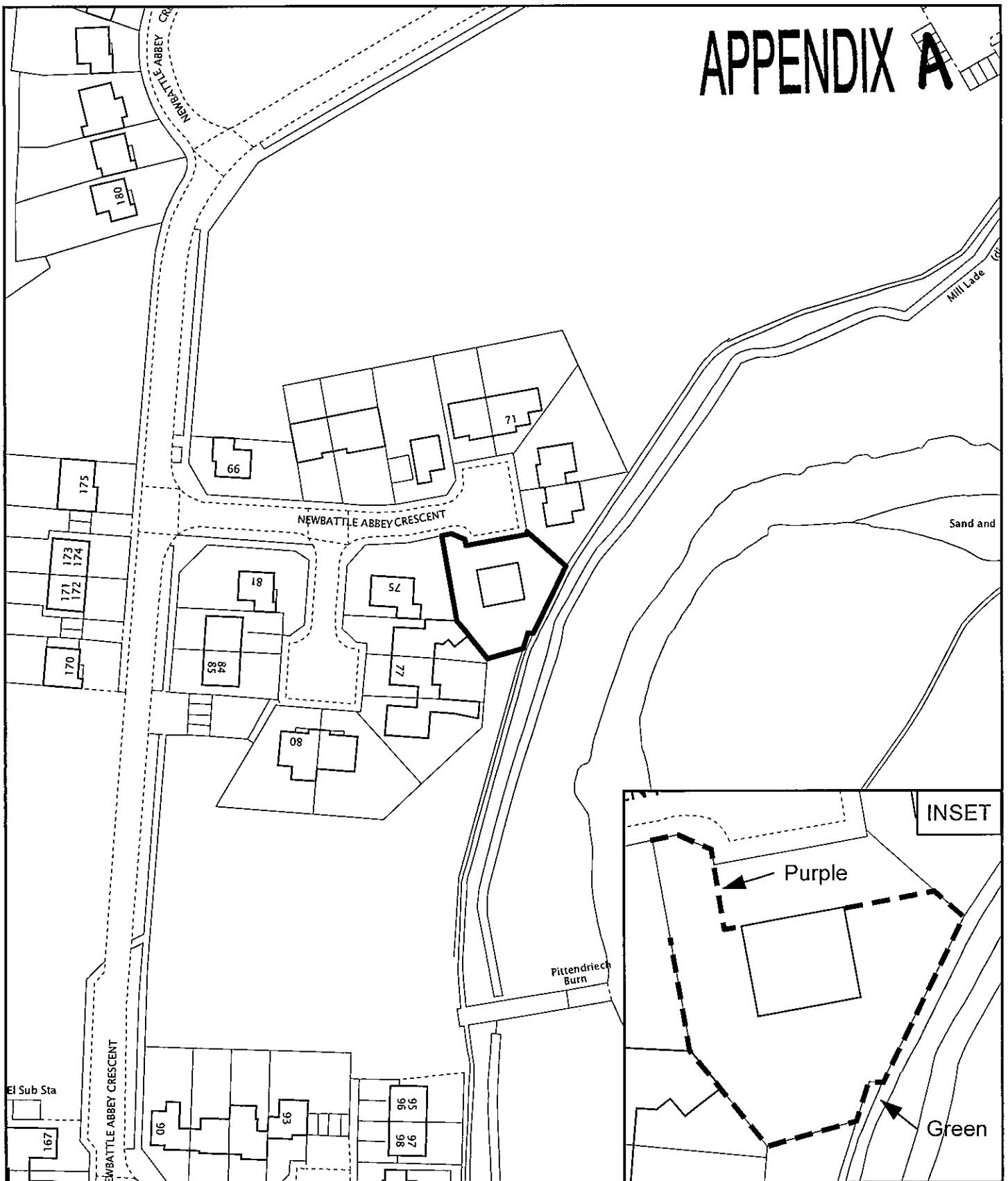


# APPENDIX A



**Corporate Resources**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith EH22 3ZQ

Erection of fence and decking area at 74 Newbattle Abbey Crescent, Dalkeith

INSET: Fences as described in conditions 1 and 2 of the planning permission.

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Midlothian Council Licence No. 100023416 (2012)

File No: 11/00864/DPP

Scale: 1:1,250



## NOTICE OF REVIEW

Under Section 43A(8) Of the Town and Country Planning (SCOTLAND) ACT 1997 (As amended) In Respect  
of Decisions on Local Developments

The Town and Country Planning (Schemes Delegation and Local Review Procedure) (SCOTLAND)  
Regulations 2008

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2008

**IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.**

PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS  
ELECTRONICALLY VIA <https://eplanning.scotland.gov.uk>

1. Applicant's Details		2. Agent's Details (if any)	
Title	Mr.	Ref No.	
Forename	Hugh	Forename	CORPORATE RESOURCES
Surname	Macdonald	Surname	FILE: 11/00864/DPP
			RECEIVED 31 MAY 2012
Company Name		Company Name	
Building No./Name	74	Building No./Name	
Address Line 1	Newbattle Abbey Crescent	Address Line 1	
Address Line 2		Address Line 2	
Town/City	Dalkeith	Town/City	
Postcode	EH22 3LW	Postcode	
Telephone		Telephone	
Mobile		Mobile	
Fax		Fax	
Email		Email	
<b>3. Application Details</b>			
Planning authority	Midlothian		
Planning authority's application reference number	11/00864/DPP		
Site address	74 Newbattle Abbey Crescent, Dalkeith, Midlothian. EH22 3LW		
Description of proposed development	Erection of fence and decking area		

Date of application 4/01/2012

Date of decision (if any) 1/3/2012

**Note.** This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.

#### 4. Nature of Application

Application for planning permission (including householder application) ☒

Application for planning permission in principle ☐

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition) ☐

Application for approval of matters specified in conditions ☐

#### 5. Reasons for seeking review

Refusal of application by appointed officer ☐

Failure by appointed officer to determine the application within the period allowed for determination of the application ☐

Conditions imposed on consent by appointed officer ☒

#### 6. Review procedure

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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

Further written submissions ☒

One or more hearing sessions ☐

Site inspection ☒

Assessment of review documents only, with no further procedure ☐

If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.

I submit that further written submissions are required to enable the LRB to fully appreciate the minimal scale, impact and nature of the Proposed Development. Further written submissions should be requested in relation to the two Reasons for Conditions.

#### 7. Site inspection

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

Can the site be viewed entirely from public land? ☒

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

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

## 8. Statement

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

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

PLEASE SEE PAPER APART

Have you raised any matters which were not before the appointed officer at the time your application was determined? Yes ☒ No ☐

If yes, please explain below a) why your are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

This additional material is introduced in direct to response to the two Reasons for Conditions detailed by the Planning Authority in its Decision Notice of March 1st 2012. Given the nature of the Proposal and the strong planning precedences, the Reasons for Conditions were not expected when the Planning Application was first lodged and hence the submission of additional information is of critical relevance to the determination of the Review.

S.43B(2) of the Town and Country Planning (Scotland) Act 1997 moreover does not affect the requirement or entitlement to have regard to the provisions of the development plan or any other material considerations. All references to additional information directly relate to the compatibility of the Proposed Development with Policy RP22 of the Midlothian Local Plan, and the existence of material considerations allowing a departure from Development Plan policy.

## 9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

PLEASE SEE PAPER APART

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

## 10. Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

Full completion of all parts of this form



Statement of your reasons for requesting a review



All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.



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

## DECLARATION

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge

Signature

: Hugh Macdonald

Date: 25 April 2012

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act.

FAO Mr. Peter Arnsdorf  
Development Control Manager  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3ZN

74 Newbattle Abbey Crescent  
Dalkeith, Midlothian  
EH22 3LW

Date: 30 May 2012

BY POST AND EMAIL

Your Ref: 11/00864/DPP

Dear Mr Arnsdorf,

**Reference: Application for the Review of the Decision of Midlothian Council Planning Permission Application Reference 11/00864/DPP for "Erection of fence and decking area" in respect of 74 Newbattle Abbey Crescent, Dalkeith by Mr. H. Macdonald**

Please find enclosed a Notice of Review, under Section 43A(8) of the Town and Country Planning (Scotland) Act 1997, further to Midlothian Council's approval with conditions of the above planning permission application.

Also enclosed are:

- paper apart containing the Statement setting out Reasons for Review, and
- accompanying documentation and evidence.

This Notice of Review, and accompanying documentation, has also been submitted by email.

Kindly acknowledge receipt.

Yours sincerely,



Hugh Macdonald

**Application for the Review of the Decision of Midlothian Council (the "Planning Authority") to apply Conditions to Planning Permission Application Reference 11/00864/DPP for "Erection of fence and decking area" in respect of 74 Newbattle Abbey Crescent, Dalkeith (the "Proposed Development") by Mr. H. Macdonald**

## **8. STATEMENT SETTING OUT REASONS FOR REVIEW**

### **Introduction**

The Planning Application (Document LRB\_1) together with the Approved Location Plan and Supporting Statements (LRB\_2 and LRB\_3 respectively) were lodged by me with the Planning Authority under the Town and Country Planning (Scotland) Act 1997 ("Planning Act"). The Application was received and validated by the Planning Authority on 29 December 2012.

The Application was granted under the Planning Authority's Decision Notice on 1 March 2012 (Document LRB\_4) for the following reasons:

**"The proposed fence and decking does not detract from the character and appearance of the Newbattle Conservation area in terms of design, scale and choice of materials and so complies with policies RP1, RP22 and RP25 of the Midlothian Local Plan."**

However, the Application has been granted with the following two Conditions:

***"1. The proposed fence identified in purple on the approved location plan dated 27 February 2012 is hereby not approved.***

***Reason: This section of proposed fence would be detrimental to the visual amenity of this part of the conservation area which is characterised by open plan gardens.***

***2. The fence identified in green on the approved location plan dated 27 February 2012 shall be erected to a height of no more than 1.8 metres.***

***Reason: To safeguard the character of the surrounding area, which is within the conservation area."***

Under Section 43A of the Planning Act I hereby apply to the Planning authority for a formal review of this decision ("Review"). I maintain that these two conditions are unreasonable and contravene Circular 4/1998 (LRB\_6) and that there is a clear-cut case for their removal.

I maintain that Condition 1 should not be upheld for the following reason:

- There are six tests listed in Circular 4/1998 for a competent condition – the fifth test "Precise" is violated because this Condition refers to ***The proposed fence identified in purple on the approved location plan dated 27 February 2012*** – however it can be seen on the Approved Location Plan and Supporting Statements (LRB\_2 and LRB\_3) that these documents are not dated 27 February 2012 and there is no purple fence highlighted.

If this imprecision is not sufficient reason to withdraw Condition 1 then it is necessary to infer which section of fencing is being subjected to this condition. Assuming that Condition 1 refers to the proposed new fencing at the north-west corner of the property then I maintain that there are a number of additional reasons why Condition 1 should not be upheld, namely:

- Condition 1 also contravenes the sixth test in Circular 4/1998, namely "Reasonable in all other respects", because it withholds permission to construct the new fence while, at the same time, does not permit the reconstruction of the old fence at the side of the property, leaving the back garden open to the cul-de-sac.
- The proposed fence would cause no detriment to the visual amenity of the area because of its small scale, unobtrusive location and adjacency to an existing fence to which it would conform in terms of style, height and colour.
- It will be shown in this petition that the "open plan" of the front garden would be maintained after the proposed fence was erected (LRB\_8).
- There are also strong planning precedents of significantly greater scale and impact in close vicinity to the Proposed Development (LRB\_12 and LRB\_13), where the Planning Authority has granted permission to enclose large open spaces with fencing.

I maintain that Condition 2 should not be upheld because the fifth test "Precise" is violated as this Condition refers to ***The fence identified in green on the approved location plan dated 27 February 2012*** – however it can be seen on the Approved Location Plan and Supporting Statements (LRB2 and LRB3) that these documents are not dated 27 February 2012 and the fence identified in green, shown in LRB3, is an existing fence that is proposed for removal rather than erection.

If this imprecision is not sufficient reason to withdraw Condition 2 then it is necessary to infer which section of fencing is being subjected to this condition. Assuming that Condition 2 refers to the boundary fencing then it contravenes the sixth test in Circular 4/1998, namely "Reasonable in all other respects", for the following reasons:

- The height of the original boundary fencing at this property, which stood for 44 years, ranged to over 2-metres (LRB\_16),
- The restriction does not allow for reasonable tolerances when constructing a fence over uneven ground,
- The Planning Authority has granted permission for 2-metre high boundary fencing in the Newbattle Abbey Crescent on previous occasions (example ref. 01/00341/FUL),
- A survey of existing fencing in the area (LRB\_15) shows that there is no absolute conformity in terms of fence height, design and character and hence the 1.8 metre restriction is arbitrary in this context.



## **Description of the Proposed Development**

The Property at 74 Newbattle Abbey Crescent ("NAC") is located at the east side of the estate, at the end of a cul-de-sac, as indicated in the Approved Location Plan (LRB\_2). Over the past year, a succession of gales has destroyed the boundary fencing that formerly enclosed the Property, and the remains may be seen in LRB\_7. As a result, the Property's visual amenity has been degraded.

Work to re-instate the boundary fencing has created an opportunity add decking and to enclose a small open area of private garden at the north-west corner of the Property as detailed in LRB\_3 and the Planning Application LRB\_1.

The back garden at the Property is shaded for much of the day by the tall trees and dense woodland along the south-east boundary. However the north-west corner of the Property has a mostly unrestricted access to sunlight so it is proposed to enclose this plot to create a private family seating area and drying green.

In addition, this area of the Property is often used by neighbouring dog-owners as a convenient location for toileting their pets and this is unacceptable. The proposed fence would mitigate this rancour and improve the overall amenity of the Property.

The first image in LRB\_8 shows the present street view of the Property. The second image indicates how insignificantly the street view would change by the addition of the proposed fence. This should be contrasted with the third image in LRB\_8 that illustrates the detrimental effect of an unrestricted hedgerow, which could be planted with impunity in front of the Property.

The fourth and fifth images in LRB\_8 show how the proposed fence would be barely visible from the cul-de-sac entrance, and how the street view is dominated by the existing fence at the adjacent property (75 NAC).

From a visual amenity perspective, I weighed the relative merits of the proposed timber fence versus a hedgerow and in my opinion the fence is the preferred enclosure option.

It is inferred that the Planning Authority has not granted permission for this proposed fence of the Planning Proposal and that this is the subject of Condition 1.

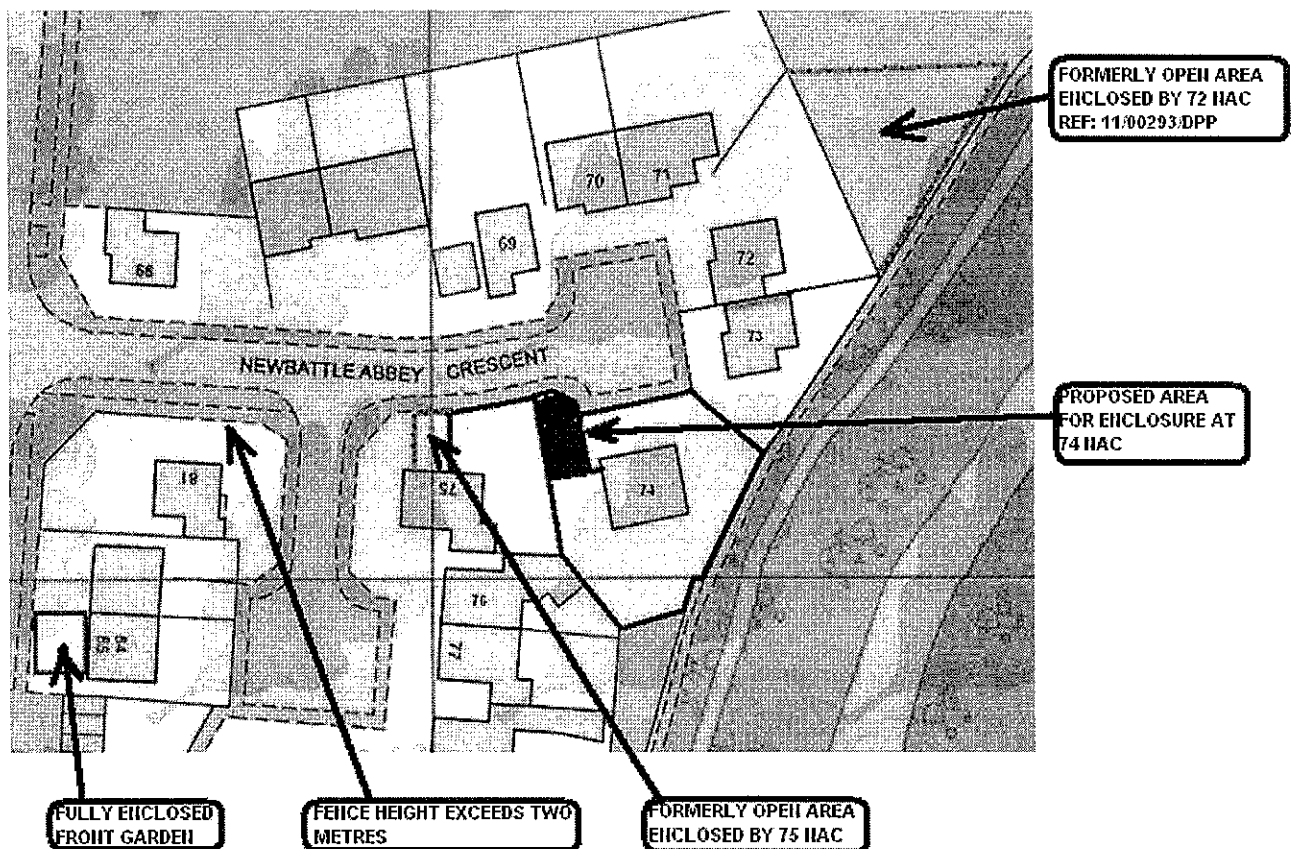
The intention is to re-construct the boundary fencing using standard 1.8m boards – however, it may not be possible to guarantee a uniform 1.8m height due to the undulating nature of the ground and other practical reasons such as legitimate tolerances associated with such a construction, hence the Planning Permission Application 11/00864/DPP states "*Height would not exceed 2m*" (LRB\_3). It is inferred that the Planning Authority has not granted permission for this proposed fence of the Planning Proposal and that this is the subject of Condition 2.

The Planning Authority has confirmed in its Planning Application Delegated Worksheet (document LRB\_5) that the Proposed Development falls within an area of residential development. On this basis Policies RP1, RP9 and RP25 of the Midlothian Local Plan 2008 are not relevant to the Application.

## Reason for Condition 1

*"This section of proposed fence would be detrimental to the visual amenity of this part of the conservation area which is characterised by open plan front gardens."*

It is assumed in the remainder of this section that Condition 1 refers to the proposed fence to enclose the small lawn area at the north-west corner of the property shown in Figure 1, which belongs to the Property. The proposed enclosed area is highlighted indicated. For comparison purposes, recently approved nearby fencing developments at 72 and 75 NAC (11/00293/DPP and 03/00756/FUL respectively) are also indicated.



**Figure 1 – Proposed enclosed area compared to permitted enclosed areas at 72 NAC and 75 NAC**

The west boundary with the adjacent property at 75 NAC is marked by close-board timber fence and this fencing has been recently extended by the present owner as indicated in Figure 1 to enclose an additional open area at the north-west side of his property (03/00756/FUL). The intention of the proposed fencing at the Property would be to maintain the same visual amenity as 75 NAC fence, as suggested in LRB\_8. The proposed fence would continue the same line as the 75 NAC fence, with the same height, colour, materials and style. The proposed fence would not obscure the principle elevation, also shown in LRB\_8, which also shows how the visual baseline is largely defined by the existing 75 NAC fence.

The proposed section of new fence at the Property would not cast a shadow over neighbour's properties or restrict their access to sunlight. The proposed fenced area would be small scale and discretely located around the corner at the end of a cul-de-sac, which is a dead-end to both traffic and pedestrians. It is unlikely that the majority of NAC residents and visitors would see

the proposed fenced area. This relative unobtrusiveness should be contrasted against the size and prominence of the Approved developments at 72 and 195 NAC, where large areas of open park land have been purchased from Bellway Homes and then fenced off by these new owners.

For comparison, the proposed enclosed area at the Property is approximately 48m<sup>2</sup>, compared to 180m<sup>2</sup> at 72 NAC and 140m<sup>2</sup> at 195 NAC. The fencing developments at 72 and 195 NAC are both clearly visible from the main spine road. Figure 2 shows the location and relative sizes compare to the proposed enclosed area at the Property. Further information on these permitted developments 72 and 195 NAC is provided in LRB\_12 and LRB\_13 respectively. Quoting from the Case Officer's notes on the proposed development at 195 NAC, "***the proposal will not have a significant impact on the character of the area.***" It is further noted that the fencing at 195 NAC is partially made of brick - this fence is unique in NAC and is therefore a significant departure from the close-board timber fence style that is a distinguishing characteristic of the estate.



**Figure 2 – Proposed enclosed area at 74 NAC compared to permitted enclosed areas at 72 NAC and 195 NAC (highlighted in red)**

The proposed section of new fence at the Property has not proven to be controversial and no statutory consultees have lodged objections.

One objection was raised, by an individual calling himself "Mr George Macintyre" (LRB\_9). However the current electoral roll does not list "Mr George Macintyre" as a resident of NAC and

his stated address is entirely fictitious. This matter was raised by email with the Case Officer at the Planning Authority on March 3<sup>rd</sup> 2012. The Planning Authority policy in these instances is unknown to me – however, given the lack of traceability and the fact that these remarks may have skewed a balanced and fair consideration of my original Planning Application, I support the exclusion of “Mr Macintyre’s” questionable opinions from any further consideration.

I challenge the accuracy of the statement in the Planning Application Delegated Worksheet (LRB\_5) that, *“Unlike the proposed fence, the fence at the neighbouring property (75 NAC) does not form part of the principal elevation”*. There is no definition of the term *principle elevation* within legislation. It is widely accepted that principal elevation refers to the part of the *house* that contains the main entrance and fronts the road. It is also commonly a reference to a two-dimensional view of the *structure*. *House* and *structure* are key words because, with reference to the second image in LRB\_8, it can be seen that the proposed fencing does not obscure the Property’s principle elevation in any way. This should be compared to the hedgerow option in the third image that could be planted with impunity.

The statement in Planning Application Delegated Worksheet (LRB\_5) continues, *“and a similar height fence would detract from the character and appearance of the conservation area”* *The proposed fence identified in purple on the approved location plan is contrary to Policy RP22 and is therefore not approved”*. RP22 policy states *“within or adjacent to a Conservation Area, development will not be permitted which would have any adverse effect on its character and appearance.”* It is difficult to understand how RP22 applies in this instance, given that there are thousands of metres of timber fencing in and around NAC – some indication of the sheer ubiquity of fencing in the estate is provided in LRB\_10. Timber fencing could even be considered to be one of NAC’s defining features, owing to the low-density housing and the peculiarities of its layout. On this basis, I maintain that the proposed section of fencing would entirely conform to the local visual amenity and as such it would not harm either the character or the appearance of the Conservation Area. The proposed fence, merged with the adjacent fence at 75 NAC, would be sympathetic to the area and have a negligible or neutral impact.

As previously stated, the open front aspect of the Property’s front garden would be maintained after the erection of proposed fence shown in LRB\_8 second image. This open front aspect compares favourably to the many instances of enclosed front gardens in NAC where the principle elevation is obscured, examples of which can be seen in LRB\_11. Particular attention is drawn to the final image in LRB\_11, where a brick wall has been constructed to enclose the front garden at 19 NAC. This lack of front garden conformity is recognised in the Planning Application Delegated Worksheet (LRB\_5) which expresses the opinion that *“Front gardens within Newbattle Abbey Crescent are generally open plan in their design.”* It is also noted that there is no definition of the term *open plan* within legislation.

Planning Application Delegated Worksheet (LRB\_5) speculates that *“Approval of this section of fence in such a prominent location is likely to set a precedent for further enclosures of open space and will prove detrimental to the character and amenity of the Conservation Area.”* This statement would seem to conflict with the strong planning precedence already set by the aforementioned approved developments at 72 and 195 NAC (ref. 11/00293/DPP and 01/00379/FUL respectively) where hundreds of square metres of open space have already been enclosed by fencing. In accepting the LRB are not bound to follow precedents I assert that on the facts, the 01/00379/FUL application was not found to be objectionable on any grounds by the Planning Authority and it has had significantly more impact in terms of both scale and nature.

The statutory order designating the Conservation Area (the "Conservation Order"), as published in 1972 (document LRB\_14) states that *"To the south there is an area of new housing. It is well screened by trees, however, and is largely hidden from view. This area has been included as the line of trees form a natural boundary and merits conservation. It is also generally considered that, in order to preserve the environment, no more development should be permitted."*

On this basis the housing development is not subject to any restrictive covenant regarding front gardens, fences or any other aspect governing its appearance. The Conservation Order does not identify a conservation value on the layout of the housing development of which the Property forms a part, nor any of the other "modern housing developments" lying within the vicinity of the Property.

The Conservation Order seeks to protect the character and appearance of the Conservation Area, which the Conservation Order states is that of a green, wooded, rural and open area with low density housing. I maintain that a development consisting of the enclosure of a small plot of private garden at the Property will not harm these characteristics of the Conservation Area. At worst, the effect will be neutral, given the presence of the adjacent fence at 75 NAC, leaving the character and visual amenity unharmed.

Furthermore it is clear from the Conservation Order that the NAC housing development is not a significant feature of the Conservation Area. The Conservation Order did not envisage that the enclosure of a small piece of garden ground would fall within the category of "development" as referred to in the Conservation Order as built development.

For the reasons given above, Condition 1 should therefore not be upheld.

## Reason for Condition 2

*"To safeguard the character of the surrounding area which is within the conservation area."*

In Planning Permission Application 11/00864/DPP I state *"Height would not exceed 2m"* (LRB\_3) with reference to the boundary fencing. While the intention is to re-build this fencing using standard 1.8m boards, it may not be possible to guarantee a uniform 1.8m height throughout due to the undulating nature of the ground and other practical reasons associated with legitimate building tolerances. I maintain that my statement is acceptable, given that the height of the original 44-year-old boundary fence varied between 0.9m and 2m. Evidence of the original boundary fence maximum height is provided in LRB\_16.

I refer back to my prior comments relating the Conservation Order (LRB\_14) which also apply with respect to Condition 2. The Conservation Order does not place a conservation value on the fencing and places no legal constraints on fence heights.

The Planning Authority has granted permission to erect 2-metre high fences in the Conservation Area in the past (example ref. 01/00341/FUL) so there is strong precedence.

There are many examples of fence heights exceeding 1.8 metres in NAC. Once such 2m fence forms the boundary between the rear gardens at 76 and 77 NAC – this fence is approximately 3m distance from the proposed fence.

No objections have been raised and 77 NAC supports (LRB\_9).

Planning Application Delegated Worksheet (LRB\_6) states *"The proposed fence to the north-east and south-west of the property is acceptable as long as the height does not exceed 1.8m. This will encourage uniformity to fence heights in the immediate vicinity and have minimum impact on the surrounding area."* I again refer to the development at 195 NAC, where the Case Officer's notes state **"the character of conservation area within the local plan area will continue to be safeguarded."** It is noted that this permitted development includes the new boundary fence which incorporates sections of brickwork (unique in NAC), has a non-uniform height (stepped construction) and is located in a prominent location, as shown LRB\_13 and LRB\_15. This should be compared to the proposed fence, in its original discrete location at the edge of the estate, with a level closed-board timber construction. With this mind, it is difficult to understand how the non-uniform height of the fence at 195 NAC is accepted in safeguarding the character of the area, whereas in contrast Condition 2 stipulates that fence height uniformity must be maintained or else the character of the Conservation Area will be compromised.

With respect to *"... this will encourage uniformity to fence heights in the immediate vicinity"* this implies that 1.8m is a standard fence height in the Conservation Area. It should be noted that the proposed fence will be adjacent to three neighbouring fences at 73, 75 and 76 NAC. In each case, the measured fence heights are 1.7m, 1.8m and 1.95m respectively. It is noted that the permitted fence height for the new boundary fence at 72 NAC (LRB\_12) is 1.7m but the actual measurement is 1.8m.

I maintain that there is not, and never has been, a standard fence height in the Conservation Area and a routine survey of the estate would verify this statement. Furthermore - over time, many sections of the original close-board vertical timber fencing have been replaced by a wide variety of other solutions. LRB\_15 shows some examples in NAC, many of which are visible from the main spine road. In LRB\_15, there are many instances of neighbouring fences that are

of different heights and style. The proposed fence would maintain the style of the original fencing and may be subject to height variations that were present in the original fence - these variations are a common feature in the Conservation Area and hence the impact of the fence height is not significant, within the limits stated in my Planning Application, combined with its secluded location at the edge of the estate.

For the reasons given above, Condition 2 should therefore not be upheld.

### **Further Procedure**

Under Regulation 13(4) of the Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008, I submit that an Inspection of the Site and locale must be undertaken to enable the LRB to fully appreciate the minimum scale, impact and nature of the proposed fencing that have been subjected to these Conditions.

### **Conclusion**

I maintain that the Conditions put forward by the Planning Authority should not be upheld because:

- The Conditions contravene Circular 4/1998,
- No detriment would be caused to the character or amenity of the surrounding area in particular due to the negligible impact of the aspects of the Proposed Development subject to these Conditions,
- Strong planning precedent of significant greater scale and impact have already been set in the near vicinity for development, by the granting by the Planning Authority of planning permissible on areas of previously open space wholly within the Conservation Area; and
- Due to the minimum scale, nature and impact of the Proposed Development, it will not harm either the character or appearance of the Conservation Area.
- The Proposed Development is entirely compatible with the requirements of Midlothian Local Plan 2008 and in consequence the Proposed Development is in conformity with Policy RP22 of the Midlothian Local Plan 2008.

I respectfully request that the Local Review Body uphold the Review in my favour and grant the removal of these two Conditions.

**Application for the Review of the Decision of Midlothian Council (the "Planning Authority") to apply Conditions to Planning Permission Application Reference 11/00864/DPP for "Erection of fence and decking area" in respect of 74 Newbattle Abbey Crescent, Dalkeith (the "Proposed Development") by Mr. H. Macdonald**

**9. LIST OF DOCUMENTS AND EVIDENCE**

The following list comprises all supporting documents, materials or evidence accompanying the Review:

Document LRB_1	Planning Permission Application Reference 11/00864/DPP
Document LRB_2	Approved Location Plan dated 01/03/2012
Document LRB_3	Supporting Statements dated 01/03/2012
Document LRB_4	Decision Notice dated 01/03/2012
Document LRB_5	Planning Application Delegated Worksheet further to Planning Permission Application Reference 11/00864/DPP dated 01/03/2012
Document LRB_6	Scottish Government Circular 4/1998
Document LRB_7	Photographs showing current state of boundary fencing at 74 Newbattle Abbey Crescent
Document LRB_8	Photographs showing street views of proposed fence at north-west corner of 74 Newbattle Abbey Crescent
Document LRB_9	Application Comments
Document LRB_10	Photographs showing fencing examples in Newbattle Abbey Crescent
Document LRB_11	Photographs showing enclosed front gardens in Newbattle Abbey Crescent
Document LRB_12	Details of planning permission to enclose open land at 72 Newbattle Abbey Crescent
Document LRB_13	Details of planning permission to enclose open land at 195 Newbattle Abbey Crescent
Document LRB_14	Statutory Order designating the Newbattle Conservation Area publ. 1972
Document LRB_15	Examples of fencing styles in Newbattle Abbey Crescent
Document LRB_16	Existing 2-metre fence section at 74 Newbattle Abbey Crescent



## Midlothian

Fairfield House 8 Lothian Road Dalkeith EH22 3ZN

Tel: 0131 271 3302

Fax: 0131 271 3537

Email: [planning-applications@midlothian.gov.uk](mailto:planning-applications@midlothian.gov.uk)

Planning Department

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

Thank you for completing this application form:

ONLINE REFERENCE 000033049-001

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

### Description of Proposal

Please describe accurately the work proposed: \* (Max 500 characters)

- 1/ Propose to add new fencing on the west side of property boundary to enclose private lawn area. Fence would be of similar design and height as adjacent fence at 75 NAC
- 2/ Propose to remove existing low-level boundary fence between 74 and 75 NAC & replace with a new fence of similar design and height as adjacent fence at 75 NAC.
- 3/ Propose to repair/replace remaining boundary fencing. Height would not to exceed 2m.
- 4/ Propose to build decked area on west side of property.

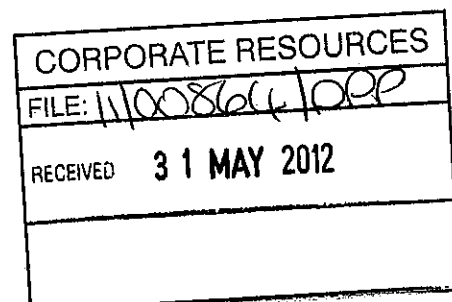
Has the work already been started and/or completed? \*

☒ No ☐ Yes - Started ☐ Yes - Completed

### Applicant or Agent Details

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

☒ Applicant ☐ Agent



## Applicant Details

Please enter Applicant details

Title: *	Mr
Other Title:	
First Name: *	Hugh
Last Name: *	Macdonald
Company/Organisation:	
Telephone Number: *	
Extension Number:	
Mobile Number:	
Fax Number:	
Email Address: *	

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

Building Name:	
Building Number:	74
Address 1 (Street): *	Newbattle Abbey Crescent
Address 2:	
Town/City: *	Dalkeith
Country: *	UK
Postcode: *	EH22 3LW

## Site Address Details

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

Address 1:	74 NEWBATTLE ABBEY CRESCENT	Address 5:	
Address 2:	ESKBANK	Town/City/Settlement:	DALKEITH
Address 3:		Post Code:	EH22 3LW
Address 4:			

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

--

Northings	665513	Easting	332731
-----------	--------	---------	--------

## Pre-Application Discussion

Have you discussed your proposal with the planning authority? \*

☐ Yes ☒ No

## Trees

Are there any trees on or adjacent to the application site? \*

☐ Yes ☒ No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

## Access and Parking

Are you proposing a new or altered vehicle access to or from a public road? \*

☐ Yes ☒ No

If Yes please describe and show on your drawings the position of any existing, altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

## Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? \*

☐ Yes ☒ No

## Certificates and Notices

Certificate and Notice under Regulation 15 8 -- Town and Country Planning (General Development Management Procedure) (Scotland) Order 1992 (GDPO 1992) Regulations 2008

One Certificate must be completed and submitted along with this application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? \*

☒ Yes ☐ No

Is any of the land part of an agricultural holding? \*

☐ Yes ☒ No

## Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

## Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

Certificate A

I hereby certify that --

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding.

Signed: Mr Hugh Macdonald

On behalf of:

Date: 28/12/2011

☒ Please tick here to certify this Certificate. \*

## Checklist - Application for Householder Application

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

- a) Have you provided a written description of the development to which it relates? \* ☒ Yes ☐ No
- b) Have you provided the postal address of the land to which the development relates, or if the land in question has no postal address, a description of the location of the land? \* ☒ Yes ☐ No
- c) Have you provided the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent? \* ☒ Yes ☐ No
- d) Have you provided a location plan sufficient to identify the land to which it relates showing the situation of the land in relation to the locality and in particular in relation to neighbouring land? \*. This should have a north point and be drawn to an identified scale. ☒ Yes ☐ No
- e) Have you provided a certificate of ownership? \* ☒ Yes ☐ No
- f) Have you provided the fee payable under the Fees Regulations? \* ☒ Yes ☐ No
- g) Have you provided any other plans as necessary? \* ☒ Yes ☐ No

Continued on the next page

A copy of other plans and drawings or information necessary to describe the proposals (two must be selected). \*

You can attach these electronic documents later in the process.

- ☐ Existing and proposed elevations.
- ☐ Existing and Proposed floor plans.
- ☐ Cross sections.
- ☒ Site layout plan/Block plans (including access).
- ☐ Roof plan.
- ☒ Photographs and/or photomontages.

Additional Surveys – for example a tree survey or habitat survey may be needed. In some instances you may need to submit a survey about the structural condition of the existing house or outbuilding. \* ☐ Yes ☒ No

A Supporting Statement – you may wish to provide additional background information or justification for your proposals. This can be helpful and you should provide this in a single statement. This can be combined with a Design Statement if required. \* ☒ Yes ☐ No

You must submit a fee with your application. Your application will not be able to be validated until the appropriate fee has been received by the planning authority.

## Declare - For Householder Application

I, the applicant/agent certify that this is an application for planning permission as described in this form and the accompanying plans/drawings and additional information.

Declaration Name: Mr Hugh Macdonald

Declaration Date: 28/12/2011

Submission Date: 28/12/2011

## Payment Details

Online payment: XMEP00000086

Created: 28/12/2011 13:38

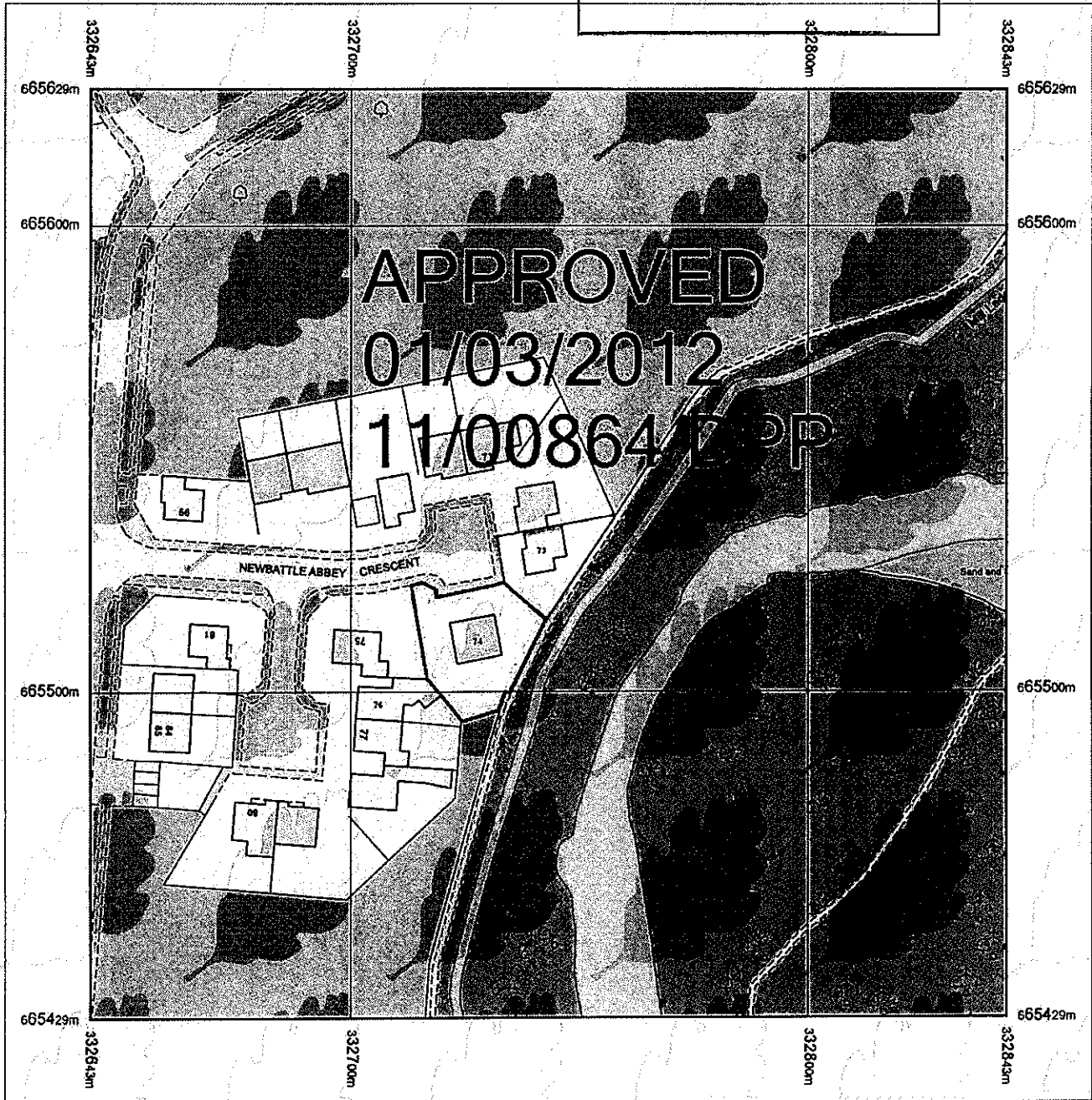


CORPORATE RESOURCES

FILE: 11/00864/PPP

RECEIVED 31 MAY 2012

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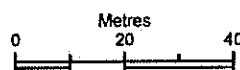
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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.



Scale 1:1250

Supplied by: Centremaps@SurveySoluti

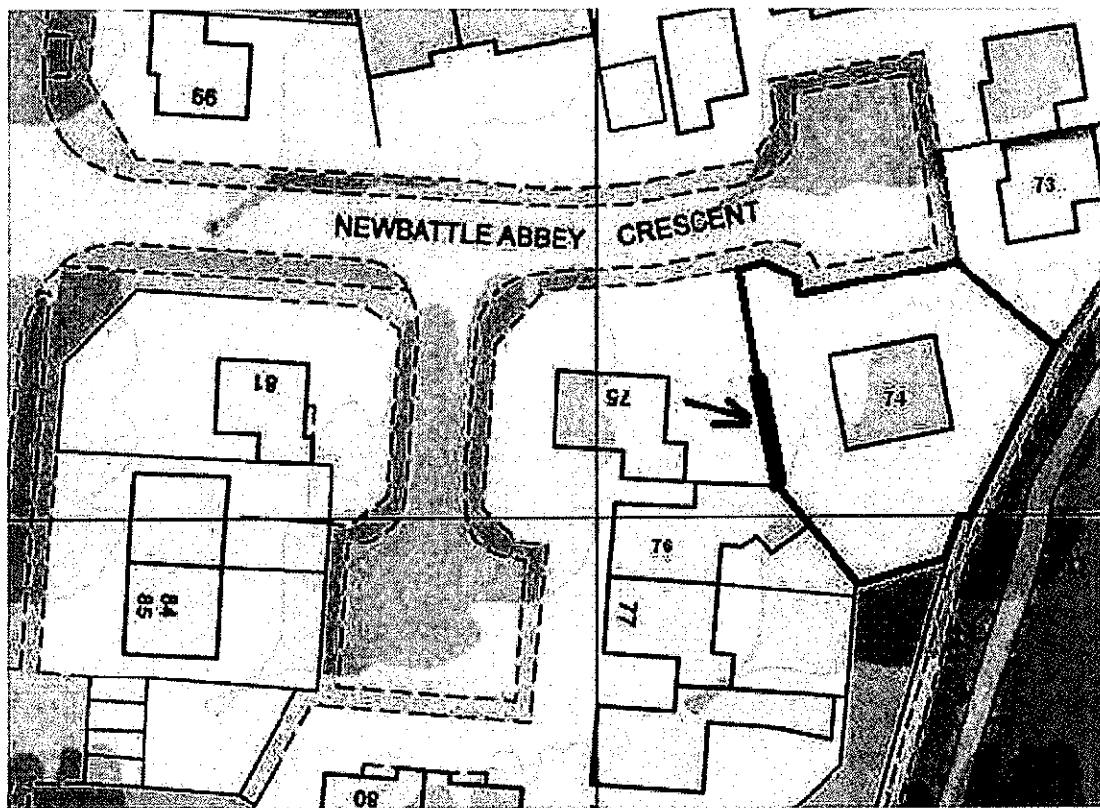
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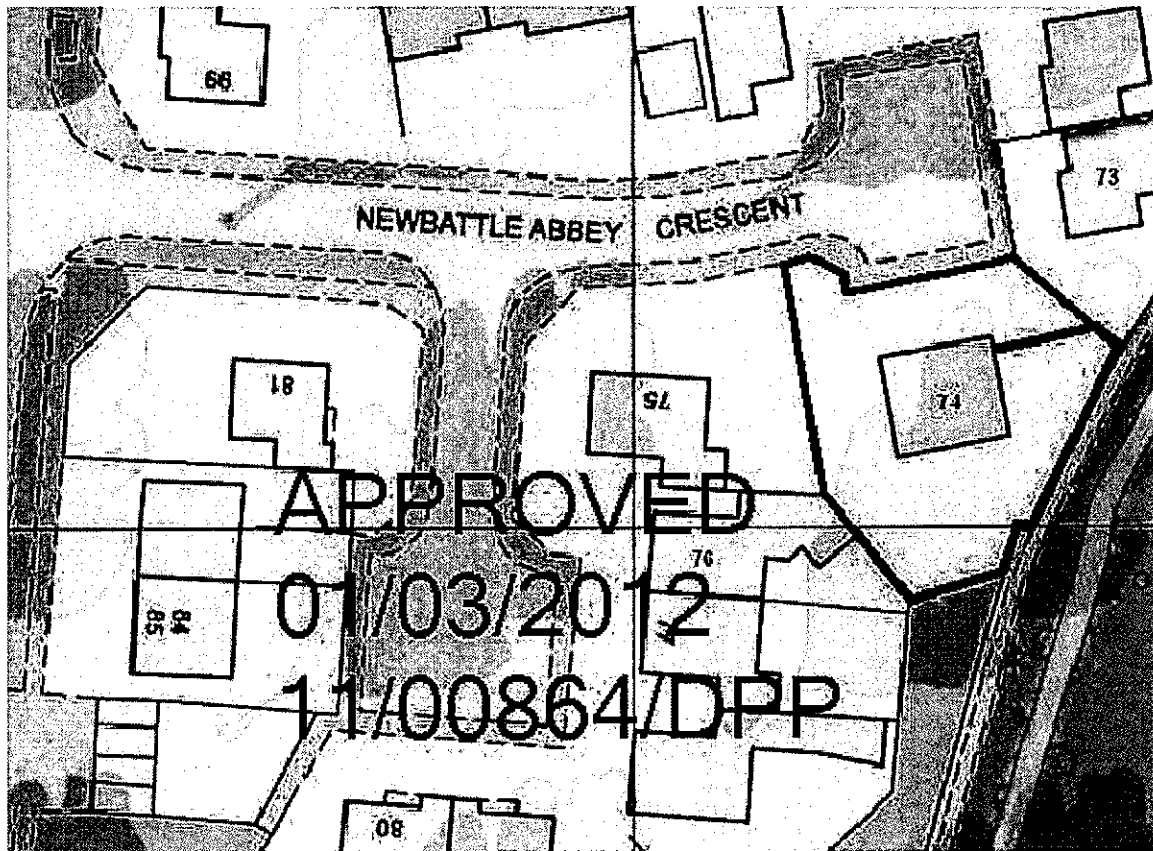
Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site: [www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk)



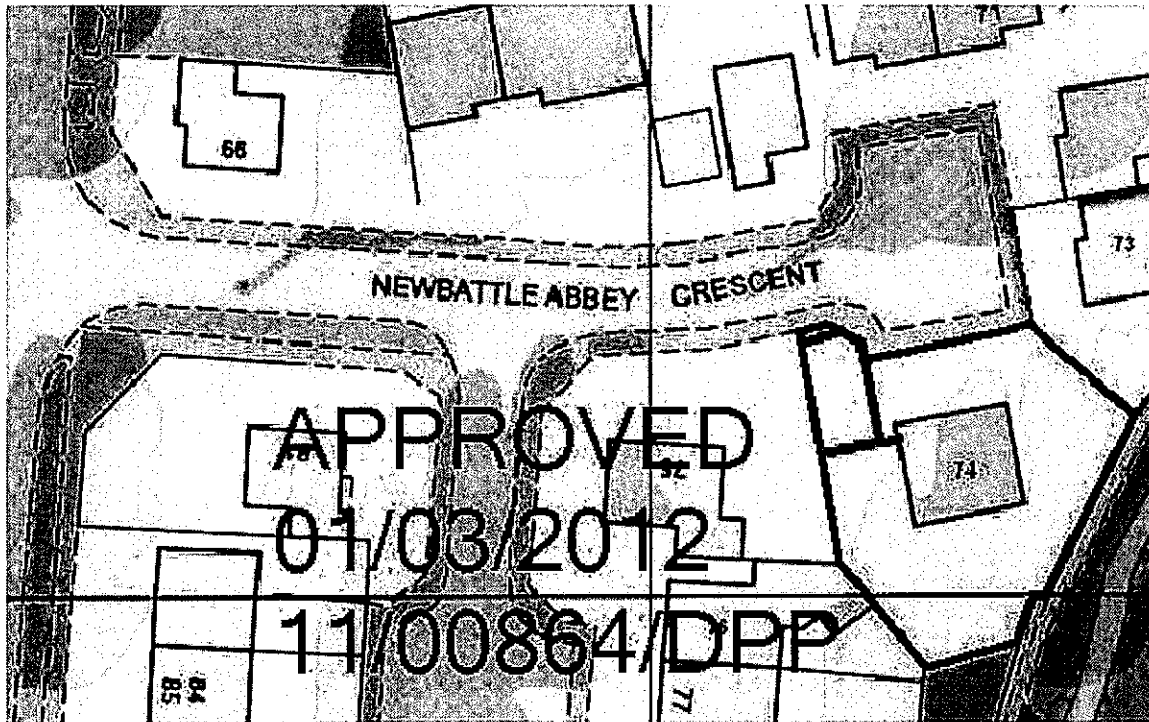
Propose removal of existing low-level boundary fence between 74 and 75 NAC. Replace low-level fence with close board timber fence approx 1.8m high



Location of existing low-level fence (highlighted in RED) to be removed and replaced with new timber fence

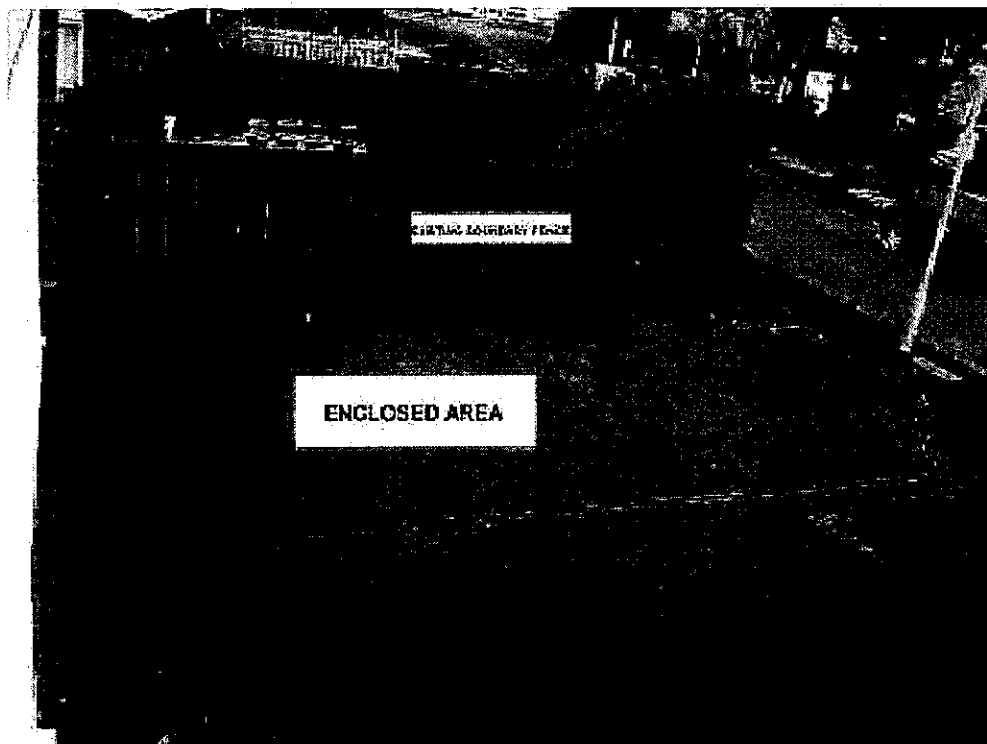


Proposed replacement/repair of existing boundary fencing highlighted in RED with close board timber fence not exceeding 2.0m high, following existing fence line



Remove section of existing fence (highlighted in GREEN)

Enclose lawn area at west side of property with new close board timber fence (highlighted in RED) approx 1.8m high in keeping with height and design of adjacent boundary fence at 75 NAC

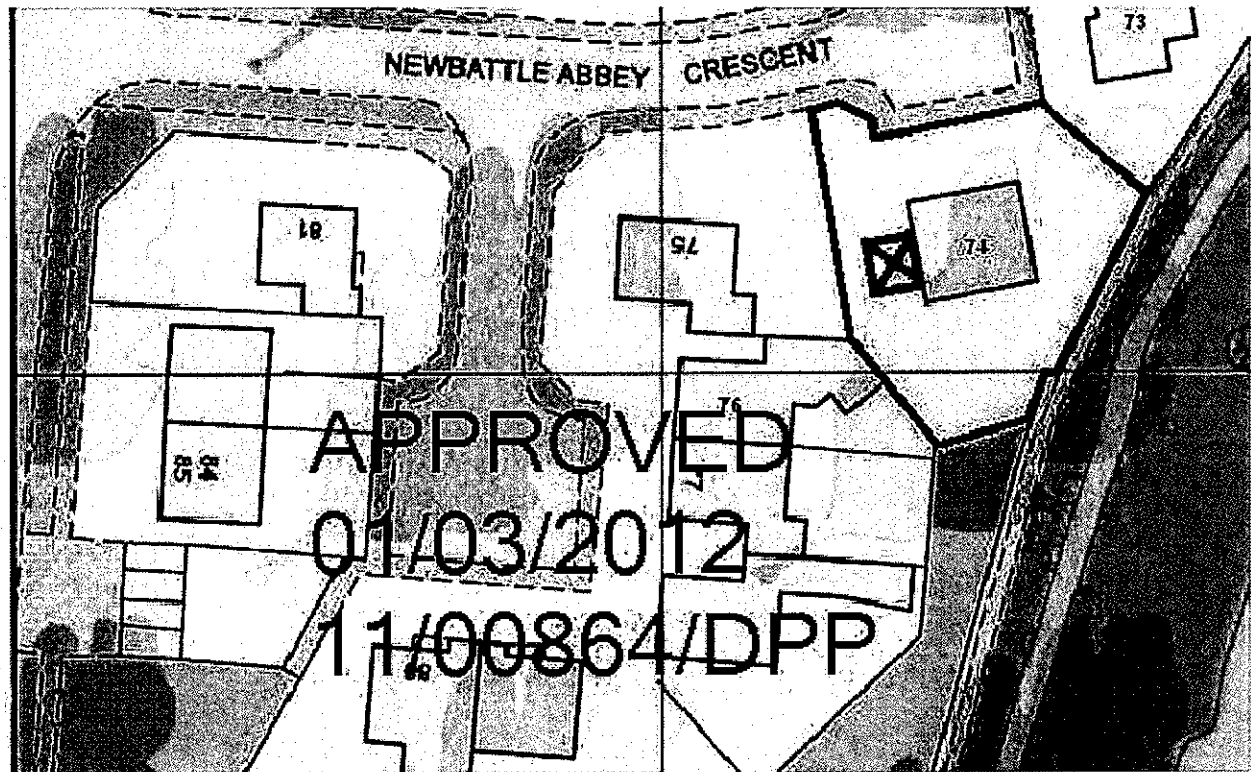


Proposed new fence line at west side of property (shown in RED) would approximate the fence line set by the adjacent boundary fence at 75 NAC (shown), while avoiding the manhole cover

Fence design and height would be in keeping with adjacent boundary fence at 75 NAC

Proposed enclosed area would be covered by loose white granite chippings





Proposed location of new timber decked area at west side of property (shown in RED).

Decking platform not to exceed 200mm height.

Decked area not to exceed 4.8m x 4.8m



**Neighbours notified:**

Mr and Mrs D. Knox, 73 NAC

Mr and Mrs L. Raeburn, 75 NAC

Occupier, 76 NAC

Document LRB\_5 Planning Application Delegated Worksheet further to  
Planning Permission Application Reference 11/00864/DPP dated 01/03/2012

**MIDLOTHIAN COUNCIL**

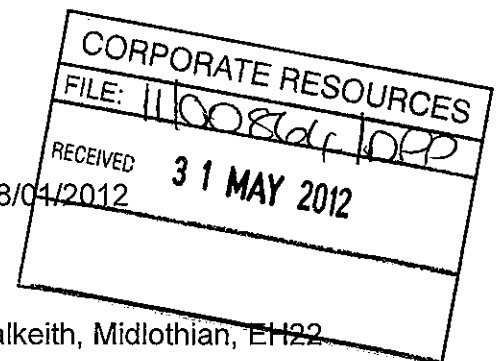
**DEVELOPMENT MANAGEMENT  
PLANNING APPLICATION DELEGATED WORKSHEET:**

**Case Officer:** Victoria Famelton

**Site Visit Date:** 18/04/2012

**Planning Application Reference:** 11/00864/DPP

**Site Address:** 74 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian, EH22 3LW



**Site Description:** The application site is a two storey dwellinghouse located within Newbattle Conservation Area. It is finished externally with a beige dry dash render on the front and rear elevations, brick on the side elevations, white uPVC windows and brown profile concrete roof tiles. There is an existing conservatory at the rear of the property (Application Reference 372/94) and the property is bounded by a 0.9 metre fence to the south west and a 1.8 metre fence throughout the rest of the site. The front of the property features an open grassed area to the north, Lady Lothian's Plantation and the River South Esk to the east and a shared boundary with 75 and 76 Newbattle Abbey Crescent to the south and west.

**Proposed Development:** Erection of fence and decking area

**Proposed Development Details:** The proposed fence to the south west of the property is to measure 1.8 metre high and to the north east it will measure 2 metres high. At the front of the property it is proposed to enclose the garden ground with a 1.8 metre high fence. The proposed decking will be situated to the south west of the site and will measure 0.2 metres in height and will have a footprint of 23.4 square metres.

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

**11/00206/DPP**

Mr and Mrs Knox, 73 Newbattle Abbey Crescent, Dalkeith, Midlothian, EH22 3LW  
Erection of two storey extension including double garage and porch

At 73 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian EH22 3LW

*Case Officer: Ingrid Forteach*

**Decision:** CONPER

**08/00544/FUL**

Stewart Mackinnon, 69 Newbattle Abbey Crescent, Eskbank, Dalkeith  
Installation of replacement windows, formation of French windows and partial infilling of window openings (retrospective)

At 69 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian, EH22 3LW

**Consultations:** No consultations are required

**Representations:** There have been two letters of representation from 77 and 168 Newbattle Abbey Crescent. Number 77 supports the proposal as long as the rear of the property (the proposed new fence line) does not exceed 6 foot 6 inches high (2 metres in height). Number 168 objects to the proposal on the following grounds: -

- Newbattle Abbey Crescent is of an open planned design characterised by areas of open spaces, trees and low density housing.
- The erection of the fence along the front of the property will reduce the open feel of the area and will be in breach of Policy RP22
- No properties in the area have a fence in the front section of their garden

**Relevant Planning Policies:**

Midlothian Local Plan 2008

RP1 – Protection of the Countryside

RP9 – Protection of River Valleys

RP22 – Conservation Areas

RP25 – Nationally Important Gardens and Designed Landscapes

**Planning Issues:** The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval. The application site is located within an area covered by the Midlothian Local Plan.

The site falls within the countryside but as it is located in a residential development and the proposed works are to an established dwelling therefore Policies RP1, RP9 and RP25 are not relevant in this case. Policy RP22 seeks to protect the character and appearance of the conservation area.

Newbattle Abbey Crescent is of an open plan design and the surrounding designed landscape is a major influence on the rural landscape and its settlement character. The area features low density housing and is characterised by the various sized cul-de-sacs located between large open spaces and trees. The character and amenity of the area is in keeping with its location within Newbattle Conservation Area.

Front gardens within Newbattle Abbey Crescent are generally open plan in their design and fences set back from the pavement. The applicant states that the proposed fence at the front of the property will be in keeping with the design and height of the adjacent boundary fence at 74 Newbattle Abbey Crescent. Unlike the proposed fence, the fence at the neighbouring property does not form part of the principal elevation and a similar height fence would detract from the character and appearance of the conservation area. The proposed fence identified in purple on the approved location plan is contrary to Policy RP22 and is therefore not approved. Approval of this section of fence in such a prominent location is likely to set a precedent for further enclosures of open space and will prove detrimental to the character and amenity of the Conservation Area.

The proposed fence to the north east and south west of the property is acceptable as long as the height does not exceed 1.8 metres. This will encourage uniformity to fence heights in the immediate vicinity and will have minimal impact on the surrounding area. There are no significant issues of overlooking or loss of

sunlight/daylight to neighbouring properties. The proposed fence and decking materials are sympathetic to the existing property and will not impact negatively on the existing character of the area with sufficient garden space remaining after development.

**Recommendation:** It is recommended that planning permission be approved with the following conditions:

1. The fence identified in purple on the approved location plan dated 4 January 2012 is not approved

**Reason:** *This section of proposed fence would be detrimental to the visual amenity of the surrounding area.*

2. The fence identified in green on the approved location plan dated 4 January 2012 must be maintained at a height of no more than 1.8 metres

**Reason:** *To safeguard the character of the surrounding area*

3. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

**Reason:** *To accord with the provisions of Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006).*

## Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 11/00864/DPP

Mr Hugh Macdonald  
74 Newbattle Abbey Crescent  
Dalkeith  
EH22 3LW

CORPORATE RESOURCES	
FILE:	11/00864/DPP
RECEIVED	31 MAY 2012

Midlothian Council, as Planning Authority, having considered the application by Mr Hugh Macdonald, 74 Newbattle Abbey Crescent, Dalkeith, EH22 3LW, which was registered on 4 January 2012, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

**Erection of fence and decking area  
at 74 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian, EH22 3LW**

in accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan/Inc neighbours notified	1:1250	04.01.2012
Location Plan/Inc neighbours notified	1:1250	27.02.2012
Other Statements		04.01.2012

This permission is granted for the following reason(s):

*The proposed fence and decking does not detract from the character and appearance of the Newbattle Conservation Area in terms of design, scale and choice of materials and so complies with policies RP1, RP22 and RP25 of the Midlothian Local Plan.*

Subject to the following condition(s):

1. The proposed fence identified in purple on the approved location plan dated 27 February 2012 is hereby not approved.

**Reason:** *This section of proposed fence would be detrimental to the visual amenity of this part of the conservation area which is characterised by open plan front gardens.*

2. The fence identified in green on the approved location plan dated 27 February 2012 shall be erected to a height of no more than 1.8 metres.

**Reason:** *To safeguard the character of the surrounding area which is within the conservation area.*

3. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

***Reason:*** To accord with the provisions of Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006).

Dated 1 / 3 / 2012

A handwritten signature in black ink, consisting of a stylized 'D' and 'R'.

.....  
Duncan Robertson  
Senior Planning Officer; Local Developments,  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

## **PLEASE NOTE**

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

*If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Development Manager, Development Management Section, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN. A notice of review form is available from the same address and will also be made available online at [www.midlothian.gov.uk](http://www.midlothian.gov.uk)*

*If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.*

### **The Felling of Trees**

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

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

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

### **Prior to Commencement (Notice of Initiation of Development)**

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

## **IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION**

### **Making an application**

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

### **Making comment on an application**

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

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



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Circular 4/1998 Circular

**Circular 4/1998****INTRODUCTION**

1. This Circular and the accompanying Annex sets out Government policy on the use of conditions in planning permissions. It updates and revises the guidance in SDD Circular18/1986, which (except for Appendices A and B - see paragraph 11 below) is now cancelled, to take account of:-

- new legislation, in particular the consolidation of the Planning Acts;
- Court decisions, which are referred to at relevant sections of the Annex;
- additional topics, such as Environmental Assessment and Nature Conservation; and
- good planning practice in the use of conditions.

**GENERAL POLICY**

2. Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:

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

The Secretary of State attaches great importance to these criteria being met so that there is an effective basis for the control and regulation of development which does not place unreasonable or unjustified burdens on applicants and their successors in title.

3. Planning conditions must not, however, be applied slavishly or unthinkingly; a clear and precise reason for a condition must be given. While the use of standard conditions can be important to the efficient operation of the development control process, such conditions should not be applied simply as a matter of routine. Conditions should be used to achieve a specific end, not to cover every eventuality.

4. It is essential that the operation of the planning system should command public confidence. The sensitive use of conditions can improve the effectiveness of development control and enhance that confidence. Conditions imposed in an unreasonable way, so that it proves impracticable or inexpedient to enforce them, will damage such confidence and should be avoided.

5. The Annex to the Circular sets out the policy in greater detail.

**DEVELOPMENT PLANS**

6. Where appropriate, development plans should specify the policies which the authority propose to implement regularly by means of planning conditions. Where applicants for planning permission are aware of such policies, they are more likely to incorporate appropriate details in their submissions, thus reducing the risk of delay in determining the applications and possibly avoiding the need to impose a specific condition.

**APPEALS**

7. Paragraph19 of AnnexA to SODD Circular13/1997 states that, in the case of planning inquiries, the statement submitted by the planning authority should include a list of conditions that it would wish to see imposed on any approval which may be given. A similar practice, which some authorities already follow, is also appropriate to cases proceeding by way of written submissions. The Secretary of State expects Reporters will be vigilant in ensuring that conditions imposed meet the criteria in paragraph2 above and the detailed policy set out in the Annex.

**BREACH OF CONDITION NOTICES**

8. Since July 1992, planning authorities have been able to ensure compliance with many planning conditions by serving a breach of condition notice. Guidance about this type of notice is given in SOEND Circular36/1992. If a valid breach of condition notice is contravened, the resulting offence is open to summary prosecution. But the prosecution's case must always be proved on the criminal standard of proof ("beyond reasonable doubt"). Consequently, if the breach of condition notice procedure is to operate effectively, planning conditions must be formulated precisely. In the event of prosecution, Courts will then have no doubt about exactly what is required in order to comply with the terms of a planning condition.

**SPECIALIST SUBJECTS**

9. This Circular does not include specific advice on the use of planning conditions for specialist subjects such as minerals workings or for developments relating to waste management.

**MANPOWER AND FINANCIAL CONSIDERATIONS**

10. This Circular brings up to date existing advice, and should therefore have no effect on local government manpower or expenditure.

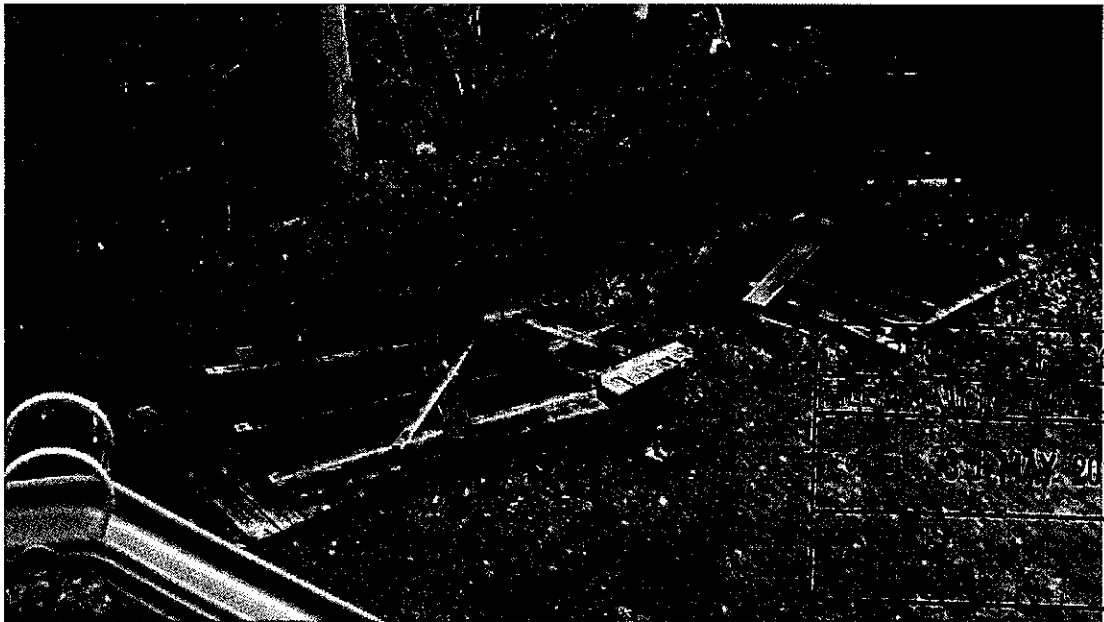
**MODEL CONDITIONS**

11. The Secretary of State is of the view that detailed guidance on model conditions should be provided. Further work with local authority representatives in this area will be undertaken and a list of model conditions will be issued in due course. This Circular should be read with the forthcoming guidance on model conditions. Until the new list of model conditions is published, authorities should continue to refer to these in AppendicesA and B of SDD Circular18/1986.

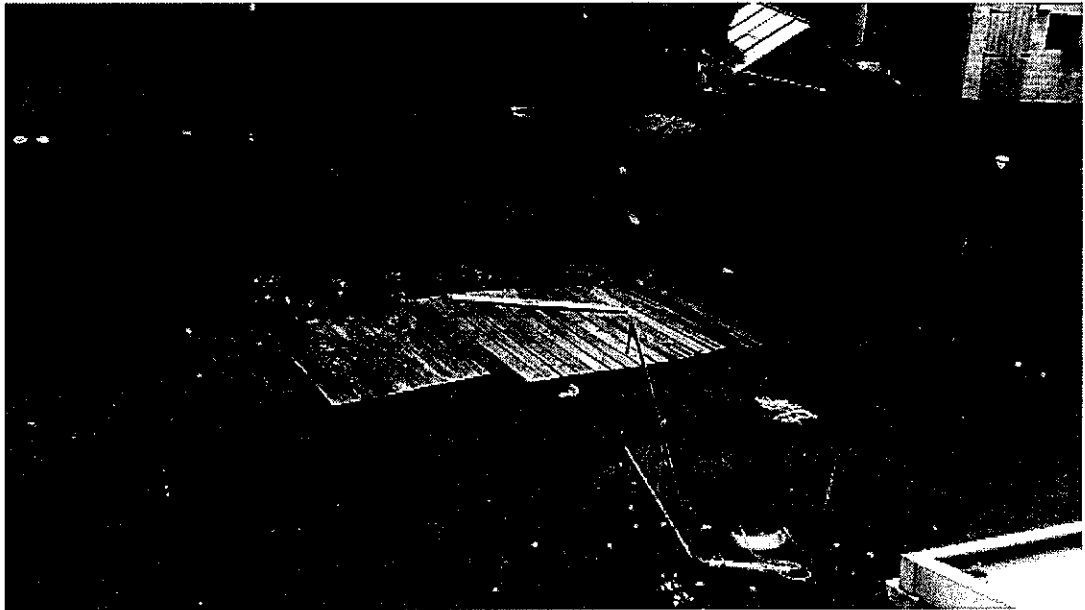
**ENQUIRIES AND FURTHER COPIES**

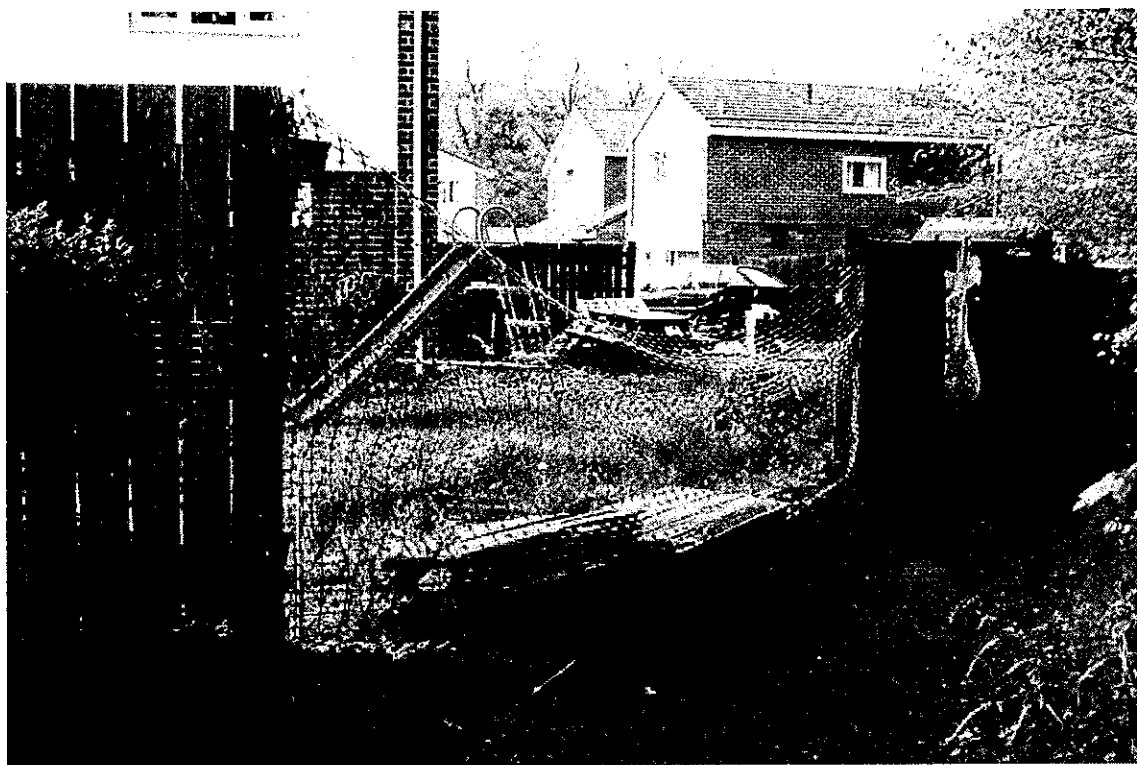
12. Enquiries about the content of this Circular should be addressed to MrStephen Bruce (Telephone 01312447065). Further copies of the Circular and a list of current planning circulars may be obtained from The Scottish Office Development Department, Planning Division, 2-H, Victoria Quay, Edinburgh, EH66QQ (Telephone 0131 244 7066 or 7825).

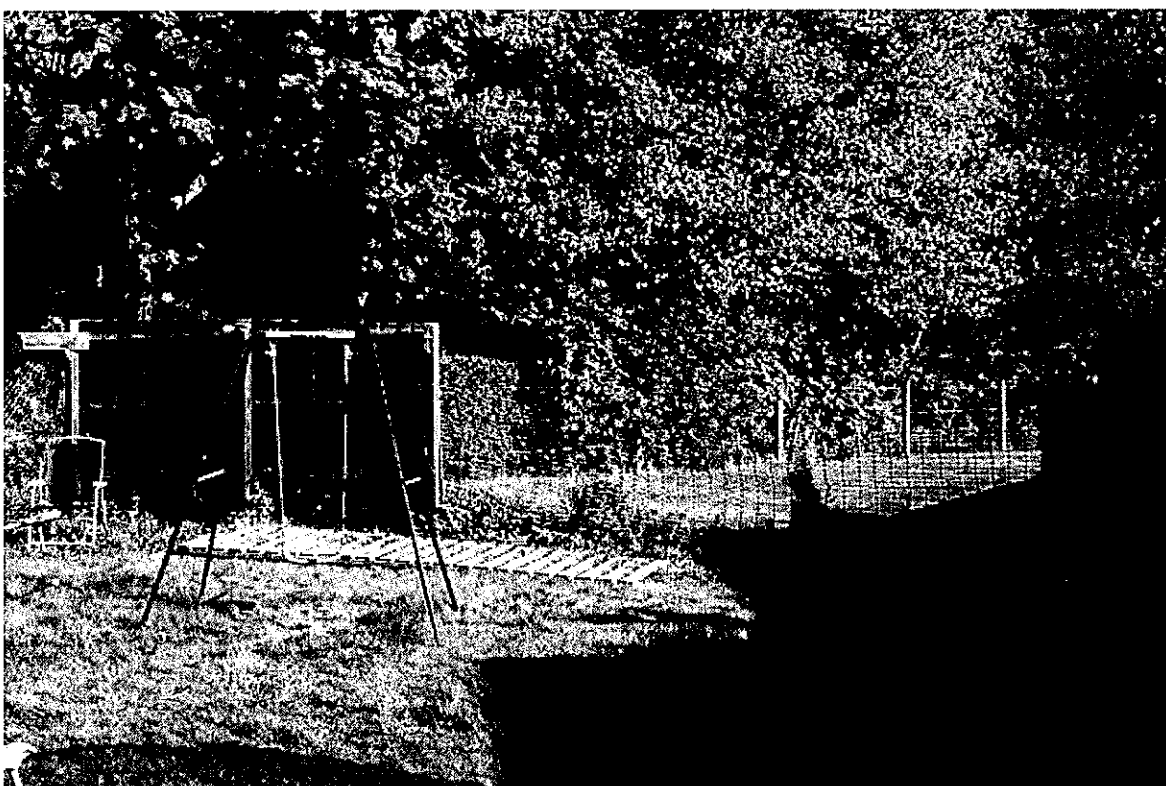
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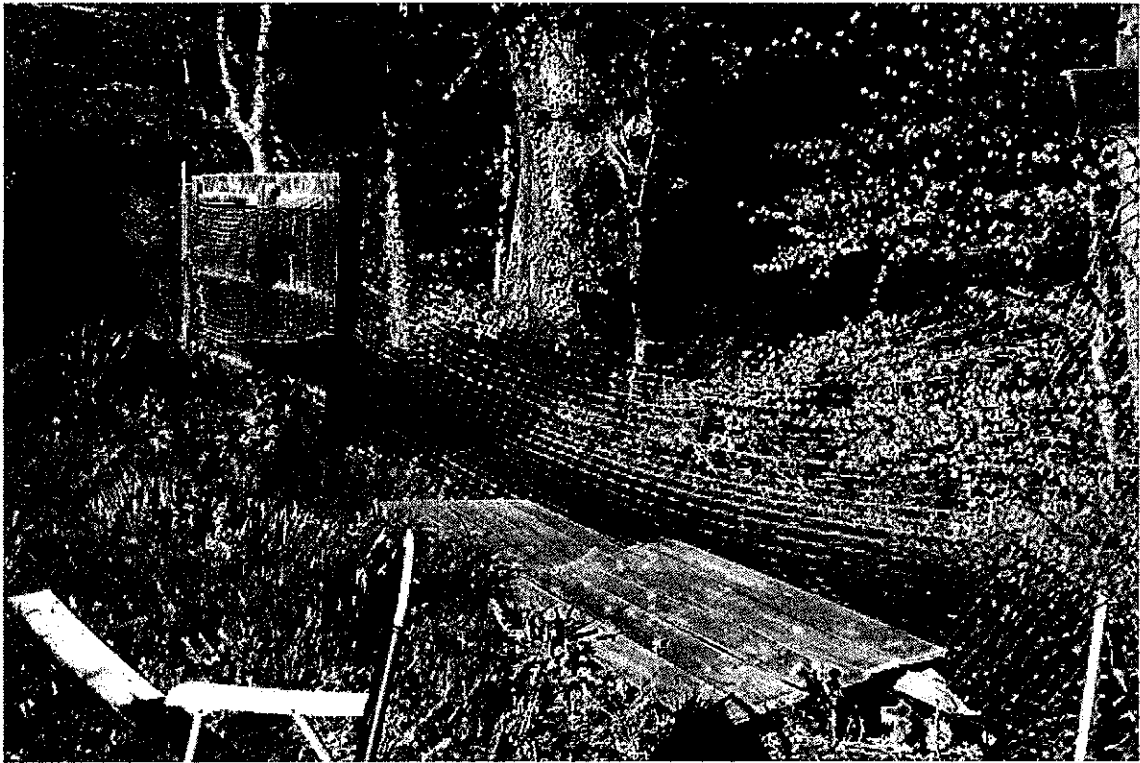


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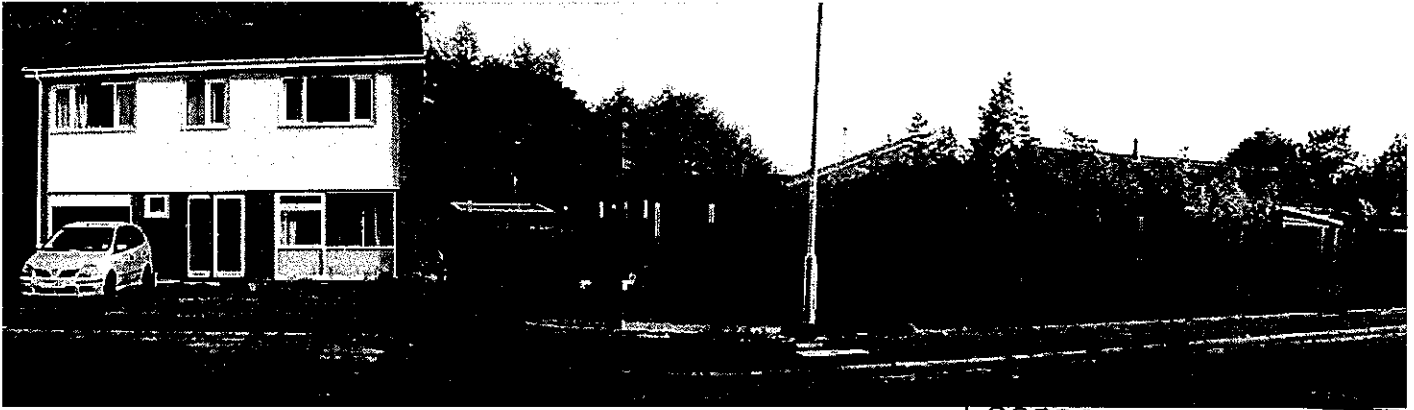








LRB\_8 - STREET VIEWS OF 74 NEWBATTLE ABBEY CRESCENT



VIEW 'A' - CURRENT STATE

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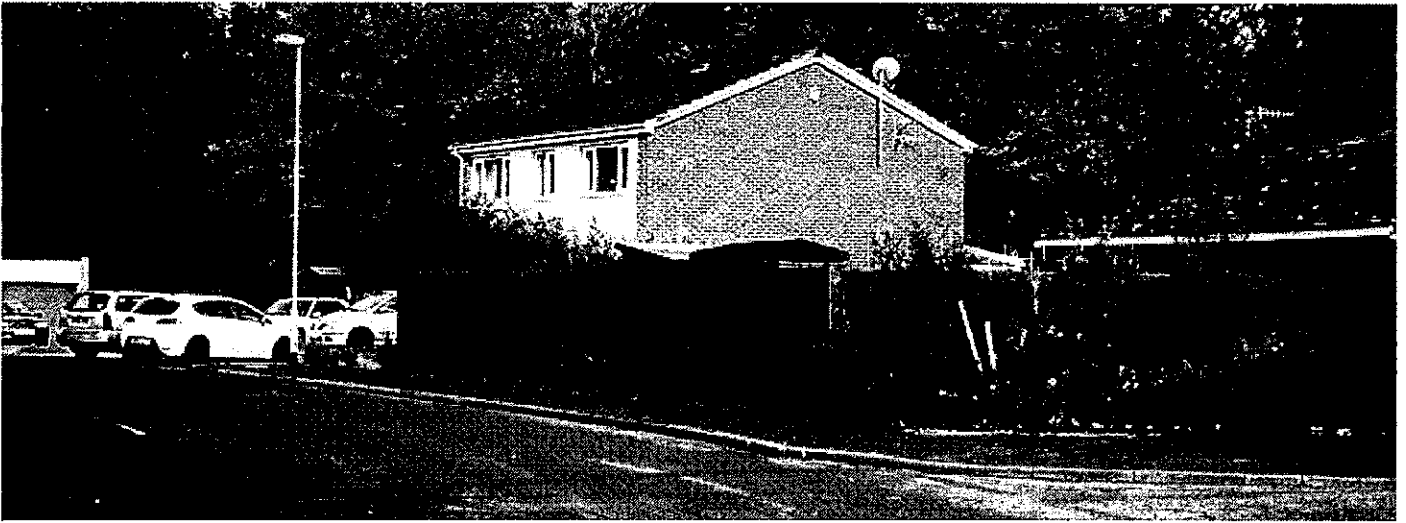


VIEW 'A' WITH PROPOSED NEW FENCE IN PLACE

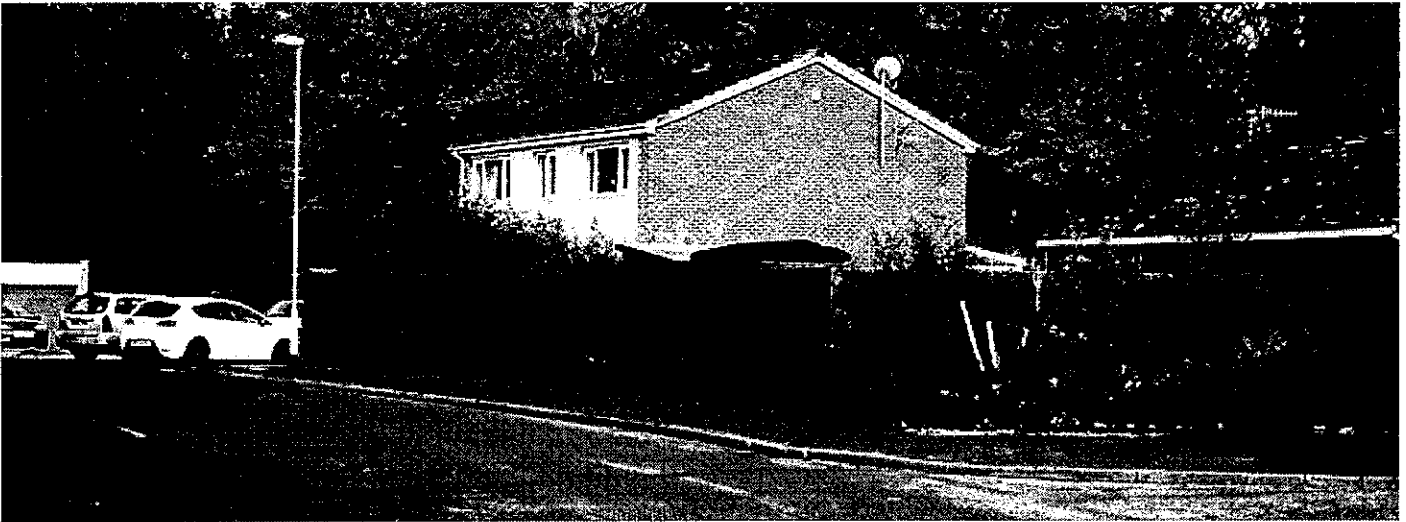


VIEW 'A' WITH 3-METRE HEDGE ALTERNATIVE TO FENCE

LRB\_8 - STREET VIEWS OF 74 NEWBATTLE ABBEY CRESCENT (CONT.)



VIEW 'B' - 74 NAC VIEWED FROM CUL-DE-SAC ENTRANCE – CURRENT STATE



VIEW 'B' - WITH PROPOSED NEW FENCE IN PLACE



## LRB\_9 – APPLICATION COMMENTS

### Mr George Macintyre (Objects)

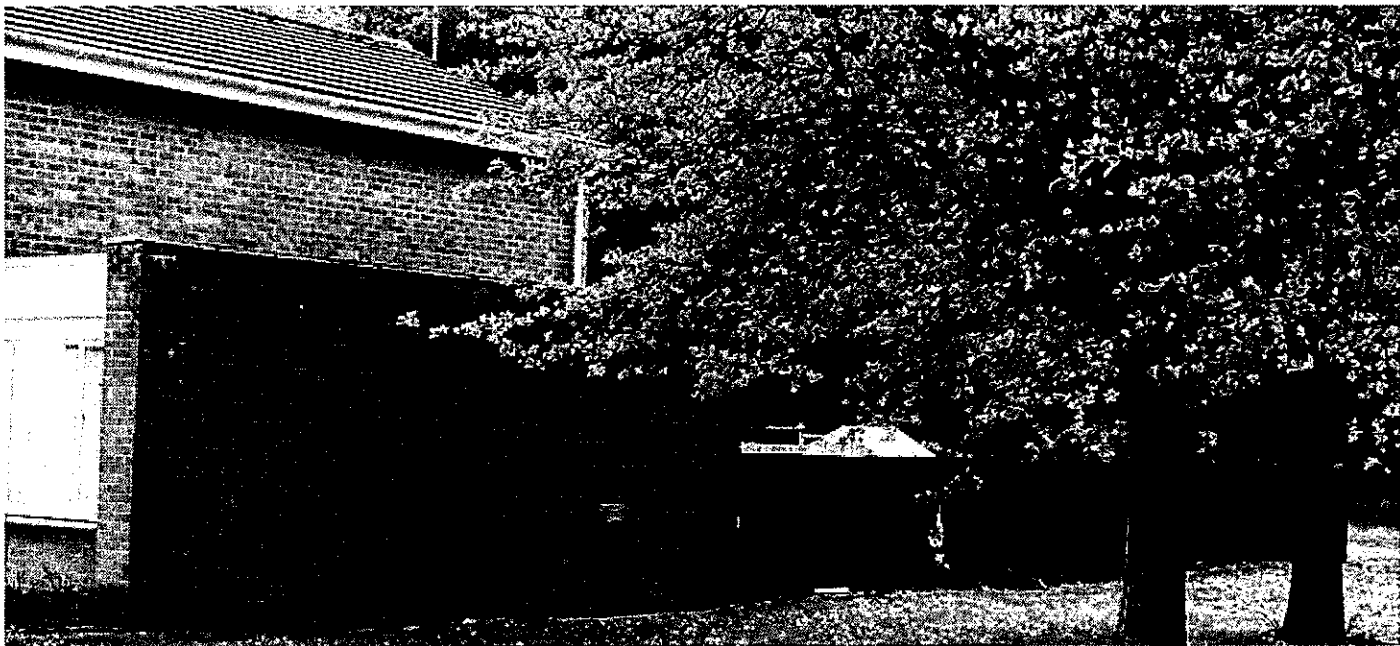
Newbattle Abbey Crescent is of an open-planned design. This is characterised by areas of open space, trees and low density housing. The erection of this fence across a portion of the front garden will significantly reduce the open feel to the cul-de-sac, and would look quite frankly - ugly. I believe this would be in breach of planning policy RP22 which states that development will not be permitted which would have any adverse effect on the character and appearance of the conservation area. I don't believe there to be any houses in the local area where you could look out at the front of the property and be looking into effectively the 'rear garden'. I believe the portion of the fence between the neighbouring property to be acceptable, but under no circumstances would fencing off a portion of the properties front garden be acceptable.

### Mr Alexander Beveridge (Supports)

I have no objections to any work that is to be carried out at 74 Newbattle Abbey Crescent as long as the rear of the property (the proposed new fence line) does not exceed 6 foot 6 inches high (2 metres in height).

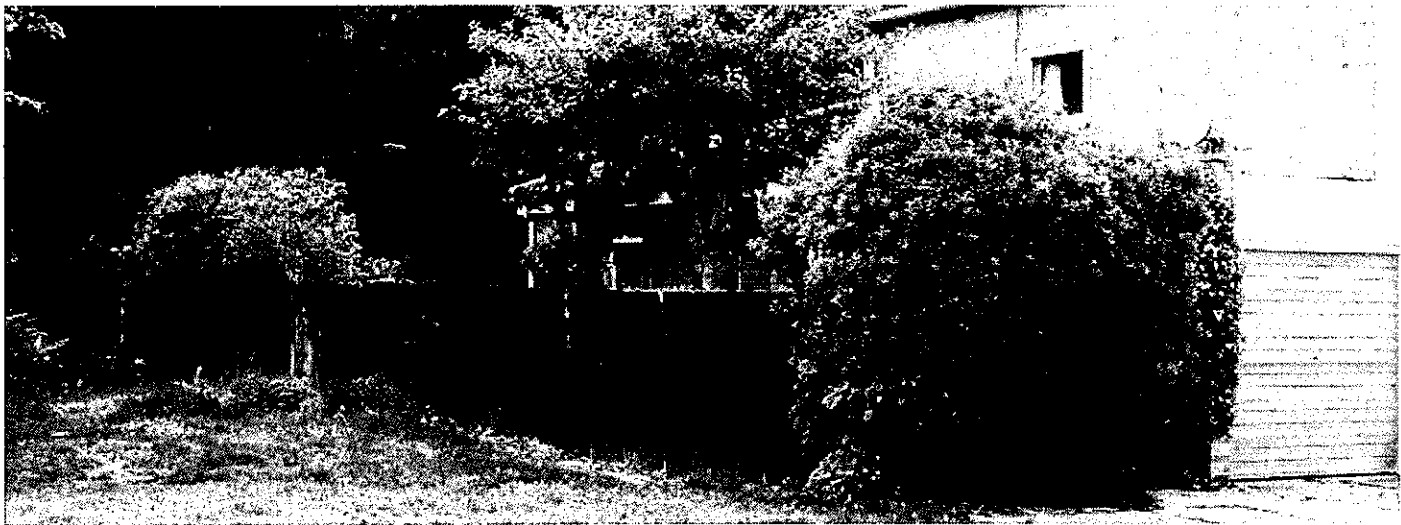
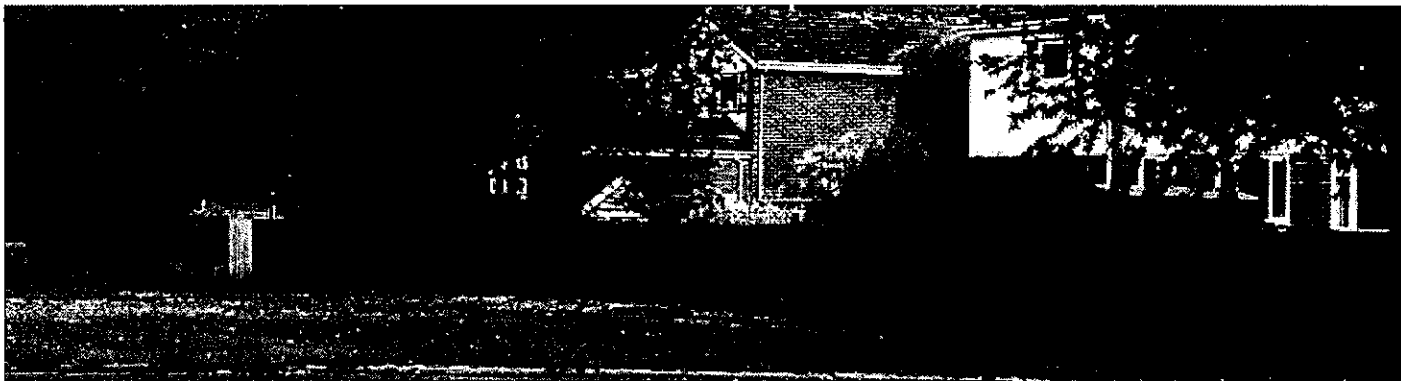
CORPORATE RESOURCES	
FILE:	11/00864/CRR
RECEIVED	31 MAY 2012





CORPORATE RESOURCES
FILE: 110086610P
31 MAY 2012

LRB\_10 - EXAMPLES OF FENCING IN NEWBATTLE ABBEY CRESCENT (CONTINUED)





LRB\_10 - EXAMPLES OF FENCING IN NEWBATTLE ABBEY CRESCENT (CONTINUED)



LRB\_10 - EXAMPLES OF FENCING IN NEWBATTLE ABBEY CRESCENT (CONTINUED)



LRB\_11 - EXAMPLES OF ENCLOSED FRONT GARDENS IN NEWBATTLE ABBEY CRESCENT



CORPORATE RESOURCES	
FILE:	11/00864/10PP
RECEIVED	31 MAY 2012

LRB\_11 - EXAMPLES OF ENCLOSED FRONT GARDENS IN NEWBATTLE ABBEY CRESCENT (CONTINUED)



## APPLICATION FOR PLANNING PERMISSION

Town and Country Planning (Scotland) Act 1997  
The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

Please refer to the accompanying Guidance Notes when completing this application  
PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS  
ELECTRONICALLY VIA <https://eplanning.scotland.gov.uk>

1. Applicant's Details		2. Agent's Details (if any)	
Title	MR	Ref No.	
Forename	DUNCAN	Forename	
Surname	MORRISON	Surname	
Company Name		Company Name	
Building No./Name	72	Building No./Name	
Address Line 1	NEWBATTLE ABBEY CRESCENT	Address Line 1	
Address Line 2		Address Line 2	
Town/City	DALKEITH	Town/City	
Postcode	EH22 3LW	Postcode	
Telephone		Telephone	
Mobile		Mobile	
Fax		Fax	
Email		Email	

3. Postal Address or Location of Proposed Development (please include postcode)	
72 NEWBATTLE ABBEY CRESCENT DALKEITH MIDLOTHIAN EH22 3LW	CORPORATE RESOURCES FILE: RECEIVED 28 APR 2011

NB. If you do not have a full site address please identify the location of the site(s) in your accompanying documentation.

4. Type of Application	
What is the application for? Please select one of the following:	
Planning Permission	<input checked="" type="checkbox"/>
Planning Permission in Principle	<input type="checkbox"/>
Further Application*	<input type="checkbox"/>
Application for Approval of Matters Specified in Conditions*	<input type="checkbox"/>
Application for Mineral Works**	<input type="checkbox"/>

NB. A 'further application' may be e.g. development that has not yet commenced and where a time limit has been imposed a renewal of planning permission or a modification, variation or removal of a planning condition.

\*Please provide a reference number of the previous application and date when permission was granted.

Reference No:		Date:	
---------------	--	-------	--

CORPORATE RESOURCES FILE: 1100864/ODP RECEIVED 31 MAY 2012
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**\*\*Please note that if you are applying for planning permission for mineral works your planning authority may have a separate form or require additional information.**

### 5. Description of the Proposal

Please describe the proposal including any change of use:

CHANGE OF USE FROM PUBLIC OPEN SPACE INTO PRIVATE GARDEN AND TO ERECT A WOODEN FENCE AROUND THE GARDEN AREA. THIS IS LAND PURCHASED TO THE REAR OF THE PROPERTY.

Is this a temporary permission?

Yes ☐ No ☒

If yes, please state how long permission is required for and why:

Have the works already been started or completed?

Yes ☒ No ☐

If yes, please state date of completion, or if not completed, the start date:

Date started: 26/3/11

Date completed: N/A

If yes, please explain why work has already taken place in advance of making this application

PURCHASED LAND FROM BELLWAY, DEAL WENT THROUGH & THEY STIPULATED I HAD TO FENCE IT OFF WITH WOODEN FENCE NO HIGHER THAN 1.8m. STARTED PUTTING POSTS IN (9) NEVER REALISED I NEEDED THIS PERMISSION TILL CONTACT FROM BRUCE MACLEOD.

### 6. Pre-Application Discussion

Have you received any advice from the planning authority in relation to this proposal?

Yes ☐ No ☒

If yes, please provide details about the advice below:

In what format was the advice given?

Meeting ☐ Telephone call ☐ Letter ☐ Email ☐

Have you agreed or are you discussing a Processing Agreement with the planning authority? Yes ☐ No ☐

Please provide a description of the advice you were given and who you received the advice from:

Name:  Date:  Ref No.:

### 7. Site Area

Please state the site area in either hectares or square metres:

Hectares (ha):  Square Metre (sq.m.) 180 m<sup>2</sup>

## 8. Existing Use

Please describe the current or most recent use:

THIS IS CURRENTLY PUBLIC OPEN SPACE BETWEEN MY REAR GARDEN AND FOOTPATH NEAR TO WOODED AREA. GROUND IS GRASSED WITH ONE TREE (SILVER BIRCH)

## 9. Access and Parking

Are you proposing a new altered vehicle access to or from a public road?

Yes ☐ No ☒

If yes, please show in your drawings the position of any existing, altered or new access and explain the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any changes to public paths, public rights of way or affecting any public rights of access?

Yes ☐ No ☒

If yes, please show on your drawings the position of any affected areas and explain the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application site?

N/A

How many vehicle parking spaces (garaging and open parking) do you propose on the site? (i.e. the total number of existing spaces plus any new spaces)

N/A

Please show on your drawings the position of existing and proposed parking spaces and specify if these are to be allocated for particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, etc.)

## 10. Water Supply and Drainage Arrangements

Will your proposals require new or altered water supply or drainage arrangements?

Yes ☐ No ☒

Are you proposing to connect to the public drainage network (e.g. to an existing sewer?)

Yes, connecting to a public drainage network ☐  
No, proposing to make private drainage arrangements ☐  
Not applicable – only arrangement for water supply required ☐

What private arrangements are you proposing for the new/altered septic tank?

Discharge to land via soakaway ☐  
Discharge to watercourse(s) (including partial soakaway) ☐  
Discharge to coastal waters ☐

Please show more details on your plans and supporting information

What private arrangements are you proposing?  
Treatment/Additional treatment (relates to package sewer treatment plants, or passive sewage treatment such as a reed bed) ☐  
Other private drainage arrangement (such as a chemical toilets or composting toilets) ☐

Please show more details on your plans and supporting information.

Do your proposals make provision for sustainable drainage of surface water?

Yes ☐ No ☐

*Note:- Please include details of SUDS arrangements on your plans*

Are you proposing to connect to the public water supply network?

Yes ☐ No ☐

*If no, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site)*

### 11. Assessment of Flood Risk

Is the site within an area of known risk of flooding?

Yes ☐ No ☒

*If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your planning authority or SEPA for advice on what information may be required.*

Do you think your proposal may increase the flood risk elsewhere? Yes ☐ No ☒ Don't Know ☐

If yes, briefly describe how the risk of flooding might be increased elsewhere.

### 12. Trees

Are there any trees on or adjacent to the application site?

Yes ☒ No ☐

*If yes, please show on drawings any trees (including known protected trees) and their canopy spread as they relate to the proposed site and indicate if any are to be cut back or felled.*

### 13. Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste? (including recycling)

Yes ☐ No ☒

*If yes, please provide details and illustrate on plans.*

*If no, please provide details as to why no provision for refuse/recycling storage is being made:*

### 14. Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats?

Yes ☐ No ☒

If yes how many units do you propose in total?

*Please provide full details of the number and types of units on the plan. Additional information may be provided in a supporting statement.*

**15. For all types of non housing development – new floorspace proposed**

Does your proposal alter or create non-residential floorspace?

Yes ☐ No ☒

If yes, please provide details below:

Use type:

If you are extending a building, please provide details of existing gross floorspace (sq.m):

Proposed gross floorspace (sq.m.):

Please provide details of internal floorspace(sq.m)

Net trading space:

Non-trading space:

Total net floorspace:

**16. Schedule 3 Development**

Does the proposal involve a class of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008?

Yes ☐ No ☒ Don't Know ☐

If yes, your proposal will additionally have to be advertised in a newspaper circulating in your area. Your planning authority will do this on your behalf but may charge a fee. Please contact your planning authority for advice on planning fees.

**17. Planning Service Employee/Elected Member Interest**

Are you / the applicant / the applicant's spouse or partner, a member of staff within the planning service or an elected member of the planning authority?

Yes ☐ No ☒

Or, are you / the applicant / the applicant's spouse or partner a close relative of a member of staff in the planning service or elected member of the planning authority?

Yes ☐ No ☒

If you have answered yes please provide details:

**DECLARATION**

I, the applicant/agent certify that this is an application for planning permission. The accompanying plans/drawings and additional information are provided as part of this application.

I, the applicant/agent hereby certify that the attached Land Ownership Certificate has been completed



I, the applicant /agent hereby certify that requisite notice has been given to other land owners and /or agricultural tenants

Yes ☐ No ☐ N/A ☒

Signature:



Name:

Duncan Morrison

Date:

11/4/11

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act.

# LAND OWNERSHIP CERTIFICATES

Town and Country Planning (Scotland) Act 1997  
Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

## CERTIFICATE A, B, C OR CERTIFICATE D MUST BE COMPLETED BY ALL APPLICANTS

### CERTIFICATE A

Certificate A is for use where the applicant is the only owner of the land to which the application relates and none of the land is agricultural land.

#### I hereby certify that -

- (1) No person other than myself was owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the application. ☒
- (2) None of the land to which the application relates constitutes or forms part of agricultural land. ☒

Signed: \_\_\_\_\_

On behalf of: \_\_\_\_\_

Date: 11/4/11

### CERTIFICATE B

Certificate B is for use where the applicant is not the owner or sole owner of the land to which the application relates and/or where the land is agricultural land and where all owners/agricultural tenants have been identified.

#### I hereby certify that -

- (1) I have served notice on every person other than myself who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates. These persons are: ☐

Name	Address	Date of Service of Notice

- (2) None of the land to which the application relates constitutes or forms part of agricultural land ☐
- or
- (3) The land or part of the land to which the application relates constitutes or forms part of agricultural land and I have served notice on every person other than myself who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are: ☐

<b>CORPORATE RESOURCES</b>	
FILE:	<u>11/00293/01P</u>
RECEIVED	<b>28 APR 2011</b>

Name	Address	Date of Service of Notice

### CERTIFICATE C

Certificate C is for use where the applicant is not the owner or sole owner of the land to which the application relates and/or where the land is agricultural land and where it has not been possible to identify ALL or ANY owners/agricultural tenants.

- (1) I have been unable to serve notice on **every** person other than myself who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates. ☐

or

- (2) I have been unable to serve notice on **any** person other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner of any part of the land to which the application relates. ☐

- (3) None of the land to which the application relates constitutes or forms part of an agricultural holding.

or

- (4) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have been unable to serve notice on any person other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. ☐

or

- (5) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding I have served notice on each of the following persons other than myself who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are: ☐

Name	Address	Date of Service of Notice

- (6) I have taken reasonable steps, as listed below, to ascertain the names and addresses of all other owners or agricultural tenants and have been unable to do so.

Steps taken:

--

**CERTIFICATE D**  
**Certificate D**

Certificate D is for use where the application is for mineral development.

- (1) No person other than myself \_\_\_\_\_ was an owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application. ☐

or

- (2) I have \_\_\_\_\_ served notice on each of the following persons other than myself \_\_\_\_\_ who, at the beginning of the period of 21 days ending with the date of the accompanying application, was to the applicant's knowledge, the owner, of any part of the land to which the application relates. These persons are: ☐

Name	Address	Date of Service of Notice

- (3) None of the land to which the application relates constitutes or forms part of an agricultural holding. ☐

or

- (4) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have \_\_\_\_\_ served notice on each of the following persons other than myself \_\_\_\_\_ who, at the beginning of the period of 21 days ending with the date of the application, was an agricultural tenant. ☐

- (5) Notice of the application as set out below has been published and displayed by public notice ☐

Signed:

On behalf of:\*

Date:

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act

COP	FORCES
FILE	11/00293 /DPP
RECEIVED	28 APR 2011



**APPROVED LRB**  
**15/11/11**  
**11/00293/DPP**

EXISTING FENCE  
 REMOVED 1.7m  
 CLOSE BOARD

PROPERTY BELONGING TO  
 MR & MRS JOHN  
 HENDERSON.

GROUND BELONGING TO  
 BELLWAY HOMES  
 SCOTLAND LTD.

PROPOSED NEW  
 FENCE 1.7m  
 CLOSE BOARD  
 TIMBER

PROPERTY BELONGING TO  
 MR & MRS DOUGLAS FRICK

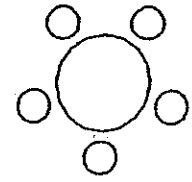
NEWBATTLE ABBEY CRESCENT



- \* SILVER BIRCH - 325mm DIAMETER  
 WITH 6.5m CANOPY SPREAD
- 2. CLOSE BOARD TIMBER FENCE  
 1.7m HIGH SURROUNDING PLOT.

Location Plan

ison Design Associates  
 Riggs  
 le - Street  
 urham



TEL 387 3382

NAME	Duncan Morrison		
AT	72, Newbattle Abbey Crescent		
TITLE	Site Plan		
DRAWN WDM	SCALE 1:200	DATE Oct 01	DRG. No. 500



**Photographs in relation to plot of land to rear of  
72 Newbattle Abbey Crescent, Dalkeith, Midlothian. EH22 3LW.**

1. View from rear fence of No. 73 looking in a NE direction along the footpath.
2. View of the short dimension of the land at the rear of No.72, showing the nine posts that have been erected and including the silver birch tree that is contained within the ground.
3. View looking in a SW direction back along the footpath showing the erected posts, silver birch tree and existing fence to rear of property.
4. View of the existing boundary fence of No.72 looking in a Southerly direction from the grass area. This also shows the erected posts and the silver birch tree.
5. View of the existing boundary fence to the rear of No.72 from a SE direction. The extent of the new fence would be from the final post running along the footpath to an area between the two trees shown in the photograph where the fence changes from dark to a lighter colour.
6. Close up view of the existing fence and the new fence will replicate this surrounding the new plot of land

**APPROVED LRB**  
**15/11/11**  
**11/00293/DPP**

CORPORATE RESOURCES	
FILE:	11/00293/DPP
RECEIVED	28 APR 2011

# Grant of Planning Permission

Town and Country Planning (Scotland) Act 1997



## Local Review Body: Review of Planning Application Reg. No. 11/00293/DPP

Mr A McKie  
Anderson Strathern LLP  
1 Rutland Court  
Edinburgh  
EH3 8EY

Midlothian Council, as Planning Authority, having considered the review of the application by Mr Duncan Morrison, 72 Newbattle Abbey Crescent, Dalkeith, EH22 3LW, which was registered on 12 September 2011 in pursuance of their powers under the above Acts, hereby **grant** permission to carry out the following proposed development:

**Change of use from public open space to private garden ground and erection of boundary fence at 72 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian, EH22 3LW**

in accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	500 1:200	28.04.2011
Other Statements		28.04.2011
Illustration/Photograph		28.04.2011
Illustration/Photograph		28.04.2011
Illustration/Photograph		28.04.2011

Subject to the following condition:

1. The development hereby permitted shall be begun within three years from the date of this permission. Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing.

**Reason:** *To accord with Section 58 and 27A of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning etc (Scotland) Act 2006).*

The Local Review Body (LRB) considered the review of the planning application at its meeting of 15 November 2011. The LRB carried out an unaccompanied site visit on the 14 November 2011.

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

Development Plan Policies:

1. RP1 Midlothian Local Plan – Protection of the countryside
2. RP9 Midlothian Local Plan – Protection of river valleys
3. RP22 Midlothian Local Plan – Conservation Areas
4. RP25 Midlothian Local Plan – Nationally important gardens and designed landscapes

Material Considerations:

1. Previously determined applications regarding the change of use of open space to residential garden.

In determining the review the LRB concluded:

The proposed change of use of open space to private garden and the erection of fence by means of its limited scale and unique position will not have a detrimental impact on the street scene or the visual amenity of the locality. The LRB acknowledged that the 'open plan' form to the residential estate enhanced the amenity of the area, but considered this development on its own did not undermine this position. The development therefore complies with the aims of the Midlothian Local Plan without resulting in an unacceptable loss of open space or setting a precedent for further developments.

Dated 15/11/2011

Councillor R Imrie  
Chair of the Local Review Body  
Midlothian Council

## SCHEDULE 2

Regulation 21

### NOTICE TO ACCOMPANY REFUSAL ETC.

#### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

### NOTICE TO ACCOMPANY REFUSAL ETC.

#### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the town and Country Planning (Scotland) Act 1997

*Advisory note:*

*If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Development Management Manager tel: 0131 2713310 or via [peter.arnsdorf@midlothian.gov.uk](mailto:peter.arnsdorf@midlothian.gov.uk)*



①

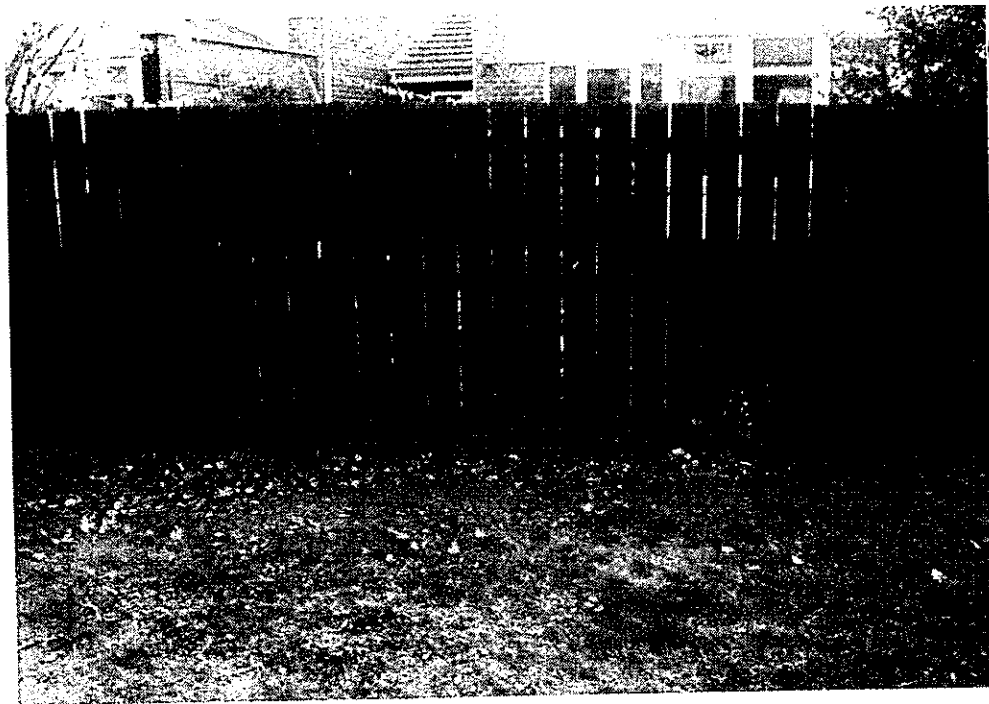


②

**APPROVED LRB**  
**15/11/11**  
**11/00293/DPP**



**APPROVED LRB**  
**15/11/11**  
**11/00293/DPP**



**APPROVED LRB**  
**15/11/11**  
**11/00293/DPP**

Document LRB\_13 Details of planning permission to enclose open land at  
195 Newbattle Abbey Crescent

Midlothian

## Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 01/00379/FUL

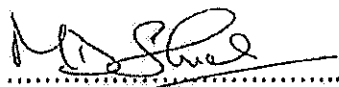
Heather Banner  
195 Newbattle Abbey Crescent  
Dalkeith  
Midlothian  
EH22 3LU

Midlothian Council, as Planning Authority, having considered the application by Heather Banner, 195 Newbattle Abbey Crescent Dalkeith Midlothian EH22 3LU, which was received on 13 June 2001, and registered on 13 June 2001, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

Change of use from public open space to private garden ground extension to dwelling house and erection of satellite dish  
at 195 Newbattle Abbey Crescent Dalkeith Midlothian EH22 3LU

in accordance with the application and plans returned and endorsed as relative to this permission. This permission is subject to the conditions set out in the attached Schedule.

Dated 12/7/2001



PP Planning Manager  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZQ

Schedule/

CORPORATE RESOURCES	
FILE:	11/00 864/100
RECEIVED	31 MAY 2012



Reg. No. 01/00379/FUL

**Schedule of conditions forming part of the permission for planning application reg.  
no. 01/00379/FUL**

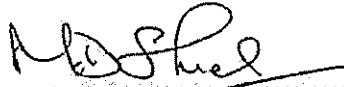
1. Before development begins the following information shall be submitted to and approved in writing by the Planning Authority
  - a) details of the position, height, design and materials of any walls or fences to be erected: and
  - b) details of proposed hard surfaced areas

*Reason : To safeguard the visual amenities of the area.*

2. The development to which this permission relates shall be begun not later than the expiration of five years beginning with the date of this permission.

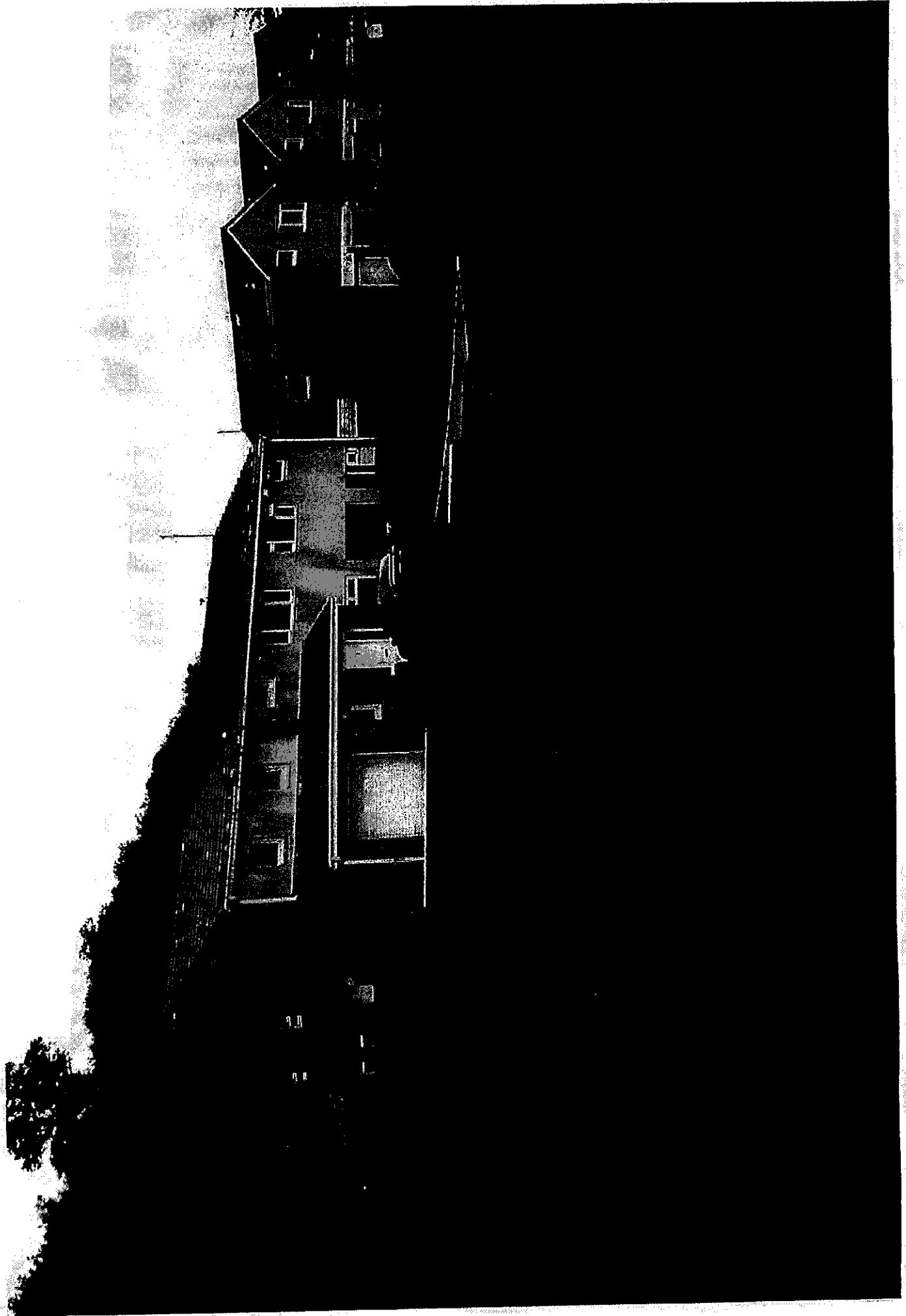
*Reason : To accord with the provisions of Section 58(1) of the Town and Country Planning (Scotland) Act 1997.*

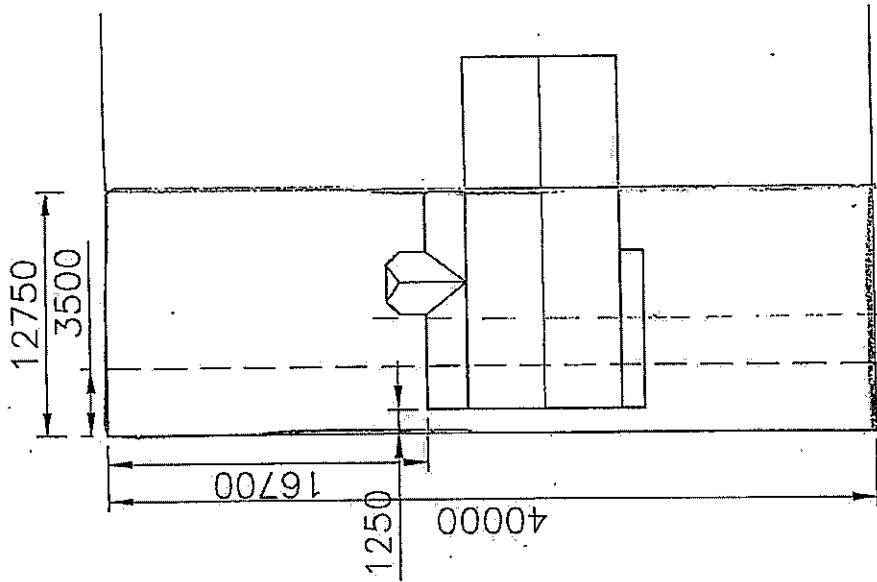
Dated...17/12/2001



PT

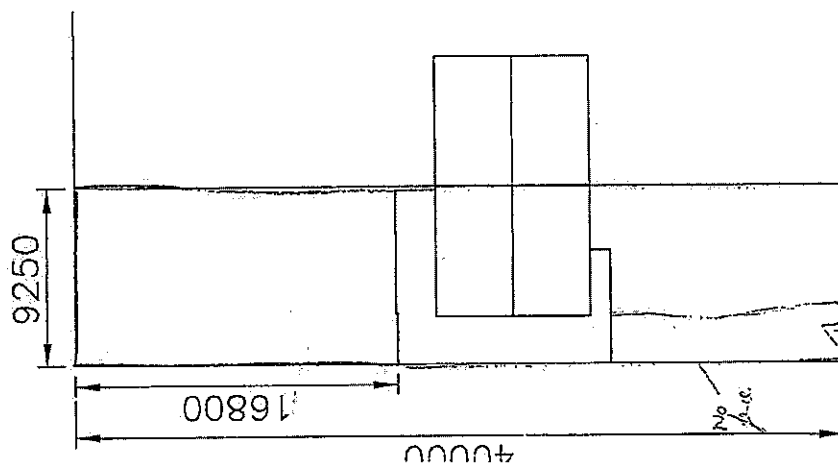
Planning Manager





Proposed New Site Layout

1:2500



Existing Site Layout

1:2500

Good details of driveway /  
boat-ramp

client

Mr & Mrs R. Banner

project

Alterations to Existing  
Dwelling House at  
195 Newbattle Abbey Crescent  
Dalkeith

title

Layouts, Elevations  
and Details

APPROVED IN TERMS  
OF CONSENT DATED  
12 JUL 2001

Doquet

This is a Plan/True Copy of the Drawing  
referred to in the application for Planning  
Permission/Building Warrant to Midlothian  
Council.

Dated.....11/01/01.....

Signed.....

issue status

Building Warrant/Planning

drawn

RGR

checked

approved

date

20.04.01

Scale, 1:100, 1:50, 1:10

Drawing  
Number

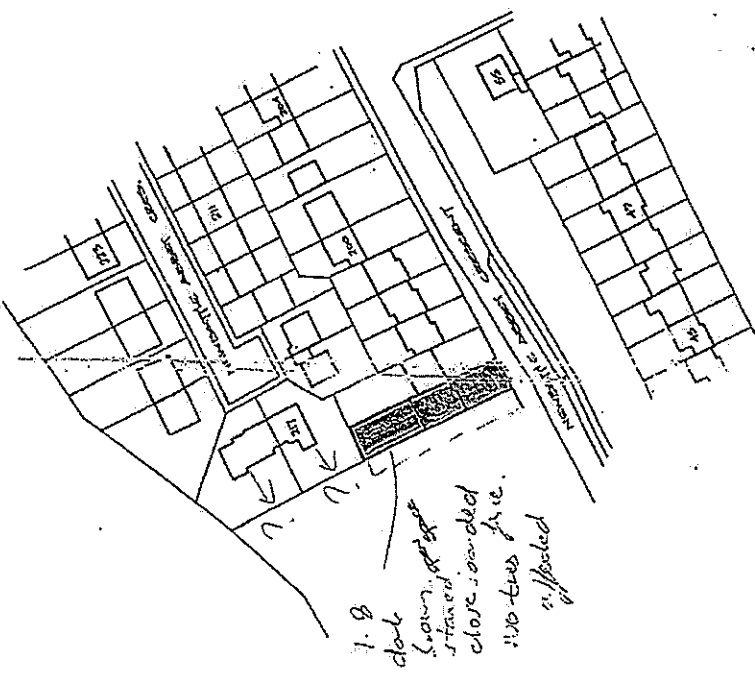
RHB-02

revision

1

MIDLOTHIAN COUNCIL  
3 JUL 2001

would not affect  
ground ops etc, etc





Change of use for public open space to private garden ground, extension to dwellinghouse and erection of satellite dish at 195 NSAC, Dalkeith

Local Plan.

Dalkeith Local Plan

18, 14, 16

The character of conservation areas within the local plan area will continue to be safeguarded.

The presumption will be for the retention of the existing use, character and appearance of part of the built-up area and against incompatible developments.

ENLUP

1

NP1 Protection of the countryside

NP20 CA

NP27 Open Space in Towns & Villages

Large area of open space adj. to house, comprising grass & trees. No trees affected by proposal. Proposal will not have a significant impact on character of area.

Proposal will create an uneven/staggered fence line. On the opposite side of the road the fence is staggered. Precedent issues - each application considered on its own merits - there is potential for other similar changes of use - if of similar scale should not have a significant impact and where adjacent to the larger areas of open space.

**SITE VISIT**

Date: 9.07.01

Initials: *MS*

\* Club Advert. Not advertised.

\* Policy.

2 story semi-detached house.

FE. Buff brick porch. White uPVC windows.  
Cream Lat & feature timber panel at 1st floor.  
Cyg plain roof tiles. Existing flat roof garage.

SE. Curved buff facing brick.

NE. Cream wetdark Lat.

No privacy issues — 2m + ledge to no 197.

Large area of open space adj to house — comprising  
gravelled & trees — some very mature. No trees  
affected by worst proposals.

**TELEPHONE CALLS**

Existing satellite dish on gable — blank wall.  
None of aerials/dishes in vicinity.

**SITE HISTORY**

A attached sheet

CORPORATE RESOURCES	
FILE:	1100864/DP
RECEIVED	31 MAY 2012

NEWBATTLE CONSERVATION AREA

BOUNDARY:

The boundary of Newbattle Conservation Area begins at the southern side of Newmillis Bridge, Dalkeith, on the A.68. At the east end of the bridge it turns to follow the boundary of the sewage disposal works in a southerly, south easterly and then north easterly direction to meet the boundary of Dalkeith Town Council's Waterfall Park housing development. The southern boundary of this development is then followed in an easterly direction to join the western periphery of Dalkeith High School's Kippielaw Annex where it runs south to a point just beyond the last school building. It then turns through 90 degrees to run east crossing the school grounds to their eastern boundary which it follows in a northerly direction to Lauder Road (A.68).

Continuing east on the south side of the A.68 to Easthouses Road it then turns south along the west side of this road (B.6455) until the latter is crossed by the line of the proposed Dalkeith Bonnyrigg ring distribution road. The boundary now runs along the eastern side of this proposed road in a south westerly direction to the south west corner of the Parkhead housing development where it continues along the edge of the wood to the north west corner of Newbattle High School grounds. It then follows the school's north west boundary until it meets the boundary of the County Council's housing development at Reed Drive continuing south westerly to Mansfield Road where it turns north west to a point opposite the north west boundary of the Gardiner Place housing. The line then crosses Mansfield Road and continues south west and west along the perimeter of the Gardiner Place and Galadale Crescent housing to Newbattle Road (B.703), turning south along this road to a point opposite the northern boundary of the sewage works.

After/



After crossing Newbattle Road it proceeds north westerly along the northern boundary of the sewage works as far as the slag heap turning north west to follow the latter's north-eastern, northern and western boundaries until it reaches the B.6455 near it's junction with the A.7. The boundary then runs north west and north following the eastern side of the A.7 road until at a point nearly opposite the entrance gateway to Hardengreen farmhouse it leaves the A.7 and follows the north west boundary of Kirk Bank Wood eventually reaching Newbattle Road (B.703) at the south east corner of Newbattle Cemetery.

It then crosses Newbattle Road due east and runs north east through Newbattle Abbey Gardens on a line between plots 1337 and 2134 for approximately 200 yards when it then turns north west to meet the south east boundary of St. David's R.C. High School, following this boundary north east and north west to Abbey Road. In Abbey Road it heads north east along the east side of the road to a point approximately 40 yards beyond the Benburgh Burn where it then follows the boundary between the woods known as Brewlands and the properties fronting Lothian Road and London Road, joining Newmills Road at Dalkeith Lodge and continuing east along the south side of the A.68 to the point of commencement at Newmills Bridge.

#### APPRAISAL:

Newbattle is a pleasant thickly wooded area, divided by the valley of the River South Esk, and interspersed with stretches of arable farmland. It is situated about  $7\frac{1}{2}$  miles south east of the centre of Edinburgh and 1 mile south of Dalkeith.

The area is one of definite character providing a unique contrast with the surrounding housing developments of Easthouses, Newtongrange, Bonnyrigg and Lasswade, Eskbank and Dalkeith.

Tho/

The boundary of the conservation area embraces Newbattle Golf Course, the grass meadows of Talbot Park and Campbell Park, the new housing development and Newbattle Abbey, with its associated buildings and extensive grounds, which forms the centre of the area.

The historical buildings of Newbattle Abbey are visually and architecturally outstanding. The Abbey House is now a college of further education, with accommodation for 60 students.

The Abbey was founded by Cistercian Monks in 1146. Since that time there has been a history of addition and alteration which has produced its present form that of a large, uniquely styled house of random rubble construction, with many fine features including externally, parapets, columns, mouldings, etc., and, internally, some very beautiful Italian plaster ceilings.

The grounds of the Abbey are of great interest. There is a small formal garden at the rear of the house which forms a transition between the buildings and the remainder of the grounds. The large variety of trees and the valley of the South Esk, with its very steep eastern bank, add to the overall scenic effect.

There are several notable structures in the grounds of the Abbey House. These include two massive stone sundials which date from 1635, and the Maiden Bridge which spans the River South Esk. This bridge dates from the late 15th century and has one narrow segmented arch of random rubble construction which supports an old cobbled road. There is also a Grotto and Ice House dating from the late 17th century which are of interesting construction, although they are partially ruined.

In the north part of the grounds there is an old army camp and these unsightly huts should be removed in order to improve the amenity of the area.

4.

A mediaeval wall constructed of random rubble surrounded the entire Abbey ground; only part of this still exists on the east side of Newbattle Road. The Abbey entrance gate, which is set in this wall, consists of two lodges of random rubble construction separated by the wrought iron gate which is supported by two large rusticated gate piers. It is georgian in design and dates from the earlier 18th century.

Other noteworthy buildings within the area include Newbattle Kirk, built in 1727, and the Manse, built earlier in 1625, which is of random rubble construction with a slated roof. Newbattle Bridge on the South Esk dates from the 18th century. It has two segmental slightly pointed arches and is built of ashlar. There are two armorial panels which have now become somewhat weather-worn.

Two other interesting buildings are Newmill's House, a traditional 18th century building in the north of the area, and the Sun Hotel which is in the south.

The boundary has been drawn to include within the area, Newbattle Golf Course. The immediate environs of the Course have also been included in order to protect them from various building pressures.

To the south west there is an area of new housing. It is well screened by trees, however, and is largely hidden from view. This area has been included as the line of trees forms a natural boundary and merits conservation. It is also generally considered that, in order to preserve the environment, no more development should be permitted.

The/

The whole of the Newbattle Abbey area is surrounded by expanding housing development, and the Conservation Area has been created in order to preserve the Abbey and its environs from this development and other pressures.

### LISTED BUILDINGS

#### Statutory List

Newbattle Abbey  
 North and South Sundial, garden of Newbattle Abbey  
 Maiden Bridge, Newbattle Abbey Policies  
 Grotto and Ice House, Newbattle Abbey Policies  
 Monkland Wall, Newbattle Abbey Policies  
 Avenue Gate  
 Newbattle Kirk  
 Newbattle Manse  
 Newbattle Bridge  
 Newmill's House

#### Provisional List - Category 'C'

The Sun Hotel

#### Ancient Monuments

Newbattle Abbey, Royal Commission No. 188  
 Maiden Bridge, " " No. 182

### POLICY

The County Council's policy is to preserve and enhance the character of the area and no new development which would detract from the general amenity will be permitted.

Newbattle Road has a distinctive appearance derived from the listed buildings and the stone boundary walls and it is essential that the character of the area remains unspoiled. The many varieties of trees, especially in the grounds of the Abbey, also enhance this road/

6.  
road and felling will not be permitted unless the trees become unsafe.

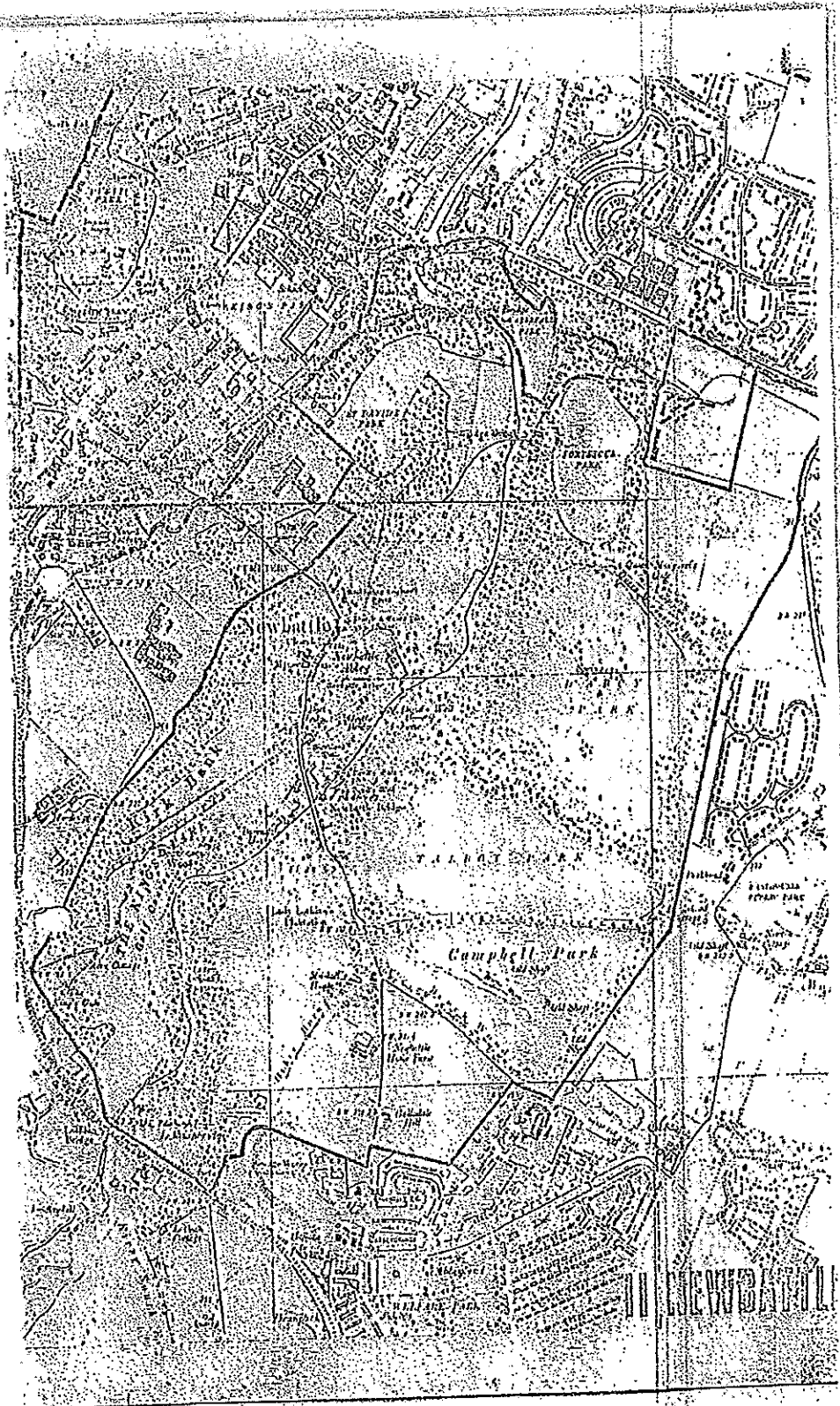
It is hoped that the old army huts in the grounds of the Abbey will be removed so that this site can revert to parkland or a more appropriate use.

The line of the new road structure has been included in the area so that the land scaping etc., can be controlled.

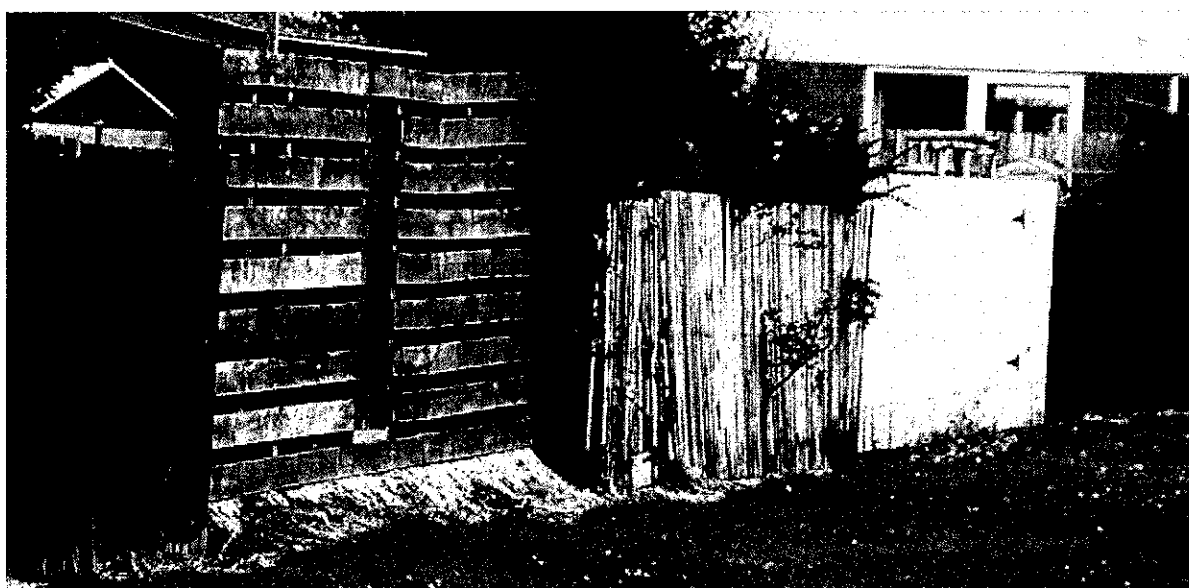
March 1972

RJ/IE

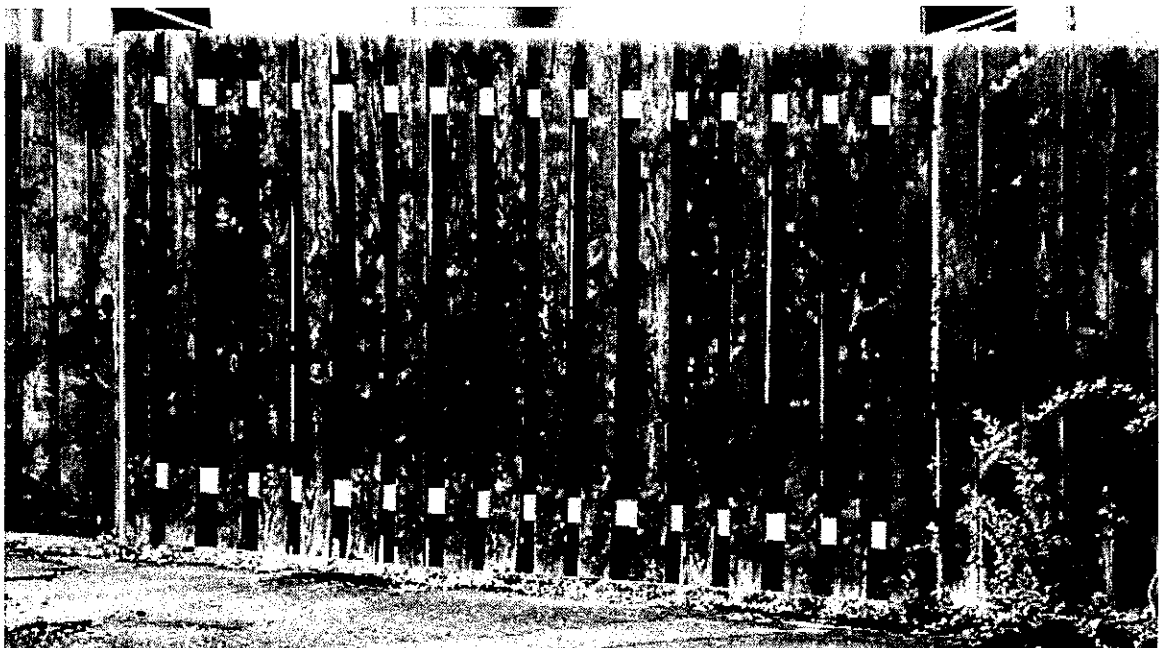
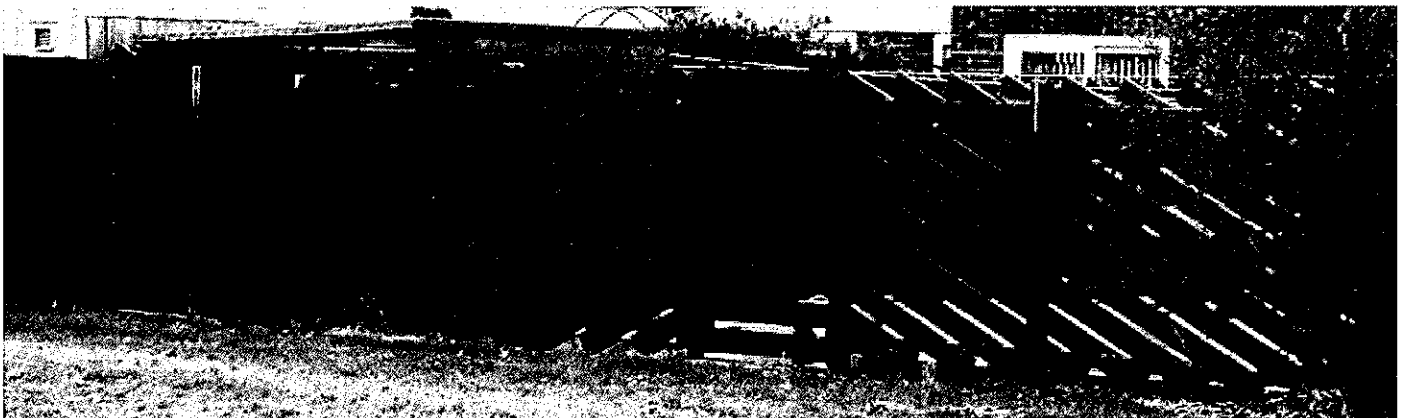
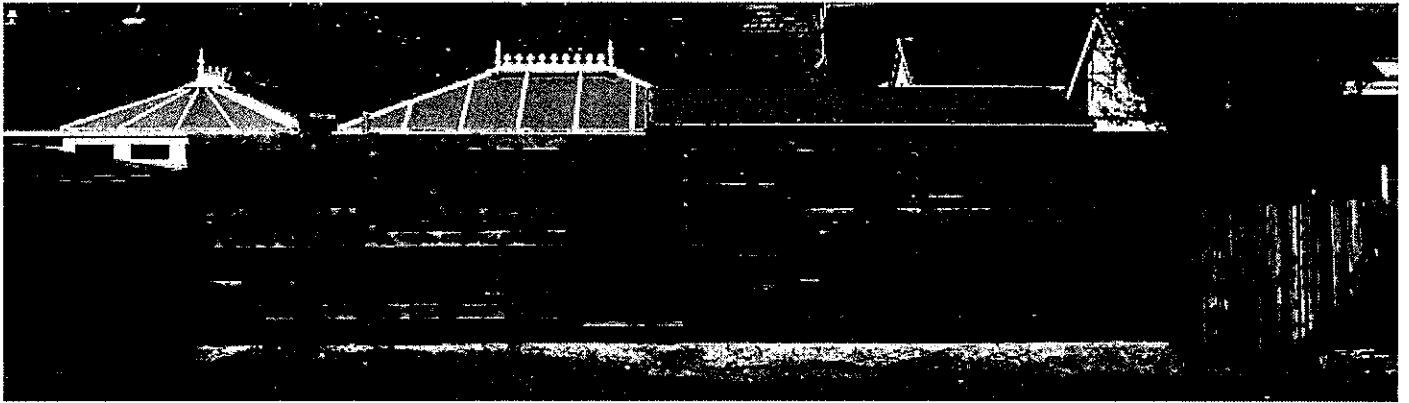
County Planning Department,  
New County Buildings,  
George IV Bridge,  
Edinburgh  
EH1 1UE



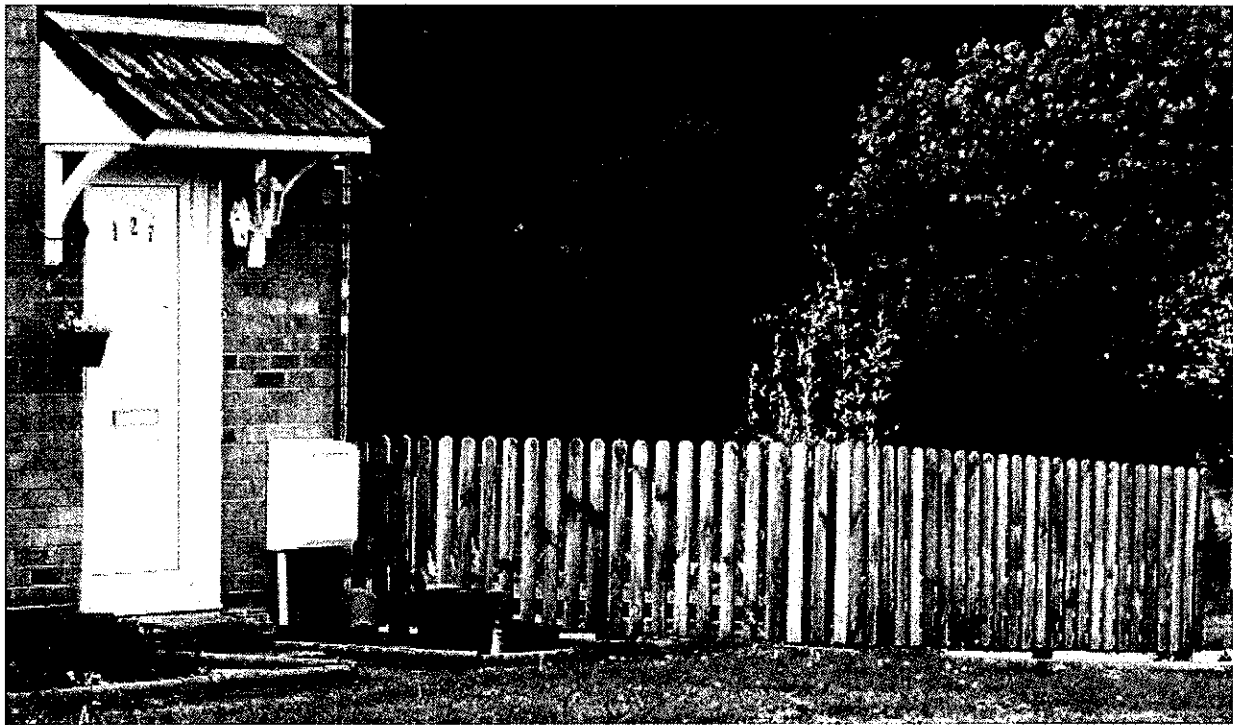
LRB\_15 - EXAMPLES OF "NON-STANDARD" FENCING IN NEWBATTLE ABBEY CRESCENT



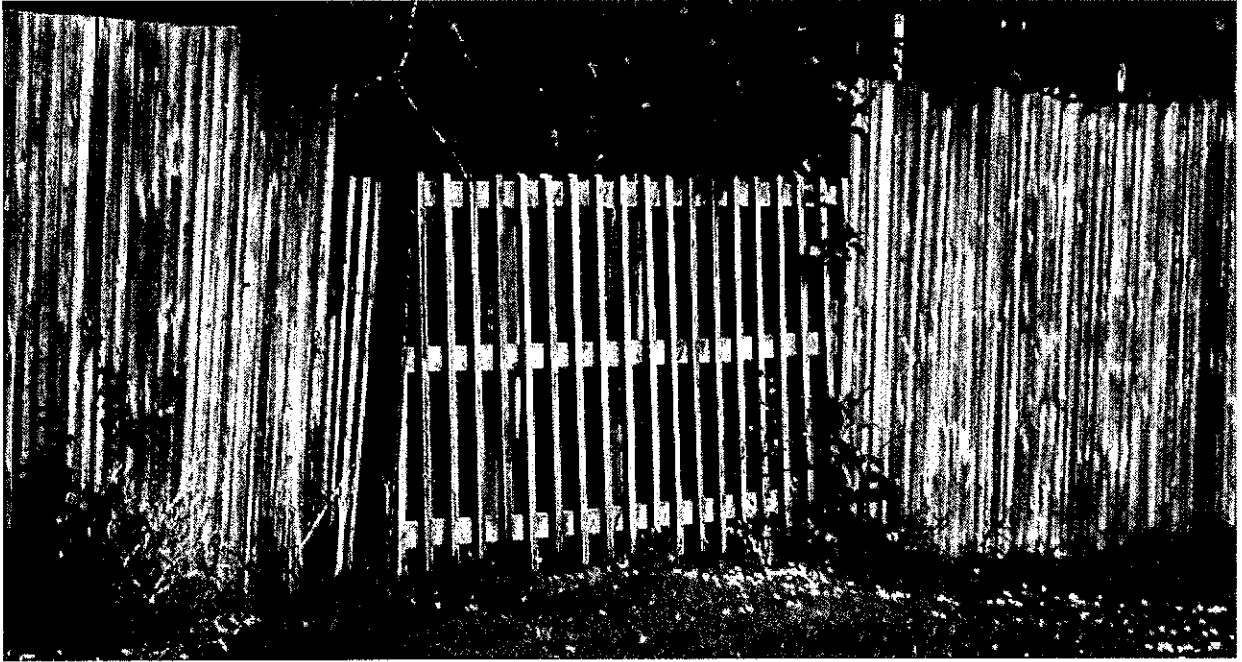
LRB\_15 - EXAMPLES OF "NON-STANDARD" FENCING IN NEWBATTLE ABBEY CRESCENT (CONTINUED)



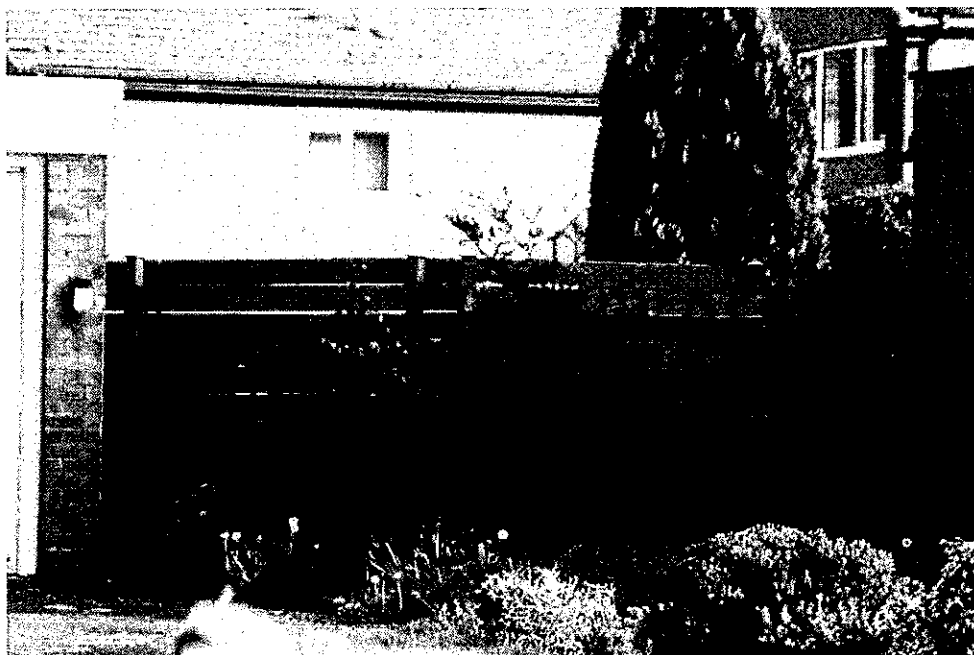




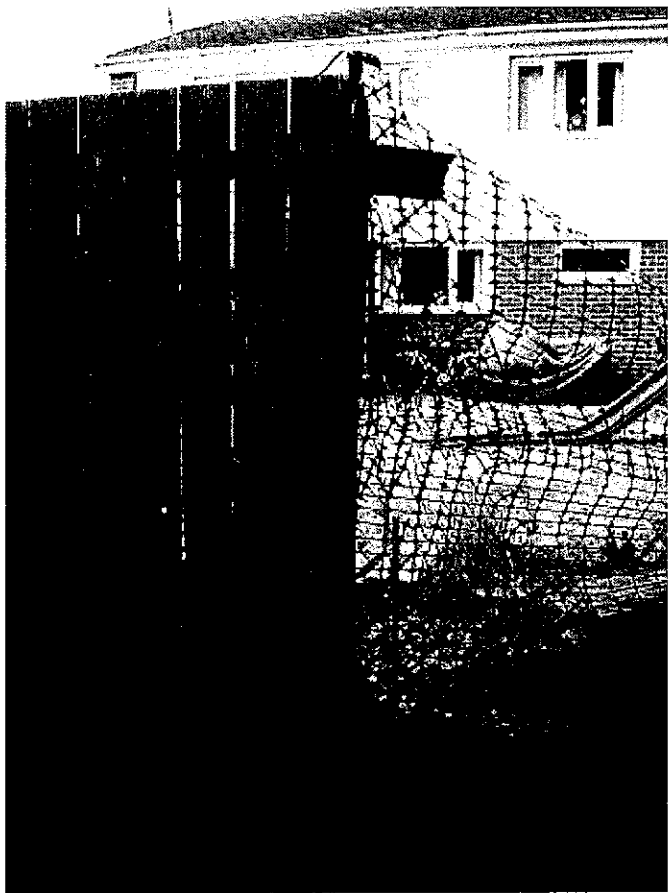
LRB\_15 - EXAMPLES OF "NON-STANDARD" FENCING IN NEWBATTLE ABBEY CRESCENT (CONTINUED)



LRB\_15 - EXAMPLES OF "NON-STANDARD" FENCING IN NEWBATTLE ABBEY CRESCENT (CONTINUED)



LRB\_16 – EXISTING 2-METRE BOUNDARY FENCE AT NEWBATTLE ABBEY CRESCENT



CORPORATE RESOURCES	
FILE:	11/00864/DP2
RECEIVED	31 MAY 2012

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Case Officer:** Victoria Famelton

**Site Visit Date:** 18/01/2012

**Planning Application Reference:** 11/00864/DPP

**Site Address:** 74 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian, EH22 3LW

**Site Description:** The application site is a two storey dwellinghouse located within Newbattle Conservation Area. It is finished externally with a beige dry dash render on the front and rear elevations, brick on the side elevations, white uPVC windows and brown profile concrete roof tiles. There is an existing conservatory at the rear of the property (Application Reference 372/94) and the property is bounded by a 0.9 metre fence to the south west and a 1.8 metre fence throughout the rest of the site. The front of the property features an open grassed area to the north, Lady Lothian's Plantation and the River South Esk to the east and a shared boundary with 75 and 76 Newbattle Abbey Crescent to the south and west.

**Proposed Development:** Erection of fence and decking area

**Proposed Development Details:** The proposed fence to the south west of the property is to measure 1.8 metre high and to the north east it will measure 2 metres high. At the front of the property it is proposed to enclose the garden ground with a 1.8 metre high fence. The proposed decking will be situated to the south west of the site and will measure 0.2 metres in height and will have a footprint of 23.4 square metres.

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

#### **11/00206/DPP**

Mr and Mrs Knox, 73 Newbattle Abbey Crescent, Dalkeith, Midlothian, EH22 3LW

Erection of two storey extension including double garage and porch

At 73 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian EH22 3LW

*Case Officer: Ingrid Forteach*

**Decision:** CONPER

#### **08/00544/FUL**

Stewart Mackinnon, 69 Newbattle Abbey Crescent, Eskbank, Dalkeith

Installation of replacement windows, formation of French windows and partial infilling of window openings (retrospective)

At 69 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian, EH22 3LW

**Consultations:** No consultations are required

**Representations:** There have been two letters of representation from 77 and 168 Newbattle Abbey Crescent. Number 77 supports the proposal as long as the rear of the property (the proposed new fence line) does not exceed 6 foot 6 inches high (2 metres in height). Number 168 objects to the proposal on the following grounds: -

- Newbattle Abbey Crescent is of an open planned design characterised by areas of open spaces, trees and low density housing.
- The erection of the fence along the front of the property will reduce the open feel of the area and will be in breach of Policy RP22
- No properties in the area have a fence in the front section of their garden

**Relevant Planning Policies:**

Midlothian Local Plan 2008

RP1 – Protection of the Countryside

RP9 – Protection of River Valleys

RP22 – Conservation Areas

RP25 – Nationally Important Gardens and Designed Landscapes

**Planning Issues:** The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval. The application site is located within an area covered by the Midlothian Local Plan.

The site falls within the countryside but as it is located in a residential development and the proposed works are to an established dwelling therefore Policies RP1, RP9 and RP25 are not relevant in this case. Policy RP22 seeks to protect the character and appearance of the conservation area.

Newbattle Abbey Crescent is of an open plan design and the surrounding designed landscape is a major influence on the rural landscape and its settlement character. The area features low density housing and is characterised by the various sized cul-de-sacs located between large open spaces and trees. The character and amenity of the area is in keeping with its location within Newbattle Conservation Area.

Front gardens within Newbattle Abbey Crescent are generally open plan in their design and fences set back from the pavement. The applicant states that the proposed fence at the front of the property will be in keeping with the design and height of the adjacent boundary fence at 74 Newbattle Abbey Crescent. Unlike the proposed fence, the fence at the neighbouring property does not form part of the principal elevation and a similar height fence would detract from the character and appearance of the conservation area. The proposed fence identified in purple on the approved location plan is contrary to Policy RP22 and is therefore not approved. Approval of this section of fence in such a prominent location is likely to set a precedent for further enclosures of open space and will prove detrimental to the character and amenity of the Conservation Area.

The proposed fence to the north east and south west of the property is acceptable as long as the height does not exceed 1.8 metres. This will encourage uniformity to fence heights in the immediate vicinity and will have minimal impact on the surrounding area. There are no significant issues of overlooking or loss of

sunlight/daylight to neighbouring properties. The proposed fence and decking materials are sympathetic to the existing property and will not impact negatively on the existing character of the area with sufficient garden space remaining after development.

**Recommendation:** It is recommended that planning permission be approved with the following conditions:

1. The proposed fence identified in purple on the approved location plan dated 27 February 2012 is hereby not approved

**Reason:** *This section of proposed fence would be detrimental to the visual amenity of this part of the conservation area which is characterised by open plan front gardens*

2. The proposed fence identified in green on the approved location plan dated 27 February 2012 shall be erected to a height of no more than 1.8 metres

**Reason:** *To safeguard the character of the surrounding area which is within the conservation area.*

3. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

**Reason:** *To accord with the provisions of Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006.*

# APPENDIX D

## Midlothian Local Plan



Midlothian





# Midlothian Local Plan

ADOPTED BY RESOLUTION OF  
MIDLOTHIAN COUNCIL  
ON 23 DECEMBER 2008

This Plan has been produced by the  
Planning Unit Strategic Services

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

## 2.1 The Natural Heritage

### Policy Title

#### RP1 PROTECTION OF THE COUNTRYSIDE

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

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

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

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

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

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

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

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

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

**2.1.7** In certain locations some limited and controlled development related to low density housing, new or expanded businesses, the winning of mineral resources, renewable energy and tourist accommodation may be acceptable and specific provisions are set out in proposal ECON1 and policies HOU5, ECON7, ECON8, MIN1 and NRG1. In such circumstances, these policies take precedence over the provisions of policy RP1. For countryside areas that are also Green Belt, policy RP2 takes precedence. Additional limited development may be acceptable where it satisfies the particular provisions of policy DP1, for example, in respect of the reuse of redundant non-residential buildings in the countryside.

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**RP1 PROTECTION OF THE COUNTRYSIDE**

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Development in the countryside will only be permitted if:

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

All such development will need to:

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

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

## Policy Title

**RP9 PROTECTION OF RIVER VALLEYS**

**2.1.41 National Planning Policy** NPPG 14 *Natural Heritage* recognises the natural heritage value of ancient and semi-natural woodlands and watercourses, both as important wildlife habitats and as valuable landscape features. Local authorities are required to protect these. The National Planning Framework for Scotland requires that development plans consider the distribution of development near watercourses to take account of the forthcoming River Basin Management Plans, in order to ensure that there is an integrated approach to water management. PAN 65 *Planning and Open Space* highlights the value of promoting and consolidating high quality networks of open spaces, including river corridors.

**2.1.42 Structure Plan Policy** The ELSP 2015 requires local plans to define areas of local value in terms of natural and built heritage (policy ENV1D). One of its objectives is to protect the natural environment from inappropriate or damaging development.

**2.1.43 Local Plan Policy** The river valleys of the North and South Esk and the Tyne unify some of Midlothian's valuable landscapes. They have great importance to Midlothian for their visual amenity, their rich habitats, and for providing recreational opportunities for local residents. The Local Plan defines a protection area for the North and South Esk on the Local Plan Proposals Map based on a landscape study *Esk River Valleys: Landscape Partnership Initiative* prepared for The Esk River Valleys Partnership by Land Use Consultants. It is intended to similarly define the protection area for the Tyne Valley in due course.

**2.1.44** The valleys are distinctive and attractive landscape features running through Midlothian. In the past, the management and protection policies

of the various estates has played a key role in their preservation and enhancement. The river valleys have a variety of protective policy designations scattered along their lengths, including AGLVs, SSSIs, and nationally important gardens and designed landscapes. However, the purpose of these policies does not provide a consistent and comprehensive basis for protecting each valley as a coherent entity. There is increasing concern about the negative effect that inappropriate development could have on the valuable amenity and access contribution made by the river valleys to Midlothian as a whole. Policy RP9 provides a unifying policy to control development in the vicinity of Midlothian's main river valleys.

**2.1.45** In recent years, enhancement work has been carried out in the valleys. Such work has focused on improving access through schemes such as the Esk Valley Way. Future enhancement is likely to focus on tree planting. The valleys are home to semi-natural and ancient woodlands that have enormous value in terms of biodiversity, and some are indeed designated as SSSIs. This policy will support the objective of environmental improvement by resisting inappropriate development, which could frustrate such schemes. Where dereliction occurs within the river valleys, redevelopment schemes which achieve environmental enhancement and landscape improvement will be supported, provided they are in accordance with other policies and proposals of the Local Plan. For example, the former Springfield Mill site is being treated and a local wildlife site created under the auspices of the Springfield Mill Action Group.

**2.1.46** It is the intention of the Council to apply to the Scottish Ministers for the designation of an Article 4 Direction Order to complement this policy. Removing permitted development rights for specific types of development should reduce the risk of the landscape being harmed by new developments such as visually prominent agricultural structures.

**RP9 PROTECTION OF RIVER VALLEYS**

Development within the river valley protection areas of the Rivers North Esk, South Esk and Tyne will not be permitted unless there is a specific locational need for the development.

Where the locational requirement has been established, development must demonstrate that:

- A. it will not have an adverse impact either on the landscape and conservation value of the valleys or impede potential public access opportunities; and
- B. it is not in conflict with other relevant Local Plan policies (in particular the Water Environment policies).

## Policy and Proposal Titles

**RP22 CONSERVATION AREAS****RP23 CONSERVATION AREAS – AMENDMENTS (PROPOSAL)****RP24 LISTED BUILDINGS**

**2.2.9 National Planning Policy** Special controls in respect of buildings and areas of special architectural or historic interest are brought into force under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Under this Act, the Scottish Ministers are required to compile a list of buildings of special architectural or historical interest (listed buildings). Local authorities are required to determine if there are areas of special architectural or historic interest (conservation areas) and if so, to designate these. Both are afforded additional protection through development plan policies seeking to preserve and enhance their character and appearance whilst taking into account that such areas must function successfully as places for social and economic activity. Guidance is set out in NPPG 18 *Planning and the Historic Environment* and in Historic Scotland's *Memorandum of Guidance on Listed Buildings and Conservation Areas*.

**2.2.10 Structure Plan Policy** Strategic policy takes on board conservation objectives in conservation areas, and in urban areas generally, and supports the conservation of all listed buildings. ELSP policies ENV1 and ENV10 require that policies for maintaining and enhancing conservation areas, and protecting all listed buildings and their settings, are contained in local plans.

**2.2.11 Local Plan Policy** Midlothian's towns and villages have many historically and architecturally interesting areas and individual buildings of special architectural or historic interest. These contribute to the distinctive character of the urban and rural environment and to the quality of life in Midlothian generally. As part of our heritage, they are valuable for education, recreation and tourism.

**2.2.12** Conservation area and listed building status does not mean that development, including new building and alterations to existing buildings, is necessarily opposed. Development proposals must be of an appropriate character, scale and appearance. Consideration requires to be given to opportunities for the preservation and enhancement of these important areas. Policies RP22 and RP24 set out the requirements where new development is proposed in conservation areas, or affecting listed buildings,

and identify where there is scope for enhancing any special qualities.

**2.2.13** Minor changes to properties, which normally would not require planning consent, could erode the character and appearance of a conservation area. In Midlothian's Conservation Areas, the Council has put in place Article 4 Direction Orders to remove permitted development rights in order to ensure control over all changes. Requirements specific to individual Conservation Areas (Newtongrange, Broomieknowe and Lasswade & Kevoch) are contained in detailed policy DP5. Supplementary planning guidance specific to other Conservation Areas may be approved during the lifetime of the Plan. Work is currently in progress to prepare Conservation Area appraisals for all of Midlothian's Conservation Areas and, when approved as supplementary planning guidance, these will assist with planning decisions relating to development proposals and also help to guide any future enhancement schemes. Conservation Area appraisals and any subsequent enhancement schemes will be the subject of consultation with appropriate organisations including community groups.

**2.2.14** There are twenty designated Conservation Areas in Midlothian, three of which are classified as outstanding for grant purposes. Defined on the Local Plan Proposals Map, their locations are: Borthwick & Crichton (outstanding), Broomieknowe, Carrington, Dalkeith (outstanding), Dewartown, Edgehead, Eskbank & Ironmills, Fala, Fala Dam, Gorebridge, Howgate, Lasswade & Kevoch, Mavisbank (outstanding), Newbattle, Newlandrig, Newtongrange, Pathhead & Ford, Penicuik, Roslin, and Temple & Arniston. The Local Plan makes provision for the designation of a new Dalhousie Conservation Area, the boundary for which is shown on the Local Plan Proposals Map. In addition, amendments are to be made to the boundaries of the Lasswade & Kevoch, Mavisbank and Penicuik Conservation Areas (policy RP23) to ensure that they better reflect the architectural and historic significance of these areas. Statutory procedures are required to implement these proposals, and to update the Article 4 Direction Orders applicable within the Conservation Areas.

**2.2.15** In conjunction with the Dalkeith town centre regeneration project, the Council is proposing a Townscape Heritage Initiative within the Dalkeith Conservation Area. This is a Heritage Lottery-funded grant initiative which supports schemes led by partnerships of local, regional and national interests that aim to regenerate the historic parts of their towns and cities. The proposed project focuses on:

- ❖ protecting the historic/architectural fabric of Dalkeith;
- ❖ enhancing the Conservation Area and improving the quality of the public realm;
- ❖ encouraging additional investment in the social and economic infrastructure of Dalkeith, including the reuse of historic buildings; and
- ❖ promoting greater awareness of conservation and the historic environment.

The initiative seeks to involve all sections of the local community in the project and has attracted initial support from the local business community. The Council will seek developer contributions from the proposal HOUS1 sites in Dalkeith as part of the project partnership (refer to policy IMP3).

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## RP22 CONSERVATION AREAS

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Within or adjacent to a Conservation Area, development will not be permitted which would have any adverse effect on its character and appearance.

### **New Buildings, Extensions and Alterations**

In the selection of site, scale, choice of materials and details of design, it will be ensured that new buildings, and extensions and alterations to existing buildings, preserve or enhance the character and appearance of the Conservation Area. Traditional natural materials appropriate to the locality or building affected will be used in new buildings, extensions or alterations. Particular care in the design of replacement windows and doors will be required on the public frontage of buildings.

### **Demolition**

- A. Demolition to facilitate new development of part or all of a building or other structure that makes a positive contribution to a Conservation Area will only be permitted where it can be shown that:
- ❖ the structural condition of the building is such that it cannot be adapted without material loss to its character to accommodate the proposal; and
  - ❖ the Conservation Area will be enhanced as a result of the redevelopment of the site; and
  - ❖ there is no alternative location physically capable of accommodating the proposed development.
- B. Where demolition of any building or other structure within a Conservation Area is proposed, it must be demonstrated that there are acceptable proposals for the immediate future use of the site which enhance the character or appearance of the Conservation Area.

Detailed plans for an acceptable replacement building must be in receipt of planning permission before conservation area consent will be granted for demolition and redevelopment. Conditions will be applied to the planning permission to ensure that demolition does not take place in advance of the letting of a contract for the carrying out of a replacement building or alternative means of treating the cleared site having been agreed.

These requirements may not apply in circumstances where the building is of no architectural or historic value, makes no material contribution to the Conservation Area, and where its early removal would not detract from the character and appearance of the Conservation Area.

## Policy Title

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**RP25    NATIONALLY IMPORTANT GARDENS  
AND DESIGNED LANDSCAPES**


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**2.2.16 National Planning Policy** SNH and Historic Scotland compiled a national *Inventory of Historic Gardens and Designed Landscapes* in 1987, which was updated in 2001. Sites are assessed on the basis of aesthetic and historic value, horticultural, arboricultural or archaeological value, scenic value or nature conservation value. This is a national designation and development affecting these sites is subject to statutory consultation with these bodies. Historic Scotland has consulted on changes to procedures for the designation, management and protection of gardens and landscapes in the Inventory.

**2.2.17 Structure Plan Policy** The ELSP 2015 values the contribution of planned landscapes to the scenic quality of the Lothians and policy ENVIC requires local plans to identify and protect historic gardens and designed landscapes of particular merit.

**2.2.18 Local Plan Policy** Landed estates with their extensive areas of policy parkland are very significant features of Midlothian's countryside. Several of these have been identified as having particular importance in the Inventory. Shown on the Local Plan Proposals

Map, these estates are at Arniston, Dalkeith House, Dalhousie Castle, Mavisbank, Melville Castle, Newbattle Abbey, Newhall House, Newton House, Oxenfoord Castle, Penicuik House, Prestonhall, and Roslin Glen and Hawthornden. There is a need to protect the special qualities and character of these gardens and planned landscapes and to encourage their sensitive management. Additional localities may be proposed for inclusion in the Inventory from time to time, and once incorporated, they will become subject to policy RP25.

**2.2.19** Any development proposals affecting a garden or designed landscape in the Inventory must include sufficient detail to allow the full extent, impact and quality of the proposals to be examined. Where an outline application is made, the proposals must include enough information to indicate the layout, height and massing of the new development. Proposals should be accompanied by an historical landscape appraisal to allow full consideration to be given to the detailed sensitivities of the site in determining the application. There may be opportunities to benefit the conservation and management of these sites through appropriate development. Planning conditions and agreements may be used to achieve repair, restoration and management of the planned landscape as part of the development proposals.

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**RP25    NATIONALLY IMPORTANT GARDENS AND DESIGNED LANDSCAPES**


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Development will not be permitted which would harm the character, appearance or setting of a garden or designed landscape which is included in the Inventory of Historic Gardens and Designed Landscapes.

**Planning Permission**

Town and Country Planning (Scotland) Act 1997

**Reg. No. 11/00864/DPP**

Mr Hugh Macdonald  
 74 Newbattle Abbey Crescent  
 Dalkeith  
 EH22 3LW

Midlothian Council, as Planning Authority, having considered the application by Mr Hugh Macdonald, 74 Newbattle Abbey Crescent, Dalkeith, EH22 3LW, which was registered on 4 January 2012, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

**Erection of fence and decking area  
 at 74 Newbattle Abbey Crescent, Eskbank, Dalkeith, Midlothian, EH22 3LW**

in accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan/Inc neighbours notified	1:1250	04.01.2012
Location Plan/Inc neighbours notified	1:1250	27.02.2012
Other Statements		04.01.2012

This permission is granted for the following reason(s):

*The proposed fence and decking does not detract from the character and appearance of the Newbattle Conservation Area in terms of design, scale and choice of materials and so complies with policies RP1, RP22 and RP25 of the Midlothian Local Plan.*

Subject to the following condition(s):

1. The proposed fence identified in purple on the approved location plan dated 27 February 2012 is hereby not approved.

**Reason:** *This section of proposed fence would be detrimental to the visual amenity of this part of the conservation area which is characterised by open plan front gardens.*

2. The fence identified in green on the approved location plan dated 27 February 2012 shall be erected to a height of no more than 1.8 metres.

**Reason:** *To safeguard the character of the surrounding area which is within the conservation area.*

3. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.



**Reason:** *To accord with the provisions of Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006.*

Dated 1 / 3 / 2012

A handwritten signature in black ink, consisting of a stylized 'D' and 'R'.

.....  
Duncan Robertson  
Senior Planning Officer; Local Developments,  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

## **PLEASE NOTE**

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

*If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Development Manager, Development Management Section, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN. A notice of review form is available from the same address and will also be made available online at [www.midlothian.gov.uk](http://www.midlothian.gov.uk)*

*If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.*

### The Felling of Trees

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

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

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

### Prior to Commencement (Notice of Initiation of Development)

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

## **IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION**

### Making an application

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

### Making comment on an application

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

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