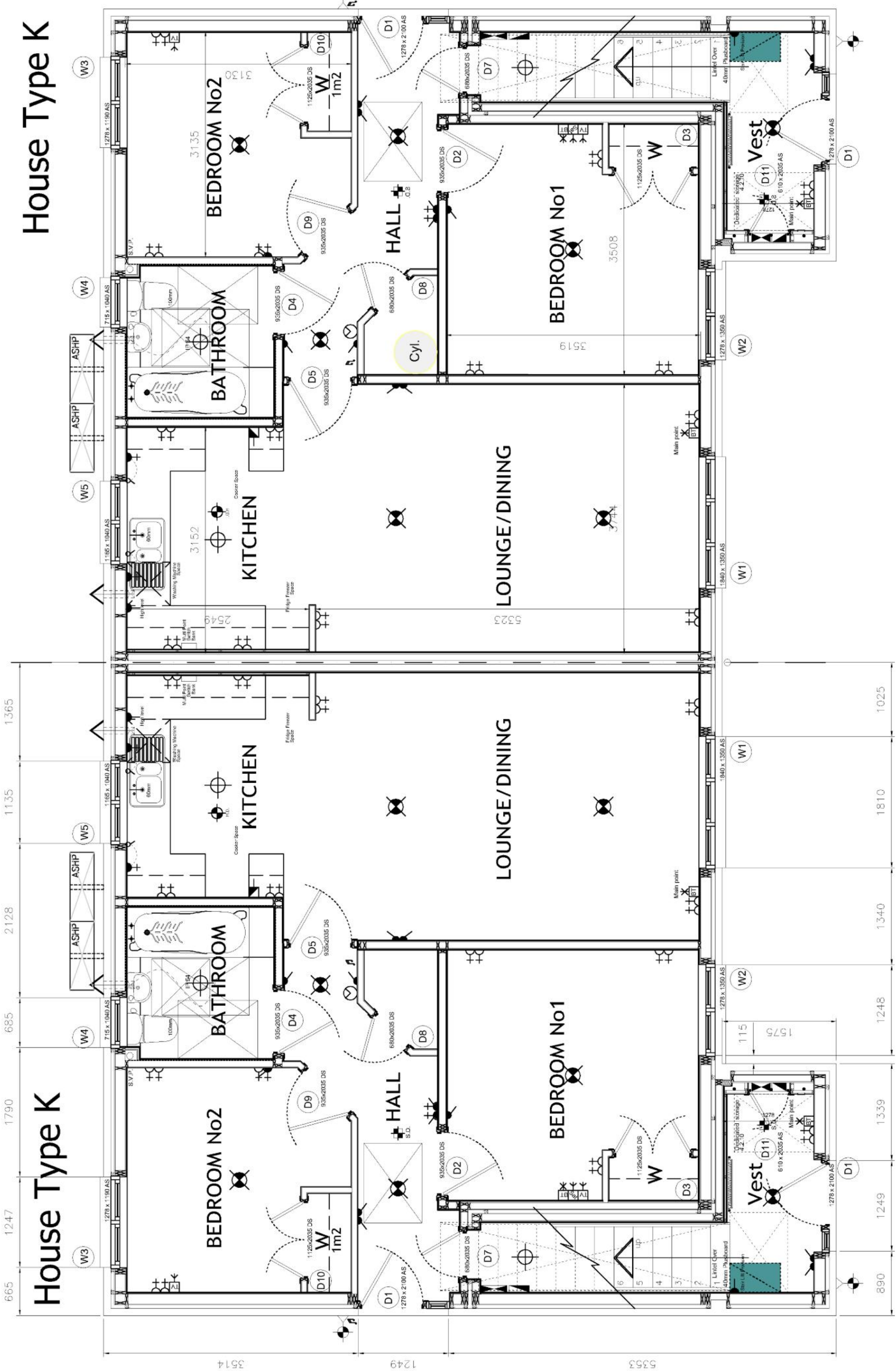


REAR ELEVATION

House Type K

3P/2B Cottage Flat

3P/2B Cottage Flat



GROUND FLOOR PLAN
66.5 m² (716 sft)

FIRST FLOOR PLAN
72.3 m² (779 sft)

FIRST FLOOR PLAN
72.3 m² (779 sft)

REVISIONS

Rev.	Date	Detail



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Project
AKA
Windsor Square, Penicuik

Drawing

AKA Block No 2 & 3

Scale	Drawn By	Checked
1:50	A.G.C.	
Date	Drawing No	
Jun 23	BLK2-3_GA_02	



BLOCK No2 & 3

