

Notice of Review: 2 Louis Braille Way, Gorebridge

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 erection of decking and fencing (retrospective) at 2 Louis Braille Way, Gorebridge.

2 Background

- 2.1 Planning application 22/00008/DPP for the erection of decking and fencing (retrospective) at 2 Louis Braille Way, Gorebridge was refused planning permission on 24 February 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 24 February 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 the LRB:

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

5 Conditions

- 5.1 The nature of the proposal is such that it is considered that no conditions would be required if the LRB is minded to grant planning permission.
- 5.2 If the LRB dismisses the review, the unauthorised decking and fencing will be required to be removed. In this case the applicant will be asked to comply with this requirement within two months of the LRB decision. However, the failure to undertake the required works will result in the Council having to consider issuing an enforcement notice to resolve the breach of planning control.

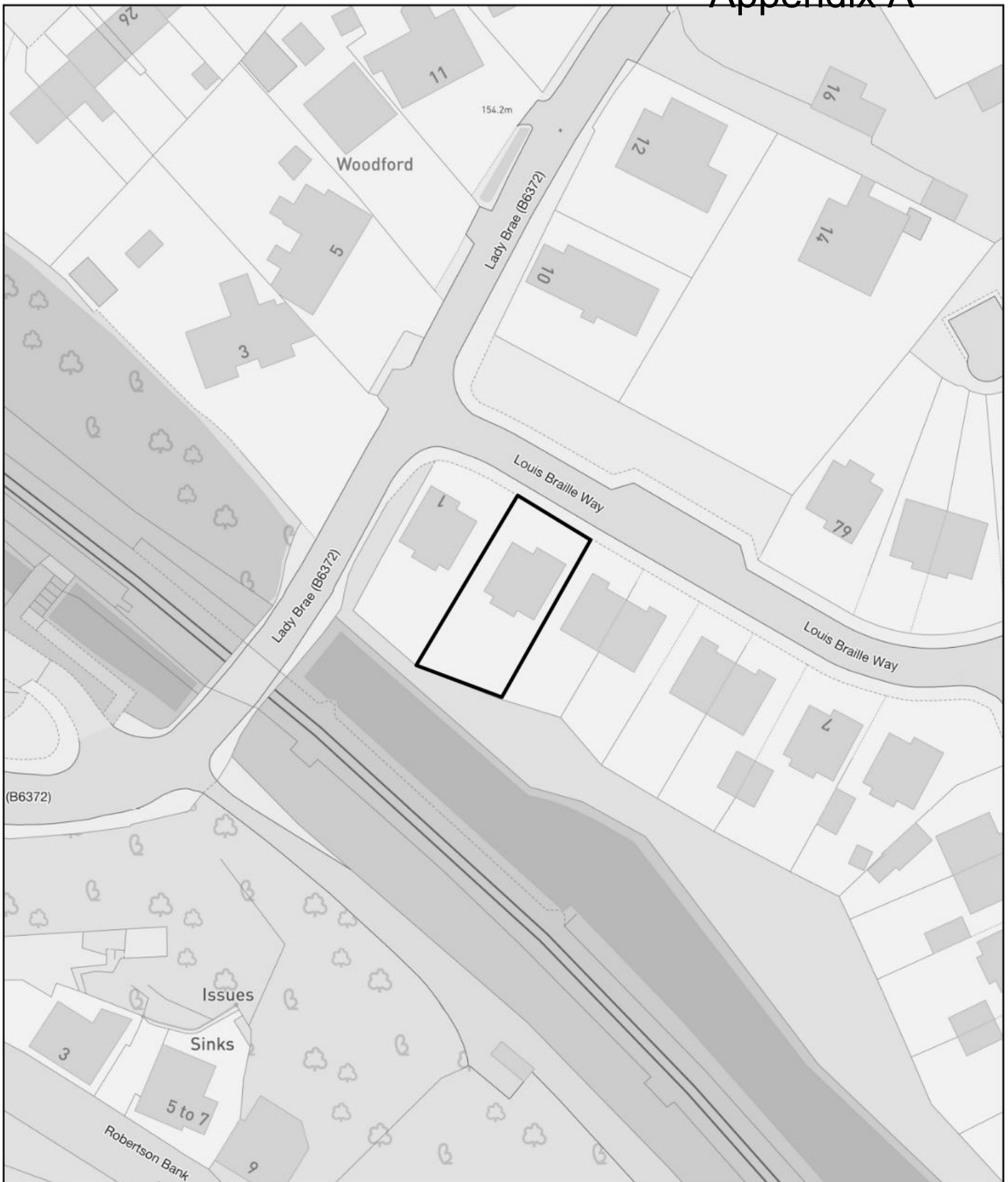
6 Recommendations

- 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: 26 August 2022
Report Contact: Alison Ewing, Planning Officer
alison.ewing@midlothian.gov.uk

Background Papers: Planning application 22/00008/DPP available for inspection online.



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

Erection of decking and fence (retrospective) at 2 Louis Braille Way, Gorebridge, EH23 4LD

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File No: 22/00008/DPP

Scale:1:750





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

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

Thank you for completing this application form:

ONLINE REFERENCE 100508735-003

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

Applicant or Agent Details

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

☒ Applicant ☐ Agent

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Adam"/>	Building Number:	<input type="text" value="2"/>
Last Name: *	<input type="text" value="Scott"/>	Address 1 (Street): *	<input type="text" value="2"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text" value="Louis Braille Way"/>
Telephone Number: *	<input type="text" value="REDACTED"/>	Town/City: *	<input type="text" value="Gorebridge"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH23 4LD"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="REDACTED"/>		

Site Address Details

Planning Authority:

Midlothian Council

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

Address 1:

2 LOUIS BRAILLE WAY

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

GOREBRIDGE

Post Code:

EH23 4LD

Please identify/describe the location of the site or sites

Northing

661200

Easting

334715

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)

Garden decking Level off the garden using a decking platform and the addition of a boundary fence to make the garden safe and useable. Application reference: 22/00008/DPP

Type of Application

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



Application for planning permission (including householder application but excluding application to work minerals).



Application for planning permission in principle.



Further application.



Application for approval of matters specified in conditions.

What does your review relate to? *

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

Statement of reasons for seeking review

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

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

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

Reasons for appeal attached as a supporting document due to restraint of 500 characters on the online form.

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

☐ Yes ☒ No

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

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

Word document with reasons for the appeal will be attached later in the process, as per above statement.

Application Details

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

100508735

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

06/01/2022

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

24/02/2022

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. *

☒ Yes ☐ No

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

Checklist – Application for Notice of Review

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

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

☐ Yes ☐ No ☒ N/A

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

☒ Yes ☐ No

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

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

☒ Yes ☐ No

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

Declare – Notice of Review

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

Declaration Name: Mr Adam Scott

Declaration Date: 17/05/2022

I would like to appeal against the decision to refuse planning permission for this proposal as I feel that refusing it on visual aspects is entirely subjective. I'd argue it is not detrimental to the surrounding area as the same kind of fencing has been used as all the gardens up the street, that are only visible from the path along the back, which is mainly used by dog-walkers. If I'd used a different kind of wood or painted it in an outrageous colour, then I could see why it might be detrimental to the surrounding area.

You may also note that there is a run down shack along the same path, that looks like a deathtrap, that has been set on fire twice in the last couple of years, that can be seen by all the residents. It appears to have been pulled down and left in an absolutely horrendous state. It feels to me that this not only hugely dangerous, but is a lot more detrimental to the visual aspects/character of the surrounding area than someone who has merely tried to make their garden safe and useable.

Also, as the garden currently is, it ensures my families privacy and safety. When it was left as it was, anybody coming up the street or using the path could see right in and the hill is so steep, we could not let our young child play in the garden safely. I feel that it's not unreasonable to ensure my family's safety and privacy.

I do agree that it could be made more visually pleasing by installing additional fencing boards, inline with the existing fencing, to cover/fill the gap. Is it possible to take that into consideration as part of the appeal? Or perhaps any other suggestions that someone could make?

We have spoken to several neighbours/street residents, none of whom have any issue with the visual aspect whatsoever. This is backed up by the fact there were absolutely no objections on the planning permission application that is made available for comment to the wider public.

Clearly, there are no privacy issues with it either or this would have been noted on the application during the comment period by any concerned party.

If there had been multiple objections to the application, then I would be far more accepting of the decision. If the application had been refused on safety grounds then again, this is a reason that in my view, holds far more weight than someone deciding, basically, it doesn't look good enough.

I'd also like to draw attention to the historical planning application for the wider development:

11/00105/DPP | Erection of 40 dwellinghouses, formation of access road and associated works | Land At Vogrie Road And Lady Brae Gorebridge Midlothian

It includes a document titled: **C - APPROVED Site Plan (also use if location plan is on the same drawing)**

Drawing number - E9266/1001 1:500 Vogrie Road

This document appears to include approved drawings that suggest a retaining wall (2.1m high) was in the original plans, to be built along the bottom of a number of properties (ours included), but has never been built. Had this been installed, as it should have been, this would have provided us with further options to make our garden safe and useable.

I'd also like to draw attention to another historical, retrospective planning application that had multiple objections added by neighbours citing privacy and size concerns:

21/00766/DPP | Erection of shed and formation of decking (retrospective) | 41 Whitehouse Way Gorebridge EH23 4FP

I note that this application was ultimately approved, even with the neighbours comments/concerns. I feel that it is rather unfair that mine has had absolutely no concerns from people who live nearby and would be affected by it, but has been declined based on looks, yet another Midlothian resident had theirs approved with multiple objections due to privacy and looks.

I hope the above doesn't sound unreasonable and that we can come to some sort of agreement that suits all parties.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 22/00008/DPP

Site Address: 2 Louis Braille Way, Gorebridge, EH23 4LD

Site Description:

The application property comprises a modern two storey detached dwellinghouse located within a residential development.

The rear garden of the property backs onto open space with railway line beyond. The garden as originally constructed featured a significant slope to the south, away from the property. There is an existing shed and paved area within the garden.

The property at no.1 Louis Braille Way to the west of the site sits at a lower level to the application site, with no.3 to the east sitting at an elevated level.

Proposed Development:

Erection of decking and fence (retrospective)

Proposed Development Details:

The application seeks retrospective planning permission for the erection of decking to the rear garden, with surrounding fence.

The decking protrudes out from the dwellinghouse at one level, reaching a maximum of 3.1m above ground level to the rear of the garden adjacent to no.1, and 1.6m adjacent to no.3. A fence has been erected surrounding the decking at a height of 1.8m to the rear and to the eastern boundary in addition to the existing fence, and 1.5m to the boundary with no.1.

The decking area and former garden ground has been covered with Astroturf grassing.

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

History sheet checked.

Consultations:

Network Rail – No objection

Representations: No representations were received.

Relevant Planning Policies:

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

DEV2 - Protecting amenity within the built-up area - seeks to protect the character and amenity of the built-up area.

It is noted that policy DP6 House Extensions, from the now superseded 2008 Midlothian Local Plan, set out design guidance for new extensions requiring that they are well designed in order to maintain or enhance the appearance of the house and the locality. The policy guidelines contained in DP6 also relate to size of extensions, materials, impact on neighbours and remaining garden area. It also states that front porches to detached or semi-detached houses are usually acceptable provided they project less than two metres out from the front of the house. It also allowed for novel architectural solutions. The guidance set out within this policy has been successfully applied to development proposals throughout Midlothian and will be reflected within the Council's Supplementary Guidance on Quality of Place which is currently being drafted.

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.

As noted above, the rear garden of the application site slopes steeply downwards to the rear section of the garden. The presence of this slope results in a large extent of the garden area effectively unusable.

The garden, and erection of decking and fencing subject to this application, is prominent as viewed on approach to the housing development from Lady Brae travelling northeast. The fence to the rear of the application garden which reaches a height of 3.1m above ground level results a very tall structure which has an overbearing presence and significantly affects the character and amenity of the surrounding area. This loss of amenity is contrary to policy DEV2 of the Midlothian Local Development Plan.

The raised decking affords some overlooking to the garden of no. 1 Louis Braille Way, however given the height of the fence erected along the boundary of the properties, and that to the boundary of no.3, it is not considered that the increased overlooking as a result of the development will significantly reduce the level of privacy available to neighbouring properties.

Recommendation:

Refuse planning permission

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 22/00008/DPP

Mr Adam Scott
2 Louis Braille Way
Gorebridge
EH23 4LD

Midlothian Council, as Planning Authority, having considered the application by Mr Adam Scott, 2 Louis Braille Way, Gorebridge, EH23 4LD, which was registered on 19 January 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Erection of decking and fence (retrospective) at 2 Louis Braille Way, Gorebridge, EH23 4LD

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	1:1250	19.01.2022
Illustration/Photograph	Proposed Measurements	19.01.2022
Illustration/Photograph	Proposed Construction Details	19.01.2022
Illustration/Photograph	Existing Site Elevations	19.01.2022

The reason for the Council's decision is set out below:

- 1. Due to the existing level changes within the garden, and the height of the proposed decking, the development appears as an overly dominant feature and has a significant detrimental impact on the visual amenity of the surrounding area. For the above reason the proposal is contrary to policy DEV2 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built-up area.*

Dated 24 / 2 / 2022



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



**The Coal
Authority**

Any Planning Enquiries should be directed to:

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

INFORMATIVE NOTE

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

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



