

## Notice of Review: 62 Royal Court, Penicuik Determination Report

Report by Derek Oliver, 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 a two storey extension to dwellinghouse and erection of fence at 62 Royal Court, Penicuik.

#### 2 Background

- 2.1 Planning application 19/00977/DPP for the erection of a two storey extension to dwellinghouse and erection of fence at 62 Royal Court, Penicuik was granted planning permission subject to conditions on 7 January 2020; a copy of the decision is attached to this report. Condition 1 on planning permission 19/00977/DPP subject to review is as follows:
  - 1. The proposed new fence along the west side of the application property is not approved.

**Reason:** The enclosure of this area and the erection of the fence would have a detrimental impact on the visual amenity of the area contrary to policy DEV 2 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built-up area.

The applicant is requesting that this condition is removed from the grant of planning permission.

- 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 7 January 2020 (Appendix D); and

- A copy of the relevant plans (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 procedures (as amended during the COVID-19 pandemic) agreed by the LRB, the LRB by agreement of the Chair:
  - Have determined to consider a visual presentation of the site instead of undertaking a site visit because of the COVID-19 pandemic restrictions; and
  - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that no consultations were required and no representations have been 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 to the next 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 13 June 2017, 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 (condition 1 is on planning permission 19/00977/DPP which the applicant has not requested to be removed/amended).

1. The colour, size, texture and profile of the roof tiles on the extension shall match those of the roof tiles on the existing building.

**Reason:** To ensure that the extension matches the external appearance of the existing building and thereby maintains the visual quality of the area.

2. Details of the colour of the proposed fence shall be submitted to the Planning Authority and the fence shall not be erected until this detail has been approved in writing by the planning authority.

**Reason:** To safeguard the visual amenity of the surrounding area.

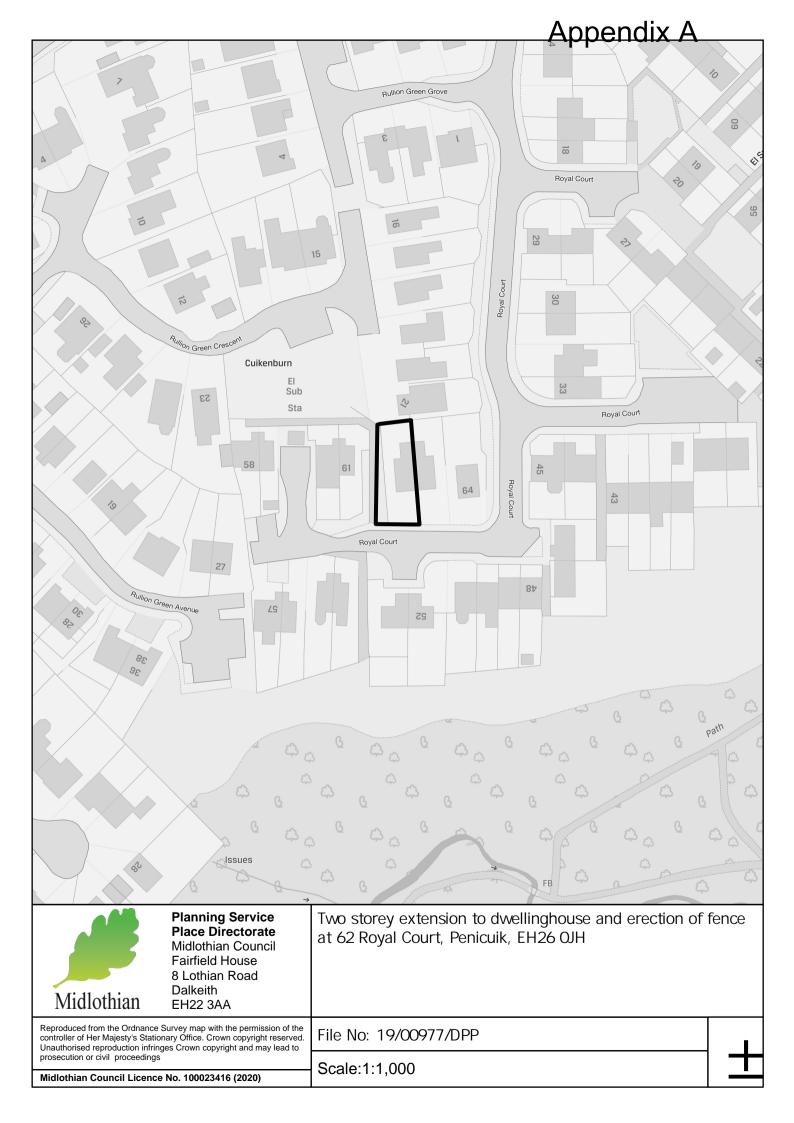
#### 6 Recommendations

- 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

**Date:** 20 November 2020

**Report Contact:** Peter Arnsdorf, Planning Manager peter.arnsdorf@midlothian.gov.uk

**Background Papers:** Planning application 19/00977/DPP available for inspection online.



# Appendix B

Midlothian						
Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: planning- applications@midlothian.gov.uk						
Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.						
Thank you for completing this application form:						
ONLINE REFERENCE 100206660-002						
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)						
Agent Details						
Please enter Agent details	3					
Company/Organisation:	David Paton Building Consultancy					
Ref. Number:		You must enter a Building Name or Number, or both: *				
First Name: *	David Paton	Building Name:				
Last Name: *	Building Consultancy	Building Number:	13			
Telephone Number: *	0131 440 1213	Address 1 (Street): *	High Street			
Extension Number:		Address 2:				
Mobile Number:		Town/City: *	Loanhead			
Fax Number:		Country: *	Scotland			
		Postcode: *	EH20 9RH			
Email Address: *	davidpatonbc@btconnect.com					
Is the applicant an individual or an organisation/corporate entity? *						
Individual Organisation/Corporate entity						

etails		
01		
Other	You must enter a Building Name or Number, or both: *	
Mr & Mrs	Building Name:	
David	Building Number:	62
Muirhead	Address 1 (Street): *	Royal Court
	Address 2:	
	Town/City: *	Penicuik
	Country: *	Scotland
	Postcode: *	EH26 0JH
Details		
	e):	
PENICUIK		
EH26 0JH		
the location of the site or sites		
661048	Easting	322955
	Muirhead	Muirhead Address 1 (Street): *   Address 2: Address 2:   Town/City: * Country: *   Country: * Postcode: *   Postcode: * *     Image: Street of the street o

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)
2 storey extension to dwelling house and erection of fence
Type of Application
What type of application did you submit to the planning authority? *
<ul> <li>Application for planning permission (including householder application but excluding application to work minerals).</li> <li>Application for planning permission in principle.</li> <li>Further application.</li> <li>Application for approval of matters specified in conditions.</li> </ul>
What does your review relate to? *
<ul> <li>Refusal Notice.</li> <li>Grant of permission with Conditions imposed.</li> <li>No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.</li> </ul>
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.
see attached supporting statment
Have you raised any matters which were not before the appointed officer at the time the Section Was made? *
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)						
Drawing which was used in Planning Application Supporting Statement Alternative Approach						
Application Details						
Please provide the application reference no. given to you by your planning authority for your previous application.	19/00977/DPP					
What date was the application submitted to the planning authority? *	22/11/2019					
What date was the decision issued by the planning authority? *	07/01/2020					
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. *						
In the event that the Local Review Body appointed to consider your application decides to in	spect 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?. *	X Yes 🗌 No					
Have you provided the date and reference number of the application which is the subject of review? $^{\ast}$	ihis 🛛 Yes 🗌 No					
If you are the agent, acting on behalf of the applicant, have you provided details of your nam and address and indicated whether any notice or correspondence required in connection wit review should be sent to you or the applicant? *						
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 *	X 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 David Paton Building Consultancy

 Declaration Date:
 16/03/2020

#### ERECTION OF 2 STOREY EXTENSION TO SIDE OF DWELLING HOUSE AND ERECTION OF FENCE IN DIFFERENT POSITION FROM EXISTING AT; 62 ROYAL COURT, PENICUIK. EH26 0JH APPLICATION NO. 19/00977/DPP APPROVED 7 JANUARY 2020

#### Introduction

On behalf of our client Mr & Mrs Muirhead, we would like to appeal against Condition 1 of the above permission which reads as follows;

1. The proposed new fence along the west side of the application property is not approved.

**Reason:** The enclosure of this area and the erection of the fence would have a detrimental impact on the visual amenity of the area contrary to Policy Dev 2 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built up area

#### Reason for Review

Permission has been granted for a 2 storey extension to the side of the house which takes it up to the existing Fence line on the property (this is not the boundary). Beyond the existing fence there is a piece of land owned by the applicant which bounds a pathway which runs between Royal Court and Rullion Green Crescent. This piece of land is landscaped. It is also overgrown, unsightly and an area where rubbish collects. Our proposal to move the fence line to the boundary would tidy this area up, allow the applicant to be able to access the rear garden of their property and also provide an area within the garden that can be landscaped properly to enhance this area.



Looking at Pathway from opposite to site



On Pathway towards Rullion Green Crescent

#### Planning Issues

It is argued by the Planning department that Landscape / open space is important because it enhances the general environment. This example does neither all that has been created is a narrow, overgrown pathway that gives poor visual amenity of the locality. Across the street from the applicant site between 53 & 54 Royal Court there is much more open pathway with no landscaping whatsoever. You also only have to walk down Royal Court to find communal landscaping which is unsightly, unkept and unacceptably narrowing the pavement. There are also examples on this estate of pathways between properties with no landscaping. It is also argued that by allowing permission here it would cause a precedent for the house on the other side of the path to do the same. I would suggest given what exists at present is a dark narrow pathway, allowing a fence on the boundary would in fact open this pathway up to allow a much more open and lighter pathway to be used and in fact would be an enhancement to the local Amenity and is in keeping with other areas within the estate. It is also worth pointing that there were no objections to this application.



Pathway between 53 & 54 Royal Court



Examples of unkept Landscaping within the estate



Pathway elsewhere on estate



#### **Alternatives**

After receiving the Planning Permission with condition attached we approached the appointed Planning officer as the applicants are keen to work with the council to find an acceptable solution which will allow access between the front and back gardens, and had first of all offered that the new fence would not go forward of the front building line and also we came up with a sketch (the planner didn't want to see it) showing an alternative which would benefit all parties with the new fence line far enough away from the extension to allow rear access to the garden, this would also allow a certain amount of landscaping to be kept to the pathway side as the Planning Department want. We were told that there is no compromise to the position of the fence line. Copy of this alternative plan is attached.

#### **Conclusion**

When this estate was built in the late 80s / early 90s, you can understand that forming landscape areas to soften the development and give an element of greenery was the correct thing to do. In reality though what we have all these years later is a pathway which is not open space as has been described or gives any great landscape value to the wider estate. What we have is a narrow, dark, messy unkept area that would benefit from what we have suggested in either original form or as amended.

With the above in mind we ask that condition 1 is removed from the permission.

David Paton Building Consultancy 13 High Street Loanhead EH20 9RH

March 2020

## Appendix C

#### **MIDLOTHIAN COUNCIL**

#### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

#### Planning Application Reference: 19/00977/dpp

Site Address: 62 Royal Court, Penicuik

#### Site Description:

The application property comprises a semi-detached two storey dwellinghouse and its associated garden located within a residential area. There is a conservatory at the rear of the house and a shed at the side. The house is finished externally in brick with brown upvc framed windows and red/brown concrete pantiles. There is a footpath link to the west side of the application site with a 1.9m high boundary fence set back from the footpath between 1m at the rear of the site and 2m approx at the front of the site with planting on the outer side of the fence.

#### **Proposed Development:**

Two storey extension to dwellinghouse and erection of fence

#### **Proposed Development Details:**

It is proposed to erect a 2.8m wide two storey extension at the side of the house continuing the form of the existing building. External materials are to match existing. It is also proposed to erect a new 1.65m high boundary fence hard up to the footpath at the side including forward of the front building line of the house.

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

History sheet checked.

402/87 – Erection of 44 dwellinghouses (amendment to previously approved house designs) at Phase 2, Rullion Road, Penicuik

07/00784/ful – Erection of fence at 4 Rullion Green Crescent, Penicuik – refused 06.02.08

#### **Consultations:**

None required.

#### **Representations:**

None received.

#### **Relevant Planning Policies:**

The relevant policy of the Midlothian Local Development Plan 2017 is;

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.

The design of the extension is in keeping with the character of the existing building and will not have a significant impact on the visual amenity of the street scene.

Sufficient garden area would remain after the erection of the extension. Existing off street parking unaffected.

Planning permission was granted for this estate in the late 1980's. The design of the estate was open plan at the front. Planning permission was granted subject to conditions including a restriction on the erection of walls or fences other than those shown on the approved plans. The reason for the condition was "to ensure that the subsequent erection of fences does not detract from the appearance and amenity of the development". There is no objection per se in principle to the erection of walls and fences subject to the impact on the visual amenity of the area and an appropriate design. Planning permission has previously been refused for a 1.8m high fence at the side of no 4 Rullion Green Crescent, which is within the same housing estate, adjacent to a footpath link on the grounds of its detrimental impact on the visual amenity of the area.

The footpath along the west side of the application property is characterised by planting including shrubs and trees on both sides with the boundary fences set back behind the fences as per the originally approved plans for this housing estate. The proposed fence would enclose an area of land which originally formed part of the landscape provision at this estate. Landscape/open space is important as it enhances the general environment. This area whilst owned by the applicant contributes to the character and visual amenity of the locality, adding interest and enhancing the appearance and users experience of the footpath link and contributes to the overall character and visual amenity of the estate both for residents and visitors. Whilst is acknowledged that the planting is somewhat overgrown this is a maintenance issue and not justification for the erection of a fence hard up to the boundary. As a result of the removal of the existing planting on the outer side of the fence and enclosing this area with a 1.65m high fence the visual benefits would be lost, with the fence being a dominant feature, with an overall detrimental impact on the visual amenity of the area including wider views from an area of open space to

the north of the site. Approval could also be seen as setting a precedent for the removal of the planting on the other side of the path and the erection of a fence resulting in a comparatively harsh boundary treatment along the footpath link rather than planting. Also whilst it is acknowledged that the existing fence projects forward of the house by 5.8m, its appearance is softened by the existing planting. With the removal of the existing planting the erection of a 1.65m high fence forward of the front building line would appear very prominent and incongruous and detract from the character of the area. It is acknowledged that there are other examples of fences hard up to pavements in the surrounding area (including at nos. 53 and 54 opposite albeit set back behind the front building line) however this should not be seen as justifying the degradation of the existing visual amenity of the area.

The proposal will not have a significant impact on the amenity of neighbouring properties.

As intimated above the proposed extension is acceptable. Planning permission could be granted for the extension subject to a condition not approving the proposed new fence.

#### **Recommendation:**

Grant planning permission subject to conditions.

## Appendix D

## Planning Permission

Town and Country Planning (Scotland) Act 1997

### Reg. No. 19/00977/DPP



David Paton Building Consultancy 13 High Street Loanhead EH20 9RH

Midlothian Council, as Planning Authority, having considered the application by, Mr and Mrs D Muirhead, 62 Royal Court, Penicuik, EH26 0JH, which was registered on 25 November 2019, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

## Two storey extension to dwellinghouse and erection of fence at 62 Royal Court, Penicuik, EH26 0JH

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

Document/Drawing	Drawing No/Scale	<b>Dated</b>
Existing Elevations	19-64-ex 1:1250 1:50	25.11.2019
Site plan, Location Plan and Elevations	19-64-PL1 1:1250 1:200	25.11.2019
	1:50	

This permission is granted for the following reason:

The extension will not have a significant impact on the character of the existing building, the visual amenity of the surrounding area or the amenity of neighbouring properties and complies with the aims of policy DEV 2 of the adopted Midlothian Local Development Plan 2017 in these respects.

Subject to the following conditions:

1. The proposed new fence along the west side of the application property is not approved.

**Reason:** The enclosure of this area and the erection of the fence would have a detrimental impact on the visual amenity of the area contrary to policy DEV 2 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built-up area.

2. The colour, size, texture and profile of the roof tiles on the extension shall match those of the roof tiles on the existing building.

**Reason:** To ensure that the extension matches the external appearance of the existing building and thereby maintains the visual quality of the area.

Dated 7 / 1 / 2020

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

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



#### **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. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous 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 development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Standards approval (if relevant). Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account of all the relevant safety and environmental risk factors, including gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distanceof-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, digging of 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.

Property specific summary information on past, current and future coal mining activity can be obtained from: <u>www.groundstability.com</u> or a similar service provider.

If any of the 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

This Informative Note is valid from 1<sup>st</sup> January 2019 until 31<sup>st</sup> December 2020





