

# Notice of Review: 4 High Street, Loanhead Determination Report

Report by Chief Officer Place

## 1 Purpose of Report

1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the infill of existing windows; alterations to door and window openings (retrospective) at 4 High Street, Loanhead.

### 2 Background

- 2.1 Planning application 22/00267/DPP for the infill of existing windows; alterations to door and window openings (retrospective) at 4 High Street, Loanhead was refused planning permission on 14 June 2022; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
  - 1 Submission of Notice of Review by the applicant.
  - 2 The Registration and Acknowledgement of the Notice of Review.
  - 3 Carrying out Notification and Consultation.

## 3 Supporting Documents

- 3.1 Attached to this report are the following documents:
  - A site location plan (Appendix A);
  - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
  - A copy of the case officer's report (Appendix C);
  - A copy of the decision notice, excluding the standard advisory notes, issued on 14 June 2022 (Appendix D); and
  - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

### 4 Procedures

4.1 In accordance with agreed procedures:

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

### 5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
  - 1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any subsequent order amending or superseding it, no additional door and/or window openings shall be formed without the submission of a planning application.

**Reason:** To safeguard the privacy of the occupants and neighbouring residents.

## 6 Recommendations

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

Peter Arnsdorf Planning, Sustainable Growth and Investment Manager

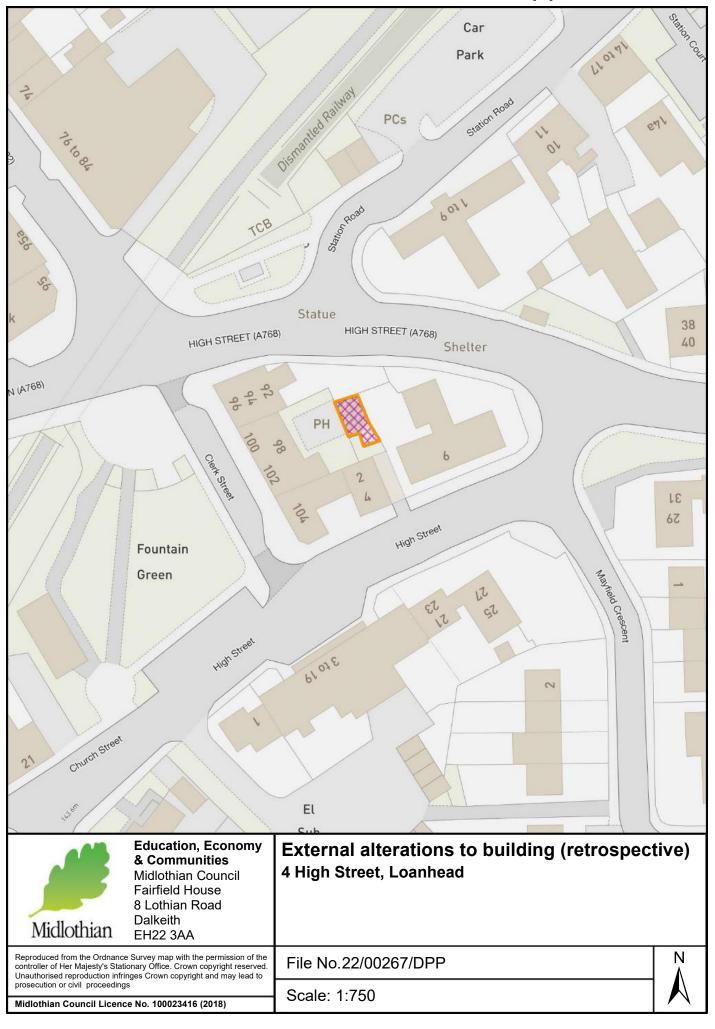
**Date:** 17 October 2022

**Report Contact:** Graeme King, Planning Officer

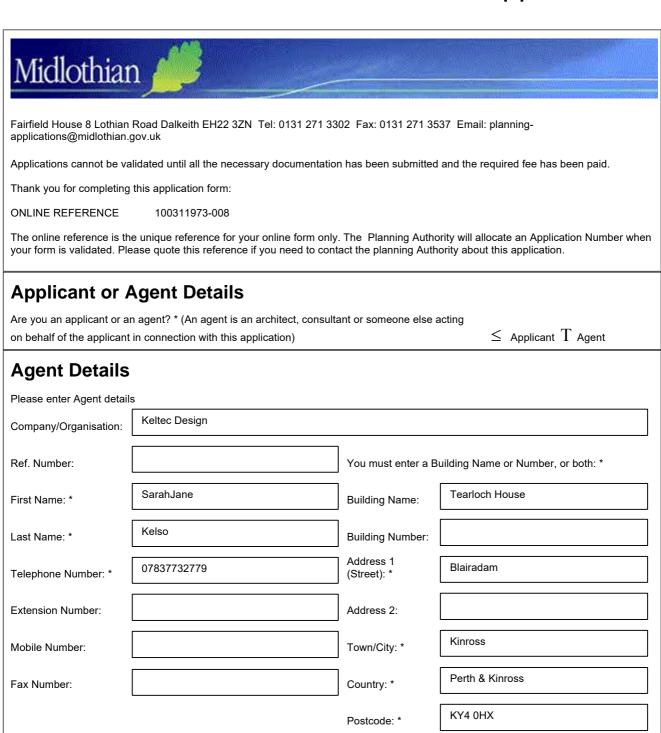
Graeme.King@midlothian.gov.uk

**Background Papers:** Planning application 22/00267/PPP available for inspection online.

## Appendix A



## Appendix B



Is the applicant an individual or an organisation/corporate entity?  $\ensuremath{^\star}$ 

Keltecdesign@live.co.uk

T Individual ≤ Organisation/Corporate entity

Email Address: \*

Applicant Details							
Please enter Applicant details							
Title:	Mr	You must enter a Bu	You must enter a Building Name or Number, or both: *				
Other Title:		Building Name:					
First Name: *	Aadil	Building Number:	4				
Last Name: *	Bashir	Address 1 (Street): *	High Street				
Company/Organisation		Address 2:					
Telephone Number: *		Town/City: *	Loanhead				
Extension Number:		Country: *	United Kingdom				
Mobile Number:		Postcode: *	EH20 9RA				
Fax Number:							
Email Address: *							
Site Address Details							
Planning Authority:	Midlothian Council						
Full postal address of the site (including postcode where available):							
Address 1:	4 HIGH STREET						
Address 2:							
Address 3:							
Address 4:							
Address 5:							
Town/City/Settlement:	LOANHEAD						
Post Code:	EH20 9RA						
Please identify/describe the location of the site or sites							
Northing	665527	Easting	328305				

## **Description of Proposal**

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

Infill of existing windows; alterations to door and window openings (retrospective), at 4 High Street, Loanhead, EH20 9RA

## Type of Application

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

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

What does your review relate to? \*

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

## Statement of reasons for seeking review

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

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

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

We feel that assumptions have been made without the full facts or any want to find out the full facts, with no returned emails or telephones messages despite contact being made during the application process. The previous planning application and conditions were clear in their intent, but this appears to have been disregarded or not referred to in the assumptions made by the allocated planning officer. Please also refer to the supporting documents for rebuttals to the reasons for refusal.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made?  $^{\star}$ 

 $T \text{ Yes} \leq \text{ No}$ 

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

The planner was not interested in returning any queries, or indeed taking onboard any comments and was advised by the planning officer to lodged an application to the local review body.

Please provide a list of all supporting documents, materials and evidence which you wish to to rely on in support of your review. You can attach these documents electronically later in the Please refer to supporting documents.	submit with your notice one process: * (Max 500 c	of review and haracters)	d intend			
Application Details						
Please provide the application reference no. given to you by your planning authority for your previous application.	22/00267/DPP					
What date was the application submitted to the planning authority? *	08/04/2022					
What date was the decision issued by the planning authority? *	14/06/2022					
Review Procedure  The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.  Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. * $T \text{ Yes} \leq No$						
In the event that the Local Review Body appointed to consider your application decides to in Can the site be clearly seen from a road or public land? *  Is it possible for the site to be accessed safely and without barriers to entry? *	<u>≤</u>	oinion: Yes T No Yes T No				
If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)  The site is currently accessed via a secured access gate which is currently closed, until the application has been under review.						

## **Checklist – Application for Notice of Review**

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

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

 $T \text{ Yes} \leq \text{ No}$ 

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

 $T \text{ Yes} \leq \text{ No}$ 

review?

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

 $T \text{ Yes} \leq \text{No} \leq \text{N/A}$ 

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

 $T \text{ Yes} \leq No$ 

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

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

 $T \text{ Yes} \leq No$ 

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

### **Declare - Notice of Review**

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

Declaration Name: Mrs SarahJane Kelso

Declaration Date: 01/09/2022

## **Local Review Body Application**

## Supporting Statement - 4 High Street, Loanhead

#### **Reasons For Refusal**

1 - As part of the proposal, four roof lights are proposed on the roof of the application site. During the site visit, it was seen that the windows have already been installed in the roof, thus making the application retrospective. The installation of the four roof lights is of concern due to the location and setting of the property within the courtyard. It is considered that due to the angle of the roof, the number, positioning and size of the rooflights, there is a significant impact on the privacy and amenity to the occupants and users of the property, 4 High Street.

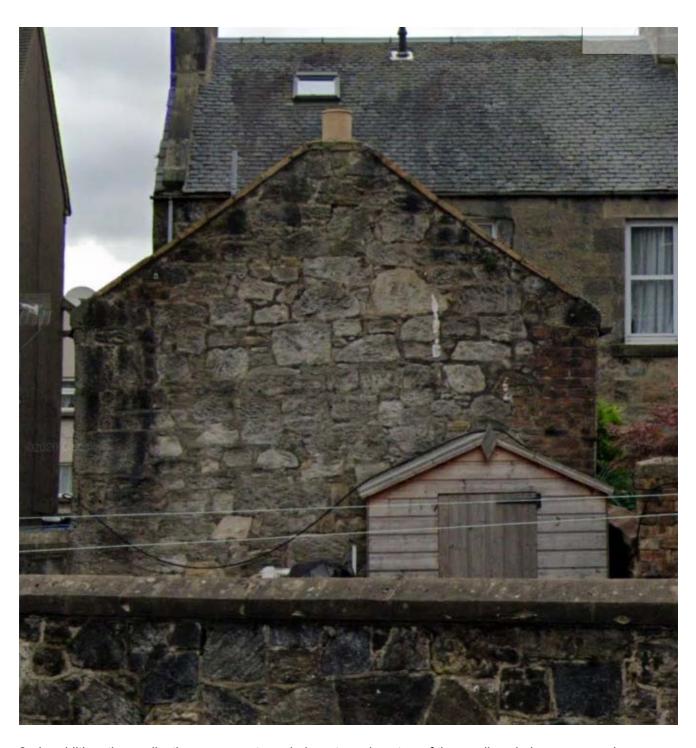
The neighbours in the surrounding flatted properties will be overlooking into the first floor kitchen and living area, affording no privacy and impacting on the amenity of the property.

Reference has been made to 4 velux wqindows, however there is already permission for 2 velux windows. If 2 velux windows had already been granted why is it now a concern in terms of privacy? Also this would be no different to the surrounding flats on the ground floor level, where they have lounges and kitchen's next to the pavements. We would understand this if it was a private bedroom area and the level of privacy with required. However the precedence already set in the surrounding area is that it is acceptable to have lounges/kitchens directly overlooked by members of the public on the public footpath, so this would be no different, in fact this gives a great level of privacy in that regard. With an already approved application for the installation of 2 velux windows and no concerns raised in the original application with overlooking, we are concerned why it is now being raised as an issue from surrounding flats when the only high level flats that will overlook the property are on the originally consented side of the building.

2 - The two window openings on the side elevation have been infilled, however the colour of the materials used does not match the colour of the existing building. This is unacceptable in terms of the appearance of the building, as the application site can be seen by a number of neighbouring properties due to the setting and location of the building within the courtyard

As you will be aware, this is a very old building with differing materials and as such it will be very difficult to match existing materials. However, i do feel that this could have been resolved with a discussion on this topic as opposed to refusal and citing this as one of the reason's. I did try to make contact with the planning officer but they refused to respond on this point. The building prior to the conversion had various area's of the building in stone and brick infill, so trying to use materials that match the original building is virtually impossible. Again no attempt was made to return contact or enter into any discussions despite our repeated attempts to make contact.

Please refer to rear elevation of the existing building showing area's of original stonework & red brick infill area's.



3 - In addition, the application proposes two windows to replace two of the smaller windows approved in application 20/00701/DPP. One of the windows measures 545mm x 1700mm and another measures 720mm x 1100mm and is to be a fire escape window. These windows are to be larger than previously consented and there is a concern with regards to privacy given this.

I'm not sure what the point is on this in terms of privacy as the windows that were consented in the previous application were (under condition 2 of 20/00701/DPP) to be obscure glazed and that was still the intention with these windows, so in terms of privacy it is a mute point. Again this could have been clarified with a discussion, despite us making reference to this in our email correspondence. But again no response was received from the planning officer.

Please see extract from planning consent - 20/00701/DPP (Condition 2)

- The ground floor windows on the East elevation of the building shall be glazed with obscure glazing.
- 4 It should be noted that a previous consent was granted in December 2020 for the change of use of the residential annexe to separate dwellinghouse (20/00701/DPP). As part of this planning permission it was stated in the delegated report that the usual permitted development rights allowing the formation of door and window openings were removed due to three elevations of the building being bound by shared garden spaces. This was conditioned as part of the consent, 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any subsequent order amending or superseding it, no additional door and/or window openings shall be formed without the submission of a planning application.

Whilst we understand this point in terms of the rights to form doors and windows are not to be permitted without the "submission of a planning application". This was the case, as the planning submission had been carried out prior to the installation of the Velux windows. Had the condition been more specific in terms of 'submission and planning approval' then the council would have a case, to state that the planning enforcement team get involved. We feel we have been compliant with the planning conditions in this regard according to the written condition no.3 in application (20/00701/DPP). As such no attempt was made to confirm installation dates for the velux windows, prior to the refusal notice, again we feel that no attempt was made by the planner to reasonably undertake the correct investigations before citing enforcement action will be taken.

#### Please see extract from planning consent - 20/00701/DPP (Condition 3)

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any subsequent order amending or superseding it, no additional door and/or window openings shall be formed without the submission of a planning application.

#### MIDLOTHIAN COUNCIL

## DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 22/00267/DPP

Site Address: 4 High Street, Loanhead, EH20 9RA

**Site Description:** The application subjects are a 1 ½ storey outbuilding in a hard surface yard to the rear of a 2 storey building on Loanhead High Street.

Planning permission was granted in December 2020 for the change of use of residential annexe to separate dwellinghouse.

Both the street fronting building and the outbuilding date from the late 19thC; the walls are stone and the roofs are finished with slate.

To the North, East and West the outbuilding is bounded by gardens of neighbouring flats. To the South the site is bounded by the external stairs that lead to the flat above the hairdresser and by the shared yard space and pend. The street fronting building is identified in the Midlothian Local Development Plan 2017 as being within the town centre of Loanhead, however the application building is not within the town centre.

**Proposed Development:** Infill of existing windows; alterations to door and window openings (retrospective).

**Proposed Development Details:** The application refers to the infill of existing windows; alterations to door and window openings. This application is retrospective as the works have already been carried out.

Four roof lights are proposed on the roof of the property.

Two window openings on the side elevation are to be infilled.

On the side elevation, two windows are proposed. One of the windows measures 545mm x 1700mm and another measures 720mm x 1100mm. This window is to be a fire escape window.

Background (Previous Applications, Supporting Documents, Development Briefs): Planning history checked.

20/00701/DPP – Change of use of residential annexe to separate dwellinghouse at 4 High Street, Loanhead, EH20 9RA. The application was granted with conditions 22/12/20.

**Consultations:** No consultations required.

**Representations:** No representations received.

## **Relevant Planning Policies:**

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

### Policy DEV2 Development within the Built-up Area

The policy states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.

### Planning Issues:

In dealing with a planning application the Planning Authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Any representations and consultation responses received are material considerations.

The application building is a long established building within the surrounding townscape. Whilst relatively plain in appearance it is a historic building within the context of Loanhead.

The building adjoins three separate garden areas and is overlooked by various flatted properties. The block of which the application site forms part of, is a narrow triangular block and consequently all of the garden areas and many of the surrounding flats are similarly overlooked.

As part of the proposal, four roof lights are proposed on the roof of the application site. During the site visit, it was seen that the windows have already been installed in the roof, thus making the application retrospective.

The installation of the four roof lights is of concern due to the location and setting of the property within the courtyard. It is considered that due to the angle of the roof, the number, positioning and size of the rooflights, there is a significant impact on the privacy and amenity to the occupants and users of the property, 4 High Street. The neighbours in the surrounding flatted properties will be overlooking into the first floor kitchen and living area, affording no privacy and impacting on the amenity of the property.

The two window openings on the side elevation have been infilled, however the colour of the materials used does not match the colour of the existing building. This is unacceptable in terms of the appearance of the building, as the application site can be seen by a number of neighbouring properties due to the setting and location of the building within the courtyard.

In addition, the application proposes two windows to replace two of the smaller windows approved in application 20/00701/DPP. One of the windows measures 545mm x 1700mm and another measures 720mm x 1100mm and is to be a fire escape window. These windows are to be larger than previously consented and there is a concern with regards to privacy given this.

It should be noted that a previous consent was granted in December 2020 for the change of use of the residential annexe to separate dwellinghouse (20/00701/DPP). As part of this planning permission it was stated in the delegated report that the usual permitted development rights allowing the formation of door and window openings were removed due to three elevations of the building being bound by shared garden spaces. This was conditioned as part of the consent, 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any subsequent order amending or superseding it, no additional door and/or window openings shall be formed without the submission of a planning application.'

As such, all relevant matters including the principles and policies of the adopted Midlothian Local Development Plan 2017 have been taken into consideration in determining this application. Given the concerns with regards overlooking and privacy and the fact that permitted developments rights were previously removed with regards to door and window openings, planning permission is to be refused. As the changes have been implemented and as such this proposal is retrospective, this case will be passed to the Planning Enforcement Team to pursue.

**Recommendation:** Refuse Planning Permission

## **Refusal of Planning Permission**



**Town and Country Planning (Scotland) Act 1997** 

Reg. No. 22/00267/DPP

Keltec Design Tearloch House Blairadam Kinross Perth & Kinross KY4 0HX

Midlothian Council, as Planning Authority, having considered the application by Mr Aadil Bashir, 4 High Street, Loanhead, EH20 9RA, which was registered on 8 April 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Infill of existing windows; alterations to door and window openings (retrospective) at 4 High Street, Loanhead, EH20 9RA

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

Document/Drawing.	Drawing No/Scale	<u>Dated</u>
Location Plan	01-01 1:1250	08.04.2022
Floor Plan (Both Proposed And Existing)	02-02D 1:100	08.04.2022
Proposed Elevations	03-02D 1:100	08.04.2022
PSAD Existing Elevations	PSAD 03-01A 1:100	08.04.2022

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

1. The development has a significant adverse impact on the amenity of the area, particularly in relation to overlooking and privacy and the relationship with neighbouring dwellings, and is therefore contrary to the aims of policy DEV2 of the Midlothian Local Development Plan 2017.

Dated 14 / 6 / 2022

\_\_\_\_\_\_

Duncan Robertson
Lead Officer – Local Developments

Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

#### Any Planning Enquiries should be directed to:



Planning and Local Authority Liaison

Direct Telephone: 01623 637 119 (Planning Enquiries)

Email: planningconsultation@coal.gov.uk

Website: <u>www.gov.uk/coalauthority</u>

#### **INFORMATIVE NOTE**

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

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside any subsequent application for Building Warrant approval (if relevant).

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

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

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

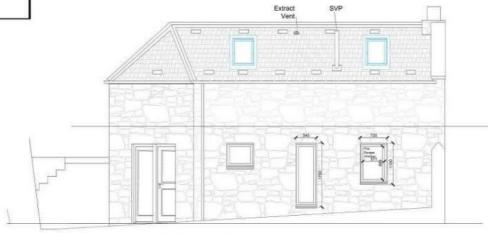
www.gov.uk/government/organisations/the-coal-authority

Informative Note valid from 1st January 2021 until 31st December 2022

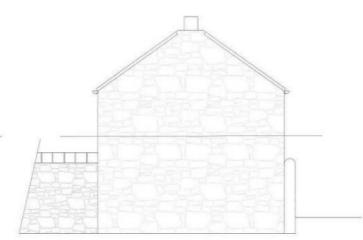
Appendix E

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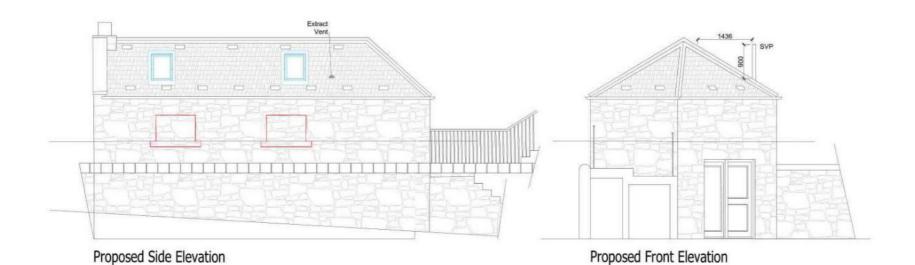
## REFUSED 14.06.2022 22/00267/DPP



Proposed Side Elevation



Proposed Rear Elevation



| Loanhead | TITLE | Proposed | Elevations | DRAWN BY | SMK | DATE | 08/10/20 | SCALE | 1/100 | Date | 08/10/21 | SK | Dylated as per Clients Amends | 08/10/21 | SK | 08/10/21 | SK | Dylated as per building control queries. | 08/08/21 | SK | Dylated as per building control queries. | 08/08/21 | SK | Dylated as per building control queries. | Date | BY | SMK | DATE | 08/10/20 | DATE | BY | SMK | DATE | 08/10/20 | DATE | BY | SMK | DATE | DA

4 High Street

